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THE AUTOCRATIC LEGAL PLAYBOOK

BY

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The Autocratic Legal Playbook

Scott L. Cummings

ABSTRACT

This Article examines the central role of lawyers in the ascent of American autocracy. It analyzes that role in relation to the development and innovation of the autocratic legal playbook: the repertoire of tactics for mobilizing law to degrade democracy. The central aim is to show how the playbook has been used by lawyers to weaken institutions that constrain the executive and to explore what this means for resistance at home and the future of democracy around the world. The Article places the American case in comparative context, illuminating how institutional attacks are channeled through executive action that bends existing law to test its boundaries, requiring lawyers to authorize and defend legal change that compromises their independence. Doing so spotlights the process of professional capture, achieved by controlling government lawyers and neutralizing their private sector counterparts, as a crucial gateway to wider attacks on other institutions: the courts, bureaucracy, universities, civil society, and media. The playbook directs these attacks toward the ultimate autocratic objective—controlling the authority to define law and thereby avoid legal accountability. Tracing American autocratization to fractures in the conservative legal movement during the first Trump administration, the Article uses evidence from the second administration to analyze the playbook's operating principles and applied tactics. This analysis reveals common moves by executive branch lawyers to effectuate institutional targeting premised on inverting empirical reality to manufacture legal authority for the exercise of extraordinary power. The Article concludes by considering how lawyers inside and outside of government can help to reverse engineer the playbook, drawing on critical lessons of how democracies have died—and been resuscitated—in other countries to outline steps for strengthening the independence of the legal profession and protecting the rule of law in perilous times.

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INTRODUCTION

On March 14, 2025, President Donald Trump made an unprecedented speech to the Department of Justice.[1] It was a declaration of victory—and a warning. The victory was capturing the department's leadership: installing loyalists, including his own private defense attorneys,[2] in key leadership positions, thereby undermining the department's historic independence.[3] In the Great Hall, where former presidents, Democratic and Republican alike, had extolled the rule of law,[4] the president repeated his campaign claim that "in recent years, a corrupt group of hacks and radicals within the ranks of the American government obliterated the trust and goodwill built up over generations."[5] Then he issued his warning: the department was coming after lawyers—including prosecutors in that very department—who sought to hold him legally accountable.[6] The speech was followed that same day by an executive order imposing sanctions on the law firm Paul Weiss for its association with two lawyers who had served as prosecutors investigating Trump.[7] The timing of this order, the third action against elite U.S. law firms,[8] was not accidental. Rather, it was part of a well-researched attack on the

1. Donald J. Trump, President, Speech: Donald Trump Addresses the Staff at the Department of Justice (Mar. 14, 2025), https://rollcall.com/factbase/trump/transcript/donald-trump-speech-department-of-justice-march-14-2025/ [https://perma.cc/H5CY-SE7R].
2. Alan Feuer & Maggie Haberman, *Trump Turns to His Personal Lawyers to Stock Top Ranks of Justice Dept.*, N.Y. TIMES (Nov. 15, 2024), https://www.nytimes.com/2024/11/15/us/politics/trump-lawyers-justice-department.html [https://perma.cc/TJ3Y-AK6X].
3. *See* Justin Wise, *DOJ Lawyer Suspensions Show Conflict in Duties to Court, Trump*, BLOOMBERG L. (Apr. 8, 2025, at 12:14 PT), https://news.bloomberglaw.com/us-law-week/doj-lawyer-suspensions-show-conflict-in-duties-to-court-trump [https://perma.cc/77FX-S837]. For an inside perspective on President Trump's attack on the independence of the Justice Department, beginning in his first administration, see generally CAROL LEONNIG & AARON C. DAVIS, INJUSTICE: HOW POLITICS AND FEAR VANQUISHED AMERICA'S JUSTICE DEPARTMENT (2025).
4. Alan Feuer, *Trump's Grievance-Filled Speech Makes Clear His Quest for Vengeance Is Personal*, N.Y. TIMES (Mar. 18, 2025), https://www.nytimes.com/2025/03/15/us/politics/trump-speech-doj-retribution.html [https://perma.cc/43Z4-WZLP].
5. Trump, *supra* note 1, at 00:06:15.
6. *Id.* at 00:17:12. Nearly a year later, a large blue banner with Trump's image was unfurled between the main columns of the DOJ building with the tagline: Make America Safe Again. Ashley Ahn, *New Trump Banner Hung on Justice Department Headquarters*, N.Y. TIMES (Feb. 19, 2026), https://www.nytimes.com/2026/02/19/us/politics/trump-banner-doj.html [https://perma.cc/K6JD-MVJR].
7. Exec. Order No. 14237, 90 Fed. Reg. 13039 (Mar. 14, 2025) ("Addressing Risks from Paul Weiss") [hereinafter Paul Weiss Order].
8. At the time, two actions had already been issued against Covington & Burling and Perkins Coie. Memorandum on Suspension of Security Clearances and Evaluation of Government

legal profession: the centerpiece of a playbook designed to weaken American democracy.

Lawyers are central targets of the playbook because of the independent role they play protecting democracy from executive abuse. Over the course of American history, lawyers have often performed this role poorly and been implicated in patently antidemocratic projects: legalizing segregation,[9] internment,[10] torture,[11] and removal.[12] Yet, at critical times, lawyers have also discharged their democratic responsibilities under enormous stress, perhaps none more intense than the effort to overturn the 2020 presidential election.[13] Lawyers have also played vanguard roles using the constitutional commitment to "equal justice under law"[14] to produce pathbreaking democratic innovations—universal

Contracts, 2025 DAILY COMP. PRES. DOC. 303 (Feb. 25, 2025) [hereinafter Covington & Burling Memo]; Exec. Order No. 14230, 90 Fed. Reg. 11781 (Mar. 6, 2025) ("Addressing Risks from Perkins Coie LLP") [hereinafter Perkins Coie Order]. There were five subsequent executive memos and orders: (1) Exec. Order No. 14244, 90 Fed. Reg. 13685 (Mar. 21, 2025) ("Addressing Remedial Action by Paul Weiss," which revoked the Paul Weiss Order, *supra* note 7, after the firm settled) [hereinafter Paul Weiss Remedial Order]; (2) Memorandum on Preventing Abuses of the Legal System and the Federal Court, 2025 DAILY COMP. PRES. DOC. 387 (Mar. 21, 2025) [hereinafter Preventing Abuses Memo] (singling out the Elias Law Group for "unethical misconduct"); (3) Exec. Order No. 14246, 90 Fed. Reg. 13997 (Mar. 25, 2025) ("Addressing Risks from Jenner & Block") [hereinafter Jenner & Block Order]; (4) Exec. Order No. 14250, 90 Fed. Reg. 14549 (Mar. 27, 2025) ("Addressing Risks from WilmerHale") [hereinafter WilmerHale Order]; and (5) Exec. Order No. 14263, 90 Fed. Reg. 15615 (Apr. 9, 2025) ("Addressing Risks from Susman Godfrey") [hereinafter Susman Godfrey Order].

9. Sherrilyn Ifill, *Trump's Attack on Lawyers and Law Firms Takes a Page Out of the Southern 1950s Playbook*, SHERRILYN'S NEWSL. (Mar. 24, 2025), https://sherrilyn.substack.com/p/trumps-attack-on-lawyers-and-law [https://perma.cc/E9W2-VZKK].
10. Neal Katyal, *Confession of Error: The Solicitor General's Mistakes During the Japanese-American Internment Cases*, U.S. DEP'T OF JUST. ARCHIVES (May 20, 2011).
11. David Cole, *The Torture Memos: The Case Against the Lawyers*, N.Y. REV. BOOKS (Oct. 8, 2009), https://www.nybooks.com/articles/2009/10/08/the-torture-memos-the-case-against-the-lawyers [https://perma.cc/RTL6-TEDQ].
12. W. Tanner Allread, *The Specter of Indian Removal: The Persistence of State Supremacy Arguments in Federal Indian Law*, 123 COLUM. L. REV. 1533 (2023).
13. Scott L. Cummings, *Lawyers in Backsliding Democracy*, 112 CALIF. L. REV. 513, 592–93 (2024) (recounting how government lawyers stood up to the 2020 election attack).
14. This commitment is inscribed on the West Pediment located at the entry to the United States Supreme Court. OFF. OF THE CURATOR, SUP. CT. OF THE U.S., THE WEST PEDIMENT INFORMATION SHEET (2021).

suffrage,[15] workers' rights,[16] and civil rights[17]—which have served as sources of inspiration for movements around the world.[18]

America has now become a world-leading incubator of a far more dangerous innovation: democratic backsliding, in which institutions that protect free elections, fundamental rights, and checks and balances are undermined.[19] American democracy has always contained authoritarianism[20]—directed at people of color, immigrants, sexual minorities, and other disadvantaged groups[21]—while continuing to enable inequality.[22] Yet never before has one presidential administration moved with such velocity, coordination, and force against all pillars limiting executive power.

With over one hundred executive orders in its first one hundred days, and a deluge of executive action in its first year, the second Trump administration has honed old tactics while developing new ones to undercut democratic functions that lawyers perform. This is because an effective way to consolidate autocracy is by disabling legal resistance to attacks on the rule of law. Toward this end, the administration has sought to undermine judicial independence by defying court orders and calling for selective impeachment of judges,[23] and to weaken professional independence by capturing the Department of Justice,[24] targeting law

15. Serena Mayeri, *After Suffrage: The Unfinished Business of Feminist Legal Advocacy*, 129 YALE L.J. F. 512 (2020).
16. WILLIAM E. FORBATH, LAW AND THE SHAPING OF THE AMERICAN LABOR MOVEMENT (1991).
17. MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY (2004).
18. *See* ALAN K. CHEN & SCOTT L. CUMMINGS, PUBLIC INTEREST LAWYERING: A CONTEMPORARY PERSPECTIVE 445–48 (2014).
19. *See, e.g.*, Thomas M. Keck, *Erosion, Backsliding, or Abuse: Three Metaphors for Democratic Decline*, 48 LAW & SOC. INQUIRY 314, 316–17 (2023).
20. *See, e.g.*, Aziz Huq, *America Is Watching the Rise of a Dual State*, ATLANTIC (Mar. 23, 2025), https://www.theatlantic.com/magazine/archive/2025/05/trump-executive-order-lawlessness-constitutional-crisis/682112 [https://perma.cc/PZM3-VVF5] (applying Ernst Fraenkel's theory of the dual state, derived from the experience of Nazi Germany, to suggest how democracy and authoritarianism in the United States are intrinsically connected).
21. *See, e.g.*, RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA (2017).
22. *See, e.g.*, MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS (2010).
23. Amy Howe, *Chief Justice Rebukes Trump's Call for Judicial Impeachment*, SCOTUSBLOG (Mar. 18, 2025), https://www.scotusblog.com/2025/03/chief-justice-rebukes-trumps-call-for-judicial-impeachment [https://perma.cc/W3N6-58EZ]; Sam Levine, *Trump's Defiance of Court Orders Is 'Testing the Fences' of the Rule of Law*, GUARDIAN (Mar. 23, 2025, at 09:01 ET), https://www.theguardian.com/us-news/2025/mar/23/judges-trump-court-rulings [https://perma.cc/K839-YVB7].
24. *See* Carol Leonnig, *All It Took for Trump to Dismantle the Justice Dept.*, N.Y. TIMES (Oct. 30, 2025), https://www.nytimes.com/2025/10/30/opinion/trump-biden-justice-department.html [https://perma.cc/56P4-NBC6].

firms,[25] and attacking the organized bar.[26] Subverting the independence of judges and lawyers, who have authority to say what the law is and thus to keep the executive within legal boundaries, removes a critical check. And that is precisely what autocrats covet: the power to control the definition of law and therefore act without legal consequences.

Because controlling law is the recipe for contemporary autocracy, lawyers are the crucial ingredient for success:[27] designing, drafting, and defending legal rules that weaken rule-of-law guardrails and democratic resistance. Research from the United States and other backsliding countries reveals that lawyers are consistently at the forefront of movements to push democracy into decline.[28] This is why lawyers led the effort to overturn the 2020 presidential election.[29] It is why lawyers were behind Project 2025.[30] It is why lawyers are prominent in the Trump administration's leadership.[31] And it is why, for American democracy to meet the backsliding challenge, lawyers committed to the rule of law must push back.

This Article examines the role of lawyers in the development and innovation of the autocratic legal playbook—the repertoire of tactics for exploiting legal loopholes to undermine democratic guardrails—and outlines lessons for resistance. It begins from the premise that successful democratic resistance starts with knowledge of how democracy declines. This requires connecting the dots: understanding that what may appear as isolated action, ad hoc strategy, or

25. *See* executive orders cited *supra* note 8.
26. *See* Jeff Overley, *'It's a War, Man': Trump's Deputy AG Unloads on Judges, Bars*, LAW360 (Nov. 7, 2025, at 23:17 ET), https://www.law360.com/articles/2409016/it-s-a-war-man-trump-s-deputy-ag-unloads-on-judges-bars [https://perma.cc/3UQN-DQMA].
27. Kim Lane Scheppele, *Autocratic Legalism*, 85 U. CHI. L. REV. 545, 581 (2018) (stating that autocrats "come to power with a phalanx of lawyers"); *see also* Aziz Huq & Tom Ginsburg, *How to Lose a Constitutional Democracy*, 65 UCLA L. REV. 78, 94–98 (2018) (explaining the mechanics of constitutional retrogression).
28. *See, e.g.*, James Saranteas, *The 'Big Lie's' Autocratic Assault on the Rule of Law: Attorneys Can Stop It*, AM. CONST. SOC'Y (Nov. 7, 2024), https://www.acslaw.org/expertforum/the-big-lies-autocratic-assault-on-the-rule-of-law-attorneys-can-stop-it [https://perma.cc/9VDU-X3B6]; Z. Umut Türem, *Professional Liquidation in the Context of Autocratic Legalism: Lawyers, Class, and Status in Turkey, 2002–?*, 50 LAW & SOC. INQUIRY 759 (2025).
29. Cummings, *supra* note 13, at 562–93.
30. MANDATE FOR LEADERSHIP: THE CONSERVATIVE PROMISE xv-xxiii (Heritage Found., Paul Dans & Steven Groves eds., 2023) (providing list of thirty-four authors, fifteen of whom identify as lawyers) [hereinafter MANDATE FOR LEADERSHIP].
31. *See, e.g.*, Coral Davenport, *The Man Behind Trump's Push for an All-Powerful Presidency*, N.Y. TIMES (Oct. 3, 2025), https://www.nytimes.com/2025/09/29/us/politics/russell-vought-trump-budget.html [https://perma.cc/XF8E-EU9W] (profiling White House budget director and lawyer, Russell T. Vought); Joe Walsh, *Trumpiverse: Ranking Trump's Inner Circle*, FORBES (Feb. 24, 2025, at 14:48 ET), https://www.forbes.com/sites/joewalsh/2025/02/24/trumpiverse-ranking-trumps-inner-circle [https://perma.cc/3BSJ-QNMD] (showing lawyers in Trump's inner circle).

overheated rhetoric is none of those things, but rather part of a systematic and well-researched plan to weaken democratic institutions. Understanding this plan helps to explain why a president would pursue policy objectives that are untethered from evidence—such as eliminating environmental protections or vaccine mandates despite their proven effectiveness—or advance contradictory aims—such as pardoning the ex-president of Honduras for drug trafficking while abducting the Venezuelan president for the same alleged crime.[32] These decisions, irrational on their face, become rational when viewed through the logic of autocracy, rather than the logic of normal policy. Understanding that logic is the key that unlocks effective countermobilization.

Part I begins by defining the autocratic legal playbook and situating it in theoretical context. Doing so sets the stage for the Article's major theoretical contributions. First, adding to the political science literature on democracy,[33] the Article deepens understanding of the role of lawyers as authors and targets of backsliding, conceptualizing professional capture as a crucial gateway through which autocrats effectuate wider attacks on independent democratic institutions that keep the executive in check: the courts, bureaucracy, universities, civil society, and media. Second, adding to the sociolegal literature on autocratic legalism,[34] the Article demonstrates how opportunity structure shapes the form and site of legal mobilization used to attack institutions[35]—mobilization that, in the U.S. context, is channeled through executive action demarcating the administrative state as the central arena of legal conflict. Third, adding to the comparative literature on constitutionalism[36] and legal ethics,[37] the Article demonstrates how autocratic

32. *See* Lindsey Granger, *Maduro Kidnapped, but Former Honduran President Pardoned? Hypocrisy*, HILL (Jan. 6, 2026, at 14:53 ET), https://thehill.com/opinion/lindseys-lens/5675203-trump-contradictory-drug-policy [https://perma.cc/G2VH-59ZL].

33. *See* TOM GINSBURG & AZIZ Z. HUQ, HOW TO SAVE A CONSTITUTIONAL DEMOCRACY (2018); STEVEN LEVITSKY & DANIEL ZIBLATT, HOW DEMOCRACIES DIE (2018).

34. *See* Scheppele, *supra* note 27.

35. On legal and political opportunity structures, see generally Chris Hilson, *New Social Movements: The Role of Legal Opportunity*, 9 J. EUR. PUB. POL'Y 238 (2002); Herbert P. Kitschelt, *Political Opportunity Structures and Political Protest: Anti-Nuclear Movements in Four Democracies*, 16 BRIT. J. POL. SCI. 57 (1986).

36. *See* MARK TUSHNET & BOJAN BUGARIČ, POWER TO THE PEOPLE: CONSTITUTIONALISM IN THE AGE OF POPULISM (2021); Gábor Halmai, *Populism, Authoritarianism and Constitutionalism*, 20 GERMAN L.J. 296 (2019); Michael J. Klarman, *The Degradation of American Democracy—and the Court*, 134 HARV. L. REV. 1 (2020); David Landau, *Abusive Constitutionalism*, 47 U.C. DAVIS L. REV. 189 (2013).

37. *See* RICHARD MOORHEAD, FRAIL PROFESSIONALISM? LAWYERS' ETHICS AFTER THE POST OFFICE AND OTHER CASES (2026); Helen Kruuse, *Presidential Lawfare and Stalingrad Tactics: Lessons from and for South Africa*, LEGAL ETHICS (2026), https://doi.org/10.1080/1460728x.2026.2694286 [https://perma.cc/6YQL-BN3S]; Iris van Domselaar, *The Role of Legal Professionals*

legalism operates in countries where constitutional transformation cannot readily be achieved through legitimate legal processes, such as parliamentary action or referenda. In these countries, like the United States, transformation paradoxically requires unilateral executive action that bends existing law to test its boundaries, placing lawyers in professionally perilous positions and posing new challenges to the meaning and enforcement of legal ethics. Synthesizing these points, the Article argues that processes of professional capture and constitutional change are interconnected elements defining a particular country's path toward autocracy. Part II traces the American path: connecting lessons from Hungary after 2010, the 2020 U.S. presidential election, and Project 2025 to the second Trump administration strategy of "flooding the zone" with executive action.[38]

This context sets the foundation for the centerpiece of the Article, which identifies the autocratic legal playbook's operating principles and tactical innovations and analyzes how they shape, and are shaped by, American law. This analysis adds to existing accounts of the "authoritarian playbook," which focus on the political and ideological dynamics of democratic decline and the mobilization of racism and sexism to forge national identities,[39] by theorizing and documenting the role of legal mobilization in autocratic change.[40]

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in Large-Scale Miscarriages of Justice: A Virtue Ethics Perspective, 28 LEGAL ETHICS 41 (2025); Maria da Gloria Bonelli, *The Professional Ecology of Lawyers, Legal Ethics, and Democratic Backsliding in Brazil*, *in* RESEARCH HANDBOOK ON THE SOCIOLOGY OF LEGAL ETHICS 408 (Scott L. Cummings, Tamara Butter, Ole Hammerslev & Sergio Ivan Anzola Rodriguez eds., 2025).

38. Luke Broadwater, *Trump's 'Flood the Zone' Strategy Leaves Opponents Gasping in Outrage*, N.Y. TIMES (Jan. 28, 2025), https://www.nytimes.com/2025/01/28/us/politics/trump-policy-blitz.html [https://perma.cc/HG4G-WYY4].

39. *See* LEVITSKY & ZIBLATT, *supra* note 33, at 23–24 (identifying four key elements of the playbook: (1) rejecting the basic rules of democracy, (2) denying the legitimacy of political opponents, (3) tolerating or encouraging violence, and (4) expressing a willingness to curtail civil liberties); JENNIFER DRESDEN, AARON BAIRD & BEN RADERSTORF, PROTECT DEMOCRACY, THE AUTHORITARIAN PLAYBOOK 8–17 (2022) (showing how the playbook works by scapegoating marginalized communities, undermining elections, stoking violence, and quashing dissent); JAMES SMITH, THE AUTHORITARIAN PLAYBOOK: THE DECLINE OF DEMOCRACY AND THE BATTLE TO RESTORE IT (2025) (discussing how authoritarianism relies on core tactics that include manipulating elections, controlling information, and appealing to national identity); *see also* JEFF MERKLEY, RING THE ALARM BELLS: THE TEN RULES OF TRUMP'S AUTHORITARIAN PLAYBOOK (2026). Far-right populists pursue common policy objectives, including withdrawing rights from immigrants and LGBTQ+ people, promoting conservative Christian values, and weakening independent institutions. *See* DRESDEN, BAIRD & RADERSTORF, *supra*, at 3; Rebecca Sanders & Laura Dudley Jenkins, *Patriarchal Populism: The Conservative Political Action Coalition (CPAC) and the Transnational Politics of Authoritarian Anti-Feminism*, 58 INT'L SPECTATOR 1, 2 (2023), https://doi.org/10.1080/03932729.2023.2225660 [https://perma.cc/478G-8EYZ].

40. *Cf.* Lynette J. Chua, *Legal Mobilization and Authoritarianism*, 15 ANN. REV. L. & SOC. SCI. 355 (2019).

Part III reveals principles behind the playbook premised on inverting reality to achieve institutional control. Using a comparative lens to illuminate the U.S. case, this Part identifies common strategies wielded by government lawyers to circumvent existing legal boundaries: fabricating facts and promoting false equivalence to foster the illusion of regularity and create legal pretexts for weakening guardrails. Examples from immigration raids, National Guard deployment, and law firm and university targeting demonstrate how lawyers manufacture what appear to be nonfrivolous grounds—often generated by government-aligned think tanks and laundered through established legal processes—to advance legally dubious, and at times facially illegal, executive action directed at asserting emergency power to suspend normal rules of the game and imposing economic pain as leverage for institutional capture. Part IV then shows how these principles are systematically mobilized against key targets, flowing through efforts to capture the legal profession—government lawyers, law firms, public interest groups, and the organized bar—as the crucial gateway to control law and attack other institutions. Taken together, Parts III and IV document the evolution of autocratic legalism in the first year of the second Trump administration. In doing so, they provide a distinctive U.S. perspective on what happens to the legal profession when an autocratic leader seizes the reins of state power.

The Article concludes in Part V by outlining a framework for reverse engineering the playbook to counter democratic decline.[41] Doing so requires that lawyers learn lessons from other democracies that have died—and those that have been resuscitated—to devise a roadmap for democratic revitalization.[42] This requires thinking like an autocrat by assuming the worst-case scenario and rejecting the illusion that autocracy "can't happen here,"[43] which only delays countermobilization and facilitates backsliding. In contrast, successful democratic defense depends on collective action by lawyers to make the rule of law

41. *Cf.* César Rodríguez-Garavito & Krizna Gomez, *Responding to the Populist Challenge: A New Playbook for the Human Rights Field*, *in* RISING TO THE POPULIST CHALLENGE: A NEW PLAYBOOK FOR HUMAN RIGHTS ACTORS 11, 22–23 (César Rodríguez-Garavito & Krizna Gomez eds., 2018); Editorial Board, *A Playbook for Standing Up to President Trump*, N.Y. TIMES (Apr. 6, 2025), https://www.nytimes.com/2025/04/06/opinion/trump-law-firms-universities.html [https://perma.cc/CN9T-46EG]; *see also* Matthew R. Cleary & Aykut Öztürk, *When Does Backsliding Lead to Breakdown? Uncertainty and Opposition Strategies in Democracies at Risk*, 20 PERSPS. ON POL. 205, 205–06 (2022) (providing broader analysis of regime outcomes in backsliding democracies by analyzing the strategic environment in which opposition may succeed).

42. For an account of resistance to the first Trump administration, see RICHARD L. ABEL, HOW AUTOCRATS ARE HELD ACCOUNTABLE: RESISTANCE TO TRUMP AND TRUMPISM (2025).

43. SINCLAIR LEWIS, IT CAN'T HAPPEN HERE (1935).

real: working in tandem with pro-democracy movements and colleagues across ideological lines to plug legal loopholes, defend the truth, and engage in small acts that wrench the gears of autocratization.

I. DEGRADING DEMOCRACY THROUGH LAW

Over the past decade, backsliding research has demonstrated that legal strategy is central to "how democracies die."[44] As Kim Lane Scheppele has shown, the dominant route for contemporary leaders seeking permanent control is not through a military coup, in the old authoritarian model, but through a constitutional coup that uses claimed democratic mandates to dismantle institutions that limit executive power.[45] To succeed, this strategy must appear to follow the legal rules of the game. Sometimes, this appearance is real. Other times, it is deliberately deceiving. In all cases, it is important for autocrats to operate under the halo effect of legal legitimacy even while mobilizing that legitimacy toward ends at odds with the rule of law.[46] The specific tactics to accomplish these ends, guided by overarching strategy and adapted to context, constitute the autocratic legal playbook.

A. Playbook as Legal Strategy in Context

To understand how the autocratic legal playbook works requires starting with definitions of key terms while acknowledging those terms are fundamentally contested. First, *liberal democracy* follows what Tom Ginsburg and Aziz Huq call a "minimalist" definition built on three institutional predicates: (1) free and fair elections, (2) fundamental rights protection, and (3) checks and balances, including judicial and prosecutorial independence.[47] The potential for minority oppression and executive overreach is why liberal democracy demands restraints on majority power.[48] These restraints are designed to protect individual freedom while

44. LEVITSKY & ZIBLATT, *supra* note 33.
45. *See* Scheppele, *supra* note 27, at 575 ("There are no tanks in the street."); *see also id.* at 548 (defining autocratic legalism as "[w]hen electoral mandates plus constitutional and legal change are used in the service of an illiberal agenda").
46. *See, e.g.*, ANDRÁS SAJÓ, RULING BY CHEATING: GOVERNANCE IN ILLIBERAL DEMOCRACY (2021) (showing how illiberal governments use populist mandates to erode the rule of law by abusing constitutionalism).
47. GINSBURG & HUQ, *supra* note 33, at 9.
48. Jürgen Habermas, *On the Internal Relation Between the Rule of Law and Democracy*, 3 EUR. J. PHIL. 12, 16 (1995) (stating that the rule of law and democracy "come together only within the frame of constitutional states").

distributing political authority among *independent democratic institutions*,[49] some constitutionally mandated (courts) and others outside the state (civil society). These institutions are critical to preventing a leader from exercising arbitrary power,[50] acting like a king rather than a president—which is the democratic peril the American Constitution sought to avoid.[51] *Autocracy* refers to the structure of power—rule by a single leader or group—while *authoritarianism* refers to the form of power—repression of opponents, suppression of pluralism, and elimination of political freedom.[52]

Backsliding is the erosion of democratic predicates—in terms of law, practice, and norms—measured relative to previous baselines.[53] While autocrats target all three predicates—tilting the electoral system to preclude genuine opposition while withdrawing rights from vulnerable groups, especially immigrants, LGBTQ+ people, and people of color—eliminating checks and balances is crucial because it allows for action without accountability.[54] Elected populist leaders with autocratic aspirations seek to change formal legal rules to weaken institutional guardrails.[55] In doing so, they mobilize a thin conception of law as simply a formal edict issued by sovereign command,[56] irrespective of whether it is consonant with

49. *Cf.* Guillermo O'Donnell, *The Quality of Democracy: Why the Rule of Law Matters*, 15 J. DEMOCRACY 32, 37 (2004) (referring to "authorized state institutions" that check executive power).

50. *See* Brian Z. Tamanaha, *Vertical and Horizontal Dimensions of the Rule of Law*, 73 EMORY L.J. 1215, 1219–20 (2024) (indicating that the rule of law is designed to provide "protection and recourse against the arbitrary exercise of power" by requiring advance legal authorization according to transparent rules and requiring powerholders to "be subject to legal restraints").

51. THE FEDERALIST NO. 47 (James Madison) (Isaac Kramnick ed., 1987).

52. *See, e.g.*, Mark J. Gasiorowski, *The Political Regimes Project*, *in* ON MEASURING DEMOCRACY: ITS CONSEQUENCES AND CONCOMITANTS 105, 110 (Alex Inkeles ed., 1991); Steven Levitsky & Lucan A. Way, *Elections Without Democracy: The Rise of Competitive Authoritarianism*, 13 J. DEMOCRACY 51, 52 (2002).

53. STEPHAN HAGGARD & ROBERT KAUFMAN, BACKSLIDING: DEMOCRATIC REGRESS IN THE CONTEMPORARY WORLD 2–3 (2021); Nancy Bermeo, *On Democratic Backsliding*, 27 J. DEMOCRACY 5, 6 (2016). For one of the most well-known methods for scoring backsliding, see MARINA NORD, DAVID ALTMAN, TIAGO FERNANDES, ANA GOOD GOD & STAFFAN I. LINDBERG, V-DEM INST., DEMOCRACY REPORT 2026: UNRAVELING THE DEMOCRATIC ERA? 15–20 (2026).

54. Levitsky and Ziblatt call democratic checks "guardrails" understood as essential pillars of the rule of law. LEVITSKY & ZIBLATT, *supra* note 33, at 97–117.

55. *See* Laurent Pech & Kim Lane Scheppele, *Illiberalism Within: Rule of Law Backsliding in the EU*, 19 CAMBRIDGE Y.B. EUR. LEGAL STUD. 3 (2017); Halmai, *supra* note 36; *see also* Paolo Sosa-Villagarcia, José Incio & Moisés Arce, *The Rise of Legislative Authoritarianism*, 36 J. DEMOCRACY 106 (2025) (describing how backsliding can also occur on a "nonexecutive path" as demonstrated in Guatemala and Peru).

56. Sung Hui Kim, *Reimagining the Lawyer's Duty to Uphold the Rule of Law*, 2023 U. ILL. L. REV. 781, 788, 798 (noting the "thicker" conception of the rule of law means "restraint of the arbitrary exercise of power"). On the meaning of the rule of law, see generally MARTIN

constitutional values or the public good. The goal is to "rule by law" without limitations on power, subverting the long-term viability of liberal democracy.[57] Backsliding, in this sense, is a particular type of *autocratization* that occurs through the erosion of democratic institutions and norms.[58]

The *autocratic legal playbook* is the repertoire of tactics to achieve backsliding, in which leaders mobilize law—or the appearance of legality—to restructure rules of the game toward the end of weakening institutions and consolidating power (Figure 1). It is a strategic plan adapted to a specific legal and political context rather than a detailed instruction manual. While the precise tactics vary based on that context, the institutional targets are well established:[59]

- *Courts*: Capture the courts by replacing independent jurists, particularly on the constitutional court, with those committed to the autocrat's agenda.
- *Public Bureaucracy*: Erase internal pockets of independence within the bureaucracy by purging career staff and installing loyalists in key positions in agencies controlling vital interests, such as the treasury, law enforcement, corporate regulation, and immigration.
- *Government Legal Offices*: Install loyalist lawyers inside the executive branch to prosecute opponents (or pardon allies) and to authorize legally dubious (or outright illegal) executive action.

KRYGIER, TEMPERING POWER: BEYOND THE RULE OF LAW (2026); and BRIAN Z. TAMANAHA, ON THE RULE OF LAW: HISTORY, POLITICS, THEORY (2004); see also Lisa M. Austin & Dennis Klimchuk, *Introduction*, *in* PRIVATE LAW AND THE RULE OF LAW 1 (Lisa M. Austin & Dennis Klimchuk eds., 2014) (discussing the meaning of the rule of law in private law that goes beyond the "public law presumption" that only deals with public abuse of power).

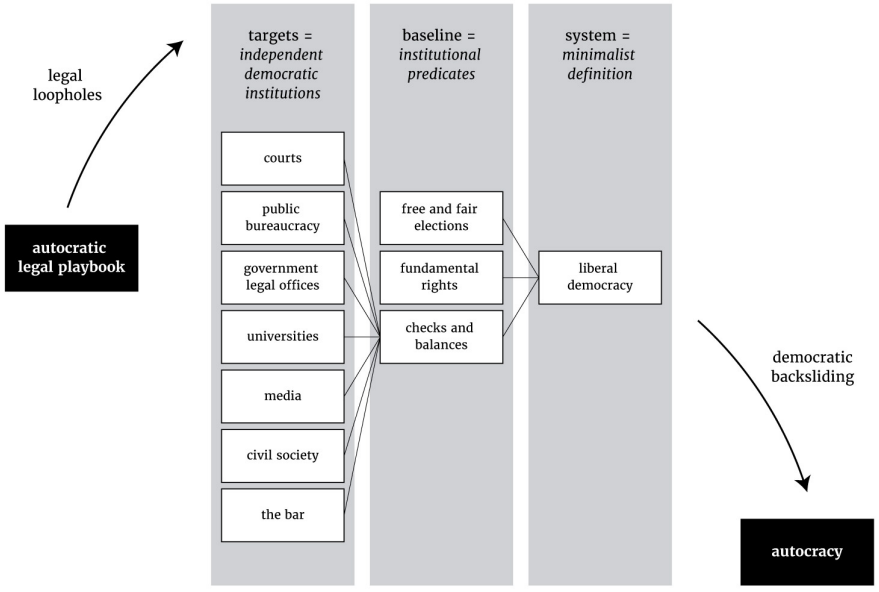
57. *See* Tamir Moustafa & Tom Ginsburg, *Introduction*: *The Functions of Courts in Authoritarian Politics*, *in* RULE BY LAW: THE POLITICS OF COURTS IN AUTHORITARIAN REGIMES 1 (Tom Ginsburg & Tamir Moustafa eds., 2008); TUSHNET & BUGARIČ, *supra* note 36; Halmai, *supra* note 36.

58. Backsliding denotes movement from democracy to a hybrid (such as competitive authoritarian) or full autocratic state. Autocratization may denote the same movement but also includes regression from already hybrid or authoritarian regimes into single-group rule. *See, e.g.*, Anna Lührmann & Staffan I. Lindberg, *A Third Wave of Autocratization Is Here: What Is New About It?*, 26 DEMOCRATIZATION 1095, 1096 (2019).

59. *See* Scheppele, *supra* note 27, at 549–50 (describing Orbán's attack on "the independence of crucial institutions, such as the judiciary, the media, the prosecutor's office, the tax authority, and the election commission" in Hungary); *see also* MCKENZIE CARRIER & THOMAS CAROTHERS, CARNEGIE ENDOWMENT FOR INT'L PEACE, U.S. DEMOCRATIC BACKSLIDING IN COMPARATIVE PERSPECTIVE 6–12 (2025) (showing that authoritarianism operates by tightening presidential control over independent agencies, making the executive branch dominant over others, and weakening societal constraints on executive power).

- *Universities*: Silence free thought and political dissent by using financial sticks and carrots to subdue universities, controlling hiring and the curriculum to promote ideological conformity.
- *Media*: Undermine the legitimacy of independent media outlets to shape the public narrative and empower alternative sources of disinformation and propaganda controlled by the regime.
- *Civil Society*: Suppress democratic resistance by social movements and shut down or severely hamper the functioning of nongovernmental organizations (NGOs) that engage in political and legal mobilization against the government.
- *The Bar*: Disable legal resistance by intimidating law firms and other private sector lawyers from representing clients against the government while capturing bar associations to eliminate professional oversight of lawyers allied with the government.

Figure 1. How the Autocratic Legal Playbook Works



There is ample empirical evidence of how the playbook has been used in relation to distinct autocratic trajectories. Hungary was the pioneer in Europe,[60]

60. *See* Paul Hockenos, *Hungary's Descent Into Dictatorship*, FOREIGN POL'Y (Dec. 6, 2024, at 17:12 ET), https://foreignpolicy.com/2024/12/06/hungary-viktor-orban-democracy-dictatorship-illiberalism-eu [https://perma.cc/N49L-U99B].

providing the template that the United States has taken to the next level. There are also examples of democracies resisting backsliding—Brazil[61]—and even "front-sliding"—Poland[62]—before backsliding again. The key point is that the playbook targets are well known and that studying countries where backsliding has occurred consistently shows each of them under threat.[63] The playbook is executed through strategies and tactics that can be studied by aspiring autocrats, shared through transnational networks, and added to with new innovations.[64]

Because the specific moves to undermine targets depend on the opportunity structure in a given country, there are different routes—through the legislature, popular referenda, executive action, or courts—to the same antidemocratic ends.[65] Because the playbook must be adapted to national context, there is rarely a one-to-one translation of legal moves but rather a contextual application of underlying principles directed toward consistent targets. This is why what happened in a country like Hungary, where constitutional amendment could occur through parliamentary action, looks different from what is happening in the United States, where that is not possible and attacks are therefore carried out through executive action. Although the moves are different, the theory of change is the same.

Executing this theory relies on exploiting legal loopholes. Such loopholes exist in every system and are not illegal per se but rather are gaps in the legal structure filled with normative commitments to democratic principles.[66] The

61. *See* Ana Ionova, *Brazil's Former President Was Convicted of Plotting a Coup. What Comes Next?*, N.Y. TIMES (Sep. 12, 2025), https://www.nytimes.com/2025/09/12/world/americas/bolsonaro-sentenced-prison-brazil.html [https://perma.cc/X26M-XC6U]; *see also* Rachel Beatty Riedl, Jennifer McCoy, Kenneth Roberts & Murat Somer, *Pathways of Democratic Backsliding, Resistance, and (Partial) Recoveries*, 712 ANNALS AM. ACAD. POL. & SOC. SCI. 8, 20–22 (2024); Matias Spektor, *The Coalition Against Democratic Backsliding in Bolsonaro's Brazil*, 712 ANNALS AM. ACAD. POL. & SOC. SCI. 169 (2024).

62. DEMOCRATIC BACKSLIDING IN POLAND: WHY HAS POLAND GONE TO THE DARK SIDE? (Łukasz Zamęcki, Renata Mieńkowska-Norkiene & Adam Szymański eds., 2023); STEFANO FELLA, HOUSE OF COMMONS LIBR. RSCH. BRIEFING NO. 10300, POLAND: THE TUSK GOVERNMENT AND THE 2025 PRESIDENTIAL ELECTION (2025); Caterina Chiopris & Monika Nalepa, *Democratic Backsliding in Poland in Light of Rule of Law Accountability to the European Union*, 73 EMORY L.J. 1291 (2024); Tom Ginsburg & Aziz Z. Huq, *The Pragmatics of Democratic "Front-Sliding"*, 36 ETHICS & INT'L AFFS. 437 (2022).

63. *See* GINSBURG & HUQ, *supra* note 33, at 95–119. *See generally* FROM THE RULE OF LAW TO THE LAW OF RULE: DISMANTLING THE RULE OF LAW IN HUNGARY (2010–2024) (Gábor Gadó, Zsuzsa Kerekes & Bálint Magyar eds., 2024) (detailing systematic legal changes in Hungary weakening democratic institutions).

64. *See* ANNE APPLEBAUM, AUTOCRACY, INC.: THE DICTATORS WHO WANT TO RUN THE WORLD 1 (2024) ("Nowadays, autocracies are run not by one bad guy but by sophisticated networks . . . connected not only to one another within a given autocracy but also to networks in other autocratic countries, and sometimes in democracies too.").

65. *See* Scheppele, *supra* note 27, at 571–81.

66. Huq & Ginsburg, *supra* note 27, at 85.

nature and type of loopholes vary. Some flow from features of constitutional design, such as the power to amend a constitution with a unilateral single-party vote that makes it easy for motivated leaders to exploit for autocratic purposes. Other loopholes are more nuanced: found in statutory gaps and regulatory lacunae. Sometimes loopholes involve discretionary practices that lack constitutional basis and thus can be discarded or changed. Autocratic leaders and their lawyers scour the system for these openings and use them to advance political designs.

One illustration is the second Trump administration's decision to breach the firewall between the Department of Homeland Security (DHS), with the power to detain and deport immigrants, and the Internal Revenue Service (IRS), which maintains identifying information from all tax filers, including undocumented immigrants who have a taxpayer identification number (TIN).[67] Immigrants have been encouraged to obtain TINs to file taxes, open bank accounts, and establish credentials to apply for lawful status.[68] Accordingly, past administrations have instituted a firewall to prevent personal identifying information from being shared with DHS, which can cross-reference taxpayers without social security numbers to determine their legal status.[69] To encourage tax collection, past presidents have respected the firewall. During the first Trump administration, the president sought to break it but was rebuffed by IRS leadership.[70] This time, the president installed loyalists in both agencies willing to disregard their independence and breach the firewall to target immigrants. Presidents should not do this. They have not done this in the past. But there is nothing constitutionally stopping them from doing so. That is the loophole.[71]

As this example suggests, leaders who proceed in this manner claim to be following the rule of law since there is often nothing technically illegal about what they have done—though their actions intentionally chip away at democratic

67. Andrew Duehren, *Top I.R.S. Officials Said to Resign After Deal to Give ICE Migrants' Data*, N.Y. TIMES (Apr. 8, 2025), https://www.nytimes.com/2025/04/08/us/politics/irs-ice-tax-data-deal.html [https://perma.cc/F8CS-DJBN].

68. *See FAQ: Individual Taxpayer Identification Number (ITIN): A Powerful Tool for Immigrant Taxpayers*, NAT'L IMMIG. L. CTR. (Mar. 4, 2026), https://www.nilc.org/resources/itinfaq [https://perma.cc/XX7E-Q6AJ].

69. Duehren, *supra* note 67.

70. *Id.*

71. Another example of exploiting loopholes was the president's claim of authority under a gap in the National Historic Preservation Act to permit the demolition of the East Wing of the White House to make way for a ballroom without consulting Congress. Nat'l Park Serv. v. Nat'l Trust for Hist. Pres., No. 26A203, 609 U.S. __ (Aug. 31, 2026); David Jordan, *East Wing Demolition Highlights Loopholes in Preservation Law*, ROLL CALL (Oct. 24, 2025, at 16:08 ET), https://rollcall.com/2025/10/24/east-wing-demolition-highlights-loopholes-in-preservation-law [https://perma.cc/9ZEA-7XQR].

guardrails.[72] This chipping away—or, in the case of the second Trump administration, crudely demolishing—results in a degradation of the quality of democratic institutions without their total elimination. This means that legalistic autocracies continue to hold elections, have a functioning judiciary, and maintain a separate administrative branch—but these institutions are more symbolic than real.[73] In such regimes, legal changes move through established channels for lawmaking: drafted, reviewed, and approved by lawyers through conventional processes. Formally speaking, there is no distinction between new "autocratic" rules and those that operate within the four corners of "democracy."

Although autocrats prefer to use the loophole strategy to exploit ambiguities in ways that are not facially illegal, this is not always possible because of national variation in legal constraints on constitutional change. Ultimately, autocrats seek to create new constitutions that discard checks and balances altogether.[74] In countries where this can be done directly through constitutional amendment, that is typically the path followed. As Parts III and IV explore, in the United States, where amendments are functionally impossible, leaders must find other modes of transformation: targeting guardrails through unilateral executive action that *bends or even breaks formal law to push new legal boundaries*. This puts opponents on the legal defensive and places pressure on courts to establish limits—or upend settled principles—making them the ultimate arbiters of any new constitutional order. This also puts government lawyers in the position of framing lawbreaking action as either effectuating higher-order legal principles or operating within the bounds of existing legality—which raises factual, legal, and ethical tensions.

B. Professional Capture as Gateway to Autocracy

Exploiting legal loopholes and reframing legally dubious action as legal requires mobilizing professionals specifically trained to do just that. The literature

72. Scheppele, *supra* note 27, at 578.

73. *See* David Waldner & Ellen Lust, *Unwelcome Change: Coming to Terms With Democratic Backsliding*, 21 ANN. REV. POL. SCI. 93, 95 (2018) ("Backsliding makes elections less competitive without entirely undermining the electoral mechanism; it restricts participation without explicitly abolishing norms of universal franchise seen as constitutive of contemporary democracy; and it loosens constraints of accountability by eroding norms of answerability and punishment . . . ."); *see also* Steven Levitsky & Lucan Way, *The New Competitive Authoritarianism*, 31 J. DEMOCRACY 51, 51 (2020) (describing competitive authoritarianism as "the coexistence of meaningful democratic institutions and serious incumbent abuse [that] yields electoral competition that is real but unfair").

74. Kim Lane Scheppele, *Trump's Counter-Constitution: 'He Who Saves His Country Does Not Violate Any Law'*, VERFASSUNGSBLOG (Feb. 21, 2025), https://verfassungsblog.de/trumps-counter-constitution [https://perma.cc/QSR9-GKM2].

on autocratic legalism has focused on how political leaders—the autocrats—cloak actions in the legitimacy of law.[75] But it has paid less attention to the motivations and maneuvers of those required to design and execute these actions: lawyers. To the extent that research has investigated lawyers, it has tended to focus on their traditional role as democracy's defenders—resisting the autocrats.[76] This perspective is incomplete: to understand how law is mobilized in the playbook—and to counter it—one must know precisely what lawyers do to advance it. The U.S. case provides unique evidence of what lawyers in fact do: from the attack on the 2020 presidential election to the second Trump administration's use of executive power. This evidence provides a window to look at lawyers in a different, more dangerous light: as *authors* of autocracy.

As the executive orders against American law firms underscore, lawyers are also central *targets* of the playbook because of their authority to define and defend law outside of government control. In the United States and many other democratic countries, the legal profession is independent of the state: lawyers regulate lawyers.[77] Although self-regulation has been criticized for facilitating rent-seeking and targeting disfavored causes,[78] it is important for American democracy because lawyers perform three functions that are essential for the rule of law. First, public sector lawyers work as prosecutors and advisors in key government legal offices, particularly the Department of Justice (DOJ) and White House Counsel at the federal level, where their job is to advance executive action

75. Scheppele, *supra* note 27, at 546.

76. *See, e.g.*, Kathryn Hendley, *Defenders but Not Resisters: The Role of Lawyers in Putin's Russia*, *in* THE OXFORD HANDBOOK OF LAW AND AUTHORITARIANISM 273 (Cora Chan, Madhav Khosla, Benjamin Liebman & Mark Tushnet eds., forthcoming); Fabio de Sá e Silva, *Law and Illiberalism: A Sociolegal Review and Research Road Map*, 18 ANN. REV. L. & SOC. SCI. 193, 201–02 (2022); *see also* Fabio de Sá e Silva, *Lawyers and Authoritarianism*, *in* THE OXFORD HANDBOOK OF LAW AND AUTHORITARIANISM, *supra* (arguing that the existing scholarly focus on lawyers as champions of liberal-democratic causes obscures lawyers' participation in authoritarianism).

77. Lawyers are generally regulated under the authority of the highest state court in which they practice, which often (but not always) delegates power to bar associations. DEBORAH L. RHODE, DAVID LUBAN, SCOTT L. CUMMINGS, NORA FREEMAN ENGSTROM & BENJAMIN H. BARTON, LEGAL ETHICS 51–52 (9th ed. 2024). On the importance of and historical challenges to professional independence, see Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1, 10 (1988). For a comparative perspective on self-regulation, see Hilary Sommerlad & Ole Hammerslev, *Lawyers in a New Geopolitical Conjuncture: Continuity and Change*, *in* 1 LAWYERS IN 21ST-CENTURY SOCIETIES, NATIONAL REPORTS 1 (Richard L. Abel, Ole Hammerslev, Hilary Sommerlad & Ulrike Schultz eds., 2020).

78. *See* RICHARD L. ABEL, AMERICAN LAWYERS 226–29 (1989); JEROLD S. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA 40–52, 102–29 (1977); Susan D. Carle, *From* Buchanan *to* Button*: Legal Ethics and the NAACP (Part II)*, 8 U. CHI. L. SCH. ROUNDTABLE 281, 299 (2001); David B. Wilkins, *Identities and Roles: Race, Recognition, and Professional Responsibility*, 57 MD. L. REV. 1502, 1505 (1998).

while protecting the Constitution and preventing abuses of power.[79] Second, private sector lawyers in law firms, small and solo practice, and NGOs provide pro bono (and low bono) access to the legal system and representation to those whose interests are adverse to government.[80] Third, lawyers act collectively through bar associations to set rules of conduct and discipline attorneys, including government lawyers, who engage in ethical misconduct.[81] This third function is important because lawyers are licensed professionals who take an oath to faithfully apply law and defend the Constitution.[82] This oath crystallizes the professional paradox at the center of autocratic legalism: lawyers, sworn to uphold the rule of law, who seek to undermine it.

To explore this paradox, the Article theorizes *professional capture as a crucial gateway to larger attacks on the rule of law*. While autocrats target all democratic institutions to expand power, the legal profession is particularly important for leaders who seek to weaken guardrails under cover of law. As developed in Subpart IV.A, in the U.S. context, professional capture involves a double-pronged attack on the legal profession: mobilizing the *public legal sector*—government legal advisors and prosecutors—to consolidate executive power, while targeting the *private legal sector*—law firms, NGOs, and the bar—to neutralize legal resistance. These targeting actions form a unified, coherent strategy because each sector depends on the other to perform its role in the adversarial system. Weakening their independence, and the connective tissue binding them together, degrades the profession's ability to act as a democratic check.

II. AMERICAN LAWYERS IN ASCENDING AUTOCRACY

To understand how autocracy has ascended in America—building on models at home and abroad—requires examining the origins of autocratic

79. *See* Jack Goldsmith & Bob Bauer, *The White House Counsel and the Adams Affair*, AM. ENTER. INST. (Feb. 17, 2025), https://www.aei.org/op-eds/the-white-house-counsel-and-the-adams-affair [https://perma.cc/7SLL-X25T]; Bruce A. Green & Rebecca Roiphe, *Can the President Control the Department of Justice?*, 70 ALA. L. REV. 1, 3–7 (2018).

80. *See* CHEN & CUMMINGS, *supra* note 18, at 125–200; *see also* DEBORAH L. RHODE, ACCESS TO JUSTICE 1 (2004) ("A commitment to equal justice is central to the legitimacy of democratic processes."). Some NGO legal organizations are publicly funded—most importantly, through the Legal Services Corporation—while government-funded public defenders also provide access to justice to defendants who cannot afford counsel. Shaun Ossei-Owusu, *Civil vs. Criminal Legal Aid*, 94 S. CAL. L. REV. 1561, 1583–84 (2021).

81. RHODE, LUBAN, CUMMINGS, ENGSTROM & BARTON, *supra* note 77, at 51–52.

82. *See* MODEL RULES OF PRO. CONDUCT: PREAMBLE & SCOPE (A.B.A. 2023); *see also Attorney's Oath*, ST. BAR CAL., https://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination/Attorneys-Oath [https://perma.cc/J4WL-V4WP] (affirming that a lawyer swears to "support the Constitution of the United States").

legalism and the role of lawyers in its construction. The velocity with which autocratization has occurred in the second Trump administration is a function of planning meeting opportunity. It was not foreordained that Republicans would win consolidated national power in the 2024 election.[83] Doing so provided the opportunity. But it was the planning that has enabled swift execution of the playbook. This Part traces the precursors of this planning: following the playbook from Hungary's populist transformation after 2010, through the assault on truth and splintering of the conservative legal movement in 2020, to Project 2025 as the compendium of lessons guiding the second Trump administration's executive action.

A. Origins: Orbán's Innovations

The political and legal origins of autocratic legalism have diverse roots, including those planted firmly in American soil.[84] Nonetheless, because far-right American leaders have pointed to Hungary as a model,[85] it is important to start by outlining former Prime Minister Viktor Orbán's autocratic innovations to show how they have shaped the U.S. approach.[86] This is not because of direct translation

83. *See* Catie Edmondson, *Republicans Win Control of House, Cementing a G.O.P. Trifecta Under Trump*, N.Y. TIMES (Nov. 13, 2024), https://www.nytimes.com/2024/11/13/us/elections/republican-house-trifecta.html [https://perma.cc/S7D4-DZUF].

84. *See supra* notes 9–12.

85. Casey Michel, *How Viktor Orbán Conquered the Heritage Foundation*, NEW REPUBLIC (Mar. 15, 2024), https://newrepublic.com/article/179776/heritage-foundation-viktor-orban-trump [https://perma.cc/F47Q-LHTB] (detailing multiple contacts between Viktor Orbán and Heritage leaders in relation to Project 2025 and quoting Trump as saying: "There's nobody that's better, smarter, or a better leader than Viktor Orbán. He's fantastic. . . . He's a great leader."); Ashifa Kassam & Flora Garamvolgyi, *He Is the Strongman Who Inspired Trump—but Is Viktor Orbán Losing His Grip on Power?*, GUARDIAN (June 1, 2025, at 01:00 ET), https://www.theguardian.com/news/ng-interactive/2025/jun/01/he-is-the-strongman-who-inspired-trump-but-is-viktor-orban-losing-his-grip-on-power [https://perma.cc/GZ8M-D5VV] (quoting Kevin Roberts, head of the Heritage Foundation, asserting "[m]odern Hungary is not just *a* model for conservative statecraft, but *the* model"); *see also* Jan-Werner Müller, *'Make Europe Great Again'*, N.Y. REV. BOOKS (Aug. 20, 2024), https://www.nybooks.com/online/2024/08/20/make-europe-great-again [https://perma.cc/8NVR-X94H]; Teri Schultz, *Why Trump Is Lavishing Praise on Hungarian Prime Minister Viktor Orban*, NPR (Aug. 20, 2024, at 05:12 ET), https://www.npr.org/2024/08/20/nx-s1-5075164/why-trump-is-lavishing-praise-on-hungarian-prime-minister-viktor-orban [https://perma.cc/4SW6-Y4BQ]; Ishaan Tharoor, *J.D. Vance's Vocal Admiration for Orban's Hungary Tells Its Own Story*, WASH. POST (July 17, 2024), https://www.washingtonpost.com/world/2024/07/17/trump-vance-project-2025-orban-hungary [https://perma.cc/RGW6-3FAD].

86. *See* Kim Lane Scheppele, *The Life and Death of Constitutions*, 57 LAW & SOC'Y REV. 423 (2023); *see also* Kim Lane Scheppele, *How Viktor Orbán Wins*, 33 J. DEMOCRACY 45 (2022) [hereinafter Scheppele, *How Viktor Orbán Wins*]. For an account of the rise of Hungarian autocracy in

of the Orbán playbook, which hinged on parliamentary action, to the United States. Rather, the Hungarian experience provided a template for defining institutional targets, framing the need for their transformation, and changing legal rules to effectuate that transformation, which could be adapted to the American context.

When Orbán's populist Fidesz party swept to power in 2010 with a two-thirds parliamentary majority in the National Assembly—enough to amend the constitution—it took swift action to weaken guardrails.[87] Through legal maneuvers eliminating opposition party input,[88] Fidesz amended the constitution a dozen times in the first year, leading to passage of an entirely new constitution—

relation to the European Union, see ANDRÁS BOZÓKI & ZOLTÁN FLECK, EMBEDDED AUTOCRACY: HUNGARY IN THE EUROPEAN UNION (2024). In April 2026, after sixteen years in power, Orbán lost to a center-right candidate, Péter Magyar, who broke from Fidesz and mobilized widespread dissatisfaction with the economy and corruption to overcome electoral manipulation and win a landslide victory—raising hopes of a model for democratic resurgence that other countries can follow. Kim Lane Scheppele, *How Viktor Orbán Loses*, J. DEMOCRACY (Apr. 2026), https://www.journalofdemocracy.org/online-exclusive/how-viktor-orban-loses/ [https://perma.cc/Z67X-TEAL] [hereinafter Scheppele, *How Viktor Orbán Loses*].

87. ATTILA ÁGH, A TÖKÉLETES AUTOKRÁCIA TÜNDÖKLÉSE ÉS BUKÁSA [THE RISE AND FALL OF THE PERFECT AUTOCRACY] 23 (2023); Gábor Halmai, *From the "Rule of Law Revolution" to the Constitutional Counter-Revolution in Hungary*, 2012 EUR. Y.B. HUM. RTS. 367, 374–75; *see also* Zoltán Szente, *Constitution*, *in* FROM THE RULE OF LAW TO THE LAW OF RULE, *supra* note 63, at 1, 5 ("[T]he constitution can be amended by a two-thirds majority vote of the members of Parliament, and . . . the Fidesz-KDNP party alliance has always been able to achieve that supermajority . . . ."). In 2010, Fidesz ran a joint list of candidates with the Christian Democratic People's Party (KDNP) and together their coalition captured the two-thirds majority and formed a government under Orbán; however, KDNP had been effectively absorbed by Fidesz and did not exercise independent influence. Péter Krekó, Bulcsú Hunyadi & Patrik Szicherle, *Anti-Muslim Populism in Hungary: From the Margins to the Mainstream*, BROOKINGS INST. (July 24, 2019), https://www.brookings.edu/articles/anti-muslim-populism-in-hungary-from-the-margins-to-the-mainstream/ [https://perma.cc/TUB3-FA43]. From 2010 to 2019, Hungary's democracy score fell by nearly half. *See* Jan-Hinrik Meyer-Sahling & Fanni Toth, *Governing Illiberal Democracies: Democratic Backsliding and the Political Appointment of Top Officials in Hungary*, 13 NISPACEE J. PUB. ADMIN. & POL'Y 93, 99 (2020) (analyzing V-Dem data).

88. *See* Miklós Bánkuti, Gábor Halmai & Kim Lane Scheppele, *Hungary's Illiberal Turn: Disabling the Constitution*, 23 J. DEMOCRACY 138, 139 (2012); *see also* Zoltán Fleck, Ágnes Kovács, Zsolt Körtvélyesi, Gábor Mészáros, Gábor Polyák & Péter Sólyom, *The Changes Undermining the Functioning of a Constitutional Democracy* 15 (MTA Társadalomtudományi Kutatóközpont, Working Paper No. 9, 2022). Proposed bills, submitted by government representatives, were prepared in unknown legal workshops outside the public sector. Zsuzsa Kerekes, *Parliament*, *in* FROM THE RULE OF LAW TO THE LAW OF RULE, *supra* note 63, at 11, 12. Subsequent procedural changes effectively required parliament to adopt submitted bills without amendment. Zoltán Szente, *Constitutional Changes in Populist Times*, 47 REV. CENT. & E. EUR. L. 12, 23 (2022).

the 2011 Fundamental Law[89]—which cemented power by reducing the size of parliament and gerrymandering new districts in Fidesz's favor.[90]

To limit legal challenges to its program, Fidesz immediately targeted the independence of courts. The National Assembly changed the procedure for nominating judges to the Constitutional Court, overriding the previous all-party nominating commission to give Fidesz direct control over selection of judges,[91] while expanding the court's size to allow party-aligned judges to gain a majority[92]—thereby weakening the judiciary as a counterweight to backsliding.[93]

89. *See* Bánkuti, Halmai & Scheppele, *supra* note 88, at 139. The Fundamental Law entered into force in 2012. Szente, *supra* note 87, at 1. It was reportedly authored by a Fidesz parliament member, Oxford-trained lawyer József Szájer, on his iPad. *'iPad Constitution' Poses Challenge to Hungary*, EURACTIV (Mar. 11, 2011, at 10:36 CET), https://www.euractiv.com/news/ipad-constitution-poses-challenge-to-hungary [https://perma.cc/DA8J-3SCB].

90. *See* Scheppele, *How Viktor Orbán Wins*, *supra* note 86, at 52–53, 55–57 (describing also subsequent changes including "voter tourism" laws allowing voters to register in competitive districts where they did not live and the reallocation of votes to party lists). For further analysis of electoral manipulation, see PÉTER BÁRÁNDY, ZOLTÁN FLECK, ÁGOTA SZENTES, RICHARD SZENTPÉTERI NAGY, KINGA SZURDAY, GÁBOR ATTILA TÓTH & IMRE VÖRÖS, A JOGÁLLAM HELYREÁLLÍTÁSÁNAK KÍSÉRLETE [THE ATTEMPT TO RESTORE THE RULE OF LAW] 43 (2022); Bálint Magyar, *Elections*, *in* FROM THE RULE OF LAW TO THE LAW OF RULE, *supra* note 63, at 73, 75–76; János Mécs, *Választások* [*Elections*], *in* INTERNETES JOGTUDOMÁNYI ENCIKLOPÉDIA 13–15 (András Jakab, Miklós Könczöl, Attila Menyhárd & Gábor Sulyok eds., 2020), https://ijoten.hu/uploads/valasztasok.pdf [https://perma.cc/9GC5-G2LD].

91. Ágnes Kovács, *Constitutional Court*, *in* FROM THE RULE OF LAW TO THE LAW OF RULE, *supra* note 63, at 6.

92. *Id.* at 7. Fidesz was able to appoint seven of fifteen judges to the Constitutional Court in the first year and a half and by 2013 had appointed a majority. Gábor Halmai, *Coping Strategies of the Hungarian Constitutional Court Since 2010* (Sep. 27, 2022), https://verfassungsblog.de/coping-strategies-of-the-hungarian-constitutional-court-since-2010/ [https://perma.cc/GJ93-KJDG]; Kim Lane Scheppele, *How to Evade the Constitution: The Hungarian Constitutional Court's Decision on Judicial Retirement Age, Part I*, VERFASSUNGSBLOG (Aug. 9, 2012), https://verfassungsblog.de/evade-constitution-case-hungarian-constitutional-courts-decision-judicial-retirement-age [https://perma.cc/J96W-6LQG]. In addition, Fidesz transferred the power to select the court's chief judge, previously exercised by the judges themselves, to parliament. Johan Norberg, *How Viktor Orbán's Hungary Eroded the Rule of Law and Free Markets*, CATO INST. (Mar. 31, 2026), https://www.cato.org/policy-analysis/how-viktor-orbans-hungary-eroded-rule-law-free-markets [https://perma.cc/83D3-JT9C].

93. Zoltán Szente, *From Guarding the Constitution to Serving Politics—the Decline of the Hungarian Constitutional Court*, *in* CONSTITUTIONALITY OF LAW WITHOUT A CONSTITUTIONAL COURT: A VIEW FROM EUROPE 99, 100–12 (Mirosław Granat ed., 2023) (reviewing the court's transformation from judicial activism to serving government interests); Nóra Chronowski, *Az alkotmánybíráskodás sarkalatos átalakítása* [*The Cardinal Transformation of Constitutional Adjudication*] 3–5 (MTA Társadalomtudományi Kutatóközpont, Working Paper No. 8, 2014). Later restrictions further hampered judicial independence by restricting judges' ability to rely on their own professional judgment to interpret statutory language and legislative intent. *Álláspontunk a T/322-es és a T/333. számú törvényjavaslatokról* [*Our Position on Draft Bills T/322 and T/333*], TASZ (Feb. 7, 2024), https://tasz.hu/cikkek/allaspontunk-a-t-322-es-es-a-t-333-szamu-torvenyjavaslatokrol [https://perma.cc/YJ7H-ADFX].

The Fundamental Law further diminished judicial authority by eliminating the individual right to bring actions for review of legislation (*actio popularis*), curtailing Constitutional Court jurisdiction over budgetary matters,[94] and making ordinary court decisions appealable to the Constitutional Court—and thus subject to greater political control.[95] This control was tightened by additional changes to the ordinary civil and criminal court system, overseen by the Supreme Court. The Fundamental Law reestablished the Supreme Court as the Kúria (its pre-Soviet name), a change that Fidesz used to remove its president, a critic of Orbán,[96] while mandating the forced retirement of senior judges,[97] permitting their replacement by Fidesz.[98] These changes were cemented by the creation of a National Judicial Office, headed by a Fidesz loyalist, with power to hire, fire, and reassign judges and cases in ordinary courts.[99] Fidesz used control of this office to bypass merit-based

94. Kim Lane Scheppele, *Hungary's Constitutional Revolution*, N.Y. TIMES (Dec. 19, 2011, at 10:31 ET), https://archive.nytimes.com/krugman.blogs.nytimes.com/2011/12/19/hungarys-constitutional-revolution [https://perma.cc/7PSJ-D6NZ].

95. Kovács, *supra* note 91, at 7–8. The Fundamental Law further removed review of any act deemed to violate the constitution if a two-thirds majority of parliament simply voted to incorporate the act into the constitution. *See* Norberg, *supra* note 92.

96. Judit Bayer, *Az Emberi Jogok Európai Bíróságának 10. cikkel kapcsolatos joggyakorlatának egyes súlypontjai* [*Key Aspects of the ECtHR's Jurisprudence on Article 10*], 4 ÁLLAM- ÉS JOGTUDOMÁNY 117, 124 (2017) (Hung.). The president's ouster was challenged and found to be a violation of the European Convention on Human Rights, but there was no remedy of reinstatement. Baka v. Hungary, App. No. 20261/12 (Eur. Ct. H.R. June 23, 2016), https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-11088%22]} [https://perma.cc/NE8T-RKQD].

97. Gábor Halmai, *The Early Retirement Age of the Hungarian Judges*, *in* EU LAW STORIES: CONTEXTUAL AND CRITICAL HISTORIES OF EUROPEAN JURISPRUDENCE 471, 471 (Fernanda Nicola & Bill Davies eds., 2017).

98. Forced retirement resulted in the loss of 10 percent of senior judges, 20 percent of Supreme Court judges, and most appellate court presidents. *See* Norberg, *supra* note 92; *see also* András Jakab & Emese Szilágyi, *Sarkalatos törvények a magyar jogrendben* [*Cardinal Laws in the Hungarian Legal System*], *in* A MAGYAR JOGRENDSZER ÁLLAPOTA 243, 294–95 (András Jakab & György Gajduschek eds., 2016).

99. *See* Norberg, *supra* note 92; *see also* Viktor Vadász & András György Kovács, *A Game Hacked by the Dealer*, VERFASSUNGSBLOG (Nov. 10, 2020), https://verfassungsblog.de/a-game-hacked-by-the-dealer [https://perma.cc/S2JH-L5QE] (detailing how the lack of transparency of the Kúria's case allocation system permitted manipulation by the court president to bring sensitive cases to judges aligned with party leaders). Subsequent changes reinforced party control over the Kúria, including the introduction of a limited precedent system and the institution of uniformity complaints, along with election of a former Fidesz-aligned Constitutional Court judge as the president. *See* Bence Bogatin, *Megszavazta az Országgyűlés, hogy tárgyalótermi tapasztalat nélkül legyen főbíró Polt Péter volt helyettese* [*The Parliament Approved Polt's Former Deputy as Chief Justice Despite Lack of Courtroom Experience*], MÉRCE (Oct. 19, 2020, at 17:03 CET), https://merce.hu/2020/10/19/megszavazta-az-orszaggyules-hogy-targyalotermi-tapasztalat-nelkul-legyen-fobiro-polt-peter-volt-helyettese [https://perma.cc/8BA4-EMZB]; András Osztovits, *Törvénymódosítás a bírósági joggyakorlat*

competition and give preferred judges discretionary promotions to well-paid senior posts.[100]

Fidesz also consolidated control over the bureaucracy and the bar. In the ministries,[101] top officials were replaced and civil service protection for lower-level positions eliminated, leading to mass staff terminations, layoffs, and resignations.[102] Offices charged with oversight and transparency, like the data protection commission, were specifically targeted.[103] Government jobs were reallocated through patronage networks to build party support and ensure vacancies were filled by loyalists, while government contracts were steered toward Fidesz-connected firms.[104] Legal oversight of the ministries was strengthened by the merger of the Ministries of Justice and Public Administration, which gave control over legal policy and the civil service to the Fidesz minister in charge.[105] This power

egységesítése érdekében – jó irányba tett rossz lépés? [*Amending the Law to Harmonize Judicial Practice—A Misstep in the Right Direction?*] 67 MAGYAR JOG [MJ] 72 (2020) (Hung.).

100. *See* Ágnes Kovács, *Defective Judicial Appointments in Hungary: The Supreme Court Is Once Again Embroiled in Scandal*, VERFASSUNGSBLOG (Sep. 27, 2022), https://verfassungsblog.de/defective-judicial-appointments-in-hungary/[https://perma.cc/QCU7-5PZN] (stating that the former head of the National Office of the Judiciary "established a practice of disguised promotion in which favoured judges could reach senior offices without participating in ordinary, competitive appointment processes").

101. To justify capture, Fidesz officials argued that the bureaucracy had been infiltrated by the deep state. Transcript at 7, Interview with HL.294, former gov't off., in Budapest, Hungary (May 23, 2024) (on file with Author). To maintain confidentiality, each interview subject is designated according to a code number and each transcript is designated HL.#, with HL standing for "Hungarian lawyer," and the # indicating the corresponding code number.

102. *See* Meyer-Sahling & Toth, *supra* note 87, at 93–94 (showing that appointments to top positions increased after 2010); Kim Lane Scheppele, *Hungary and the End of Politics*, NATION (May 6, 2014), https://www.thenation.com/article/archive/hungary-and-end-politics [https://perma.cc/T4Z5-ZRRN] (stating that one of Orbán's first acts was to permit civil servants to be fired without cause).

103. Jakab & Szilágyi, *supra* note 98, at 289–90 (discussing the removal of the data protection commissioner). For an analysis of procedural changes reducing access to government information, see K-MONITOR PUB. BENEFIT ASS'N, REPORT ON THE ACCESS TO INFORMATION IN THE CONTEXT OF THE MEASUREMENTS ADOPTED IN THE CONDITIONALITY PROCEDURE AGAINST HUNGARY (2023), https://drive.google.com/file/d/1R-G4qOmt1cRwXIJB5LeLjKef9navbXKZ/view [https://perma.cc/BMM6-CDJQ].

104. *See* BÁLINT MAGYAR, POST-COMMUNIST MAFIA STATE: THE CASE OF HUNGARY 97–99, 125–26 (2016).

105. This position was held from 2010 to 2014 by Tibor Navracsics. *Curriculum Vitae of Tibor Navracsics, Dr., Ministry of Public Administration and Justice*, WEBSITE HUNGARIAN GOV'T, https://2010-2014.kormany.hu/en/ministry-of-public-administration-and-justice/the-minister [https://perma.cc/4GQM-8HGB]; *Tibor Navracsics*, POLITICO, https://www.politico.eu/person/tibor-navracsics/ [https://perma.cc/F7BD-PBKX]. In 2014, the Ministries were separated again and László Trócsányi, who had served on the Constitutional Court, became the minister of justice. *László Trócsányi, Dr.*, MJE, https://jogaszegylet.hu/dr-laszlo-trocsanyi [https://perma.cc/U4N6-275M]. After his term as minister of justice, Trócsányi became

was buttressed by the appointment of party-aligned lawyers in key leadership positions and consolidation of legal decision-making across ministries in the prime minister's office.[106] Fidesz named a party loyalist as prosecutor general and changed the constitutional rules to entrench his power.[107] The National Assembly placed primary disciplinary authority over prosecutors in the Prosecutor General's office, reducing external oversight of misconduct.[108] The Ministry of Justice exercised closer supervision over the organized bar[109]—the Hungarian Bar Association and regional chambers, including the largest in Budapest[110]—which remained formally independent but in the face of pressure adopted a position of political neutrality and generally avoided rule-of-law criticisms.[111] Law firms

president of the Hungarian Lawyers Association, a voluntary association dedicated to the improvement of law. *Id.*

106. Transcript at 12, 25, Interview with HL.168, gov't off., in Budapest, Hungary (June 18, 2024) (on file with Author); Transcript at 37–38, Interview with HL.294, *supra* note 101.

107. Jakab & Szilágyi, *supra* note 98, at 300–01 (noting that the prosecutor general's term was extended and external oversight reduced). A constitutional amendment required a two-thirds parliamentary vote for the chief prosecutor's appointment and removal. Márton Sándor Németh, *Újra módosították az Alaptörvényt, mutatjuk a részleteket* [*The Fundamental Law Has Been Amended Again, Here Are the Details*], INDEX (Dec. 17, 2024, at 16:55 CET), https://index.hu/belfold/2024/12/17/orszaggyules-parlament-alaptorveny-legfobb-ugyesz [https://perma.cc/NV85-DUW9].

108. Péter Hack, *Az ügyészség* [*The Prosecution Service*], *in* A MAGYAR JOGRENDSZER ÁLLAPOTA, *supra* note 98, at 480, 499–502.

109. Transcript at 15, Interview with HL.161, bar off., MÜK [Hungarian Bar Association], in Budapest, Hungary (July 3, 2024) (on file with Author).

110. The Hungarian Bar Association promulgates a professional code of conduct and hears disciplinary appeals from mandatory regional chambers, which have primary admission and disciplinary authority. *Magyar Ügyvédi Kamara* [*Hungarian Bar Association*], MÜK, https://www.mük.hu [https://perma.cc/88RC-EV79]; *see also* Márta Pardavi, The Legal Profession in Hungary 3 (2008) (on file with Author) (describing organization of the Hungarian bar).

111. Transcript at 4, 6, Interview with HL.151, former bar off., MÜK [Hungarian Bar Association], in Budapest, Hungary (June 25, 2024) (on file with Author); Transcript at 11, Interview with HL.152, bar off., MÜK [Hungarian Bar Association], in Budapest, Hungary (June 25, 2024) (on file with Author); Transcript at 9, 13, Interview with HL.133, former bar off., Budapest Bar Association, in Budapest, Hungary (June 23, 2024) (on file with Author). The bar was occasionally critical of the Orbán government. *See, e.g.*, Juli Boros, *The Bar Association Rejects Viktor Orbán's Accusations*, 444 (Jan. 20, 2020, at 09:46 CET), https://444.hu/2020/01/20/az-ugyvedi-kamara-visszautasitja-orban-viktor-vadjait [https://perma.cc/4ZAF-SAJC] (describing bar president's rejection of Orbán's criticism of lawyers litigating cases against the government on prison conditions). In 2017, parliament passed a new Act on the Activities of Lawyers, which expanded the category of regulated lawyers and modernized rules. 2017. évi LXXVIII. törvény az ügyvédi tevékenységről (Act LXXVIII of 2017 on the Activities of Lawyers). The following year, the Hungarian Bar Association adopted a new Code of Professional Conduct to align with the act, affirming that "[r]espect for the legal profession is an essential condition for the rule of law and democracy in society." Preambulum, Regulation 6/2018 of the MÜK on the Ethical Rules and Expectations of the Legal Profession (2018), https://net.jogtar.hu/muk?docid=A18S0006.MUK&getdoc=1&dbnum=62 [https://perma.cc/ZV42-H6AN].

adapted to the government-controlled economy by representing party-aligned corporate clients and reshaping pro bono programs to avoid sensitive cases.[112]

A central target of Fidesz was the NGO sector, which grew in the post-Soviet era, supported by foreign donors, particularly the Hungarian-born financier George Soros, whose Open Society Institute was critical to building democratic infrastructure.[113] The Orbán government sought to weaken NGO advocacy through legal crackdowns and by creating government-organized NGOs (GONGOs) to run countercampaigns.[114] In 2017, the National Assembly passed a "Lex NGO" law, based on Russia's "foreign agent" act,[115] which required civil society groups to disclose foreign funding under the banner of "transparency."[116] This was followed by the "Stop Soros" legislative package that imposed a 25 percent tax on foreign funding for all immigration activities and criminalized groups and individuals helping migrants seeking asylum.[117] In May 2021, after a decision by

112. Transcript at 20, 28–30, Interview with HL.132, dir. of pro bono, int'l l. firm, in Budapest, Hungary (May 2, 2024) (on file with Author) (stating that politically sensitive pro bono was "tricky" and that while the firm would take some human rights cases not likely to offend government, it would not touch cases raising LGBTQ+ issues); Transcript at 4, Interview with HL.512, att'y, int'l l. firm, in Budapest, Hungary (June 6, 2025) (on file with Author) (describing the importance of big law firms establishing relationships with government and stating that, although the firm would sometimes do pro bono work for targeted NGOs, it remained anonymous).

113. *The Open Society Foundations in Hungary*, OPEN SOC'Y FOUNDS. (Aug. 17, 2023), https://www.opensocietyfoundations.org/newsroom/the-open-society-foundations-in-hungary [https://perma.cc/B2XG-QCGP].

114. Áron Varga, *A GONGO-jelenség és kormányzati civilek* [*The GONGO Phenomenon and Government-Linked Civil Actors*], *in* A CIVILEK HATALMA: A POLITIKAI TÉR VISSZAFOGLALÁSA 243–45 (Attila Antal ed., 2016).

115. *See* Helene Bienvenu & Palko Karasz, *In Anti-Soros Feud, Hungary Adopts Rules on Foreign-Financed Groups*, N.Y. TIMES (JUNE 13, 2017), https://www.nytimes.com/2017/06/13/world/europe/hungary-law-ngo-soros.html [https://perma.cc/4992-7SWU]; *see also* Péter Sárosi, *Orban Imports Foreign Agent Law From Russia*, LIBERTIES.EU (Apr. 4, 2017), https://www.liberties.eu/en/stories/orban-imports-foreign-agent-law-from-russia/11698 [https://perma.cc/4JHD-PPSJ] (highlighting the parallels between the Hungarian and Russian laws targeting NGOs).

116. TASZ, *Minden, amit a civiltörvényről tudnod kell* [*Everything You Need to Know About the NGO Law*], TASZ (2017), https://tasz.hu/minden-amit-a-civiltorvenyrol-tudnod-kell [https://perma.cc/AT2Y-6HN6]. The law, officially called the Law on the Transparency of Organisations which Receive Support from Abroad, was specifically targeted at three key civil society organizations: Transparency International, the Hungarian Civil Liberties Union (TASZ), and the Hungarian Helsinki Committee. Nick Thorpe, *Hungary Approves Strict Regulations on Foreign-Funded NGOs*, BBC NEWS (June 13, 2017), https://www.bbc.com/news/world-europe-40258922 [https://perma.cc/4TK2-QBS8].

117. *Hogyan hat a 'Stop Soros' csomag a magyar civil társadalomra?* [*How Does the 'Stop Soros' Package Affect Hungarian Civil Society?*], EUR. CTR. FOR NOT-FOR-PROFIT L. 1–2 (2018), https://ecnl.org/sites/default/files/files/Soros-law-package_hu.pdf [https://perma.cc/D744-FHYT]; OPEN SOC'Y FOUNDS., BRIEFING: LEGAL ANALYSIS OF HUNGARY'S ANTI-NGO BILL 2–3

the European Court of Justice declaring breaches of the European Union (EU) Charter of Fundamental Rights,[118] the National Assembly repealed the Lex NGO law but required large organizations to undergo annual audits,[119] further chilling advocacy.[120]

In addition, the government targeted the media and universities. After the 2010 election, Fidesz created a centralized media authority, stacked with loyalists, which was used to manipulate licensing and merger decisions in favor of pro-government outlets,[121] weakening the independent media.[122] Control over party-

(2018), https://www.justiceinitiative.org/uploads/179297f1-4d84-4f7f-8bad-fede7607380a/briefing-hungary-lexngo-update-20180705.pdf [https://perma.cc/9Y74-ANVP].

118. Case C-78/18, Comm'n v. Hungary (*Transparency of Ass'ns*), ECLI:EU:C:2020:476, ¶ 145 (June 18, 2020). The Court of Justice also ruled against the Stop Soros law. Lorne Cook, *Top EU Court Hits Hungary Over 'Stop Soros' Migrant Law*, AP NEWS (Nov. 16, 2021, at 05:19 PT), https://apnews.com/article/immigration-hungary-europe-george-soros-viktor-orban-bc4c15a32cd520f3fc3e5b4b395f811a [https://perma.cc/78RC-34J3].

119. Magyar Helsinki Bizottság, *A civilellenes törvény visszavonása fontos lépés, de a helyébe lépő új törvényjavaslat aggályokra ad okot* [*Repealing the Anti-NGO Law Is an Important Step, but the New Proposed Legislation Raises Concerns*], HUNGARIAN HELSINKI COMM. (Apr. 21, 2021), https://helsinki.hu/a-civilellenes-torveny-visszavonasa-fontos-lepes-de [https://perma.cc/8GDF-B2K7].

120. *See* Norberg, *supra* note 92. The Sovereignty Protection Office, established in 2024, launched several investigations against organizations critical of the government, which were labeled "foreign-funded," claiming that they were engaged in activities "aimed at influencing voters' will." Tamás Rugli, *A gödi akkugyár ellen felszólaló civilek vegzálásába kezdett a Szuverenitásvédelmi Hivatal* [*The Sovereignty Protection Office Has Begun Harassing Civil Activists Opposing the Göd Battery Factory*], 24.HU (Sep. 12, 2024), https://24.hu/belfold/2024/09/12/god-ert-egyesulet-szuverenitasvedelmi-hivatal-akkugyar [https://perma.cc/4BTX-DCHD]. In January 2025, Orbán announced the expulsion of Hungarian NGOs blamed for criticizing the government—an expulsion the Fifteenth Amendment to the Fundamental Law concretized by enabling the "suspension" of Hungarian citizenship and the expulsion of dual citizens from the country if they posed a threat to Hungary's public order, public safety, or national security (an EU legal violation leading to the withholding of EU funds). Magyar Helsinki Bizottság, *Az Alaptörvény 15. módosítása és a kapcsolódó törvények alapjogsértőek* [*The 15th Amendment to the Fundamental Law and the Related Legislation Violate Fundamental Rights*], HUNGARIAN HELSINKI COMM. (Apr. 14, 2025), https://helsinki.hu/az-alaptorveny-15-modositasa-es-a-kapcsolodo-torvenyek-alapjogsertoek [https://perma.cc/6R78-S5QD].

121. NYU RULE OF L. LAB, THE REPRESSION OF INDEPENDENT MEDIA IN HUNGARY, 2010–2025, at 4 (2026), https://www.law.nyu.edu/sites/default/files/2026-02/Hungary-Media-Report_Final-Feb-2026.pdf [https://perma.cc/LZ4K-Z33W].

122. PÉTER BAJOMI-LÁZÁR, A PATRÓNUSI-KLIENSI MÉDIARENDSZER [THE PATRON-CLIENT MEDIA SYSTEM] 41, 44 (2020). The government's Transparency of Public Life law, proposed in May 2025, would have weakened remaining independent media outlets—as well as businesses, universities, and NGOs—by placing onerous registration and disclosure requirements on groups using foreign funds to endanger Hungary's sovereignty through a broad range of activities defined as influencing "public life"; such groups would have been placed on a list requiring financial transactions to be monitored and pre-approval of foreign grants, while

aligned and state media was centralized, and those outlets' footprint was expanded.[123] The government limited freedom of information laws to reduce press access and used smear campaigns, strategic lawsuits against public participation (SLAPPs), and surveillance to intimidate journalists.[124]

Universities were put under pressure.[125] After 2010, the government reduced state support for universities by nearly one-third, followed by the creation of new well-funded institutions, including the University of Public Service and research institutes like the Center for Fundamental Rights.[126] The Higher Education Act of 2011 changed accreditation standards and narrowed the definition of academic freedom, while amendments to the Fundamental Law gave the government greater power over university budgets.[127] Fidesz used its expanded authority to appoint party-aligned university chancellors, charged with eliminating disfavored

imposing harsh sanctions for noncompliance, including forced closure. Renáta Uitz, *A Threat to the Core: Why the New Hungarian Transparency Bill Is an Attack on the Foundations of the European Union*, VERFASSUNGSBLOG (May 21, 2025), https://verfassungsblog.de/hungary-transparency-law-foreign-funding/ [https://perma.cc/F78Q-9RP3]; *Hungary's New Bill Threatens to End Civil Society and Empower the Government to Persecute With Impunity*, TRANSPARENCY INT'L (May 19, 2025), https://www.transparency.org/en/press/transparency-international-hungarys-new-bill-threatens-to-end-civil-society-empower-government-persecute-with-impunity [https://perma.cc/B7DV-V59Z]. The bill was not brought to a final vote. Máté Világi & Anita Vorák, *Russian-Style Bill Targeting Independent Press and NGOs Tabled in Hungarian Parliament*, TELEX (May 13, 2025, at 11:41 CET) (Andrea Horváth Kávai trans.), https://telex.hu/english/2025/05/14/russian-style-law-targeting-independent-press-and-ngos-tabled-in-hungarian-parliament [https://perma.cc/F5R8-B7UL]; *see also Hungary: New Government Needs to Restore Rule of Law*, HUM. RTS. WATCH (Apr. 13, 2026, at 19:00 ET), https://www.hrw.org/news/2026/04/14/hungary-new-government-needs-to-restore-rule-of-law [https://perma.cc/7A23-5HFY].

123. Gábor Polyák, *Media*, *in* FROM THE RULE OF LAW TO THE LAW OF RULE, *supra* note 63, at 60, 60–61; NYU RULE OF L. LAB, *supra* note 121, at 10–11.

124. NYU RULE OF L. LAB, *supra* note 121, at 5.

125. István Polónyi, *Az akadémiai szabadság és az egyetemi autonómia* [*Academic Freedom and University Autonomy*], 32 ISKOLAKULTÚRA 3, 18 (2022).

126. Ellen Bos & Marianne Kneuer, *The Sequencing of Academic Freedom Violations During Democratic Erosion: Comparing the Cases of Hungary and Poland*, INT'L POL. SCI. REV. (Special Issue) 1, 6 (2026); *see also* Ildikó Bartha, *Felsőoktatás-finanszírozás* [*Higher Education Financing*], *in* KÖZSZOLGÁLTATÁSOK MEGSZERVEZÉSE ÉS POLITIKÁI 730, 742 (Tamás M. Horváth & Ildikó Bartha eds., 2016); Andras L. Pap, *Piecemeal Devourment: Academic Freedom in Hungary*, UIC L. REV. BLOG (June 24, 2021), https://lawreview.law.uic.edu/news-stories/piecemeal-devourment-academic-freedom-in-hungary [https://perma.cc/P8U6-S8J6] (discussing curtailment of academic freedom through assaults on universities and research institutes).

127. Bos & Kneuer, *supra* note 126, at 6; *see also* Balázs Majtényi & Andrew Ryder, *Academic Freedom and Dissent in Higher Education: The Case of Hungary*, 33 J. CONTEMP. CENT. & E. EUR. 483, 485 (2025).

programs like Gender Studies and cutting personnel.[128] The most prominent attack came in 2017, when the National Assembly passed a law requiring foreign-funded universities to operate under international agreements and maintain activities in their home country—standards that applied only to the Central European University (CEU), an English-language school started by Soros in 1991 on the liberal arts model, which was forced to move to Vienna.[129] After funding for the prestigious Hungarian Academy of Sciences (MTA) was slashed and its research network broken up,[130] the government proposed to transfer ownership of all universities to private foundations endowed with state assets.[131] Although the transfer was formally voluntary, resource-strapped universities had little genuine choice and faced government pressure to accept the deal.[132] While presented as a "model change" for increasing financial stability, the deal was in fact a vehicle to solidify government control: universities that "opted into" the plan received generous financial support in exchange for government-appointed boards of trustees with sweeping authority over hiring and curricular decision-making.[133] Most universities became "foundationized."[134]

128. Bos & Kneuer, *supra* note 126, at 6–7; Árpád Kocsis, *The Shift in Governance Models for Hungarian Universities*, HEINRICH BÖLL FOUND. (June 14, 2021), https://cz.boell.org/en/2021/06/14/shift-governance-models-hungarian-universities [https://perma.cc/PVL6-Q9EM].

129. Calvin Khalesi, *Decline of Academic Freedom in Hungary: Rational Choice Analysis of the European Response*, 25 EUR. POL. SCI. 91, 92–93 (2026). The European Court of Justice concluded that the CEU law was contrary to EU law, but by this time, the CEU had already reestablished itself in Vienna. *See* Nóra Chronowski & Attila Vincze, *The Hungarian Constitutional Court and the Central European University Case: Justice Delayed Is Justice Denied*, 17 EUR. CONST. L. REV. 688, 695 (2021); *see also* Csongor István Nagy, *Case C-66/18* Commission v. Hungary *(CEU)*, 115 AM. J. INT'L L. 700 (2021).

130. Bos & Kneuer, *supra* note 126, at 7. The MTA was broken up in 2019 by the government, which moved the MTA's centers to a new government-controlled entity and forced a sale of MTA assets. László Péter, *The Dilemma of the Hungarian Academy of Sciences Before the Extraordinary General Assembly Deciding on Real Estate Assets*, ÉS (Dec. 6, 2024).

131. Balázs Majtényi & Andrew Ryder, *Hungarian Academia in a Deep State*, 33 EUR. REV. S102, S105 (2025).

132. *See* Bos & Kneuer, *supra* note 126, at 7.

133. Dóra Ónody-Molnár, *Közel 13 milliárd forintról mondanak le a modellváltó egyetemek* [*Model-changing Universities Give Up Nearly 13 Billion Forints*], JELEN (Oct. 11, 2022).

134. *See* Balázs Váradi, *Collective Punishment?*, 4 TÉNYEK, TÁRSADALOM, TUDOMÁNY: ADF–3T 6–7 (2023). Twenty-one institutions agreed to become part of the foundation system. *See* Gergely Kováts, András Derényi, Gabriella Keczer & Zoltán Rónay, *The Role of Boards in Hungarian Public Interest Foundation Universities*, 49 STUD. HIGHER EDUC. 368, 368 (2024); *see also* Edit Inotai, *Fidesz Makes Hungary's Universities an Offer They Can't Refuse*, BALKANINSIGHT (Feb. 23, 2021, at 07:38 CET), https://balkaninsight.com/2021/02/23/fidesz-makes-hungarys-universities-an-offer-they-cant-refuse/rd/ [https://perma.cc/MH4W-SBAU] (describing how the Hungarian government used financial incentives to pressure universities into becoming private foundations). Only a handful refused, including the country's most

Checks and balances were further eroded by the expansion of emergency powers that began with the 2015 migration crisis and grew after the COVID-19 pandemic, resulting in over one thousand decrees.[135] Beginning in 2020, the definition of what counted as an emergency was expanded and authority to issue decrees concentrated in the executive.[136] Such decrees allowed the government to suspend duly enacted legislation and introduce other extraordinary measures, including in certain cases domestic military mobilization.[137] After the Russian invasion of Ukraine in 2022, the Fundamental Law was amended to permit the government to declare a "state of danger" from external wars—authority Orbán used to exercise continuous emergency power.[138]

B. Foundation: Conspiracism in the Conservative Legal Movement

Adaptation of the playbook from Hungary and elsewhere to America required an organizational support structure with leaders willing to translate lessons of democratic backsliding to a distinct environment. In the U.S. context, the vehicle for this project would emerge out of the conservative legal movement. This is not because autocracy is intrinsically tied to conservatism; to the contrary, historical and contemporary examples reveal diverse ideological underpinnings.[139] However, autocratic legalism in America has grown from right-

prestigious university, Eötvös Loránd University (ELTE). Majtényi & Ryder, *supra* note 127, at 492–93. Orbán had studied law at ELTE before taking a research fellowship at Oxford funded by the Soros Foundation. *See* Bülent Keneş, *Viktor Orbán: Past to Present* 5–6, EUR. CTR. FOR POPULISM STUD. (Aug. 2, 2020), https://www.populismstudies.org/viktor-orban-past-to-present/ [https://perma.cc/55H3-5YBC]. As part of the university reorganization, the Mathias Corvinus Collegium was upgraded to an elite training ground for Fidesz, overseen by Orbán's chief political advisor. *See* Bos & Kneuer, *supra* note 126, at 7.

135. Fruzsina Gárdos-Orosz & Evelin Burján, *From Constitutional* Risk Management *to* Constitutional Risk *Management (Emergency Law Misuse) in Hungary*, 16 EUR. J. RISK REG. 421, 422 (2025); *see also* Imre Vörös, *A felhatalmazási törvénytől az egészségügyi válsághelyzetig és tovább* [*From the Empowerment Law to the Health Crisis and Beyond*], *in* JOGI DIAGNÓZISOK: A COVID–19-VILÁGJÁRVÁNY HATÁSAI A JOGRENDSZERRE [LEGAL DIAGNOSES: THE EFFECTS OF THE COVID-19 PANDEMIC ON THE LEGAL SYSTEM] 17 (Fruzsina Gárdos-Orosz & Viktor Oliver Lőrincz eds., 2020).

136. The Ninth Amendment to the Fundamental Law defined three categories for issuing special legal orders: states of war, emergencies (internal conditions threatening overthrow of the state), and dangers (national disasters and public health crises). Gárdos-Orosz & Burján, *supra* note 135, at 424–25.

137. *See id.*

138. Gábor Mészáros, *How Misuse of Emergency Powers Dismantled the Rule of Law in Hungary*, 57 ISR. L. REV. 288, 301–03 (2024).

139. For example, autocratization in Venezuela was led by a far-left populist movement. *See* Javier Corrales, *Democratic Backsliding Through Electoral Irregularities: The Case of Venezuela*, 109 EUR. REV. LATIN AM. & CARIBBEAN STUD. 41 (2020).

wing populism and therefore it is necessary to situate the evolution of the American playbook in relation to what Ann Southworth has described as the conservative challenge to the meaning of law.[140]

That challenge emerged in the 1980s to counter the Warren Court "rights revolution,"[141] as conservative lawyers began to develop a network of organizations that mimicked the form and function of their liberal legal counterparts to reorient policy on corporate regulation, religion, and civil rights in a rightward direction.[142] This strategy of coopting the meaning of "public interest law" proved to be an essential innovation that would later be expanded to other concepts. For the first three decades of its existence, the conservative legal movement—led by groups like the Pacific Legal Foundation, a public interest organization started in 1973 to litigate cases for libertarian causes, and the Federalist Society, a law school–based association formed in 1982 to promote conservative programming and networking opportunities[143]—used advocacy, research, and education to move ideas from the periphery to the center of mainstream legal thought.[144] And as the Supreme Court itself moved further to the right, the movement used impact litigation to achieve notable success, such as winning the individual right to bear arms in *District of Columbia v. Heller* and campaign finance deregulation in *Citizens United v. FEC*.[145] While these cases asserted controversial readings of the Constitution, they remained within the zone of normal political and legal conflict.

The tenor of the movement began to change during the presidency of Barack Obama as the rise of polarization and disinformation weakened established legal conventions and accelerated "partisan warfare."[146] Polarization fueled extreme

140. *See* Ann Southworth, *Conservative Lawyers and the Contest Over the Meaning of "Public Interest Law"*, 52 UCLA L. REV. 1223 (2005).

141. *See* CHARLES R. EPP, THE RIGHTS REVOLUTION: LAWYERS, ACTIVISTS, AND SUPREME COURTS IN COMPARATIVE PERSPECTIVE 26–70 (1998) (tracing the role of the support structure of liberal rights groups in shaping constitutional change during the Warren Court era).

142. *See* ANN SOUTHWORTH, LAWYERS OF THE RIGHT: PROFESSIONALIZING THE CONSERVATIVE COALITION 14–18 (2008); David Daley, *The* Other *Memo That Started the Conservative Legal Movement*, ATLANTIC (July 30, 2024), https://www.theatlantic.com/ideas/archive/2024/07/michael-j-horowitz-report-1980/679236 [https://perma.cc/HJS8-4JKL].

143. STEVEN M. TELES, THE RISE OF THE CONSERVATIVE LEGAL MOVEMENT: THE BATTLE FOR CONTROL OF THE LAW 87 (2008); AMANDA HOLLIS-BRUSKY, IDEAS WITH CONSEQUENCES: THE FEDERALIST SOCIETY AND THE CONSERVATIVE COUNTERREVOLUTION 10–22 (2015).

144. *See* Reva B. Siegel, *Dead or Alive: Originalism as Popular Constitutionalism in* Heller, 122 HARV. L. REV. 191, 212–36 (2008).

145. *See* District of Columbia v. Heller, 554 U.S. 570 (2008); Citizens United v. FEC, 558 U.S. 310 (2010).

146. *See* LEVITSKY & ZIBLATT, *supra* note 33, at 158.

position-taking and "constitutional hardball,"[147] which resulted in the violation of longstanding democratic norms. This was illustrated in Senate Republicans' refusal to hold hearings for President Obama's Supreme Court nominee, Merrick Garland, after the unexpected death of Justice Antonin Scalia before the 2016 election—an appointment that would have given liberals a majority on the Court.[148] Invoking then-Senator Joe Biden's 1992 floor speech arguing against Supreme Court confirmations in an election year,[149] Majority Leader Mitch McConnell (R-KY) said the Senate should "let the American people decide" control of the Court by electing the next president.[150]

The next president, it turned out, was Trump, whose victory institutionalized the second feature of the shifting political landscape: the use of "conspiracism" as a governing strategy.[151] Trump had already distinguished himself as the most high-profile advocate of the false claim that Obama was not a U.S. citizen.[152] This "birther conspiracy" fed a broader disinformation campaign, amplified by Trump as early as 2011, designed to undermine the legitimacy of Obama's presidency and stoke rising anger against what the far right began calling the "deep state."[153]

The increasing prominence of conspiracy theory within the conservative movement was particularly evident in the growing myth of "voter fraud."[154] This myth developed after the 2000 presidential election between George W. Bush and Al Gore, decided by a few hundred votes in the state of Florida after a bitterly

147. Mark Tushnet, *Constitutional Hardball*, 37 J. MARSHALL L. REV. 523 (2004).
148. *See* LEVITSKY & ZIBLATT, *supra* note 33, at 144–45, 166.
149. Sarah Wheaton, *Biden in '92: No Election-Season Supreme Court Nominees*, POLITICO (Feb. 22, 2016, at 19:19 ET), https://www.politico.com/story/2016/02/joe-biden-supreme-court-nominee-1992-219635 [https://perma.cc/EX9F-GM3R].
150. Amita Kelly, *McConnell: Blocking Supreme Court Nomination 'About a Principle, Not a Person'*, NPR (Mar. 16, 2016, at 12:31 ET), https://www.npr.org/2016/03/16/470664561/mcconnell-blocking-supreme-court-nomination-about-a-principle-not-a-person [https://perma.cc/8ZAR-6GKR].
151. *See* RUSSELL MUIRHEAD & NANCY L. ROSENBLUM, A LOT OF PEOPLE ARE SAYING: THE NEW CONSPIRACISM AND THE ASSAULT ON DEMOCRACY 43 (2019) (describing the spread of false facts by carefully embedding enough real facts to make them "true enough").
152. *See* LEVITSKY & ZIBLATT, *supra* note 33, at 160; Anthony Zurcher, *The Birth of the Obama 'Birther' Conspiracy*, BBC NEWS (Sep. 16, 2016), https://www.bbc.com/news/election-us-2016-37391652 [https://perma.cc/DC4Y-HBJC].
153. Winston Berg, *Origins of the "Deep State" Trope*, 35 CRITICAL REV. 281, 282 (2023); Ashley Jardina & Michael Traugott, *The Genesis of the Birther Rumor: Partisanship, Racial Attitudes, and Political Knowledge*, 4 J. RACE ETHNICITY & POL. 60, 62 (2019); Arit John, *From Birtherism to 'Treason': Trump's False Allegations Against Obama*, L.A. TIMES (June 23, 2020, at 10:37 PT), https://www.latimes.com/politics/story/2020-06-23/trump-obamagate-birtherism-false-allegations [https://perma.cc/B5W3-V2CG].
154. *The Myth of Voter Fraud: Overview*, BRENNAN CTR. FOR JUST., https://www.brennancenter.org/topics/voting-elections/vote-suppression/myth-voter-fraud [https://perma.cc/Y3E2-5RYH] (showing conclusively that most fraud allegations are baseless).

fought recount was ended in favor of Bush by the Supreme Court's controversial decision in *Bush v. Gore*.[155] That decision sparked a right-wing voter fraud movement to make sure that Florida and other battleground states would stay solidly Republican.[156] An integral part of this movement was a litigation campaign by conservative legal groups to advance voter fraud cases in court,[157] complemented by a political campaign to institute restrictions through voter purges,[158] strict identification laws,[159] and polling site closures.[160] These efforts fed into a mounting public relations drive to discredit the voting system during the first Trump administration, which featured a blue-ribbon "Presidential Advisory Commission on Election Integrity" led by vocal immigration critic Kris Kobach, whose claims of fraud sought to justify a request for all personal voter information from every state.[161] This request was roundly rejected at the time and the commission was never able to produce any credible evidence that fraud was a serious problem in U.S. elections.[162]

However, the voter fraud movement succeeded in achieving a more insidious goal: producing widespread distrust among conservative voters in the

155. 531 U.S. 98 (2000); *see also* Ron Elving, *The Florida Recount of 2000: A Nightmare That Goes on Haunting*, NPR (Nov. 12, 2018, at 05:00 ET) (describing problems with the ballots and Bush's narrow victory), https://www.npr.org/2018/11/12/666812854/the-florida-recount-of-2000-a-nightmare-that-goes-on-haunting [https://perma.cc/SR3L-3QFL].

156. RICHARD L. HASEN, THE VOTING WARS: FROM FLORIDA 2000 TO THE NEXT ELECTION MELTDOWN 41–73 (2012) (discussing the "fraudulent fraud squad"); *see also* Jim Rutenberg, *The Attack on Voting: How President Trump's False Claim of Voter Fraud Is Being Used to Disenfranchise Americans*, N.Y. TIMES MAG. (Sep. 30, 2020), https://www.nytimes.com/2020/09/30/magazine/trump-voter-fraud.html [https://perma.cc/5XXA-7N6D] (reviewing origins of voter fraud movement). The Bush DOJ launched an initiative to prosecute voter fraud but failed to reveal any serious problems. HASEN, *supra*, at 52–53.

157. Matt Cohen, *How a Right-Wing Legal Group Uses the Courts to Spread Election Disinformation*, DEMOCRACY DKT. (Apr. 19, 2024), https://www.democracydocket.com/analysis/how-a-right-wing-legal-group-uses-the-courts-to-spread-election-disinformation [https://perma.cc/F2M8-BLYD].

158. *See* JONATHAN BRATER, KEVIN MORRIS, MYRNA PÉREZ & CHRISTOPHER DELUZIO, BRENNAN CTR. FOR JUST., PURGES: A GROWING THREAT TO THE RIGHT TO VOTE 2–6 (2018).

159. *See* Theodore R. Johnson, *The New Voter Suppression*, BRENNAN CTR. FOR JUST. (Jan. 16, 2020), https://www.brennancenter.org/our-work/research-reports/new-voter-suppression [https://perma.cc/ZS26-LS5H].

160. *See* Scott Abramson & Sharece Thrower, *The Direct Cost to Voters of Polling Site Closures and Consolidation*, POL. SCI. RSCH. & METHODS 1, 1 (2025) (stating that at least 1688 polling sites had been closed since the 2013 U.S. Supreme Court decision in *Shelby County v. Holder*).

161. *See* David A. Graham, *The Last Time Trump Alleged Massive Fraud*, ATLANTIC (Nov. 12, 2020), https://www.theatlantic.com/ideas/archive/2020/11/kris-kobach-and-search-mythical-voter-fraud/617069 [https://perma.cc/543V-XGQW]; *see also* Exec. Order No. 13799, 82 Fed. Reg. 22389 (May 11, 2017) ("Establishment of Presidential Advisory Commission on Election Integrity").

162. Graham, *supra* note 161.

electoral system.[163] Distrust was therefore already firmly embedded in the public consciousness leading into the 2020 election, given further credence by the Trump campaign's preelection litigation and media challenges to COVID-era voting rules crucial for ballot access, like vote by mail, on the unproven ground that they were susceptible to fraud.[164] The election itself was expected to be decided by battleground states that would determine the Electoral College outcome.[165] Critically, the states, through their elected officials—not the federal government—controlled the vote certification process. In 2020, Joe Biden won all these states by very narrow margins—provoking an extraordinary attack on the outcome.

C. Earthquake: Trump One and the Radicalizing Right

To understand how the 2020 election attack unfolded—and why it failed—it is useful to start with the selection process for high-level government lawyers and their conventional role serving the president while protecting the constitutional system. When Trump was elected in 2016, the conservative legal movement functioned, as it had in prior Republican administrations, as the pipeline for top legal spots in the White House and DOJ, with the Federalist Society serving as key gatekeeper.[166] The vetting role was given to Jones Day partner Don McGahn, who screened lawyers for key government positions (McGahn became White House counsel, while his partner, Noel Francisco, became solicitor general).[167] These

163. *See* Justin McCarthy, *Confidence in Election Integrity Hides Deep Partisan Divide*, GALLUP (Nov. 4, 2022), https://news.gallup.com/poll/404675/confidence-election-integrity-hides-deep-partisan-divide.aspx [https://perma.cc/X2YT-EH4U] (finding that Republican confidence in voting integrity dropped to a "new low of 44%" in advance of the 2020 election); Richard H. Pildes, *Election Law in an Age of Distrust*, 74 STAN. L. REV. ONLINE 100, 102 (2022) (citing evidence that before the 2020 election more than 40 percent of Democrats and Republicans stated they would not accept victory by the other side's candidate).

164. *See* Cummings, *supra* note 13, at 560–61.

165. The key states were Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin. Michael Andre et al., *Presidential Election Results 2020: Biden Wins*, N.Y. TIMES (Nov. 2020), https://www.nytimes.com/interactive/2020/11/03/us/elections/results-president.html [https://perma.cc/Y939-A4EZ].

166. Charlie Savage, *Trump, Bashing the Federalist Society, Asserts Autonomy on Judge Picks*, N.Y. TIMES (May 30, 2025), https://www.nytimes.com/2025/05/30/us/politics/trump-judges-nominations.html [https://perma.cc/65PV-YJGN]. As part of a deal to solidify support from Republicans skeptical of Trump's conservatism, Trump agreed to choose judges from a list of Supreme Court nominees vetted by the Federalist Society during his 2016 campaign. *Id.*; Mattathias Schwartz, *The Federalist Society Is Torn Between Its Legal Philosophy and Trump's Demands*, N.Y. TIMES (Nov. 22, 2025), https://www.nytimes.com/2025/11/22/us/trump-federalist-society.html [https://perma.cc/P3HA-HEYB].

167. David Enrich, *How a Corporate Law Firm Led a Political Revolution: The Untold Story of Jones Day's Push to Move the American Government and Courts to the Right*, N.Y. TIMES MAG. (Aug.

lawyers were, on the whole, mainstream conservatives, who believed that they could keep Trump within guardrails while advancing long-sought policy changes, like promoting the unitary executive theory[168] and reversing *Roe v. Wade*.[169] While they ultimately did achieve many of these goals, from very early on there were tensions. Trump famously clashed with his first attorney general (AG), Jeff Sessions, when Sessions recused himself from the DOJ investigation into Russian interference in the 2016 election, clearing the way for the appointment of Special Counsel Robert Mueller.[170] McGahn then threatened to resign as White House counsel after Trump ordered him to fire Mueller.[171]

Precisely because he chafed against his own government lawyers, Trump turned to private lawyers to do his bidding. Two years into his administration, he retained former U.S. Attorney and New York City Mayor Rudy Giuliani as his personal lawyer, dispatching him to Ukraine to negotiate a deal to investigate Hunter Biden, which led to Trump's first impeachment.[172] Giuliani was also charged with defending Trump in the media, pioneering a new role as legal influencer, in which he infamously asserted that "truth isn't truth" in an effort to explain why Trump was not required to testify in the Russia investigation.[173]

Well before 2020, Trump had therefore already broken a critical democratic norm by hiring his own private lawyers—willing to test the limits of law and legal ethics—to represent him on matters serving his political interests. In doing so, the president circumvented the official government lawyers he had appointed, who

25, 2022), https://www.nytimes.com/2022/08/25/magazine/jones-day-trump.html [https://perma.cc/R6H9-4NAP].

168. *See* Deborah Pearlstein, *The Democracy Effects of Legal Polarization: Movement Lawyering at the Dawn of the Unitary Executive*, 2 J. AM. CONST. HIST. 357 (2024).

169. 410 U.S. 113 (1973). On the movement to overturn *Roe v. Wade*, see MARY ZIEGLER, AFTER *ROE*: THE LOST HISTORY OF THE ABORTION DEBATE (2015).

170. Kaelyn Forde, Cheyenne Haslett & Mike Levine, *Attorney General Jeff Sessions Fired by President Trump, Leaving Mueller Probe in New Hands*, ABC (Nov. 8, 2018, at 04:57 PT), https://abcnews.com/Politics/attorney-general-jeff-sessions-resigns-trumps-request/story?id=59037350 [https://perma.cc/EEL6-2WA3].

171. Michael S. Schmidt & Maggie Haberman, *Trump Ordered Mueller Fired, but Backed Off When White House Counsel Threatened to Quit*, N.Y. TIMES (Jan. 25, 2018), https://www.nytimes.com/2018/01/25/us/politics/trump-mueller-special-counsel-russia.html [https://perma.cc/3XG2-7L8G].

172. Maggie Haberman & Michael S. Schmidt, *Giuliani to Join Trump's Legal Team*, N.Y. TIMES (Apr. 19, 2018), https://www.nytimes.com/2018/04/19/us/politics/giuliani-trump.html [https://perma.cc/X5B6-5N8H]; David L. Stern, *Ukraine Stayed Quiet During Trump-Era Pressures. Now It's Sharing Some Giuliani Tales*, WASH. POST (Jan. 30, 2021), https://www.washingtonpost.com/world/europe/ukraine-giuliani-biden-hunter/2021/01/29/592cecd6-54f7-11eb-acc5-92d2819a1ccb_story.html [https://perma.cc/S44Y-7GEJ].

173. Rebecca Morin & David Cohen, *Giuliani: 'Truth Isn't Truth'*, POLITICO (Aug. 19, 2018, at 18:16 ET), https://www.politico.com/story/2018/08/19/giuliani-truth-todd-trump-788161 [https://perma.cc/D6LB-M7H4].

were charged with keeping him within constitutional guardrails. In breaking that norm, Trump made clear what he wanted from his lawyers: total personal loyalty, a willingness to disregard or even subvert truth, and a commitment to navigate around legal constraints to destabilize long-settled democratic institutions. This was the new model for Trump lawyers in the vanguard of radicalizing the conservative legal movement.

D. Catalyst: The 2020 Election and the Assault on Truth

The attack on the 2020 election was the catalytic event that transformed—and ultimately divided—the conservative legal movement. The crucial point is that because it *barely* failed, it illuminated weak spots of the system, providing essential lessons for a broader challenge to democratic institutions. After the election, a team of private "Lawyers for Trump," recruited in advance by the Trump campaign,[174] launched litigation to contest results in battleground states. Tapping conspiratorial themes already primed by the voter fraud movement and deftly packaged to invert reality, the campaign was called "Stop the Steal," meaning to stop Biden from stealing the election from Trump, when the real intent was the precise opposite.[175] At the heart of the campaign was an effort by private lawyers, some of whom (like Giuliani) had already begun to work for Trump, to use the voter fraud myth to attack the centerpiece of American democracy: free and fair elections. This was, in short, no longer lawyering within the mainstream conservative movement.

The legal plan consisted of three interlocking steps advanced by three key lawyers. The first was Giuliani, who spearheaded a litigation and public relations campaign falsely alleging voter fraud. There were nearly sixty lawsuits filed after the election and before the January 6 Capitol attack.[176] Some early cases were

174. Press Release, Donald J. Trump for President, Inc., Trump Campaign Launches 'Lawyers for Trump,' Mobilizing Support for Four More Years of President Trump's Strong Leadership (July 23, 2020), https://www.presidency.ucsb.edu/documents/trump-campaign-press-release-trump-campaign-launches-lawyers-for-trump-mobilizing-support [https://perma.cc/7NJ4-3LX4]; Anita Kumar, *Trump Readies Thousands of Attorneys for Election Fight*, POLITICO (Sep. 27, 2020, at 09:01 ET), https://www.politico.com/news/2020/09/27/trump-legal-network-election-day-fight-422035 [https://perma.cc/NS9L-PGXD].

175. Charles Homans, *How 'Stop the Steal' Captured the American Right*, N.Y. TIMES MAG. (July 28, 2022), https://www.nytimes.com/2022/07/19/magazine/stop-the-steal.html [https://perma.cc/5QLU-9EZH].

176. *See* Cummings, *supra* note 13, at 564–65 (finding fifty-eight cases from a review of the COVID-Related Election Litigation Tracker database based on a search of battleground states); JOHN DANFORTH ET AL., LOST, NOT STOLEN: THE CONSERVATIVE CASE THAT TRUMP LOST AND BIDEN WON THE 2020 PRESIDENTIAL ELECTION 51–52, 59–60 (2022) (listing sixty-four cases, which included six filed before the election).

brought by mainstream election lawyers asserting legitimate challenges to voting procedures under technical provisions of state law.[177] However, these legitimate suits either failed quickly or did not involve enough votes to change the results.[178] By mid-November, mainstream lawyers began to pull out—and Giuliani took over to promote the voter fraud myth.[179] He did this directly in a federal lawsuit in Pennsylvania, arguing that there was widespread, systemic voter fraud,[180] a claim the court dismissed as "unsupported by evidence."[181] There were roughly forty other lawsuits that alleged voting irregularities, such as hacked voting machines and unauthorized voters, all of which failed.[182] These lawsuits included the notorious "Kraken" cases (named after the mythological sea monster), brought by a team led by Sidney Powell, who alleged a conspiracy between the Dominion Voting Systems company, Antifa, and others to manipulate the election for Biden.[183] While the 2020 litigation effort was led by lawyers in private practice, it

177. *See, e.g.*, Petition for Review of Decision by the Montgomery County Board of Elections at 8–9, Donald J. Trump for President, Inc. v. Montgomery Cnty. Bd. of Elections, No. 2020-18680 (Pa. Montgomery Cnty. C.P. Nov. 5, 2020) (filed by Ronald Hicks, Jr. of Porter Wright Morris & Arthur LLP in Pittsburgh, Pennsylvania and Jonathan S. Goldstein of Goldstein Law Partners, LLC in Hatfield, Pennsylvania); Notice of Appeal via Petition for Review of Decision by the Bucks County Board of Elections at 9, 12, Donald J. Trump for President, Inc. v. Bucks Cnty. Bd. of Elections, No. 2020-05786 (Pa. Bucks Cnty. C.P. Nov. 9, 2020) (filed by Goldstein and Hicks); Notice of Appeal via Petition for Review of Decision by the Philadelphia County Board of Elections, *In re* Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 General Election, No. 201100874 (Pa. Phila. Cnty. C.P. Nov. 10, 2020) (filed by Philadelphia-based solo lawyer Linda Kearns & Hicks).

178. *See, e.g.*, *In re* Canvass of Absentee and Mail-In Ballots of November 3, 2020 General Election, 241 A.3d 1058, 1062 (Pa. Nov. 23, 2020) (ruling on five suits challenging Philadelphia County election board decisions to count a total of 8329 ballots); Petition for Review of Decision by the Montgomery County Board of Elections at 7–8 ¶¶ 20–22, Donald J. Trump for President, Inc. v. Montgomery Cnty. Bd. of Elections, No. 2020-18680 (Pa. Montgomery Cnty. C.P. Nov. 5, 2020) (challenging the election board's decision to count 600 mail-in ballots that were defective because they lacked inner secrecy envelopes, had marked inner secrecy envelopes, or had incomplete declarations); Memorandum Opinion by Judge Cohn Jubelirer at 1–3, 14, *In re* Canvass of Absentee and/or Mail-in Ballots of November 3, 2020 General Election, No. 20-05786-35, No. 1191 C.D. 2020 (Pa. Commw. Ct. Nov. 25, 2020) (addressing the Trump campaign's appeal concerning 2177 absentee and mail-in ballots in Bucks County and noting that challenges to all but 69 were controlled by the Pennsylvania Supreme Court's intervening decision in *In re Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election*).

179. *See* Cummings, *supra* note 13, at 571–75 (recounting how Giuliani stepped in to replace Porter Wright in the case of *Trump v. Boockvar*, challenging the Pennsylvania results).

180. Report and Recommendation of Ad Hoc Hearing Committee at 15, *In re* Giuliani, No. 22-BD-027 (D.C. Bd. Pro. Resp. July 7, 2023).

181. Donald J. Trump for President, Inc. v. Boockvar, 502 F. Supp. 3d 899, 906 (M.D. Pa. Nov. 21, 2020).

182. *See* Cummings, *supra* note 13, at 567–82.

183. *See, e.g.*, Complaint for Declaratory, Emergency, and Permanent Injunctive Relief, King v. Whitmer, No. 20-cv-13134 (E.D. Mich. Nov. 25, 2020). Powell and other lawyers involved in

also relied on conservative legal NGOs, including the Thomas More Society and Great Lakes Justice Center, which were religious groups repurposed for election attack.[184]

In addition to lying in court, Giuliani made false public statements to advance the second part of the 2020 plan: to overturn the Electoral College vote in favor of Biden. The plan was laid out in memos authored by the second key lawyer, John Eastman, a constitutional law scholar and former dean of Chapman Law School, who had attracted Trump's attention through his media advocacy against birthright citizenship.[185] Eastman's memos, building on a prior set by Kenneth Chesebro advising the Trump campaign on how states could create "alternative" electors,[186] outlined scenarios under which Vice President Mike Pence could discard certified Biden electoral votes on January 6.[187] The problem was that votes submitted by the Biden electors had already been sanctioned by states as official while the Trump alternatives were fake.[188] The Eastman memos sought to hide that fundamental flaw by arguing that it was legal to disqualify Biden electors so long as there were "ongoing election disputes."[189] The strategy was to maintain the

the Michigan case were sanctioned over $100,000 by the court. Maggie Astor, *Sidney Powell and Other Trump-Aligned Lawyers Will Face Legal Penalties*, N.Y. TIMES (Feb. 21, 2024), https://www.nytimes.com/2024/02/21/us/politics/trump-sidney-powell-kraken.html [https://perma.cc/3486-3RCT].

184. *See* Cummings, *supra* note 13, at 570, 573–74.

185. *See* David Nakamura, *Lawyer Who Backed Trump on Jan. 6 Helped Push Birthright Citizenship Ban*, WASH. POST (Feb. 5, 2025), https://www.washingtonpost.com/immigration/2025/02/05/birthright-citizenship-lawyer-trump-jan-6 [https://perma.cc/HXK7-ABF5]; City News Service, *Former Chapman Law School Dean, Trump Attorney Disbarred*, L.A. TIMES (Apr. 17, 2026, at 08:57 PT), https://www.latimes.com/socal/daily-pilot/entertainment/story/2026-04-17/former-chapman-law-school-dean-disbarred [https://perma.cc/8DTT-QNFV]. Motivated by the case of Yaser Hamdi, a U.S. citizen captured in Afghanistan and transferred to Guantánamo Bay after 9/11, Eastman argued that the Fourteenth Amendment did not apply to children of temporary visitors (like Hamdi's parents) but was only meant to apply to newly freed slaves. *See* John C. Eastman, *Born in the U.S.A.? Rethinking Birthright Citizenship in the Wake of 9/11*, 42 U. RICH. L. REV. 955 (2008).

186. *See* Memorandum from Kenneth Chesebro to Judge James R. Troupis, Re: The Real Deadline for Settling a State's Electoral Votes 1 (Nov. 18, 2020), https://www.justsecurity.org/wp-content/uploads/2022/06/january-6-clearinghouse-kenneth-chesebro-memorandum-to-james-r.-troupis-attorney-for-trump-campaign-wisconsin-November-18-2020.pdf [https://perma.cc/J5TJ-BM8Q]. For a full description, see Cummings, *supra* note 13, at 584–87. The Florida Supreme Court rejected a disciplinary referee's recommendation that Chesebro be suspended, instead issuing a public reprimand. Fla. Bar v. Chesebro, 434 So. 3d 662 (Fla. June 11, 2026).

187. Memorandum from John Eastman, January 6 Scenario 2 (Dec. 23, 2020), https://cdn.cnn.com/cnn/2021/images/09/20/eastman.memo.pdf [https://perma.cc/RG66-XRR3].

188. *See* Alan Feuer & Katie Benner, *The Fake Electors Scheme, Explained*, N.Y. TIMES (Aug. 3, 2022), https://www.nytimes.com/2022/07/27/us/politics/fake-electors-explained-trump-jan-6.html [https://perma.cc/66DN-XKR6].

189. Memorandum from John Eastman, January 6 Scenario 5 (Jan. 3, 2021).

appearance of legal disputes through lawsuits. The problem was that these lawsuits were failing.

This failure led to the third part of the legal plan: trying to coopt government lawyers to put the weight of the DOJ behind the voter fraud myth. This part was advanced by a third lawyer, Jeffrey Clark, a little-known assistant AG recently placed in charge of the civil division, who had no role in criminal investigations generally or voter fraud in particular.[190] Nevertheless, he was recruited by the president to take over the DOJ and send out a "proof of concept" letter to Georgia officials publicly claiming the department had "significant concerns" about voter fraud.[191] This was false. In fact, the DOJ had already conducted extensive investigations showing no fraud—and Clark knew this.[192]

As critical as lawyers were to pushing Stop the Steal forward, they were also essential to thwarting its success. Clark's planned letter was foiled by top DOJ lawyers, including Acting AG Jeffrey Rosen and Acting Deputy AG Richard Donoghue, who debunked claims of voter fraud offered by Clark, dramatically confronting the president at a meeting with White House Counsel Pat Cipollone and threatening to resign.[193] Eastman's pressure campaign against Vice President Pence was resisted by Pence's counsel, Gregory Jacob, who similarly tracked down cases and law review articles that Eastman proposed in support of his fake elector plan and rebutted Eastman point by point.[194] By following the rules of legal ethics and performing their independent role, these lawyers—mainstream conservatives who placed protecting the Constitution above serving the president—helped defeat the election attack. It was a democratic "near miss."[195]

190. Report and Recommendation of Hearing Committee Number Twelve at 4, 22, 54, 184, *In re* Clark, Bd. Dkt. No. 22-BD-039, Disciplinary Dkt. No. 2021-D193 (D.C. Bd. Pro. Resp. Aug. 1, 2024).

191. Draft Letter from Jeffrey A. Rosen, Acting Att'y Gen., Richard Donoghue, Acting Deputy Att'y Gen. & Jeffrey Bossert Clark, Acting Assistant Att'y Gen., to Hon. Brian P. Kemp, Governor, Hon. David Ralston, Speaker of the House & Hon. Butch Miller, President Pro Tempore of the Senate, Re: Georgia Proof of Concept 1–2 (Dec. 28, 2020).

192. Report and Recommendation of Hearing Committee Number Twelve, *supra* note 190, at 185–86.

193. SELECT COMM. TO INVESTIGATE THE JAN. 6TH ATTACK ON THE U.S. CAPITOL, FINAL REPORT, H.R. REP. NO. 117-663, at 400–01 (2022); *see also* Indictment at 30–31, United States v. Trump, No. 23-cr-00257 (D.D.C. Aug. 1, 2023) (detailing meeting of president with top lawyers in the DOJ and White House Counsel's office).

194. Decision and Order of Involuntary Inactive Enrollment 53–59, *In re* Eastman, No. SBC-23-O-30029 (Cal. State Bar Ct. Hearing Dep't Mar. 27, 2024); *see also* SELECT COMM. TO INVESTIGATE THE JAN. 6TH ATTACK ON THE U.S. CAPITOL, *supra* note 193, at 18–19, 30–43, 50.

195. *See* Tom Ginsburg & Aziz Huq, *Democracy's Near Misses*, 29 J. DEMOCRACY 16 (2018).

E. Lessons: Law as a Tool of Democratic Distrust

Near misses are important not just for what they fail to accomplish but also for how they illuminate new paths forward for leaders to avoid past mistakes. In this case, out of the failure of 2020 came three key lessons for Trump and his allies.

First, even if Trump lost in a court of law, he could win in the court of public opinion. Litigation could be used to sow doubt about the legitimacy of elections, even if based on false claims, because the system was not designed to efficiently screen out bogus cases. What mattered was that false claims could be coordinated with a disinformation campaign to undermine election trust. And the proof was in the polling: three years after 2020, over two-thirds of Republicans believed that Biden did not legitimately win the election.[196]

Second, settled institutional arrangements that had long been taken for granted as democratically untouchable, like the process for counting electoral votes, could in fact be challenged by lawyers willing to disregard existing law and legal ethics. Crucially, this challenge could extend beyond elections to target *all once-sacred institutional guardrails protecting American democracy from executive power*.

This led to the third, most essential, lesson: To succeed, this project would require loyalist government lawyers willing to go all in. The 2020 election pitted Trump's private lawyers—Giuliani, Eastman, and dozens of others who filed election lawsuits—against his public ones—including AG William Barr, who himself had earlier breached DOJ norms in downplaying evidence of Trump obstructing the Russia investigation,[197] but ultimately rejected Trump's false claims of election fraud and resigned.[198] In the end, the 2020 election was a dramatic moment of public lawyers prevailing over private ones; of mainstream conservatives prevailing over the far right; of institutional commitments to the rule of law prevailing over personal loyalty to a president seeking to undermine it. From the president's perspective, the crucial takeaway was that, to succeed next time around, this could not happen again.

The lessons from 2020 were derived from what was, at the time, a chaotic, last-ditch effort, punctuated by far-fetched claims—symbolized by Powell's

196. Jennifer Agiesta & Ariel Edwards-Levy, *CNN Poll: Percentage of Republicans Who Think Biden's 2020 Win Was Illegitimate Ticks Back Up Near 70%*, CNN (Aug. 3, 2023, at 10:18 ET), https://www.cnn.com/2023/08/03/politics/cnn-poll-republicans-think-2020-election-illegitimate [https://perma.cc/KKM6-WGQD].

197. *See* Cummings, *supra* note 13, at 549.

198. *See* Resignation Letter from William P. Barr, Att'y Gen., to Donald J. Trump, President (Dec. 14, 2020), https://int.nyt.com/data/documenttools/attorney-general-william-barr-resignation-letter/b82836cf0fe20bf8/full.pdf [https://perma.cc/VRD5-KTMT].

Kraken lawsuits. Yet out of this chaos, the outlines of a new playbook emerged designed to promote democratic distrust. The 2020 attack provided the roadmap: (1) legitimize radical legal theories (that the vice president could circumvent the Electoral College) to undermine the existing system based on conspiracy (voter fraud); (2) mobilize loyalist lawyers (Giuliani, Eastman, and Clark) to execute the plan; (3) develop false claims, in legal memoranda and court filings, to give them an aura of legality; (4) confuse the public through a coordinated media disinformation campaign; (5) claim there was a crisis (in 2020, a flawed voting system manipulated by the deep state) justifying extraconstitutional action (staying in power despite losing); and (6) capture legal gatekeepers (at the DOJ and White House) to eliminate internal roadblocks.[199] The looming question from 2020, as Trump left office without ever admitting defeat, was how to translate this playbook from a *defensive strategy for attacking the election* into an *affirmative strategy of governance*.[200]

F. Roadmap: Project 2025 and the Touchstone of Loyalty

Project 2025's *Mandate for Leadership: The Conservative Promise*, a 920-page policy report put out by the Heritage Foundation in 2023, was the vehicle through which the lessons from 2020 were converted from rearguard attack into proactive legal strategy.[201] The crucial chapters were drafted by lawyers, some associated with new NGOs, like America First Legal, established by influential Trump advisor Stephen Miller, and the Center for Renewing America, established by lawyer and former Director of the Office of Management and Budget (OMB) Russell Vought, where Jeffrey Clark had become director of litigation.[202] The report contained exaggerated and misleading claims of government dysfunction linked to affirmative proposals culled from careful study of autocracies around the world, particularly Hungary. The Fidesz-aligned Danube Institute signed a cooperation agreement and held exchanges with Heritage prior to the release of the report, which was presented in Budapest in February 2024, after which Heritage's president, Kevin Roberts, hosted Prime Minister Orbán at a closed-door session in

199. Cummings, *supra* note 13, at 594.
200. *See* Gregory Krieg & Kate Sullivan, *Trump Says He 'Shouldn't Have Left' the White House as He Closes Campaign With Increasingly Dark Message*, CNN (Nov. 3, 2024, at 21:04 ET), https://www.cnn.com/2024/11/03/politics/trump-dark-closing-message [https://perma.cc/8LF2-FK93].
201. MANDATE FOR LEADERSHIP, *supra* note 30.
202. *Leadership*, AM. FIRST LEGAL, https://aflegal.org/leadership [https://perma.cc/R65V-Z35J]; *About Staff Jeff Clark*, CTR. FOR RENEWING AM., https://americarenewing.com/team/jeff-clark [https://perma.cc/5FRW-R4KT].

Washington, D.C. with high-profile right-wing political figures.[203] Learning the lessons of 2020, one of the Project's explicit goals was to replace government lawyers with loyalists. It advanced that goal by taking control of the pipeline for administration legal jobs away from mainstream conservatives and mobilizing the Federalist Society for a new mission: installing far-right lawyers screened for fealty to Trump in key positions of government power.[204]

Project 2025's *Mandate for Leadership* explicitly articulated what this new mission would mean if Trump were to win reelection.[205] The report singled out the very legal offices that had thwarted Trump's 2020 attack: the DOJ and White House Counsel. Previewing a disinformation strategy that would define the second administration's executive orders, and using language that presaged the president's March 2025 DOJ speech, the report falsely claimed that "[l]arge swaths of the [DOJ] have been captured by an unaccountable bureaucratic managerial class and radical Left ideologues" requiring a staff purge to achieve a "vast expansion of the number of appointees in every office and component across the department."[206] The report outlined a similar plan for the Office of White House Counsel, repudiating its traditional independent role to create "an activist yet ethical plaintiffs' firm" representing the president.[207] The message was clear. To

203. Jeremy Shapiro & Zsuzsanna Végh, *The Orbanisation of America: Hungary's Lessons for Donald Trump*, EUR. COUNCIL ON FOREIGN RELS. (Oct. 9, 2024), https://ecfr.eu/publication/the-orbanisation-of-america-hungarys-lessons-for-donald-trump [https://perma.cc/9H6N-C29G]; Zalán Zubor, *Orbán's Influence on Project 2025 Was Highlighted Further by Leaked Training Videos*, ÁTLÁTSZÓ (Aug. 23, 2024), https://english.atlatszo.hu/2024/08/23/orbans-influence-on-project-2025-was-highlighted-further-by-leaked-training-videos [https://perma.cc/PD3R-ZN2J].

204. Jonathan Blitzer, *Inside the Trump Plan for 2025*, NEW YORKER (July 15, 2024), https://www.newyorker.com/magazine/2024/07/22/inside-the-trump-plan-for-2025 [https://perma.cc/SR8R-EJ7N]; *see also* Matt Ford, *The Decline and Fall of the Federalist Society's Never Trumpers*, NEW REPUBLIC (June 11, 2024), https://newrepublic.com/article/182542/decline-fall-federalist-societys-never-trumpers [https://perma.cc/AT7Q-RAHN] (detailing the transformation of Steven Calabresi, co-founder of the Yale Federalist Society chapter, from Never Trumper to election denier). Spencer Chretien, co-director of Project 2025, was quoted in a training video for potential political appointees as stating, in a new conservative administration, "loyalty and ideology are more important than professional experience." Zubor, *supra* note 203.

205. The Heritage Foundation has put out similar *Mandate for Leadership* volumes since 1980 and brought in a "plethora of voices on the so-called New Right" to draft Project 2025, which was originally compiled with Florida Governor Ron DeSantis in mind, causing tension with Trump after he secured the nomination. Elisabeth Zerofsky, *What the Crackup of the Heritage Foundation Says About the Post-Trump Right*, N.Y. TIMES MAG. (July 28, 2026), https://www.nytimes.com/2026/07/28/magazine/heritage-foundation-trump-republicans.html [https://perma.cc/G4XA-RPLZ] (noting that America First Policy Institute, where Pam Bondi was a leader, also put out a policy manual, which overlapped with Project 2025).

206. Gene Hamilton, *Department of Justice*, *in* MANDATE FOR LEADERSHIP, *supra* note 30, at 545, 569.

207. Rick Dearborn, *White House Office*, *in* MANDATE FOR LEADERSHIP, *supra* note 30, at 23, 27.

implement Trump's campaign agenda—which included illegal proposals to prosecute political enemies and election workers, and to use the military to detain and deport immigrants without due process[208]—would require zealous Trump loyalists in crucial legal positions, not what Project 2025 disparagingly called the "white-shoe" elites from the first Trump administration.[209]

This message was reinforced by the Supreme Court, whose presidential immunity decision in *Trump v. United States*[210]—the 2020 federal election interference case brought by Special Counsel Jack Smith—gave a legal green light to Trump campaign proposals so long as they were executed through government lawyers. In addition to this case, Trump fought multiple legal battles flowing from his exit from office. On the criminal side, these included a Smith-led federal prosecution for mishandling classified documents,[211] a prosecution by Fulton County District Attorney (DA) Fani Willis for election interference in Georgia,[212] and another by Manhattan DA Alvin Bragg for hush money payments to porn actor Stormy Daniels.[213] In addition, Trump was sued by E. Jean Carroll for sexual abuse and defamation,[214] while Trump and his family business were sued by New York AG Letitia James for civil damages for illegally inflating property values to mislead investors.[215] Amid this welter of litigation, the Supreme Court's July 1, 2024 decision on immunity ensured that the major federal case, at least, would not be resolved before the 2024 election—while crystallizing the payoff of Project 2025's plan to capture the DOJ.

In a 6–3 opinion, the conservative majority held that a president is entitled to "absolute immunity" for actions within his "core constitutional powers"—and made clear that this immunity extended to "discussions with Justice Department

208. Charlie Savage, Maggie Haberman, Jonathan Swan & Michael Gold, *Trump Steps Up Threats to Imprison Those He Sees as Foes*, N.Y. TIMES (Sep. 9, 2024), https://www.nytimes.com/2024/09/09/us/politics/trump-prison-threats-opponents.html [https://perma.cc/PH5M-RLK4]; Nick Corasaniti & Alexandra Berzon, *Trump's Talk of Prosecution Rattles Election Officials*, N.Y. TIMES (Sep. 18, 2024), https://www.nytimes.com/2024/09/18/us/politics/donald-trump-2024-election-officials.html [https://perma.cc/9XRP-Q4AC]; Charlie Savage, Maggie Haberman & Jonathan Swan, *Sweeping Raids, Giant Camps and Mass Deportations: Inside Trump's 2025 Immigration Plans*, N.Y. TIMES (Nov. 11, 2023), https://www.nytimes.com/2023/11/11/us/politics/trump-2025-immigration-agenda.html [https://perma.cc/YW24-MM77].

209. Dearborn, *supra* note 207, at 27.

210. 603 U.S. 593 (2024).

211. Superseding Indictment, United States v. Trump, No. 23-CR-80101 (S.D. Fla. July 27, 2023).

212. Indictment, State v. Trump, No. 23SC188947 (Fulton Cnty. Super. Ct. Ga. Aug. 14, 2023).

213. Order Unsealing a Grand Jury Matter, People v. Trump, No. 71543-23 (N.Y. Sup. Ct. Mar. 30, 2023).

214. Complaint and Jury Demand, Carroll v. Trump, No. 160694/2019 (N.Y. Sup. Ct. Nov. 4, 2019); Notice of Removal, Carroll v. Trump, No. 20-cv-07311 (S.D.N.Y. Sep. 8, 2020).

215. Complaint, People v. Trump, No. 452564/2022 (N.Y. Sup. Ct. Sep. 21, 2022).

officials."[216] The dissent pointed out, in language that proved prescient, that the ruling appeared to authorize the president to use official channels to "assassinate a political rival" or organize "a military coup."[217] By the same logic, the opinion also seemed to protect a president who ordered DOJ lawyers to falsely claim voter fraud to illegally overturn an election. In contrast, the case suggested that there would be no protection if a president were to commit these acts through *private* lawyers, like Trump did in 2020—a point that Trump's counsel, D. John Sauer, conceded during oral argument by acknowledging that there would be no immunity when a president worked with private lawyers to "spread knowingly false claims of election fraud."[218] The ruling therefore added fuel to the plan to place loyalists in government lawyer positions, where they could insulate the president (and possibly the lawyers themselves) from otherwise criminal conduct. This plan also may have influenced the selection of Yale Law School–trained J.D. Vance as Trump's running mate: a "never-Trumper" turned election denier who would presumably not follow the script of Trump's first vice president, Mike Pence (also a lawyer), if called upon to place Trump's interests over the country's.[219]

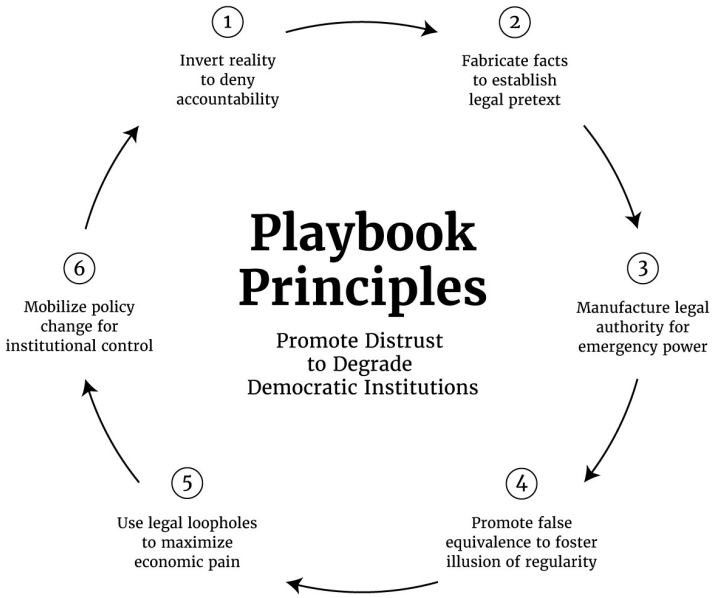
III. PRINCIPLES

Before considering the scope and content of legal strategies to weaken democratic targets, it is necessary to understand their underlying logic. As the last Part showed, the playbook works by providing a set of principles to degrade democracy through law. These principles must be adapted to the context of specific countries since the precise legal opportunities available—and therefore the strategies used—vary by national system. This Part investigates principles behind the legal moves. Although these principles (depicted in Figure 2) derive from and apply to comparative cases, they are particularly shaped by the U.S. experience, in which autocracy advances through executive action that pushes the boundaries of legality to transform the constitutional order—and therefore depends on revisionist accounts of fact and law by lawyers willing to test professional limits. Although not all of the principles operate consistently in every context, one may see lawyers at various times directing them toward a common goal: promoting distrust in the democratic system so that leaders can set themselves above legal

216. *Trump*, 603 U.S. at 606, 609, 621.
217. *Id.* at 685 (Sotomayor, J., dissenting).
218. Transcript of Oral Argument at 29, Trump v. United States, 603 U.S. 593 (2024) (No. 23-939).
219. Charles Homans, *J.D. Vance Once Warned Trump About Lying About Elections. That Was Then.*, N.Y. TIMES (July 23, 2024), https://www.nytimes.com/2024/07/17/us/politics/donald-trump-jd-vance-republican-2024-election.html [https://perma.cc/6RQV-5H4Z].

rules and democratic norms, claim unilateral power, and achieve institutional control.

Figure 2. Playbook Principles



A. Invert Reality to Deny Accountability

Because democratic distrust hinges on convincing the people that the system has failed and assigning blame for that failure to conventional political actors, it is necessary to generate a master narrative that consistently hammers home this message to lay the groundwork for change. This is why a core feature of the playbook is blurring fact and fiction—and often just promoting sheer fiction—using conspiracy theory as the tip of the spear to deflate democratic institutions. The key is that conspiracy is not just a theatrical distraction designed by media-savvy leaders (and, in the case of Trump, a former reality TV star), but rather a tool to invert reality to facilitate legal attacks on expertise, institutions, and law itself. Inverted reality is used to create media content strategically disseminated to hardcore backers and low-information voters, who may be persuaded to support

a wolf in sheep's clothing.[220] Conspiracies embedded in media content become the seedbed for official legal actions, which are then used to create new media content that references those actions as claimed proof of the veracity of conspiracies—in a vicious cycle.[221]

Authoritarianism has long depended on propaganda to create scapegoats and promote the myth that leaders are infallible and therefore above law.[222] The Trump team has brought this strategy fully into the digital age. Trump's media communications reveal the logic of inverted reality: beating the consistent drumbeat of a deep state master narrative explicitly tied to proposals that purport to be legally justified based on the narrative—and blame opponents for the very misconduct that Trump and allies perform.

Trump pioneered this strategy in his first run for president. During the 2016 campaign, in the face of allegations of sexual assault and hush money payments, he promoted conspiracies about his opponent Hillary Clinton using a private computer server as secretary of state to send classified emails while allies suggested she was part of a Democratic pedophile ring run out of a pizza shop in Washington, D.C.[223] The goal was to tie Clinton to a shadowy elite network of behind-the-scenes manipulation that undermined institutional trust and was broad enough to encompass any action by adversaries—while absolving Trump from all wrongdoing.

Once elected, Trump continued to distract from his own legal troubles by refracting facts through this master lens. During DOJ Special Counsel Mueller's probe of 2016 election interference, launched after Trump fired Federal Bureau of Investigation (FBI) Director James Comey for authorizing Operation Crossfire

220. For analysis of the impact of disinformation on democracy, see generally RICHARD L. HASEN, CHEAP SPEECH: HOW DISINFORMATION POISONS OUR POLITICS—AND HOW TO CURE IT (2022); CYRUS KROHN & TOM FARMER, BOMBARDED: HOW TO FIGHT BACK AGAINST THE ONLINE ASSAULT ON DEMOCRACY (2020).

221. *See* Cummings, *supra* note 13, at 582; *see also* Jess Bidgood, *How Do You Silence a Conspiracy Theory?*, N.Y. TIMES (July 14, 2025), https://www.nytimes.com/2025/07/14/us/politics/conspiracy-epstein-files-trump.html [https://perma.cc/S8EC-SWTL].

222. On the use of propaganda by authoritarian leaders, see generally XIAOMEI CHEN, STAGING CHINESE REVOLUTION: THEATER, FILM, AND THE AFTERLIVES OF PROPAGANDA (2017); CRISTINA MARCANO & ALBERTO BARRERA TYSZKA, HUGO CHÁVEZ: THE DEFINITIVE BIOGRAPHY OF VENEZUELA'S CONTROVERSIAL PRESIDENT (2007); NICHOLAS O'SHAUGHNESSY, MARKETING THE THIRD REICH: PERSUASION, PACKAGING AND PROPAGANDA (2017).

223. Amy Davidson Sorkin, *The Age of Donald Trump and Pizzagate*, NEW YORKER (Dec. 5, 2016), https://www.newyorker.com/news/amy-davidson/the-age-of-donald-trump-and-pizzagate [https://perma.cc/9YZV-3NF7].

Hurricane to investigate Trump campaign coordination with Russia,[224] Trump made social media posts that deflected blame through inverted reality: "Collusion with Russia was very real. Hillary Clinton and her team 100% colluded with the Russians . . . . We also know that Hillary Clinton paid through . . . a law firm, eventually Kremlin connected sources, to gather info on Donald Trump. Collusion is very real with Russia, but only with Hillary and the Democrats, and we should demand a full investigation."[225] It was true that Clinton paid a law firm, Perkins Coie, to conduct opposition research on Trump, contained in the Steele dossier compiled by a former MI6 agent, some of which was later discredited.[226] But there was no factual basis to claims of Russian coordination by Clinton[227]—highlighting how conspiracy is created by connecting outright falsehood to an underlying kernel of plausible misconduct.[228] A similar approach was used to spread conspiracies about COVID-19,[229] which fed into a broader anti-vax

224. ROBERT S. MUELLER, III, 1 REPORT ON THE INVESTIGATION INTO RUSSIAN INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION (2019) [hereinafter MUELLER, REPORT 1]; ROBERT S. MUELLER, III, 2 REPORT ON THE INVESTIGATION INTO RUSSIAN INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION (2019) (concluding there were significant contacts between the Trump campaign and Russian operatives and evidence of obstruction of justice).

225. Donald J. Trump (@realDonaldTrump), X (Aug. 6, 2018, at 07:13 PT), https://x.com/realDonaldTrump/status/1026471244949061632 [https://perma.cc/D6MT-4FKN]; Donald J. Trump (@realDonaldTrump), X (Aug. 6, 2018, at 07:25 PT), https://x.com/realDonaldTrump/status/1026474458326986752 [https://perma.cc/JDN4-QA3H].

226. Charlie Savage, *Why the Discredited Dossier Does Not Undercut the Russia Investigation*, N.Y. TIMES (Apr. 5, 2022), https://www.nytimes.com/2021/12/01/us/trump-russia-investigation-dossier.html [https://perma.cc/9Q7B-WXVA]; Megan Messerly, *Trump Targets Prominent Democratic-Linked Law Firm*, POLITICO (Mar. 6, 2025, at 18:44 ET), https://www.politico.com/news/2025/03/06/trump-security-clearance-steele-dossier-025203 [https://perma.cc/5R9F-F49W]. The Steele dossier grew out of opposition research originally commissioned by a conservative website to support Republican candidate Marco Rubio against Trump in the 2016 primary. Kenneth P. Vogel, *The Trump Dossier: What We Know and Who Paid for It*, N.Y. TIMES (Oct. 25, 2017), https://www.nytimes.com/2017/10/25/us/politics/steele-dossier-trump-expained.html [https://perma.cc/P6SV-URMG]. The Mueller Report contained extensive documentation of Russian interference in the 2016 election in favor of Trump. MUELLER, REPORT 1, *supra* note 224, at 5–7 (summarizing the evidence). Trump's lawsuit in London against Steele's firm, claiming that it violated British data protection laws in gathering information about Trump's Russian ties and sexual conduct, was dismissed and Trump was ordered to pay legal fees. Brian Melley, *Trump Is Ordered to Pay Legal Fees After Failed Lawsuit Over the Steele Dossier*, AP NEWS (Mar. 7, 2024, at 11:42 PT), https://apnews.com/article/trump-steele-dossier-uk-lawsuit-russia-55427915a83f33a8ead484109b8a89f6 [https://perma.cc/3WZD-DLFH].

227. *AP Fact Check: Trump's Exaggerations About the Russia Probe*, PBS (Apr. 1, 2019, at 09:24 ET), https://www.pbs.org/newshour/politics/ap-fact-check-trumps-exaggerations-about-the-russia-probe [https://perma.cc/WT6U-C4QS].

228. MUIRHEAD & ROSENBLUM, *supra* note 151, at 43.

229. *See* Fu Gu, Yingwen Wu, Xinyu Hu, Jianfeng Guo, Xiaohan Yang & Xinze Zhao, *The Role of Conspiracy Theories in the Spread of COVID-19 Across the United States*, 18 INT'L J. ENV'T RSCH.

campaign to challenge the credibility of the government's top infectious disease official, Anthony Fauci,[230] inverting the reality of vaccine safety to undermine trust in scientific expertise and score political points, no matter what the public health cost.[231]

The strategy of inverting reality was honed further in the 2020 election around the voter fraud myth and, when Trump lost, was deployed to attack the legitimacy of legal cases against him. Trump's media strategy in the interregnum between presidential terms was to respond to legal cases by accusing judges and prosecutors of disqualifying bias. For instance, he repeatedly referred to E. Jean Carroll's ultimately successful defamation lawsuit as a "witch hunt" (even uttering those words in court while she testified).[232] During the Manhattan DA's prosecution for covering up hush money payments, Trump relentlessly attacked the trial judge, Juan Merchan, accusing him of bias.[233] Trump similarly impugned the integrity of Special Counsel Jack Smith in cases alleging election interference and mishandling classified documents. Despite Smith's distinguished record and nonpartisan reputation, Trump repeatedly called him a "deranged" "Trump-hating prosecutor," insinuating that he was part of a deep state conspiracy weaponizing DOJ to smear Trump's reputation.[234]

& PUB. HEALTH 3843 (2021) (linking theory that the virus was manufactured in a Wuhan, China lab with claim that it was engineered by Bill Gates as part of a deep state plan to control the world).

230. Sheryl Gay Stolberg, Maggie Haberman & Noah Weiland, *Trump Calls Fauci 'a Disaster' and Shrugs Off Virus as Infections Soar*, N.Y. TIMES (Oct. 19, 2020), https://www.nytimes.com/2020/10/19/us/politics/trump-fauci-covid.html [https://perma.cc/WMF2-VBSY].

231. *See generally* William J. Broad, *Historians See Autocratic Playbook in Trump's Attacks on Science*, N.Y. TIMES (Aug. 31, 2025), https://www.nytimes.com/2025/08/31/science/trump-science-autocrats.html [https://perma.cc/H6DP-52DD] (stating that autocratic rulers treat science as a rival source of authority, repressing basic research and independent inquiry while favoring applied science that serves regime goals). A similar anti-science logic is at play in Trump's claim that climate change is a hoax. David Gelles, *Trump's Environmental Claims Ignore Decades of Climate Science*, N.Y. TIMES (Oct. 29, 2024), https://www.nytimes.com/2024/10/29/climate/donald-trump-climate-change-claims.html [https://perma.cc/NQK8-CW4Y].

232. Benjamin Weiser, Jonah E. Bromwich, Maria Cramer & Kate Christobek, *Jury Orders Trump to Pay Carroll $83.3 Million After Years of Insults*, N.Y. TIMES (Jan. 26, 2024), https://www.nytimes.com/2024/01/26/nyregion/trump-defamation-trial-carroll-verdict.html [https://perma.cc/FNJ2-BBYN].

233. Michael R. Sisak, *Donald Trump Assails Judge and His Daughter After Gag Order in New York Hush-Money Criminal Case*, AP NEWS (Mar. 27, 2024, at 16:54 PT), https://apnews.com/article/donald-trump-judge-merchan-hush-money-gag-order-truth-social-daughter-578a0c6334b206d81dc2ebf6a410a502 [https://perma.cc/R5HN-FLWV].

234. Alison Main & Katelyn Polantz, *Trump Continues Attacks on Special Counsel Jack Smith, References His Family*, CNN (Nov. 12, 2023, at 14:33 ET), https://www.cnn.com/2023/11/11/politics/trump-jack-smith-family-attacks [https://perma.cc/8HJQ-JYUW]; *see also* Devlin

In all cases, the goal was to link legal actors to an anti-Trump cabal to weaken their credibility and thus authority to hold Trump accountable. This deep state theory was laundered through the legal system in a 2022 lawsuit filed in federal district court in Florida by Trump's private attorney Alina Habba, claiming a Racketeer Influenced and Corrupt Organizations (RICO) conspiracy involving Hillary Clinton, the Democratic National Committee, Perkins Coie, and James Comey, among others, to "weave a false narrative" about Trump's ties to Russia in the 2016 campaign through the alleged deliberate fabrication of the Steele dossier.[235] The lawsuit was dismissed with prejudice with the judge concluding that the "case should never have been brought" and ordering Habba and Trump to pay nearly $1 million in attorney's fees as sanctions under Federal Rule of Civil Procedure 11 (Rule 11) for frivolous litigation.[236]

Such official repudiation did not deter Trump, who ratcheted up conspiratorial ideas in his campaign for a second term.[237] A May 31, 2022 Truth Social post concisely synthesized the central themes of his master narrative: "Our Legal System is CORRUPT, our Judges (and Justices!) are highly partisan, compromised or just plain scared, our Borders are OPEN, our Elections are Rigged, Inflation is RAMPANT, . . . our Country is going to HELL . . . ."[238] False claims about election rigging tapped the voter fraud myth, which was amplified in

Barrett, *Jack Smith's Legal Team Fires Back Against Ethics Complaint*, N.Y. TIMES (Aug. 26, 2025), https://www.nytimes.com/2025/08/26/us/jack-smith-ethics-complaint-trump.html [https://perma.cc/VX77-RX22] (stating that Senator Tom Cotton (R-AR) lodged an ethics complaint endorsed by administration officials alleging Smith's prosecution sought to influence the 2024 election in violation of the Hatch Act).

235. Complaint for Damages and Demand for Trial by Jury at 2, Trump v. Clinton, No. 22-cv-14102 (S.D. Fla. Mar. 24, 2022).

236. Order on Sanctions, Trump v. Clinton, 653 F. Supp. 3d 1198, 1215, 1218, 1232–33 (S.D. Fla. Jan. 19, 2023), *aff'd in relevant part*, 161 F.4th 671 (11th Cir. Nov. 26, 2025).

237. For example, during the campaign, Trump promised to release DOJ files on the Jeffrey Epstein case, which allies suggested contained information linking the convicted child sex offender to prominent Democrats, when in fact, as it later turned out, they contained evidence of Trump's own connection to Epstein. *See* Alexandra Hutzler, *What Trump Has Said About Jeffrey Epstein Over the Years, Including on the 2024 Campaign Trail*, ABC NEWS (July 16, 2025, at 13:51 PT), https://abcnews.com/Politics/trump-jeffrey-epstein-years-including-2024-campaign-trail/story?id=123778541 [https://perma.cc/AN2R-Y7EG]; Steve Eder, Michael C. Bender & David Enrich, *How Trump Appears in the Epstein Files*, N.Y. TIMES (Feb. 1, 2026), https://www.nytimes.com/2026/02/01/us/trump-epstein-files.html [https://perma.cc/Y6MJ-2TSZ]; Ali Swenson & Nicholas Riccardi, *How Trump Spent Years Stoking Dark Theories, and Why He's Facing Epstein Case Blowback Now*, PBS (July 15, 2025, at 13:05 ET), https://www.pbs.org/newshour/politics/how-trump-spent-years-stoking-dark-theories-and-why-hes-facing-epstein-case-blowback-now [https://perma.cc/2D88-699K].

238. Donald J. Trump (@realDonaldTrump), TRUTH SOC. (May 31, 2022, at 10:05 PT), https://truthsocial.com/@realDonaldTrump/posts/108397641376875033 [https://perma.cc/X63Q-WSYQ].

the run-up to the 2024 election to pave the way for potential legal challenges by suggesting that the election could be legal only if Trump won—encouraging the public to support electoral subversion in the case of defeat. Toward the end of the campaign, Trump's effort to cast doubt on voting integrity intensified and was explicitly linked to threats of legal retribution:

> CEASE & DESIST: I, together with many Attorneys and Legal Scholars, am watching the Sanctity of the 2024 Presidential Election very closely because I know, better than most, the rampant Cheating and Skullduggery that has taken place by the Democrats in the 2020 Presidential Election. It was a Disgrace to our Nation! Therefore, the 2024 Election, where Votes have just started being cast, will be under the closest professional scrutiny and, WHEN I WIN, those people that CHEATED will be prosecuted to the fullest extent of the Law, which will include long term prison sentences so that this Depravity of Justice does not happen again.[239]

This threat came after Trump and his team had already floated the ideas of arresting poll workers and using the Insurrection Act of 1807 to quell anti-Trump demonstrations around the election (the latter based on an argument developed by Jeffrey Clark).[240] Following the logic of inverted reality, the goal was to turn normal dissent into an attack on the nation justifying repression, while immunizing Trump and allies from accountability for engaging in the very electoral subversion they claimed to be fighting. Driving this point home, after the

239. Donald J. Trump (@realDonaldTrump), X (Sep. 7, 2024, at 18:17 PT), https://x.com/realdonaldtrump/status/1832589096029450360 [https://perma.cc/T6QJ-K8DS]; Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Sep. 17, 2024, at 08:56 PT), https://truthsocial.com/@realDonaldTrump/posts/113153709035732249 [https://perma.cc/876X-LRU7]; Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Oct. 25, 2024, at 10:32 PT), https://truthsocial.com/@realDonaldTrump/posts/113369255491639591 [https://perma.cc/J87M-6XG9].

240. *See* Isaac Arnsdorf, Josh Dawsey & Devlin Barrett, *Trump and Allies Plot Revenge, Justice Department Control in a Second Term*, WASH. POST (Nov. 6, 2023), https://www.washingtonpost.com/politics/2023/11/05/trump-revenge-second-term [https://perma.cc/UFF9-ZEGV] (noting that the argument for using the Insurrection Act was developed by Clark); *see also* Tom Dreisbach, *Trump Has Made More Than 100 Threats to Prosecute or Punish Perceived Enemies*, NPR (Oct. 22, 2024, at 07:00 ET), https://www.npr.org/2024/10/21/nx-s1-5134924/trump-election-2024-kamala-harris-elizabeth-cheney-threat-civil-liberties [https://perma.cc/MU6F-2C8X] ("'START ARRESTING THE POLL WORKERS AND WATCH HOW FAST THEY TELL YOU WHO TOLD THEM TO CHEAT,' reads a message Trump reposted on social media in 2023."). The Insurrection Act is codified at 10 U.S.C. §§ 251–255.

election, the administration reframed the only genuine insurrection of the past century—the January 6 Capitol attack—as a "day of love" by patriotic citizens held as "political prisoners," even though many had been convicted of violent crimes against law enforcement officers.[241]

The use of conspiracy to invert reality and undermine trust is a guiding principle of the second Trump administration, which has systematically deployed the master narrative to justify targeting individuals and institutions. One of Trump's first executive orders revoked the security clearances of former intelligence officials for purportedly suppressing information about Hunter Biden's laptop "to manipulate the political process" and interfere with the 2020 election, while condemning former Trump National Security Advisor John Bolton for the "publication of classified information" in his memoir,[242] distracting from substantial evidence of Trump's far more consequential classified document breach.[243] Anti-vax conspiracies have reshaped policy at the Department of Health and Human Services, where Secretary Robert F. Kennedy, Jr. purged the influential Advisory Committee on Immunization Practices, stacking it with loyalists who upended the empirical consensus on vaccines by using debunked claims of autism and allergy risks to change longstanding infant vaccination protocols.[244]

True to Project 2025's promise, the deep state logic has been used to dismiss dozens of DOJ career prosecutors and law enforcement officials involved in the

241. Dan Barry & Alan Feuer, *'A Day of Love': How Trump Inverted the Violent History of Jan. 6*, N.Y. TIMES (Jan. 5, 2025), https://www.nytimes.com/2025/01/05/us/politics/january-6-capitol-riot-trump.html [https://perma.cc/7ZCX-UXDL]; *see also* Luke Broadwater & Alan Feuer, *White House Posts False Jan. 6 Narrative on Riot's 5th Anniversary*, N.Y. TIMES (Jan. 6, 2026), https://www.nytimes.com/2026/01/06/us/politics/trump-white-house-jan-6-website.html [https://perma.cc/GZ5J-X3RV].

242. Exec. Order No. 14152, 90 Fed. Reg. 8343 (Jan. 20, 2025) ("Holding Former Government Officials Accountable for Election Interference and Improper Disclosure of Sensitive Governmental Information").

243. *See* Superseding Indictment, United States v. Trump, No. 23-CR-80101 (S.D. Fla. July 27, 2023).

244. *See* Apoorva Mandavilli, *Kennedy Scales Back the Number of Vaccines Recommended for Children*, N.Y. TIMES (Jan. 5, 2026), https://www.nytimes.com/2026/01/05/health/children-vaccines-cdc-kennedy.html [https://perma.cc/28J3-4J9Y] (stating that the Centers for Disease Control and Prevention had changed its immunization schedule to reduce the number of recommended vaccinations for children and adults, circumventing "the detailed and methodical evidence-based process that has underpinned vaccine recommendations in the nation for decades").

investigation into Russian election interference in 2016 and post-2020 prosecutions of Trump and January 6 defendants, and to justify legal action against those claimed to have participated in DOJ weaponization and the "Russia hoax."[245] This has led to the indictment of Comey[246] and a sprawling investigation by the U.S. attorney's office in Miami, which has issued subpoenas against Obama intelligence officials (and is investigating Obama himself) in relation to a "grand conspiracy" to destroy Trump based on the same allegations of a smear campaign rejected in the frivolous Habba lawsuit.[247]

B. Fabricate Facts to Establish Legal Pretext

As the investigation into Obama officials highlights, conspiracy softens the ground for the use of fabricated facts—either outright false or deeply misleading[248]—to establish pretexts for legal action. This strategy was honed in the 2020 election attack, when Trump lawyers promoted unfounded conspiracies of voting by dead people and undocumented immigrants, alongside unsupported allegations of voting machine manipulation designed to create factual bases for

245. Emily Bazelon & Rachel Poser, *The Unraveling of the Justice Department: Sixty Attorneys Describe a Year of Chaos and Suspicion*, N.Y. TIMES MAG. (Nov. 16, 2025), https://www.nytimes.com/interactive/2025/11/16/magazine/trump-justice-department-staff-attorneys.html [https://perma.cc/3E9E-FWPL].

246. After a failed indictment by interim U.S. Attorney Lindsey Halligan in Virginia alleging Comey made a false statement during testimony and obstructed a congressional hearing on the Russia investigation in 2020, *infra* notes 513–16, Comey was indicted for threatening the president in relation to a social media post with shells arranged to read "86 47" (referring to Trump as the 47th U.S. president). Indictment, United States v. Comey, No. 4:26-CR-16 (E.D.N.C. Apr. 28, 2026).

247. Glenn Thrush, Alan Feuer & Charlie Savage, *Trump Loyalists Push 'Grand Conspiracy' as New Subpoenas Land*, N.Y. TIMES (Nov. 9, 2025), https://www.nytimes.com/2025/11/09/us/politics/trump-conspiracy-probe-subpoenas.html [https://perma.cc/93AX-JZ6M]; Perry Stein, Jeremy Roebuck & David Ovalle, *The Trump Prosecutor Probing Former Top Obama Administration Officials*, WASH. POST (Nov. 17, 2025), https://www.washingtonpost.com/national-security/2025/11/17/trump-obama-jason-quiones-miami-prosecutor [https://perma.cc/7TC5-T9KH]. In April 2026, the investigation was assigned to a newly hired Trump loyalist, Joseph DiGenova, who was previously a member of the legal team that Trump picked to challenge the 2020 election using false claims of fraud; DiGenova resigned in September without bringing any charges. Alan Feuer, *Trump Loyalist Steps Down From 'Grand Conspiracy' Case*, N.Y. TIMES (Sep. 10, 2026), https://www.nytimes.com/2026/09/10/us/digenova-steps-down-grand-conspiracy-case.html [https://perma.cc/X5D5-WPJU].

248. *See* Petra Bárd & Dimitry Kochenov, *The Four Elements of the Autocrats' Playbook*, RECONNECT (Sep. 19, 2018), https://reconnect-europe.eu/blog/autocrats-playbook [https://perma.cc/TD3M-4NFX] (finding that autocrats deploy systematic disinformation).

otherwise frivolous legal claims—all the while covering up the illegal intent of the Stop the Steal campaign.[249] In the second Trump administration, fabricated facts are mobilized by lawyers to create the appearance of meeting established legal standards to justify legally dubious, or just illegal, actions in service of larger autocratic aims.[250]

This approach has been directed with intensity against immigrants, who are vilified in the Trump master narrative as "criminals," "gang members," "terrorists," "rapists," and "drug dealers" responsible for American decline.[251] Such demonization has longstanding American roots,[252] while echoing Orbán's 2015 anti-immigrant manifesto, put forth in the midst of Europe's migration crisis, which equated immigrants with terrorists blamed for polluting Hungarian identity and causing the country's economic woes—transgressions claimed to warrant internment camps and even the death penalty.[253] Far-right parties in France, Germany, the Netherlands, Poland, and Slovenia, among other countries, developed similar rhetorical strategies targeting Arab and Muslim immigrants

249. *See* Cummings, *supra* note 13, at 564–82 (detailing failure of legal cases challenging election results).

250. *See, e.g.*, Colby Smith, *Powell Under Siege as Fed Plans to Stand Pat on Rate Cuts*, N.Y. TIMES (July 29, 2025), https://www.nytimes.com/2025/07/29/business/powell-trump-fed-rate-cuts.html [https://perma.cc/T9QF-GJW6] (describing effort to oust Federal Reserve Chair Jerome Powell for alleged overspending on building renovations); Maxine Joselow & Lisa Friedman, *In Game-Changing Climate Rollback, E.P.A. Aims to Kill a Bedrock Scientific Finding*, N.Y. TIMES (July 29, 2025), https://www.nytimes.com/2025/07/29/climate/epa-endangerment-finding-repeal-proposal.html [https://perma.cc/HS43-WH4N] (using false claims about lack of evidence of climate change to rescind environmental policy); *see also* Peter Baker, *Trump Efforts to Control Information Echo an Authoritarian Playbook*, N.Y. TIMES (Aug. 3, 2025), http://nytimes.com/2025/08/03/us/politics/trump-bls-jobs-facts.html [https://perma.cc/9JPQ-JK5Z] (describing the termination of the Labor Department official in charge of compiling employment statistics as part of an attack on facts).

251. *See* Jayashri Srikantiah & Shirin Sinnar, *White Nationalism as Immigration Policy*, 71 STAN. L. REV. ONLINE 197, 198–99 (2019); Michelle Ye Hee Lee, *Donald Trump's False Comments Connecting Mexican Immigrants and Crime*, WASH. POST (July 8, 2015), https://www.washingtonpost.com/news/fact-checker/wp/2015/07/08/donald-trumps-false-comments-connecting-mexican-immigrants-and-crime [https://perma.cc/JW58-LX68].

252. *See* ERIKA LEE, AMERICA FOR AMERICANS: A HISTORY OF XENOPHOBIA IN THE UNITED STATES (2019).

253. *See* András Bíró-Nagy, *Orbán's Political Jackpot: Migration and the Hungarian Electorate*, 48 J. ETHNIC & MIGRATION STUD. 405 (2022); Ian Traynor, *Hungary PM: Bring Back Death Penalty and Build Work Camps for Immigrants*, GUARDIAN (Apr. 29, 2015, at 08:42 ET), https://www.theguardian.com/world/2015/apr/29/hungary-pm-death-penalty-work-camps-for-immigrants-viktor-orban [https://perma.cc/K5T7-FRMW].

from the Middle East and North Africa,[254] also tapping deep historical veins of xenophobia.[255]

Rhetorical ploys to inflame public opinion by fabricating facts of immigrant harm (falsely asserting that immigrants are criminals or steal jobs) are not only efforts to mobilize far-right voters through scapegoating.[256] They also have a specifically legal dimension: creating factual predicates to justify what would otherwise be impermissible legal action. This can be seen in efforts to use the narrative of immigrant "invasion" as a pretext to trigger the Alien Enemies Act of 1798 (AEA),[257] a wartime law affecting the rights of noncitizens that the administration claims authorizes detention and deportation practices that otherwise violate due process safeguards and circumvent protections in immigration law. The key is that these practices may be legal only if the predicate "invasion" is established. In the AEA cases, if objective facts do not meet the standard, they are fabricated to match.

The legal foundation for this strategy was laid on January 20, 2025—Trump's first day in office—when he signed an executive order "Protecting the American

254. *See* Koen Damhuis, *"The Biggest Problem in the Netherlands": Understanding the Party for Freedom's Politicization of Islam*, BROOKINGS INST. (July 24, 2019), https://www.brookings.edu/articles/the-biggest-problem-in-the-netherlands-understanding-the-party-for-freedoms-politicization-of-islam/ [https://perma.cc/9T2Z-NK78]; Jeffrey Gedmin, *Right-Wing Populism in Germany: Muslims and Minorities After the 2015 Refugee Crisis*, BROOKINGS INST. (July 24, 2019), https://www.brookings.edu/articles/right-wing-populism-in-germany-muslims-and-minorities-after-the-2015-refugee-crisis/#framing [https://perma.cc/4ZQG-CGX6]; Damjan Mandelc, *Religion, Migration, and the Far-Right: How European Populism Frames Religious Pluralism*, 16 RELIGIONS 1192 (2025); *see also* David Andreas Bell, Marko Valenta & Zan Strabac, *A Comparative Analysis of Changes in Anti-Immigrant and Anti-Muslim Attitudes in Europe: 1990–2017*, 9 COMPAR. MIGRATION STUD. 1–24 (Nov. 23, 2021), https://link.springer.com/article/10.1186/s40878-021-00266-w [https://perma.cc/GR26-GB22]; Marcel Lubbers & Marcel Coenders, *Nationalistic Attitudes and Voting for the Radical Right in Europe*, 18 EUR. UNION POL. 98 (2017).

255. *See* Andrea Baltasar, *Understanding Racism in Europe: Historical Roots, Contemporary Challenges, and Paths to Equality*, 5 INT'L J. SCI. & SOC'Y 280, 280–81 (2023).

256. *See* DRESDEN, BAIRD & RADERSTORF, *supra* note 39, at 15. Empirical studies show that immigrants do not engage in violent crime any more than citizens and are a net benefit to the economy. *See* Ran Abramitzky, Leah Platt Boustan, Elisa Jácome, Santiago Pérez & Juan David Torres, *Law-Abiding Immigrants: The Incarceration Gap Between Immigrants and the U.S.-Born, 1870–2020* (Nat'l Bureau of Econ. Rsch., Working Paper No. 31440, 2023), https://www.nber.org/system/files/working_papers/w31440/w31440.pdf [https://perma.cc/AC3G-DM2C]; AM. IMMIGR. COUNCIL, DEBUNKING THE MYTH OF IMMIGRANTS AND CRIME (2024), https://www.americanimmigrationcouncil.org/wp-content/uploads/2024/10/debunking_the_myth_of_immigrants_and_crime.pdf [https://perma.cc/W7YX-AX3F]; Dany Bahar, Carlos Daboin Contreras & Greg Wright, *The Immigrant Workforce Supports Millions of US Jobs*, BROOKINGS INST. (Oct. 17, 2022), https://www.brookings.edu/articles/the-immigrant-workforce-supports-millions-of-u-s-jobs [https://perma.cc/MJ42-645F].

257. Alien Enemies Act of 1798, ch. 66, 1 Stat. 577 (codified as amended at 50 U.S.C. § 21).

People Against Invasion."[258] The order asserted without evidence that the Biden "administration invited, administered, and oversaw" the entry of "[m]illions of illegal aliens," "[m]any" of whom were alleged to pose "significant threats to national security and public safety" and to be "engaged in hostile activities, including espionage, economic espionage, and preparations for terror-related activities."[259] By directing "total and efficient enforcement" of immigration law against dangerous invaders,[260] the order reframed immigration as a wartime threat. To address that threat, the order created a Homeland Security Task Force under the direction of the AG and DHS secretary to combat "criminal cartels, foreign gangs, and transnational criminal organizations," giving the DHS secretary "sole and unreviewable discretion" for expedited removals.[261]

Rhetorically, the trope of immigrant "invasion" leverages longstanding nativism:[262] a dog whistle for the Great Replacement Theory espoused by Stephen Miller,[263] which forms a political tool to mobilize white nationalism. Legally, establishing a factual basis for invasion is used to override the existing system of protections for noncitizens. Proclamation 10903,[264] secretly signed by the president on March 14, 2025,[265] sought to do this by explicitly tying the invasion logic to the AEA. Under the AEA, whenever the president proclaims "there is a declared war" or "any invasion or predatory incursion . . . by any foreign nation or government," "subjects of the hostile nation" may be "apprehended, restrained, secured, and removed as alien enemies."[266] Crucially, the AEA gives a president plenary authority over "alien enemies" free of the constitutional and statutory constraints requiring that noncitizens be given hearings in which they might counter the claim that they are, in fact, alien enemies or invoke other legal protections against deportation.

258. Exec. Order No. 14159, 90 Fed. Reg. 8443 (Jan. 20, 2025).
259. *Id.*
260. *Id.*
261. *Id.* at 8444–45.
262. *See generally* Tamara Shamir, *"The Greatest Invasion in History": The Nineteenth Century Nativist Theory Behind Trump's 2025 Immigration Agenda*, 120 NW. U. L. REV. ONLINE 114 (2025).
263. *See* Jason Wilson, *Leaked Emails Reveal Trump Aide Stephen Miller's White Nationalist Views*, GUARDIAN (Nov. 14, 2019, at 02:00 ET), https://www.theguardian.com/us-news/2019/nov/14/stephen-miller-leaked-emails-white-nationalism-trump [https://perma.cc/54KZ-38CY].
264. Proclamation No. 10903, 90 Fed. Reg. 13033 (Mar. 14, 2025) ("Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Aragua").
265. *See* Zolan Kanno-Youngs et al., *Hour by Hour: How Trump Deported Migrants Despite Judge's Order*, N.Y. TIMES (Apr. 30, 2025), https://www.nytimes.com/interactive/2025/04/30/us/politics/trump-venezuela-deportations-timeline.html [https://perma.cc/V4FU-5TPF].
266. Alien Enemies Act of 1798, *supra* note 257.

To assert power under the AEA—last used to authorize Japanese internment during World War II[267]—a president must first meet the factual predicate of a "declared war" or an "invasion" to deport aliens from the "hostile nation."[268] Proclamation 10903 attempted to do this by designating the Venezuelan gang "Tren de Aragua" (TdA) as a "Foreign Terrorist Organization" that was "closely aligned with, and indeed has infiltrated, the Maduro regime," conflating TdA with the Venezuelan state then led by President Nicolás Maduro to establish the predicate of a hostile nation.[269] Under this logic, the presence of TdA members in the United States was equated to an "invasion or predatory incursion" justifying the apprehension and removal of "all Venezuelan citizens 14 years of age or older who are members of TdA, are within the United States, and are not actually naturalized or lawful permanent residents"—precisely tracking the language of the AEA.[270] The intent of the proclamation was to strip TdA members (and anyone claimed to be associated with the ill-defined group) of their rights by fabricating grounds to invoke the AEA despite the reality that there was no actual invasion by Venezuela—or any foreign power.

This proclamation was immediately put to the legal test when DHS agents loaded 261 people—including 137 Venezuelans[271]—onto three planes in Texas

267. KATHERINE YON EBRIGHT, BRENNAN CTR. FOR JUST., THE ALIEN ENEMIES ACT: UNJUST, UNNECESSARY, AND UNCONSTITUTIONAL 3 (2024), https://www.brennancenter.org/media/13434/download/2024_09_alien_enemies_act_report_final_0.pdf?inline=1 [https://perma.cc/XX2S-ULCE].

268. Alien Enemies Act of 1798, *supra* note 257.

269. *See* Proclamation No. 10903, *supra* note 264, at 13033–34 ("TdA is undertaking hostile actions and conducting irregular warfare against the territory of the United States both directly and at the direction, clandestine or otherwise, of the Maduro regime in Venezuela."). The Trump administration's own intelligence assessment contradicted the assertion that TdA was controlled by the Venezuelan government. Charlie Savage & Julian E. Barnes, *Intelligence Assessment Said to Contradict Trump on Venezuelan Gang*, N.Y. TIMES (Mar. 22, 2025), https://www.nytimes.com/2025/03/20/us/politics/intelligence-trump-venezuelan-gang-alien-enemies.html [https://perma.cc/H5QC-45PJ].

270. Proclamation No. 10903, *supra* note 264, at 13034.

271. *See* Marianne LeVine, Maria Sacchetti, Joyce Sohyun Lee & Natalie Allison, *White House Official Says 137 Immigrants Deported Under Alien Enemies Act*, WASH. POST (Mar. 16, 2025), https://www.washingtonpost.com/immigration/2025/03/16/alien-enemies-act-venezuela-el-salvador-prison [https://perma.cc/6E2X-SB8V]. The planes included 23 people from El Salvador with alleged ties to the MS-13 gang, along with 101 additional Venezuelans removed under other federal laws. *Id.* The immigrants were rounded up based on unverified claims of alleged gang affiliation, often based on tattoos. *See* Alan Feuer, *U.S. Tied Migrants to Gang Based Largely on Clothes or Tattoos, Papers Show*, N.Y. TIMES (Mar. 31, 2025), https://www.nytimes.com/2025/03/31/us/politics/us-deportations-tren-de-aragua-deportation-guidance.html [https://perma.cc/B5DS-CZ28].

without notifying their families or lawyers.[272] In the early morning of March 15, the American Civil Liberties Union (ACLU) and Democracy Forward filed an emergency class action petition in the case of *J.G.G. v. Trump*,[273] along with a request for a temporary restraining order (TRO) to block the use of the AEA "to summarily remove noncitizens from the United States" without meeting the "prerequisites for invocation of the AEA."[274] The president publicly released Proclamation 10903 one hour before an emergency video hearing called by James Boasberg, chief judge of the U.S. District Court for the District of Columbia.[275] At the hearing, Deputy Assistant AG Drew Ensign—head of the DOJ Office of Immigration Litigation (OIL)—stated he did not know whether there would be an "imminent deportation,"[276] despite the fact that the previous day he had attended a meeting in which Principal Associate Deputy AG Emil Bove III discussed the plan with key OIL staff, one of whom, Erez Reuveni, reported that Bove instructed the lawyers to tell the courts "fuck you" if they ruled against the deportation orders.[277]

Judge Boasberg called a break at 5:22 p.m. for Ensign to find out about the status of any planned departures; four minutes later, the first plane left from Texas,

272. J.G.G. v. Trump, 772 F. Supp. 3d 18, 26 (D.D.C. Mar. 24, 2025); Arelis R. Hernández & María Luisa Paúl, *They Were Arrested During Routine ICE Check-Ins. Then They Disappeared.*, WASH. POST (Mar. 22, 2025), https://www.washingtonpost.com/immigration/2025/03/22/trump-venezuela-migrants-el-salvador [https://perma.cc/JF7A-GSWX].

273. Class Action Complaint and Petition for Writ of Habeas Corpus, J.G.G. v. Trump, No. 25-cv-00766 (D.D.C. Mar. 15, 2025).

274. Memorandum of Law in Support of Plaintiffs' Motion for Temporary Restraining Order at 1, J.G.G. v. Trump, No. 25-cv-00766 (D.D.C. Mar. 15, 2025); *see also* Plaintiffs' Class Action Motion for Class Certification With Supporting Points and Authorities at 1, J.G.G. v. Trump, No. 25-cv-00766 (D.D.C. Mar. 15, 2025) (arguing that the AEA "cannot be used here against nationals of a country—Venezuela—with whom the United States is not at war, which is not invading the United States, and which has not launched a predatory incursion into the United States").

275. *J.G.G.*, 772 F. Supp. 3d at 27; Kanno-Youngs et al., *supra* note 265.

276. *J.G.G.*, 772 F. Supp. 3d at 27; Transcript of Motion Hearing Held via Zoom Before the Honorable James E. Boasberg at 1, J.G.G. v. Trump, No. 25-00766 (Mar. 15, 2025); *see also* Letter from Scott Harshbarger, Chairman, Lawyers Defending Am. Democracy, to Off. of Disciplinary Couns., D.C. Ct. of Appeals, Re: Ethics Complaint Against Drew C. Ensign 3–4 (Apr. 7, 2026), https://ldad.org/wp-content/uploads/2026/04/Drew-Ensign-Complaint-FINAL.pdf [https://perma.cc/8NYW-FD8H] (detailing Ensign's role in the *J.G.G.* emergency hearing).

277. *See* Letter from Dana L. Gold, Andrea Meza & Kevin L. Owen, Gov't Accountability Project & Gilbert Emp. Law, P.C., to Michael E. Horowitz, Inspector Gen., U.S. Dep't of Just. et al., Re: Protected Whistleblower Disclosure of Erez Reuveni Regarding Violation of Laws, Rules & Regulations, Abuse of Authority, and Substantial and Specific Danger to Health and Safety at the Department of Justice 7–11 (June 24, 2025), https://www.judiciary.senate.gov/imo/media/doc/06-24-2025_-_Protected_Whistleblower_Disclosure_of_Erez_Reuveni_Redacted.pdf [https://perma.cc/WF6W-CG2B] [hereinafter Reuveni Whistleblower Disclosure].

soon followed by the second.[278] When the hearing resumed, Ensign stated he did not "have many details to share" because of "potential national security issues,"[279] leading Judge Boasberg to verbally issue a TRO ordering all planes grounded and any planes that had departed to turn around.[280] A written version of the TRO was posted online at 7:25 p.m.[281] The third flight, which the government claimed did not contain people removed under the proclamation, left from Texas ten minutes later.[282] The first two flights landed in Honduras after 7:30 p.m. en route to El Salvador, where the president, Trump ally Nayib Bukele, had agreed to incarcerate deportees in the maximum-security Center for Terrorism Confinement (CECOT).[283] All three flights arrived in El Salvador after midnight on March 16.[284] Referring to Judge Boasberg's order to turn the planes around, Bukele posted on X: "Oopsie, too late."[285] After the Supreme Court issued a shadow docket ruling in *J.G.G.*,[286] vacating Boasberg's TRO on the grounds that plaintiffs were required to challenge their removal through habeas in Texas where they were detained, the ACLU renewed its legal challenge on behalf of detainees A.A.R.P. and W.M.M. at Bluebonnet Detention Center (as members of a putative class),[287] winning a Fifth Circuit injunction against AEA removals on September 2, 2025.[288]

278. *See* Kanno-Youngs et al., *supra* note 265.
279. Transcript of Motion Hearing Held via Zoom Before the Honorable James E. Boasberg, *supra* note 276, at 15.
280. *J.G.G.*, 772 F. Supp. 3d at 28 ("[Y]ou shall inform your clients of [the Order] immediately, and that any plane containing [members of the class] that is going to take off or is in the air needs to be returned to the United States . . . . However that's accomplished, whether turning around a plane or not [dis]embarking anyone on the plane . . . , I leave to you. But this is something that you need to make sure is complied with immediately.").
281. J.G.G. v. Trump, No. 25-cv-00766, 2025 WL 825116 (D.D.C. Mar. 15, 2025) (TRO), *vacated*, 604 U.S. 670 (2025).
282. LeVine, Sacchetti, Lee & Allison, *supra* note 271.
283. *Id.*
284. *Id.*
285. *Id.*
286. Trump v. J.G.G., 604 U.S. 670, 673 (Apr. 7, 2025) (stating also that detainees are "entitled to notice and an opportunity to challenge their removal"). On the development and use of the shadow docket, see generally STEPHEN VLADECK, THE SHADOW DOCKET: HOW THE SUPREME COURT USES STEALTH RULINGS TO AMASS POWER AND UNDERMINE THE REPUBLIC (2023).
287. Complaint-Class Action: Class Petition for Writ of Habeas Corpus and Complaint for Declaratory Relief and Injunctive Relief, A.A.R.P. v. Trump, No. 25-cv-00059 (N.D. Tex. Apr. 16, 2025).
288. W.M.M. v. Trump, 154 F.4th 207 (5th Cir. Sep. 2, 2025). This ruling came after the Supreme Court ordered the government "not to remove any member of the putative class of detainees" and later enjoined removal pending an order by the Fifth Circuit on plaintiffs' motion for injunctive relief. A.A.R.P. v. Trump, 605 U.S. 91, 93, 98 (May 16, 2025) (per curiam). The Fifth Circuit, sitting en banc, heard oral argument in the *W.M.M.* case on January 22, 2026. *Docket,* W.M.M. v. Trump (No. 25-10534), https://www.courtlistener.com/docket/69913684/aarp-v

On that same day, the White House announced that U.S. military command had conducted its first missile strike against an alleged drug boat off the coast of Venezuela.[289] Echoing the AEA proclamation, the press secretary's social media post tied the "kinetic strike" to the prior designation of TdA as a "Foreign Terrorist Organization" and asserted that TdA was "under the control of Nicolas Maduro."[290] Although the administration stopped short of a formal declaration of war, which would have required congressional authorization,[291] it asserted wartime authority under the president's Article II power as commander in chief[292]

-trump/ (last updated Mar. 12, 2026) [https://perma.cc/L34N-U4QC]. Retaining jurisdiction over issues related to plaintiffs already removed in the *J.G.G.* case, Judge Boasberg ordered the government to facilitate the return of the 137 deported Venezuelans. Memorandum Opinion and Order, J.G.G. v. Trump, No. 25-00766, 2026 WL 391937, at *1–3 (D.D.C. Feb. 12, 2026) (detailing history of case including the court's December 22, 2025 order to facilitate habeas hearings for Venezuelans deported without due process to CECOT and ordering the government to facilitate the return of plaintiffs sent to third countries). In addition, Judge Boasberg initiated criminal contempt proceedings to determine if there was an intentional violation of his March 15, 2025 TRO in *J.G.G.* J.G.G. v. Trump, 778 F. Supp. 3d 24, 30 (D.D.C. Apr. 16, 2025) (determining "that the Government's actions on that day demonstrate a willful disregard for its Order, sufficient for the Court to conclude that probable cause exists to find the Government in criminal contempt"); J.G.G. v. Trump, No. 25-766, 2025 WL 3375370 (D.D.C. Nov. 28, 2025) (rejecting request to terminate hearing after admission that DHS Secretary Kristi Noem made decision not to turn planes around). However, in April 2026, the D.C. Circuit, in a 2–1 decision with Trump-appointed judges in the majority, ordered Boasberg to terminate the contempt proceedings. *In re* Trump, 172 F.4th 44, 47 (D.C. Cir. Apr. 14, 2026) (granting government's petition for a writ of mandamus).

289. Karoline Leavitt (@PressSec), X (Sep. 2, 2025, at 14:27 PT), https://x.com/PressSec/status/1962990882652881138 [https://perma.cc/KMU9-YVM9].

290. *Id.*

291. The legal struggle over the administration's desire to have it both ways—to place the United States on a wartime footing against Venezuela without formally declaring war—centered on the meaning of "hostilities" under the War Powers Resolution of 1973, which requires congressional approval after sixty days. War Powers Resolution, 50 U.S.C. § 1544(b). The administration argued that its boat strikes did not fall within the definition. Charlie Savage & Julian E. Barnes, *War Powers Law Does Not Apply to Trump's Boat Strikes, Administration Says*, N.Y. TIMES (Nov. 1, 2025), https://www.nytimes.com/2025/11/01/us/politics/trump-boat-attacks-war-powers.html [https://perma.cc/CV34-ATEX]. A Senate vote to invoke the resolution after the invasion of Venezuela failed when Vice President Vance broke a 50–50 tie. Robert Jimison & Megan Mineiro, *Republicans Block Effort to Check Trump's Power in Venezuela*, N.Y. TIMES (Jan. 14, 2026), https://www.nytimes.com/2026/01/14/us/politics/trump-venezuela-war-powers-vote.html [https://perma.cc/T9P3-4R6P].

292. *See* Letter from Donald J. Trump, President of the U.S., to Charles Grassley, President Pro Tempore of the U.S. Senate (Sep. 4, 2025), https://s3.documentcloud.org/documents/26084994/sept4warpowers.pdf [https://perma.cc/XXY9-UDG5] (stating that violent cartels "threaten the United States and destabilize other nations," and that in "the face of the inability or unwillingness of some states in the region to address the continuing threat," U.S. forces were required to act "in self-defense"); EXEC. OFF. OF THE PRESIDENT, NOTICE TO CONGRESS, SUBMISSION CONSISTENT WITH SECTION 1230 OF THE FISCAL YEAR 2024 NATIONAL DEFENSE

based on a secret forty-page memo from lawyers in the Office of Legal Counsel (OLC), the elite DOJ unit in charge of issuing binding opinions on the legality of executive action.[293] The memo reportedly bootstrapped the TdA terrorist designation, along with other unsupported factual claims of cartel activity, to argue that the United States was in a formal armed conflict with "narco-terrorist" groups justifying lethal strikes,[294] which were widely condemned by outside experts.[295] In turn, the strikes created new "facts" on the ground supporting the administration's claim of hostilities with Venezuela, which had the effect of buttressing the case for AEA deportations by demonstrating active conflict with the very nation already accused of invasion.

C. Manufacture Legal Authority for Emergency Power

As the AEA example illustrates, using fabricated facts (immigrants are engaged in an invasion) to create legal pretexts (requiring them to be summarily removed under wartime authority) stretches interpretation of law beyond accepted boundaries. So-called "heterodox" interpretations must therefore be manufactured at the outset by lawyers who give a green light to executive action that would otherwise cross established legal lines and who are willing to defend those interpretations in court (or try to evade judicial scrutiny altogether as in the *J.G.G.* case). This process of manufacturing legal authority draws on the law reform strategy pioneered by the NAACP in *Brown v. Board of Education*[296] and pursued by public interest groups on the left and right over the past half-century.[297]

AUTHORIZATION ACT (50 U.S.C. § 1543a) (2025) (reporting that the president determined the cartels to be nonstate armed groups, designated them as terrorist organizations, and concluded that their actions constituted an armed attack against the United States, leading to a further determination that the United States was in a non-international armed conflict with those groups).

293. Charlie Savage & Julian E. Barnes, *Memo Approving Boat Strikes Is Said to Rely on Trump's Claims About Cartels*, N.Y. TIMES (Nov. 13, 2025), https://www.nytimes.com/2025/11/13/us/politics/boat-strikes-doj-memo-trump.html [https://perma.cc/643H-F4NM]; Jameel Jaffer, *The Secretive Office Approving Trump's Boat Strikes*, N.Y. TIMES (Oct. 23, 2025), https://www.nytimes.com/2025/10/23/opinion/trump-boat-strikes-office-legal-counsel.html [https://perma.cc/63JE-HKZW].

294. *See* Savage & Barnes, *supra* note 291; Nick Turse, *Secret Boat Strike Memo Justifies Killings by Claiming the Target Is Drugs, Not People*, INTERCEPT (Nov. 14, 2025, at 12:28 ET), https://theintercept.com/2025/11/14/boat-strikes-immunity-legality-trump/ [https://perma.cc/R4L3-2T46].

295. *See* Savage & Barnes, *supra* note 291; *see also* Charlie Savage & Julian E. Barnes, *Second Strike Scrutiny Obscures Larger Question About Trump's Boat Attacks*, N.Y. TIMES (Dec. 4, 2025), https://www.nytimes.com/2025/12/04/us/politics/trump-boat-attacks-killings.html [https://perma.cc/9CDG-QW2U].

296. 347 U.S. 483 (1954).

297. *See supra* Subpart II.B.

However, lawyers for autocratic leaders pervert this strategy, outwardly following the formal procedure of legal change, but deploying it not to deepen democracy—but to consolidate power.

While law reform in the United States—from *Brown* on the left to *Heller* on the right—historically proceeded through incremental test case litigation to build support and reshape legal meaning over time, the Trump administration asserts heterodox authority all at once, using control of the state to decisively implement a new legal vision—and leaving opponents to challenge executive action in court. Legal authority is manufactured by seeding pro-regime think tanks and legal rights organizations (like the Heritage Foundation and America First Legal) with lawyers who propagate fringe theories, placing loyalist lawyers in key government positions to endorse those theories, mobilizing political allies to launder them through established legal processes, and enlisting government lawyers to defend them in court. Oftentimes, manufactured authority builds on a legal foundation developed in pursuit of long-sought movement goals, like the conservative quest for unitary executive authority,[298] but reshapes those goals in service of autocratic ends.

In its maximalist form, manufactured authority allows autocratic leaders to act outside preexisting legal boundaries to create new constitutional orders skewed in their favor. At the outer extreme is rule by emergency, which is a cornerstone of contemporary autocracy. As described in Part II, Hungary's Orbán issued emergency orders in response to the migration crisis and ruled continuously under emergency authority following the Ukraine war until his election defeat in 2026.[299] Other backsliding democracies have similar records.[300] Emergency power is seized in moments of real or imagined crises—natural disasters, economic catastrophes, public health emergencies, wars, and rebellions—under statutory or constitutional authority.

The attack on the 2020 election, also detailed in Part II, tested an emergency approach in America. Legal rights organizations and think tanks before 2020 engaged in advocacy to propagate the voter fraud myth, amplified by a

298. *See* Pearlstein, *supra* note 168.

299. Attila Horváth, *Government by Decree: A Never-Ending Story? Analysis of Hungary's Emergency Legislation (2020–2024)*, 50 REV. CENT. & E. EUR. L. 439, 439 (2026); Kriszta Kovács, *Hungary and the Pandemic: A Pretext for Expanding Power*, VERFASSUNGSBLOG (Mar. 11, 2021), https://verfassungsblog.de/hungary-and-the-pandemic-a-pretext-for-expanding-power [https://perma.cc/Y562-KN95]; Zoltán Szente & Fruzsina Gárdos-Orosz, *Using Emergency Powers in Hungary: Against the Pandemic and/or Democracy?*, *in* PANDEMOCRACY IN EUROPE: POWER, PARLIAMENTS AND PEOPLE IN TIMES OF COVID-19, at 155, 156 (Matthias C. Kettemann & Konrad Lachmayer eds., 2022).

300. *See* Anna Lührmann & Bryan Rooney, *Autocratization by Decree: States of Emergency and Democratic Decline*, 53 COMPAR. POL. 617, 627–30 (2021).

government commission in the first Trump administration to promote public distrust of electoral integrity.[301] The myth was then leveraged into legal authority by Trump lawyers who filed lawsuits challenging the 2020 election and drafted legal opinions to disregard constitutional standards for Electoral College certification.[302] The objective was to use the pretext of a stolen election to manufacture emergency authority to stay in power despite losing.[303]

After failing in the U.S. presidential election of 2020, this approach was redeployed in the Brazilian presidential election of 2022. In advance, far-right incumbent Jair Bolsonaro followed the Trump script of sowing doubts about fraud.[304] When Bolsonaro lost to left-wing former President Luiz Inácio Lula da Silva, Bolsonaro refused to concede defeat and suggested support for a coup,[305] emboldening supporters to demand military intervention.[306] Behind the scenes, Bolsonaro and advisors held meetings with politicians and members of the armed forces to develop a plan that included the assassination of Lula, Vice President–elect Geraldo Alckmin, and Supreme Court Justice Alexandre de Moraes, who had issued significant rulings against the Bolsonaro campaign.[307]

The plan hinged on commissioning a legal opinion from AG Bruno Bianco to justify an executive order declaring a state of emergency permitting Bolsonaro to stay in power.[308] The AG opinion was to rest on a heterodox interpretation of the Brazilian constitution purporting to allow the president to ignore Supreme Court rulings that illegally blocked emergency orders and to mobilize the military

301. *See supra* text accompanying notes 157–162.
302. Cummings, *supra* note 13, at 572–91.
303. *Id.* at 594.
304. Tom Phillips, *Fears Bolsonaro May Not Accept Defeat as Son Cries Fraud Before Brazil Election*, GUARDIAN (Oct. 27, 2022, at 13:19 ET), https://www.theguardian.com/world/2022/oct/27/jair-bolsonaro-brazil-election-fraud-claim [https://perma.cc/8ZZQ-ETRV]; Ana Ionova, *How to Try, and Fail, to Stage a Coup*, N.Y. TIMES (Sep. 2, 2025), https://www.nytimes.com/2025/09/02/world/americas/jair-bolsonaro-brazil-coup-trial.html [https://perma.cc/6PWH-WWGA].
305. Vanessa Buschschlüter, *Bolsonaro Ends Silence Without Publicly Conceding*, BBC NEWS (Nov. 1, 2022), https://www.bbc.com/news/world-latin-america-63451860 [https://perma.cc/5MX5-SWU2].
306. Brian Ellsworth & Rodrigo Viga Gaier, *Bolsonaro Backers Call on Brazil Military to Intervene After Lula Victory*, REUTERS (Nov. 2, 2022, at 18:27 PT), https://www.reuters.com/world/americas/bolsonaro-backers-call-brazil-military-intervene-after-lula-victory-2022-11-02 [https://perma.cc/NQ86-PXCE].
307. Polícia Federal [Federal Police], Relatório No. 4546344/2024 [Report No. 4546344/2024], at 425–627.
308. *Id.*

if necessary to stop judicial enforcement.[309] Crucially, the opinion would have given the AG sole discretion to determine which Supreme Court rulings were in fact illegal and authorized the president to instruct lower-level law enforcement officers to disobey rulings or face imprisonment.[310] Bolsonaro planned to issue an executive order making the AG's legal determination mandatory for the entire executive branch, forcing all personnel to follow the president's emergency decrees.[311] In the end, the plan was thwarted not because lawyers stood against it, but because top brass from the army and air force refused to go along[312]—highlighting that both legal and military personnel must be committed for manufactured states of emergency to succeed.[313]

309. *Id.* at 819. Ives Gandra Martins was the main Brazilian legal scholar arguing that Article 142 of Brazil's constitution, which states that the armed forces "guarantee . . . law and order," permits the president to use the military as a constitutional moderator if the court acts outside of its authority. *See* Ives Gandra da Silva Martins, *Cabe às Forças Armadas Moderar os Conflitos Entre os Poderes* [*It Is Up to the Armed Forces to Moderate Conflicts Between the Powers*], CONSULTOR JURÍDICO (May 28, 2020), https://www.conjur.com.br/2020-mai-28/ives-gandra-artigo-142-constituicao-brasileira/ [https://perma.cc/8626-ERQH]; *see also* João Victor Archegas & Leticia Kreuz, *The 'Constitutional Military Intervention': Brazil on the Verge of Democratic Breakdown*, VERFASSUNGSBLOG (June 4, 2020), https://verfassungsblog.de/the-constitutional-military-intervention-brazil-on-the-verge-of-democratic-breakdown/ [https://perma.cc/VG9T-XLFU] (elaborating and critiquing the heterodox position).

310. Polícia Federal [Federal Police], *supra* note 307, at 304–72.

311. The attorney general in Brazil has the power to standardize the interpretation of law in the federal executive branch under the statute of the Federal Attorney General's Office. Lei Complementar No. 73, de 10 de Fevereiro de 1993 [Supplementary Law No. 73, of Feb. 10, 1993], Diário Oficial da União [D.O.U.] (Feb. 10, 1993). President Trump's executive order on "Ensuring Accountability for All Agencies" contains a similar provision: "The President and the Attorney General, subject to the President's supervision and control, shall provide authoritative interpretations of law for the executive branch. The President and the Attorney General's opinions on questions of law are controlling on all employees in the conduct of their official duties." Exec. Order No. 14215, 90 Fed. Reg. 10447 § 7 (Feb. 18, 2025).

312. *See* Tom Phillips, *Bolsonaro Met With Army, Navy and Air Force Heads to Discuss Coup – Reports*, GUARDIAN (Sep. 21, 2023, at 14:51 ET), https://www.theguardian.com/world/2023/sep/21/bolsonaro-military-coup-plans-former-secretary-reports [https://perma.cc/A74S-YZP4].

313. An additional factor affecting the outcome in the Brazil case may have been the 2020 ruling by the chief justice of the Supreme Court, Luiz Fux, stating that the constitution did not permit the president to summon the armed forces to mediate conflicts between the three branches of government. According to Justice Fux's opinion, the military's primary mission is to defend the country from external threats. This decision was unanimously approved by the other Supreme Court justices in April 2024. S.T.F., *Ação Direta de Inconstitucionalidade* No. 6457, Relator: Min. Luiz Fux, 09.04.2024, Supremo Tribunal Federal Jurisprudência [S.T.F.J.] (April 9, 2024) (Braz.). This may have dissuaded military intervention since it could have opened military leaders to prosecution. The international community's likely reaction to Bolsonaro's coup was pivotal in debates among military leaders, particularly due to the support the Biden administration provided for Brazilian democracy immediately following the 2022 elections. *See* Oliver Stuenkel, *How U.S. Pressure Helped Save Brazil's Democracy*, FOREIGN POL'Y (Feb.

In his second term, Trump has invoked emergencies to justify tariffs,[314] rescind environmental protections,[315] and threaten to federalize elections.[316] As the AEA discussion previewed, wartime emergency presents the widest ambit to suspend legal constraints on executive power.[317] In the latter half of 2025, the Trump administration sought to expand the wartime emergency frame from the AEA deportation cases to mobilize National Guard troops to suppress protests against immigration raids. The legal foundation for this mobilization was set in the president's January 20 executive order on "Clarifying the Military's Role in Protecting the Territorial Integrity of the United States," which instructed the secretary of defense to create a military plan to "seal the borders" due to the "National Emergency" of immigrant invasion.[318]

20, 2024, at 10:33 ET), https://foreignpolicy.com/2024/02/20/brazil-bolsonaro-coup-us-biden-democracy-election-chips-lula [https://perma.cc/FUF3-WXXL]. Bolsonaro was convicted of attempting a coup and sentenced to twenty-seven years in prison—a sentence that was reduced by Congress in an override vote pending review by the Supreme Court. Tiago Rogero, *Brazil's Congress Approves Bill Reducing Prison Sentence of Former President Jair Bolsonaro*, GUARDIAN (Apr. 30, 2026, at 17:18 ET), https://www.theguardian.com/world/2026/apr/30/brazils-congress-approves-bill-reducing-prison-sentence-of-former-president-jair-bolsonaro [https://perma.cc/2RUJ-P59J].

314. Trump's use of the International Emergency Economic Powers Act of 1977, 50 U.S.C. §§ 1701 et seq., to authorize sweeping tariffs was struck down by the Supreme Court. Learning Res., Inc. v. Trump, 607 U.S. 229, 255 (Feb. 20, 2026). Trump reacted by saying he was "ashamed" of the "disloyal" Justices who ruled against the tariffs, among them two Trump appointees (Neil Gorsuch and Amy Coney Barrett), while suggesting the Court was influenced by "foreign interests." Julia Manchester, *Trump Calls Supreme Court Justices Who Ruled Against Tariffs 'Disloyal'*, HILL (Feb. 20, 2026, at 13:37 ET), https://thehill.com/homenews/administration/5747841-trump-criticizes-court-justices [https://perma.cc/K4L3-Q9AW]. After losing in court, the administration reinstituted tariffs under a nonemergency law. *See* Alyssa Aquino, *Trump's New Global Tariffs Have a Better Legal Grounding. Does That Matter?*, LAW.COM (July 30, 2026, at 16:21 ET), https://www.law.com/2026/07/30/trumps-new-global-tariffs-have-better-legal-grounding-does-that-matter/?kw=Trump%27s+New+Global+Tariffs+Have+Better+Legal+Grounding.+Does+That+Matter?&utm_source=email&utm_medium=enl&utm_campaign=newsroomupdate&utm_content=20260731&utm_term=law&oly_enc_id=4246E3873812E2Y&user_id=516da11534b9b0a80491717c [https://perma.cc/8NMC-6SEA].

315. Exec. Order No. 14156, 90 Fed. Reg. 8433 (Jan. 20, 2025) ("Declaring a National Energy Emergency").

316. Exec. Order No. 14248, 90 Fed. Reg. 14005 (Mar. 25, 2025) ("Preserving and Protecting the Integrity of American Elections"); Jasleen Singh, *The Trump Administration's Campaign to Undermine the Next Election*, BRENNAN CTR. FOR JUST. (Aug. 3, 2025), https://www.brennancenter.org/our-work/research-reports/trump-administrations-campaign-undermine-next-election [https://perma.cc/8MU9-HYJS].

317. Adam B. Kushner, *Can Trump Just Do Whatever He Wants by Declaring Emergencies?*, N.Y. TIMES (Sep. 7, 2025), https://www.nytimes.com/2025/09/04/briefing/trump-emergency-presidential-power.html [https://perma.cc/T25Y-2XJT].

318. Exec. Order No. 14167, 90 Fed. Reg. 8613 (Jan. 20, 2025) ("Clarifying the Military's Role in Protecting the Territorial Integrity of the United States").

This order was accompanied by Proclamation 10886, which claimed "America's sovereignty is under attack" by an "invasion" at the southern border causing "widespread chaos and suffering in our country."[319] To stop the invasion, the proclamation invoked the National Emergencies Act "to order as many units or members of the Armed Forces . . . as the Secretary of Defense determines to be appropriate . . . in obtaining complete operational control of the southern border of the United States."[320] The proclamation further instructed the defense and homeland security secretaries to report on "whether to invoke the Insurrection Act," permitting a president to call up state militia and use regular armed forces "as he considers necessary to enforce" federal laws or "suppress" a "rebellion against the authority of the United States."[321] Although the proclamation was aimed at border security, reference to the Insurrection Act suggested that immigration—and, by extension, immigration-related protest—could constitute a form of rebellion, establishing a potential legal bridge between border enforcement and domestic policing. In April, Pentagon lawyers recommended against using the Insurrection Act in domestic immigration enforcement,[322] although the president continued to publicly float the idea, which he originally considered in 2020 to put down protests over the police killing of George Floyd and to stay in office after the election.[323]

These documents, along with the January 20 executive order on "Protecting the American People Against Invasion," formed the legal backdrop for Immigration and Customs Enforcement (ICE) raids that began immediately after the inauguration and escalated dramatically over the summer in Los Angeles, which Trump had criticized for its sanctuary policy,[324] linking it to out-of-control

319. Proclamation No. 10886, 90 Fed. Reg. 8327 (Jan. 20, 2025) ("Declaring a National Emergency at the Southern Border of the United States").
320. *Id.*
321. *Id.*
322. Natasha Bertrand, Haley Britzky, Jake Tapper & Priscilla Alvarez, *For Now, Pentagon and DHS Won't Recommend That Trump Invoke the Insurrection Act*, CNN (Apr. 18, 2025, at 16:25 ET), https://www.cnn.com/2025/04/18/politics/pentagon-dhs-wont-recommend-insurrection-act [https://perma.cc/XR5N-ZWCU].
323. Cheyanne M. Daniels, *Trump Has Floated Invoking the Insurrection Act. It's Only Been Done a Handful of Times in Modern History*, POLITICO (June 11, 2025, at 12:00 ET), https://www.politico.com/news/2025/06/11/insurrection-act-history-donald-trump-00398051 [https://perma.cc/SUA5-SB7X]; Genesis Magpayo, *What Is the Insurrection Act? Here's What Trump Has Said About Using It*, PBS (Jan. 15, 2026, at 09:36 ET), https://www.pbs.org/newshour/politics/what-is-the-insurrection-act-heres-what-trump-has-said-about-using-it [https://perma.cc/RYX8-H36T].
324. L.A. CAL., ADMIN. CODE § 19.190 et seq. (Ord. No. 188441, signed Dec. 9, 2024). On the evolution of sanctuary cities, see LOREN COLLINGWOOD & BENJAMIN GONZALEZ O'BRIEN, SANCTUARY CITIES: THE POLITICS OF REFUGE (2019).

crime without evidence.[325] On June 6, 2025, DHS launched military-style raids by masked ICE agents across the city.[326] That evening, about eight hundred protesters marched downtown, where some threw "concrete chunks, bottles of liquid, and other objects" at federal officers.[327] The Los Angeles Police Department (LAPD) declared the protest an unlawful assembly and used tear gas and flash-bang grenades to disperse the crowd,[328] which was cleared by midnight.[329] On June 7, the LAPD reported that protests at the immigration detention center were "fairly in control," and local law enforcement dispersed another occasionally violent protest at a Home Depot by late that night.[330] Despite Governor Gavin Newsom's assertion that there was "no unmet need" warranting federal troop deployment, the White House claimed that "violent mobs have attacked ICE Officers" and "California's feckless Democrat leaders have completely abdicated their responsibility to protect their citizens."[331]

That day, Trump issued an executive memo invoking 10 U.S.C. § 12406, a rarely used emergency law that allows a president to federalize the state-based National Guard.[332] This law, like the Insurrection Act, permits a president to override the proscription on deploying the military for domestic law enforcement codified in the Posse Comitatus Act of 1878, which outlaws the use of the military "to execute the laws" without express authorization "by the Constitution or Act of Congress."[333] Section 12406 confers express congressional authorization for the federalization of the National Guard as the president "considers necessary to" respond to one of three factual predicates: (1) the United States "is invaded or is in

325. *See* Juliann Ventura, *Trump Administration Sues Los Angeles Over Sanctuary Policies*, POLITICO (June 30, 2025, at 16:55 ET), https://www.politico.com/news/2025/06/30/trump-administration-sues-los-angeles-over-sanctuary-policies-00434069 [https://perma.cc/N2SQ-C92U].

326. Kaitlyn Huamani, Clara Harter, Rachel Uranga, Rebecca Ellis & Ruben Vines, *Immigration Raids Roil L.A., Dozens of People Detained. What We Know So Far*, L.A. TIMES (June 7, 2025, at 12:52 PT), https://www.latimes.com/california/story/2025-06-07/immigration-raids-roil-l-a-what-you-need-to-know [https://perma.cc/UL2S-HCEV].

327. Newsom v. Trump, 786 F. Supp. 3d 1235, 1243 (N.D. Cal. June 12, 2025) (granting plaintiff's application for temporary restraining order).

328. Lily Dallow, *Police Use Flash-Bangs, Tear Gas to Quell ICE Raid Protests in L.A.*, KTLA 5 (June 6, 2025, at 11:12 PT), https://ktla.com/news/local-news/flash-bangs-tear-gas-and-arrests-as-ice-raids-protests-continue-in-los-angeles [https://perma.cc/2VTY-U5KG].

329. *Newsom*, 786 F. Supp. 3d at 1243.

330. *Id.*

331. Karoline Leavitt, *Statement From the White House*, WHITE HOUSE (June 7, 2025), http://whitehouse.gov/briefings-statements/2025/06/statement-from-the-white-house-d320 [https://perma.cc/K5PW-E9E6].

332. Memorandum on Department of Defense Security for the Protection of Department of Homeland Security Functions, 2025 DAILY COMP. PRES. DOC. 672 (June 7, 2025).

333. 18 U.S.C. § 1385.

danger of invasion by a foreign nation"; (2) "there is a rebellion or danger of rebellion against the authority of the Government"; or (3) "the President is unable with the regular forces to execute the laws of the United States."[334] Unlike the Insurrection Act, which authorizes the president to act unilaterally, § 12406 requires orders to be made "through the governors of the States."[335]

Trump's June 7 memo did not refer to Los Angeles by name, although it clearly had the city in mind in stating "[n]umerous incidents of violence and disorder have recently occurred and threaten to continue in response to the enforcement of Federal law by" ICE.[336] The memo leveraged sporadic incidents of violence, provoked by the administration's own tactics, into an alleged military-level crisis providing the pretext to justify troop deployment. Toward this end, the memo parroted provisions of § 12406 in asserting the need for federalization: "To the extent that protests or acts of violence directly inhibit the execution of the laws, they constitute a form of rebellion against the authority of the Government of the United States."[337] Over the next few days, Defense Secretary Pete Hegseth issued orders calling four thousand members of the California National Guard into service, along with seven hundred Marines.[338] The last time the National Guard had been federalized in California was during the 1992 Rodney King unrest—with the consent of Governor Pete Wilson.[339] In contrast, the June 7 federalization order was made directly to the California official in charge of the state's National Guard troops, bypassing Governor Newsom—marking the first time a governor had been bypassed since 1965, when President Lyndon Johnson used troops in Alabama to protect civil rights protesters from local authorities.[340] The Trump order turned this precedent on its head: federalizing the National Guard *against* protesters.

On June 9, Newsom sued to block the deployment, asserting that "President Trump has repeatedly invoked emergency powers to exceed the bounds of lawful

334. 10 U.S.C. § 12406.
335. *Id.*
336. Memorandum on Department of Defense Security for the Protection of Department of Homeland Security Functions, *supra* note 332.
337. *Id.*
338. *Newsom*, 786 F. Supp. 3d at 1244–45.
339. *See* Jenny Jarvie, Grace Toohey & Christopher Buchanan, *National Guard Came to L.A. to Fight Unrest. Troops Ended Up Fighting Boredom*, L.A. TIMES (July 17, 2025, at 03:00 PT), https://www.latimes.com/california/story/2025-07-17/military-troops-los-angeles-what-they-doing [https://perma.cc/FUC7-FRXP].
340. Chris Megerian & Michelle L. Price, *Trump Says He Will 'Liberate' Los Angeles in Speech to Mark the 250th Anniversary of the Army*, AP NEWS (June 10, 2025, 19:45 PT), https://apnews.com/article/donald-trump-fort-bragg-6df36485dec1df2350d5b7be0882a703 [https://perma.cc/5RSG-HJY5].

executive authority . . . [using] a protest that local authorities had under control to make another unprecedented power grab."[341] The next day, in a speech at Fort Bragg celebrating the Army's 250th anniversary, the president referred to Los Angeles protesters as "animals" and a "foreign enemy."[342] On June 12, District Court Judge Charles Breyer issued a TRO blocking the deployment, concluding that the administration had not established the predicates for federalization: ruling specifically that the "protests in Los Angeles fall far short of 'rebellion'" under § 12406(2), which requires action that is "armed," "organized," "open and avowed," and "against the government as a whole."[343] Judge Breyer emphasized that he was "troubled by the implication inherent in Defendants' argument that protest against the federal government, a core civil liberty protected by the First Amendment, can justify a finding of rebellion."[344] Turning to § 12406(3), Judge Breyer held that "the statute does not allow for the federalizing of the National Guard when the President faces obstacles that cause him to underperform in executing the laws."[345]

The National Guard mobilization in Los Angeles was followed by similar efforts in Washington, D.C., Portland, Memphis, and Chicago,[346] the last of which

341. Complaint at 2, *Newsom*, 786 F. Supp. 3d 1235 (N.D. Cal. June 9, 2025) (No. 25-cv-04870); Joe Gould & Connor O'Brien, *Hegseth Says Troops in LA Are Lawful. He Just Can't Explain Why*, POLITICO (June 11, 2025, at 15:58 ET), https://www.politico.com/news/2025/06/11/hegseth-hearing-stumble-los-angeles-00400436 [https://perma.cc/ZU3W-LK93].

342. Megerian & Price, *supra* note 340.

343. *Newsom*, 786 F. Supp. 3d at 1253.

344. *Id.* at 1254.

345. *Id.* at 1255–56. The Ninth Circuit stayed the TRO pending appeal. Newsom v. Trump, 141 F.4th 1032, 1040 (9th Cir. June 19, 2025). In the meantime, the case went to trial, resulting in an order enjoining the government from violating the Posse Comitatus Act. Newsom v. Trump, 797 F. Supp. 3d 1092, 1097 (N.D. Cal. Sep. 2, 2025) (granting injunctive relief), *appeal docketed*, No. 25-5553 (9th Cir. Sep. 3, 2025). A government appeal was stayed pending related appeals. Order, Newsom v. Trump, No. 25-5553 (9th Cir. Jan. 12, 2026). After DHS Secretary Noem declared that the administration had arrested "4,481 illegal aliens in the Los Angeles area," the government issued another ninety-day federalization order for three hundred National Guard troops on August 5, 2025, prompting a new injunction to remove all troops from Los Angeles and restore control to Governor Newsom. Newsom v. Trump, 811 F. Supp. 3d 1086, 1094–96 (N.D. Cal. Dec. 10, 2025) (granting renewed motion for preliminary injunction), *appeal docketed*, No. 25-7781 (9th Cir. Dec. 11, 2025). The Ninth Circuit stayed the portion of the order restoring control to the governor. Newsom v. Trump, No. 25-7781, 2025 U.S. App. LEXIS 32656, at *2–3 (9th Cir. Dec. 12, 2025). In Portland, the Ninth Circuit initially stayed a district court TRO before scheduling a rehearing en banc. Oregon v. Trump, 159 F.4th 1159 (9th Cir. Oct. 28, 2025). The government's motion to dismiss the consolidated appeals was granted on February 17, 2026. Order, Oregon v. Trump, No. 25-6268 (9th Cir. Feb. 17, 2026).

346. Chris Hippensteel & Pooja Salhotra, *How Courts Have Ruled in Challenges to Trump's National Guard Deployments*, N.Y. TIMES (Dec. 11, 2025), https://www.nytimes.com/2025/10/

Trump called a "hellhole," falsely claiming that crime was out of control, when in fact it was on the decline.[347] The administration announced Operation Midway Blitz in Chicago on September 8 and federalized the Illinois Guard a month later.[348] On October 10, District Court Judge April Perry issued a TRO blocking that deployment, stating that she did "not see any factual determination by President Trump regarding a rebellion brewing here," and although there was evidence of "protests, some of which have included acts of violence. . . . DHS has not been unable to carry out its mission."[349] A three-judge panel of the Seventh Circuit affirmed the TRO blocking deployment in *Illinois v. Trump*,[350] and the Supreme Court declined to issue a stay on its shadow docket.[351] In the face of this defeat, on New Year's Eve, Trump announced the withdrawal of National Guard troops from all cities, posting ominously on Truth Social: "We will come back, perhaps in a much different and stronger form, when crime begins to soar again."[352]

10/us/federal-courts-national-guard-trump.html [https://perma.cc/8YRQ-68QY]. Trump threatened but ultimately did not federalize troops in San Francisco. Sara DiNatale, *Trump Adds San Francisco to List of Cities Where He Wants to Send Troops*, S.F. CHRON. (Aug. 22, 2025), https://www.sfchronicle.com/politics/article/trump-san-francisco-troops-20883072.php [https://perma.cc/6Z8A-R2QH] ("'Look at what the Democrats have done to San Francisco,' Trump told reporters. 'They've destroyed it. We could clean that up, too. We'll clean that one up, too.'"). Trump declared a crime emergency before sending National Guard troops to Washington, D.C., which sued to block the deployment. *See* Exec. Order No. 14333, 90 Fed. Reg. 39301 (Aug. 11, 2025) ("Declaring a Crime Emergency in the District of Columbia"); U.S. Dep't of Just. Directive No. 2025-12 (Aug. 14, 2025). A district court injunction was stayed pending appeal due to the federal government's unique control over the district. District of Columbia v. Trump, No. 25-5418, 2025 WL 3673674 (D.C. Cir. Dec. 17, 2025).

347. Megan Forrester, *How the Trump Administration Offered Multiple Justifications for Deploying the National Guard in US Cities*, ABC NEWS (Oct. 9, 2025, at 13:23 PT), https://abcnews.com/Politics/trump-administration-offered-multiple-justifications-deploying-national-guard/story?id=126258936 [https://perma.cc/4KWD-HR2A].

348. Memorandum on Department of War Security for the Protection of Federal Personnel and Property in Illinois, 2025 DAILY COMP. PRES. DOC. 978 (Oct. 4, 2025).

349. Illinois v. Trump, No. 25-cv-12174, 2025 WL 2886645, at *15, *20 (N.D. Ill. Oct. 10, 2025) (opinion and order). At the hearing announcing the TRO, Judge Perry said: "I have seen no credible evidence that there is a danger of a rebellion in the state of Illinois." Mitch Smith, *Federal Judge Temporarily Blocks National Guard Deployment in Illinois*, N.Y. TIMES (Oct. 9, 2025), https://www.nytimes.com/2025/10/09/us/judge-national-guard-chicago-illinois.html [https://perma.cc/HN7Y-MXJG].

350. Illinois v. Trump, 155 F.4th 929, 933 (7th Cir. Oct. 16, 2025) (per curiam). The court's decision upheld the TRO with respect to the deployment of the Guard but stayed the portion of the lower court order enjoining federalization. *Id.*

351. Trump v. Illinois, 146 S. Ct. 432, 434 (Dec. 23, 2025). The case was dismissed by joint stipulation. Final Order with Mandate, Illinois v. Trump, No. 25-2798 (7th Cir. Jan. 22, 2026).

352. Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Dec. 31, 2025, at 12:55 PT), https://truthsocial.com/@realDonaldTrump/posts/115816171466225987 [https://perma.cc/8P28-5G3J]. The same day, the Ninth Circuit removed its stay on the return of National Guard control to the state. Order at 2, Newsom v. Trump, No. 25-7781 (9th Cir. Dec. 31, 2025).

D. Promote False Equivalence to Foster Illusion of Regularity

The process of manufacturing legal authority turns on substantive arguments that often rely on the next playbook principle: promoting false equivalence. This principle asserts that the legal moves autocratic leaders make—federalizing the National Guard to protect law enforcement officers—are simply the ideological flipside of actions taken by political opponents—using the National Guard to protect civil rights protesters. In its most effective form, false equivalence works by deploying lawyers' stock-in-trade—analogical reasoning—to justify rule-of-law attacks under legal precedent set by opponents.[353] In this way, false equivalence is mobilized to foster the illusion of regularity—that executive actions follow good faith application of normal legal procedures—when in fact there is nothing normal about their form or content, which subverts settled legal principles to weaken democratic institutions.

False equivalence grows out of a broader strategy—coopting the meaning of concepts and practices designed to expand liberal democratic rights—and deploying it toward democratically damaging ends. Because autocratic regimes seek the ideological upper hand by convincing people that the leader's personal interests are identical to the public interest, the battle to reframe liberal democratic ideas as bad for democracy or imbue them with meanings contrary to their spirit is essential to backsliding. As with other elements of the playbook, discursive cooptation has roots in legitimate battles over policy that autocrats twist into illegitimate efforts to expand control. One can trace the use of discursive cooptation for policy advantage to the conservative legal movement's campaign to reframe the meaning of "public interest law" to equate advocacy by left-wing organizations to expand rights for underserved groups and causes with efforts by their right-wing counterparts to roll those rights back,[354] and to repurpose the notion of "colorblindness" to equate affirmative action and diversity, equity, and inclusion (DEI) programs with "anti-White discrimination."[355]

353. Lawyers are also skillful practitioners of a related antidemocratic art: "bothsidesism." Denis Muller, *'Suicide for Democracy.' What Is 'Bothsidesism'—and How Is It Different From Journalistic Objectivity?*, CONVERSATION (Oct. 15, 2024, at 12:10 PT), https://findanexpert.unimelb.edu.au/news/93527-%E2%80%98suicide-for-democracy.%E2%80%99-what-is-%E2%80%98bothsidesism%E2%80%99-%E2%80%93-and-how-is-it-different-from-journalistic-objectivity%3F [https://perma.cc/6ASD-NQKN] (defining "bothsidesism" as "a term of disparagement that presents 'both sides' of an issue without any regard for their relative evidentiary merits").

354. *See* Southworth, *supra* note 140.

355. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181 (2023); Exec. Order No. 14151, 90 Fed. Reg. 8339 (Jan. 20, 2025) ("Ending Radical and Wasteful Government DEI Programs and Preferencing").

As the preceding discussion of manufactured legal authority suggested, false equivalence taps into underlying conceptual and practical ambiguities over the borderline between legitimate legal change and illegitimate abuse of the legal system: exploiting the difficulty of defining when a legal argument is "frivolous." Legal ethics rules define frivolousness against what it is not: permitting lawyers to make arguments for a "good faith extension, modification or reversal of existing law,"[356] thus begging the question of when a legal argument to reverse longstanding precedent is in good faith. At the time of *Brown*, racial segregation had been settled constitutional law for more than fifty years—clearly decided in *Plessy v. Ferguson*.[357] Nonetheless, civil rights lawyers crafted legal arguments that gradually won cases leading the Supreme Court to overturn *Plessy*'s "separate but equal" principle in public schools.[358] For pro-life lawyers, the analogue to *Plessy* was *Roe v. Wade*,[359] a fifty-year-old precedent overturned in *Dobbs v. Jackson Women's Health Organization*[360] after a sustained legal campaign by conservative Christian groups, including Alliance Defending Freedom, to overturn the right to abortion.[361]

As these examples highlight, what counts as a "good faith" argument for the "reversal of existing law" depends on ideologically contested ideas of how well settled existing law is and should be, which depends in turn on the openness of courts to entertain arguments outside the legal mainstream. The Trump administration has used the possibility of Supreme Court receptivity to major doctrinal change to inoculate legal positions from the charge of frivolousness. This can be seen in arguments defending the executive order to restrict birthright citizenship,[362] based on a fringe legal theory by John Eastman to overturn a

356. MODEL RULES OF PRO. CONDUCT r. 3.1 (A.B.A. 2023).
357. 163 U.S. 537 (1896).
358. *See generally* RICHARD KLUGER, SIMPLE JUSTICE: THE HISTORY OF *BROWN V. BOARD OF EDUCATION* AND BLACK AMERICA'S STRUGGLE FOR EQUALITY (1975); MARK V. TUSHNET, THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925–1950 (2005).
359. 410 U.S. 113 (1973).
360. 597 U.S. 215 (2022). Justice Samuel Alito's leaked draft of *Dobbs* directly cited *Brown* for the proposition that the Justices could "correct our own mistake" and that some of the Court's "most important constitutional decisions have overruled prior precedents." Draft Opinion of Justice Alito in Dobbs v. Jackson Women's Health Organization at 36, No. 19-1392 (Feb. 2022), https://www.documentcloud.org/documents/21835435-scotus-initial-draft [https://perma.cc/59XA-S3QZ].
361. *See* David D. Kirkpatrick, *The Next Targets for the Group That Overturned* Roe, NEW YORKER (Oct. 2, 2023), https://www.newyorker.com/magazine/2023/10/09/alliance-defending-freedoms-legal-crusade [https://perma.cc/LFS6-9S69].
362. *See* Exec. Order No. 14160, 90 Fed. Reg. 8449 (Jan. 20, 2025) ("Protecting the Meaning and Value of American Citizenship") (denying citizenship "to persons: (1) when that person's

century-old case,[363] *United States v. Wong Kim Ark*,[364] which affirmed citizenship for children of noncitizens.[365] Repackaging this theory as an extension of liberal legal precedent, the administration claimed its executive order "restores the original meaning" of the Fourteenth Amendment—intended to overrule *Dred Scott v. Sandford*[366] to confer citizenship on newly freed slaves—by limiting citizenship to those born of parents legally present in the United States and therefore "subject to the jurisdiction thereof."[367] This position (which ultimately failed) sought to exploit a loophole in *Wong Kim Ark*—in which the parents were noncitizens but not undocumented—to overturn decades of settled constitutional understanding and government practice.[368]

A similar reformist argument, predicated on a maximalist view of the unitary executive theory, underlies the portfolio of executive actions dismantling administrative agencies and terminating legally protected government workers.[369] Administration lawyers have effectively argued that although the Court has never

mother was unlawfully present in the United States and the person's father was not a United States citizen or lawful permanent resident at the time of said person's birth, or (2) when that person's mother's presence in the United States was lawful but temporary, and the person's father was not a United States citizen or lawful permanent resident at the time of said person's birth").

363. Eastman, *supra* note 185. Eastman's position on Hamdi was a specific application of a controversial position taken by Yale professors Peter Schuck and Rogers Smith two decades earlier. PETER H. SCHUCK & ROGERS M. SMITH, CITIZENSHIP WITHOUT CONSENT: ILLEGAL ALIENS IN THE AMERICAN POLITY (1985). On the evolution of the argument to overturn birthright citizenship, see Abbie VanSickle, *At Supreme Court, a Once-Fringe Birthright Citizenship Theory Takes the Spotlight*, N.Y. TIMES (May 14, 2025), https://www.nytimes.com/2025/05/14/us/politics/supreme-court-birthright-citizenship.html [https://perma.cc/WWZ9-6UC9].

364. 169 U.S. 649 (1898).

365. *Id.* at 693 ("The amendment, in clear words and in manifest intent, includes the children born within the territory of the United States of all other persons, of whatever race or color, domiciled within the United States. Every citizen or subject of another country, while domiciled here, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States.").

366. 60 U.S. 393 (1857).

367. Brief for the Petitioners (I), Trump v. Barbara, No. 25-365 (Jan. 20, 2026); Amy Howe, *The Key Arguments in the Birthright Citizenship Case*, SCOTUSBLOG (Mar. 27, 2026), https://www.scotusblog.com/2026/03/the-key-arguments-in-the-birthright-citizenship-case [https://perma.cc/5LGH-V84B].

368. *See Wong Kim Ark*, 169 U.S. at 652. The government's argument was rejected by the Supreme Court in *Trump v. Barbara*, 146 S. Ct. 2438, 2548 (June 30, 2026). In its wake, the president issued two new executive orders seeking to eliminate birthright citizenship for narrower categories of children of noncitizens. *Fact Sheet: President Donald J. Trump Ends Birth Tourism and Protects the Meaning and Value of American Citizenship*, WHITE HOUSE (Aug. 6, 2026), https://www.whitehouse.gov/fact-sheets/2026/08/fact-sheet-president-donald-j-trump-ends-birth-tourism-and-protects-the-meaning-and-value-of-american-citizenship/ [https://perma.cc/7GDY-E9ZA].

369. *See infra* Subpart IV.C.

accepted this maximalist view, they nonetheless have a sincerely held belief that it is correct. At bottom, their argument is: Until the Court tells us otherwise, we will proceed as if the law is on our side. The openness of the Court to revisit precedent, evident in cases like *Dobbs* and others,[370] and of some Justices to entertain heterodox arguments in dissent,[371] makes it difficult—if not impossible—to say such an argument is frivolous.

False equivalence takes advantage of this difficulty by presenting arguments that have surface legal appeal but contain misleading representations that collapse under close scrutiny. The 2020 election attack featured this argumentative sleight of hand. The premier example was the effort to legally justify the fake elector scheme by reference to liberal precedent and scholarship. Chesebro's memo on how to create fake electors in battleground states equated the Trump scheme to the effort by Democrats to establish an alternative elector slate for John F. Kennedy in Hawaii in the 1960 presidential election,[372] failing to note the essential distinction: there was a genuine active recount underway in Hawaii legitimately clouding the 1960 results.[373] Eastman's legal memo similarly argued in favor of discarding valid Biden electoral votes by citing analysis of liberal constitutional scholar Laurence Tribe,[374] a Harvard Law School professor who was involved in the 2000 Florida

370. *See, e.g.*, Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024) (overturning *Chevron* deference); Janus v. Am. Fed'n of State, Cnty. & Mun. Emps. Council 31, 585 U.S. 878 (2018) (overturning *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977), which held that unions could require nonunion employees to pay fair-share fees for union services); Trump v. Slaughter, 146 S. Ct. 2283 (2026) (holding that statutory removal protections for members of the Federal Trade Commission (FTC) violate the separation of powers, overruling *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), which held that Congress could limit the power of a president to fire members of independent agencies without cause).

371. For example, Justices Samuel Alito and Clarence Thomas dissented from the Court's rejection of the State of Texas's lawsuit asking the Court to use its original jurisdiction to permit a challenge to the 2020 election under the independent state legislature theory based on allegations of nationwide voting fraud. Texas v. Pennsylvania, 141 S. Ct. 1230 (2020) (mem.). More recently, in the National Guard case from Chicago, Justices Alito and Thomas dissented from the refusal to stay the lower court injunction on the grounds that the "District Court . . . erred in refusing to afford any deference to the President's determination . . . ." Trump v. Illinois, 146 S. Ct. 432, 439 (Dec. 23, 2025) (Alito, J., dissenting). Justices Alito, Gorsuch, and Thomas dissented from the ruling striking down the executive order on birthright citizenship. Trump v. Barbara, 146 S. Ct. 2438, 2474 (June 30, 2026) (Thomas, J., joined by Gorsuch, J., dissenting); *id.* at 2524 (Alito, J., dissenting); *id.* at 2545 (Gorsuch, J., dissenting).

372. Memorandum from Kenneth Chesebro to Judge James R. Troupis, *supra* note 186, at 3–4 & 4 n.3 (arguing that alternative Trump electors could follow the example of Hawaii in 1960, when alternative Kennedy electors were created to preserve Kennedy's rights pending a recount, and citing Laurence Tribe for support).

373. *Kennedy Widens Lead: Margin in Recount of Hawaii Is Increased to 55*, N.Y. TIMES, Dec. 19, 1960, at 25.

374. Memorandum from John Eastman, January 6 Scenario, *supra* note 187, at 2.

recount in the Bush–Gore election[375]—when there was, in fact, a legitimate ongoing dispute casting the outcome in real doubt.[376]

In his second administration, the use of false equivalence has been taken to extremes by Trump, who routinely rails against "Radical Left Lunatics" to normalize the radical nature of his own agenda.[377] The logic of false equivalence cuts across issue areas to constitute a central instrument of governance: for example, casting Biden's anticipatory pardons of family members targeted by Trump as equivalent to Trump's subsequent pardons of January 6 rioters,[378] or framing the use of an executive order by Obama to protect undocumented immigrant youth from removal as no different from Trump's orders to facilitate the removal of immigrants and the deprivation of birthright citizenship for their children.[379]

The principle of false equivalence is intrinsically linked to inverting reality to undermine the legitimacy of legal opponents, accusing them of the very misconduct that the administration performs.[380] The most sweeping—and dangerous—example is the blanket charge of "weaponization," which is a master narrative of the second Trump administration used to deflect legal accountability by suggesting that any legitimate prosecution of Trump, his administration, or his allies is a product of "lawfare," while authorizing the administration's actual abuse of the justice system to target enemies, exact retribution, and dole out favors under the auspices of remedying past wrongs.[381] The weaponization claim trades on a form of false equivalence by suggesting previous abuses justify current ones. Along these lines, the weaponization critique of the DOJ for legitimately prosecuting Trump for criminal conduct in his first administration is used to

375. JEFFREY TOOBIN, TOO CLOSE TO CALL: THE THIRTY-SIX-DAY BATTLE TO DECIDE THE 2000 ELECTION 100 (2001).
376. *See id.* at 6–7.
377. Donald J. Trump (@realDonaldTrump), X (Nov. 28, 2024, at 05:33 PT), https://x.com/realDonaldTrump/status/1862127644222832894 [https://perma.cc/KSL6-5RJF].
378. Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Dec. 1, 2024, at 18:11 PT), https://truthsocial.com/@realDonaldTrump/posts/113580801259196546 [https://perma.cc/S6YE-G7WD]; Ruth Marcus, Opinion, *Biden's Pardons Were Disappointing. Trump's Are Worse.*, WASH. POST (Jan. 21, 2025), https://www.washingtonpost.com/opinions/2025/01/21/trump-pardons-jan-6-insurrection-biden [https://perma.cc/2ENW-49XE].
379. *See, e.g.*, Christian Schneider, *Democrats Seem to Be Missing the Point of 'No Kings'*, MS NOW (June 13, 2026, at 06:00 ET), https://www.ms.now/opinion/no-kings-democrats-trump-executive-power-president [https://perma.cc/R8YJ-KHSU] (arguing that Democrats were hypocritical for criticizing Trump's executive action when they were silent on Obama's DACA).
380. Brad Wendel, *Lawfare: Schtick and Reality*, LEGAL ETHICS STUFF (Feb. 26, 2025), https://bradwendel.substack.com/p/lawfare-schtick-and-reality [https://perma.cc/8HPQ-66K9].
381. *See* discussion *infra* Subpart IV.A.

authorize his second administration's actual weaponization of the department to investigate former lawyers, like Special Counsel Smith, and indict perceived opponents, like former FBI Director Comey.[382]

The discursive evolution of weaponization—a military term originally coined to characterize the conversion of rockets for wartime strikes[383]—in relation to legal attacks illustrates how false equivalence is used to evade accountability and justify abuse. The legal weaponization term of art, lawfare, also originated in military jargon to describe the "use of law as a weapon of war" through legal actions asserting violations of international law in armed conflict.[384] During the first Trump administration, the term lawfare was used to criticize legal attacks on the rule of law,[385] which reached a crescendo with the 2020 election lawsuits. As this definition of lawfare as abuse of legal process gained prominence, right-wing lawyers and public figures appropriated the term to challenge the legitimacy of efforts to enforce liberal democratic rights and uphold rule-of-law values.[386]

This strategy took a page from Hungary, where the Danube Institute hosted a 2024 conference that characterized NGO strategic litigation to protect the rights of LGBTQ+ people and other minorities in the European Court of Human Rights as lawfare harming national sovereignty.[387] This antiliberal definition entered into American discourse as a way to undermine legal proceedings against Trump and allies. In July 2024, Eastman and John Yoo, author of OLC memos authorizing

382. Ryan Lucas, *Critics Warn of Weaponization of the DOJ Despite Administration Calls to End It*, NPR (May 5, 2025, at 04:11 ET), https://www.npr.org/2025/05/05/nx-s1-5380131/critics-warn-of-weaponization-of-the-doj-despite-administration-calls-to-end-it [https://perma.cc/YJD7-WSJ9].

383. John Kelly, *Everything Is* Weaponized *Now. This Is a Good Sign for Peace*, SLATE (Aug. 30, 2016, at 09:30 ET), https://slate.com/human-interest/2016/08/how-weaponize-became-a-political-cultural-and-internet-term-du-jour.html [https://perma.cc/2MU7-EGF8].

384. *See* ORDE F. KITTRIE, LAWFARE: LAW AS A WEAPON OF WAR 4 (2016).

385. *See* Jeff Handmaker, *Researching Legal Mobilisation and Lawfare* 10–11 (Int'l Inst. of Soc. Stud., Working Paper No. 641, 2019) (characterizing democracy-threatening strategies as lawfare and excluding them from the definition of legal mobilization).

386. *See* John Yoo, *Biden's Lawfare by Other Means*, NAT'L REV. (Dec. 26, 2024, at 06:30 ET), https://www.nationalreview.com/2024/12/bidens-lawfare-by-other-means [https://perma.cc/H57N-97CM]. For an excellent analysis, see Wendel, *supra* note 380.

387. *See* The Danube Institute, the Center for Fundamental Rights, and The European Conservative, Conference on the Rule of Law as Lawfare, Day 1 (May 27, 2024), https://danubeinstitute.hu/en/events/rule-of-law-as-lawfare-conference-day-1 [https://perma.cc/AYG4-YFWT]; The Danube Institute, the Center for Fundamental Rights, and The European Conservative, Conference on the Rule of Law as Lawfare, Day 2 (May 28, 2024), https://danubeinstitute.hu/en/events/rule-of-law-as-lawfare-conference-day-2 [https://perma.cc/2N4R-KBVP].

torture in the War on Terror,[388] participated in a panel on "Lawfare: The Criminalization of Politics" at the National Conservatism Conference, where they argued that federal and state prosecutions of Trump for election interference were politicized; this was followed the next month by Elon Musk making a plea to "stop the lawfare" against Trump in an interview on X.[389]

Two weeks before the 2025 inauguration, Trump screened a film claiming to show that the bar and prosecutors were engaged in lawfare against Eastman for his advocacy in the 2020 election.[390] Heeding Musk's plea, on January 20, 2025, Trump signed an executive order on "Ending the Weaponization of the Federal Government" (Weaponization order) premised on the idea that the Biden DOJ had engaged in lawfare by prosecuting Trump and his allies.[391] Although the Weaponization order did not explicitly mention lawfare, the March 25 executive order targeting the law firm Jenner & Block did: explicitly stating that the firm was being sanctioned because it had "condoned partisan 'lawfare,' and abused its pro bono practice."[392] The Jenner & Block order previewed the administration's larger strategy, detailed in Subpart IV.A, of using the charge of lawfare to target the legal sector: turning weaponization into a carte blanche justifying the administration's campaign to deter lawyers from suing the administration and to disable oversight by the bar.[393]

E. Use Legal Loopholes to Maximize Economic Pain

A critical weapon in the autocratic arsenal is the power of the purse.[394] The central government's far-reaching economic ties with corporations, NGOs,

388. U.S. DEP'T OF JUST., OFF. OF PRO. RESP., INVESTIGATION INTO THE OFFICE OF LEGAL COUNSEL'S MEMORANDA CONCERNING ISSUES RELATING TO THE CENTRAL INTELLIGENCE AGENCY'S USE OF "ENHANCED INTERROGATION TECHNIQUES" ON SUSPECTED TERRORISTS 251 (July 29, 2009).

389. Tyler McBrien, *How the Right Explains Trump's Authoritarian Logic to Themselves*, MOTHER JONES (Sep. 4, 2024), https://www.motherjones.com/politics/2024/09/lawfare-meaning-trump-trial [https://perma.cc/8ZPY-DAK3].

390. Josh Marcus, *Anger as Trump Hosts Documentary Screening for Lawyer Who Tried to Overturn 2020 Election Result*, INDEPENDENT (Jan. 6, 2025, at 03:45 GMT), https://www.independent.co.uk/news/world/americas/us-politics/trump-john-eastman-documentary-mar-a-lago-b2674160.html [https://perma.cc/4SWB-QCDB] (noting the film was called *The Eastman Dilemma: Lawfare of Justice).*

391. Exec. Order No. 14147, 90 Fed. Reg. 8235 (Jan. 20, 2025) ("Ending the Weaponization of the Federal Government").

392. Jenner & Block Order, *supra* note 8.

393. *See, e.g.*, Symone D. Sanders Townsend & Evan Brechtel, *Trump's 'Lawfare' Attack on the Courts Could Backfire on the Constitution*, MS NOW (Feb. 14, 2025, at 06:00 ET), https://www.ms.now/opinion/msnbc-opinion/trump-lawfare-judges-constitution-rcna192076 [https://perma.cc/G4TV-GM9P].

394. Scheppele, *supra* note 27, at 575–77.

universities, law firms, and other private sector actors allow it to exploit legal loopholes—since government funding streams are discretionary or terminable for cause—to withdraw public largesse as a pain point to weaken independent institutions and exert leverage to negotiate for control. Maximizing economic pain is the underlying logic of the executive orders targeting law firms,[395] public broadcasting,[396] and the U.S. Agency for International Development (USAID),[397] as well as the withdrawal of funding to civil society organizations, including the American Bar Association (ABA),[398] and universities.[399] Economic leverage is also part of the logic behind tariffs, which may be used to extract agreements from private industry in exchange for carveouts or to pressure foreign governments for concessions on unrelated political issues.[400] In an example of the latter, in July 2025, just before former Brazilian President Bolsonaro's criminal trial for election subversion,[401] President Trump sent a letter to current President Lula, announcing a 50 percent tariff on "any and all Brazilian products sent into the United States" in response to the "Witch Hunt" against Bolsonaro and (referring to legal orders issued by Justice Moraes against electoral disinformation[402]) the "insidious attacks on Free Elections" and "hundreds of SECRET and UNLAWFUL Censorship Orders to U.S. Social Media platforms."[403] Underscoring the transactional nature of the tariffs, the letter ended with an invitation: "These Tariffs may be modified,

395. *See* Executive Orders cited *supra* note 8.
396. Exec. Order No. 14290, 90 Fed. Reg. 19415 (May 1, 2025) ("Ending Taxpayer Subsidization of Biased Media").
397. Exec. Order No. 14169, 90 Fed. Reg. 8619 (Jan. 20, 2025) ("Reevaluating and Realigning United States Foreign Aid").
398. *See* A.B.A. v. Dep't of Just., 783 F. Supp. 3d 236, 239 (D.D.C. May 14, 2025) (granting preliminary injunction to stop the cancellation of federal grants to the ABA).
399. *See* discussion *infra* in this Subpart and Subpart IV.D.
400. There is also evidence that the Trump Organization has financially benefited from a transactional approach to tariff rescission. *See* Damien Cave, *Why Vietnam Ignored Its Own Laws to Fast-Track a Trump Family Golf Complex*, N.Y. TIMES (May 25, 2025), https://www.nytimes.com/2025/05/25/world/asia/trump-vietnam-golf-project.html [https://perma.cc/97NV-XRJP] (detailing Vietnam's approval of a $1.5 billion Trump golf complex outside of Hanoi as Trump threatened 46 percent tariffs); Khanh Vu & Mikhail Flores, *US, Vietnam Agree to Boost Trade, Tariffs on Some Vietnamese Goods May Be Removed*, REUTERS (Oct. 26, 2025, at 03:08 PT), https://www.reuters.com/world/asia-pacific/us-vietnam-agree-framework-trade-deal-2025-10-26 [https://perma.cc/FR7N-VHAC] (describing plan to eliminate some tariffs).
401. Ana Swanson, *Trump's Tariffs Aim to Settle Scores With Countries, No Matter Their Size*, N.Y. TIMES (July 9, 2025), https://www.nytimes.com/2025/07/09/business/economy/trump-tariffs-global-trade.html [https://perma.cc/GU25-MRLM].
402. *See infra* Subpart V.D.
403. Letter from Donald J. Trump, President of the U.S. of Am., to Luiz Inacio Lula da Silva, President of the Federative Republic of Braz. (July 9, 2025), https://www.cov.com/-/media/files/corporate/publications/file_repository/2025-07-09---letter---president-trump-to-president-lula-en.pdf [https://perma.cc/9AF6-2695].

upward or downward, depending on our relationship with your Country. You will never be disappointed with the United States of America."[404]

Reducing government funding to institutional targets provides bargaining power for negotiated agreements that restore (or even increase) funding once targets accede to demands for control.[405] This strategy has been used to pressure universities following the Orbán playbook, in which funding cuts were leveraged to secure universities' agreement to be placed under government-controlled foundations.[406] The American version of this playbook exploits the massive increase in federal research and development money to universities over the past half-century to destabilize the higher education financial model by finding loopholes to curtail discretionary funding.[407] In one of the first examples, the National Institutes of Health, which provided over $35 billion for biomedical and public health research in 2023, issued a rule to reduce and cap previously negotiated amounts that universities could take for overhead, which are used to cover indirect costs associated with research grant implementation.[408]

This approach—imposing economic pain through loopholes—has been scaled into a broader legal campaign against U.S. universities, examined in Subpart IV.D, which has used the pretext of unchecked antisemitism (along with claims of reverse discrimination in relation to university policies on DEI and the participation of transgender women in sports under Title IX) to withdraw billions in federal funds from America's premier institutions to leverage deals aimed at suppressing "left," "woke," and "socialist" viewpoints on campus.[409] To shape the public narrative, the administration has inverted reality by beating the consistent drum of leftist hijacking, building on exaggerated claims by Trump before the 2024 election that "colleges [have] become dominated by Marxist Maniacs and lunatics" who are "obsessed with indoctrinating America's youth."[410]

404. *Id.*
405. *Cf.* Kati Cseres & York Albrecht, *The Authoritarian Market Playbook*, VERFASSUNGSBLOG (Jan. 31, 2025), https://verfassungsblog.de/the-authoritarian-market-playbook/ [https://perma.cc/F6RX-PPUU].
406. *See* discussion *supra* Subpart II.A.
407. Jeremy W. Peters & Andrea Fuller, *How Universities Became So Dependent on the Federal Government*, N.Y. TIMES (Apr. 18, 2025), https://www.nytimes.com/2025/04/18/us/trump-universities.html [https://perma.cc/KJF4-Q3DU] (noting that federal funding for university research and development increased from less than $2 billion in 1953 to $60 billion in 2023).
408. Massachusetts v. Nat'l Insts. of Health, 770 F. Supp. 3d 277, 287–88 (D. Mass. Mar. 5, 2025) (memorandum and order on motion for preliminary injunction), *permanent injunction granted*, 2025 WL 1063760 (D. Mass. Apr. 4, 2025), *aff'd*, 164 F.4th 1 (1st Cir. Jan. 5, 2026).
409. Am. Ass'n of Univ. Professors v. Trump, 815 F. Supp. 3d 907, 930–31 (N.D. Cal. Nov. 14, 2025) (granting motion for preliminary injunction in UCLA case).
410. *Id.* at 936.

Purporting to address an alleged link between leftism and antisemitism, in 2025, the administration rescinded already awarded federal research grants and contracts from select universities,[411] under the argument that they could be given only to recipients who complied with federal law and whose projects reflected federal priorities.[412] The goal, as Trump ally and right-wing university critic Christopher Rufo pronounced, was to put universities in "existential terror."[413] The rescission campaign targeted elite universities on the theory that their capitulation would send a signal to the rest of the field and force schools down the hierarchy to fall in line. The DOJ's Task Force to Combat Anti-Semitism, launched in February 2025 under an executive order calling for multiagency enforcement of antidiscrimination law,[414] has been a vehicle for the administration's fiscal pressure campaign.

Based on charges of failure to address antisemitism, in March 2025, the administration canceled $400 million in grants and contracts to Columbia for "potential violations of Title VI" of the Civil Rights Act of 1964[415]—which prohibits discrimination by federally funded institutions.[416] This led to a settlement by the university that included a $200 million payment and wide-ranging promises to: review "programs in regional areas across the University,

411. *See, e.g.*, *id.* at 931; *see also* Mikhail Zinshteyn, *White House Admits It Used Keywords to Kill Billions Worth of California Research Grants*, WASH. POST (July 22, 2026), https://www.washingtonpost.com/national/2026/07/21/california-research-grants-terminated-keywords-lawsuit/8f49f4ba-8540-11f1-9cec-0fb26676f07e_story.html [https://perma.cc/5889-9U89] (stating that federal agencies terminated grants based on keywords related to diversity, gender, and vaccines).

412. *See* Uniform Guidance, 2 C.F.R. § 200.300 (2026) (requiring all grant awardees to comply with federal law); *id.* § 200.340(a)(4) (2026) (permitting termination of federal grants "if an award no longer effectuates program goals or agency priorities").

413. Ross Douthat, *The Anti-D.E.I. Crusader Who Wants to Dismantle the Department of Education*, N.Y. TIMES (Mar. 7, 2025), https://www.nytimes.com/2025/03/07/opinion/chris-rufo-trump-anti-dei-education.html?smid=url-share [https://perma.cc/2FZT-XES5].

414. Exec. Order No. 14188, 90 Fed. Reg. 8847 (Jan. 29, 2025) ("Additional Measures to Combat Anti-Semitism").

415. Press Release, U.S. Gen. Servs. Admin., HHS, ED, and GSA Announce Additional Measures to End Anti-Semitic Harassment on College Campuses (Mar. 3, 2025), https://www.gsa.gov/about-gsa/newsroom/news-releases/hhs-ed-and-gsa-announce-additional-measures-to-end-antisemitic-harassment-03032025 [https://perma.cc/KR52-4PDP]; Sharon Otterman & Liam Stack, *White House Cancels $400 Million in Grants and Contracts to Columbia*, N.Y. TIMES (Mar. 8, 2025), https://www.nytimes.com/2025/03/07/nyregion/trump-administration-columbia-grants-cancelled-antisemitism.html [https://perma.cc/L5U2-MA4E]. Johns Hopkins University had roughly $800 million in funding cut primarily as part of the administration's termination of USAID grants. *See* Stephanie Saul, *Johns Hopkins to Cut More Than 2,000 Workers Funded by Federal Aid*, N.Y. TIMES (Mar. 13, 2025), https://www.nytimes.com/2025/03/13/us/trump-cuts-johns-hopkins-university-layoffs.html [https://perma.cc/F5WU-4ECN].

416. 42 U.S.C. § 2000d.

starting with the Middle East"; "maintain merit-based admissions policies"; review international student admissions; ensure faculty hiring be grounded "solely in individual qualifications and academic and professional merit"; report foreign gifts; and reform student disciplinary processes while banning students from wearing masks.[417] Critics argued that these and other commitments did not address the goal of combating antisemitism and would chill free expression.[418]

Following Columbia, the administration froze funds on a variety of grounds to the University of Pennsylvania (Penn),[419] Princeton,[420] Brown,[421] Cornell,[422] Northwestern,[423] Harvard,[424] and Duke.[425] In May 2025, former civil rights lawyer Leo Terrell, as head of the Task Force,[426] made explicit the administration's intent

417. Resolution Agreement Between the United States of America and Columbia University 5–11 (July 23, 2025), https://www.nytimes.com/interactive/2025/07/24/nyregion/columbia-trump-deal.html [https://perma.cc/5K5V-8NER].

418. *See* Eyal Press, *The Troubling Lines That Columbia Is Drawing*, NEW YORKER (Aug. 18, 2025), https://www.newyorker.com/news/the-lede/the-troubling-lines-that-columbia-is-drawing [https://perma.cc/LC4N-6QGZ].

419. Zeke Miller & Annie Ma, *Trump Administration Suspends $175 Million in Federal Funding for Penn Over Transgender Swimmer*, AP NEWS (Mar. 19, 2025, at 12:46 PT), https://apnews.com/article/penn-transgender-swimmer-trump-federal-funding-2416de5d0abee40163a25294e8a72442 [https://perma.cc/BPZ2-9C8H] (freezing $175 million for alleged violations of Title IX in relation to permitting a transgender female athlete to compete in swimming in 2022).

420. Alan Blinder & Anemona Hartocollis, *Trump Pauses Dozens of Federal Grants to Princeton*, N.Y. TIMES (Apr. 25, 2025), https://www.nytimes.com/2025/04/01/us/trump-federal-grants-princeton.html [https://perma.cc/39QK-H9T9] (freezing "several dozen" federal grants for unspecified reasons).

421. Anemona Hartocollis, Alan Blinder, Michael C. Bender & Vimal Patel, *Trump Administration Set to Pause $510 Million for Brown University*, N.Y. TIMES (Apr. 3, 2025), https://www.nytimes.com/2025/04/03/us/trump-administration-brown-university-funding-pause.html [https://perma.cc/8ZX7-P2RN] (imposing funding cuts for "relentless antisemitism on campus").

422. Michael C. Bender & Sheryl Gay Stolberg, *Trump Administration Freezes $1 Billion for Cornell and $790 Million for Northwestern, Officials Say*, N.Y. TIMES (Apr. 15, 2025), https://www.nytimes.com/2025/04/08/us/politics/cornell-northwestern-university-funds-trump.html [https://perma.cc/E7QZ-56J3] (citing investigations into antisemitism and racial discrimination).

423. *Id.*

424. Vimal Patel, *Trump Administration Will Freeze $2 Billion After Harvard Refuses Demands*, N.Y. TIMES (Apr. 14, 2025), https://www.nytimes.com/2025/04/14/us/harvard-trump-reject-demands.html [https://perma.cc/C2LG-MU92] (stating the freeze came after Harvard rejected demands to cede control over operations like admissions and hiring).

425. Chris Cameron, Michael C. Bender & Zolan Kanno-Youngs, *Trump Administration Freezes $108 Million in Funds to Duke University*, N.Y. TIMES (July 29, 2025), https://www.nytimes.com/2025/07/29/us/politics/trump-duke-university-frozen-funding-discrimination.html [https://perma.cc/AJR9-LCFJ] (accusing university of racial discrimination in its health care system).

426. Peter Elkind & Katherine Mangan, *The Improbable Warrior: Why the Unlikely Leader of Trump's Antisemitism Task Force May Be the Perfect Man for the Job*, CHRON. HIGHER EDUC.

to impose economic harm to gain concessions from the University of California (UC): "[E]xpect massive lawsuits against UC systems . . . . We're going to go after them where it hurts them financially, and there's numerous ways. I hope you can read between the lines."[427] The administration followed through on this threat in July by suspending $584 million in research funding to the University of California at Los Angeles (UCLA) for alleged Title VI violations in relation to its handling of the 2024 campus protests over the Israel-Hamas war in Gaza.[428] These economic sticks were followed by carrots in October 2025, when the administration announced a "compact" for higher education promising nine schools—including already targeted Penn and Brown—streamlined access to federal funding in exchange for concessions similar to those made by Columbia.[429] Only one school, the University of Texas, suggested interest in signing on,[430] though it ultimately did not commit to do so.[431]

F. Mobilize Policy Change for Institutional Control

The final and perhaps most important playbook principle rests on another sleight of hand—highlighted by university targeting—which is to mobilize what appear to be legitimate efforts to effect policy change to achieve illegitimate control over independent institutions standing in the way of executive power. This

(Aug. 27, 2025), https://www.chronicle.com/article/the-improbable-warrior?bc_nonce=crg5ztokcltdbcqij522lm&cid=reg_wall_signup [https://perma.cc/ZEU4-SG3D].

427. Am. Ass'n of Univ. Professors v. Trump, 815 F. Supp. 3d 907, 938–39 (N.D. Cal. Nov. 14, 2025).

428. *Id.* at 939.

429. Compact for Academic Excellence in Higher Education, version 10.1 (undated) (on file with *Washington Examiner*). The other schools were Dartmouth College, Massachusetts Institute of Technology, University of Arizona, University of Southern California, University of Texas at Austin, University of Virginia, and Vanderbilt University. The administration subsequently invited all universities to participate. *See* Alan Blinder, *Brown University Rejects White House Deal for Special Treatment*, N.Y. TIMES (Oct. 17, 2025), https://www.nytimes.com/2025/10/15/us/brown-university-trump-compact-funding.html [https://perma.cc/3VYN-3TH7].

430. Alan Blinder, *All but 2 Universities Decline a Trump Offer of Preferential Funding*, N.Y. TIMES (Oct. 20, 2025), https://www.nytimes.com/2025/10/20/us/politics/universities-funding-compact.html [https://perma.cc/5E8A-PDSQ] (noting that Vanderbilt had not taken a position but expressed reservations). The compact strategy could reshuffle the status hierarchy of U.S. higher education given that the major ranking index, *US News & World Report*, gives significant weight to academic spending. Eric Brooks & Sam Wellington, *A More Detailed Look at the Ranking Factors*, U.S. NEWS & WORLD REP. (Sep. 22, 2025, at 21:00 ET), https://www.usnews.com/education/best-colleges/articles/ranking-criteria-and-weights [https://perma.cc/Y3LQ-TYB4] (noting that "financial resources per student" and "faculty salaries" count for a combined 14 percent of a school's overall score).

431. Jessica Priest, *UT-Austin Still Silent on Trump Compact After Deadline to Sign Passes*, TEX. TRIB. (Nov. 22, 2025, at 11:15 CT), https://www.texastribune.org/2025/11/17/university-of-texas-trump-policy-changes-federal-funding/ [https://perma.cc/AP6Y-LGY5].

principle cuts across and synthesizes others—using fabricated facts to manufacture authority and maximize economic pain—in the quest for control. Examples from abroad and at home before 2025 provide models for executive actions since. In Orbán's Hungary after 2010, Fidesz used policy rationales as pretexts to target institutions: mobilizing the concern about unaccountable judges to capture the judiciary, the specter of deep state corruption to overtake the bureaucracy, the threat of terrorism to disable human rights NGOs, and the problem of ideological indoctrination to muzzle universities.[432] In the United States after 2020, Trump allies asserted the policy goal of stamping out voter fraud to take over election institutions in battleground states, such as Georgia, where loyalists in swing counties successfully ran for local election boards and issued legally dubious changes to vote counting rules designed to advantage Trump in the 2024 election.[433]

Using the pretext of policy change to achieve control is the organizing logic of the second Trump administration's executive actions targeting institutions examined in Part IV. Although these actions purport to be about advancing priorities endorsed by Trump's electoral mandate—ending weaponization, promoting efficiency, reversing transgender rights and DEI, cracking down on illegal immigration, and fighting antisemitism—they are ultimately designed to achieve dominion over (or at least to substantially degrade) democratic guardrails. Institutional targeting actions are typically presented as necessary solutions for legitimate policy problems, illustrated by reference to a small number of real—even if contested—examples of abuse or dysfunction that are blown up and cycled through the media to amplify their effect. In this vein, the administration has pointed to evidence of alleged bias or misconduct by law enforcement officials[434]

432. *See supra* Subpart II.A.

433. Nick Corasaniti, *How a Far-Right Takeover of Georgia's Election Board Could Swing the Election*, N.Y. TIMES (Aug. 19, 2024), https://www.nytimes.com/2024/08/19/us/politics/trump-2024-georgia-elections.html [https://perma.cc/R6LA-QD8T]; *see also* Nick Corasaniti, *Georgia Board Grants Local Officials New Power Over Certifying Elections*, N.Y. TIMES (Aug. 6, 2024), https://www.nytimes.com/2024/08/06/us/politics/georgia-elections-certification.html [https://perma.cc/UQ2Q-3UG9] (describing new rules permitting local boards to conduct a "reasonable inquiry" that "the results are a true and accurate accounting of all votes cast that election" designed to give boards significant discretion to contest or overturn the results).

434. *See, e.g.*, Philip Ewing & Carrie Johnson, *Justice Department Fires Embattled FBI Deputy Director Just Short of Retirement*, NPR (Mar. 16, 2018, at 22:09 ET), https://www.npr.org/2018/03/16/571671917/justice-department-fires-embattled-fbi-deputy-director-just-short-of-retirement [https://perma.cc/7W97-ZCZX] (discussing allegations of misconduct by former FBI Deputy Director Andrew McCabe, which included claims that he leaked information to a reporter about FBI investigations into Hillary Clinton); Olivia Beavers, *FBI Fires Strzok After Anti-Trump Texts*, HILL (Aug. 13, 2018, at 11:10 ET), https://thehill.com/

and prosecutors at DOJ[435] to justify efforts to "drain the swamp"[436]—getting rid of career officials to capture the department and undermine its independence. Similarly, examples of wasteful spending and bias provide the foundation for policy proposals by the Department of Government Efficiency (DOGE) to dramatically curtail the administrative state.[437]

This same approach is evident in relation to funding cuts and lawsuits targeting universities on the grounds that they discriminate against Jewish, white, or female students.[438] While it is true that administration demands address legitimate issues of campus climate—and there are examples of misconduct in relation to student protests[439]—the terms of the Columbia agreement discussed above (and that proposed in the Harvard case discussed below) demonstrate that the larger aim is to contractually bind leadership to government oversight of hiring and curricular choices to align universities with the administration's agenda under the guise of "viewpoint diversity."[440] The law firm targeting orders described in the next Part follow a similar pattern: mobilizing specific allegations of individual lawyer wrongdoing in claimed pursuit of policies to punish lawfare, stop illegal

policy/national-security/401558-fbi-fires-strzok-over-anti-trump-texts [https://perma.cc/44PT-2CNK] (discussing allegations of bias against FBI Special Agent Peter Strzok, who was involved in the Russian election interference probe, due to texts disparaging Trump).

435. For example, Trump called Andrew Weissmann, who served as deputy to Special Counsel Mueller, a "bad guy" while signing an executive order targeting Weissmann's former firm, Jenner & Block. Devlin Barrett, *Trump's Old Grudge Fuels Swipe at a New Law Firm*, N.Y. TIMES (Mar. 25, 2025), https://www.nytimes.com/2025/03/25/us/politics/trump-executive-order-law-firm-jenner-block.html [https://perma.cc/YTJ6-NSF2].

436. *President Trump's America First Priorities*, WHITE HOUSE (Jan. 20, 2025), https://www.whitehouse.gov/briefings-statements/2025/01/president-trumps-america-first-priorities [https://perma.cc/8S2A-Q5VW].

437. *See, e.g.*, *infra* notes 728–29 (citing false claims of unemployment fraud to justify cuts to the Labor Department); Linda Qiu, *Fact-Checking Musk's Oval Office Remarks*, N.Y. TIMES (Feb. 11, 2025), https://www.nytimes.com/2025/02/11/us/elon-musk-doge-fact-check.html [https://perma.cc/RN6W-4CCS] (noting Musk's claim that USAID sent $50 million of condoms to Gaza to justify dismantling USAID); Erin Schumaker, *The 'Deep State' Is Proving to Trump It's a Worthy Foe*, POLITICO (Sep. 14, 2025, at 07:00 ET), https://www.politico.com/news/2025/09/14/trump-federal-workers-deep-state-civil-service-00558940 [https://perma.cc/2EQ5-45K5] (noting Trump's claims that civil servants are "crooked" in justifying agency staff reductions).

438. Alan Blinder, *Trump Has Targeted These Universities. Why?*, N.Y. TIMES (Apr. 9, 2025), https://archive.md/Y1Ix0#selection-507.0-507.43 [https://perma.cc/BH5H-CKFY].

439. *See, e.g.*, Dan Rosenzweig-Ziff, Clara Ence Morse, Susan Svrluga, Drea Cornejo, Hannah Dormido & Júlia Ledur, *Riot Police and Over 2,000 Arrests: A Look at 2 Weeks of Campus Protests*, WASH. POST (May 3, 2024, at 06:00 PT), https://www.washingtonpost.com/nation/interactive/2024/university-antiwar-campus-protests-arrests-data [https://perma.cc/HQ39-JWZF].

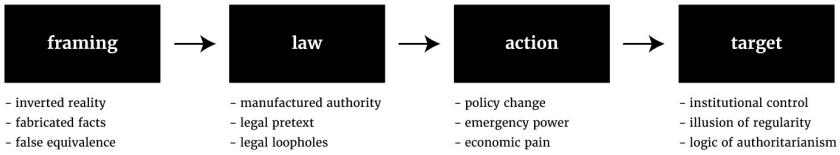
440. *See, e.g.*, President & Fellows of Harvard Coll. v. U.S. Dep't of Health & Hum. Servs., 798 F. Supp. 3d 77, 136–37 (D. Mass. Sep. 3, 2025) (concluding that the administration was using antisemitism as a pretext to influence Harvard's governance).

immigration, and end DEI, when in fact the orders are negotiating chips used to redirect pro bono resources toward Trump-sanctioned causes and to disable firms from suing the administration.[441] In this way, Trump's executive actions use the smokescreen of policy reform to destabilize targets, forcing them to accede to demands codified in legal agreements that reveal the administration's larger goal: to replace the rule of law with the "rule of the deal."[442]

IV. TARGETS

This Part shifts perspective to analyze playbook targets: those independent institutions that keep the executive within legal and normative limits. Examining executive actions through the first year of the second Trump administration, Part IV brings targeting into sharper focus by showing how it activates the playbook principles in Part III to degrade democratic guardrails.

Figure 3. Mobilizing the Playbook to Target Institutions



Following a pattern illustrated in Figure 3, targeting mobilizes the playbook to frame problems,[443] define law as a solution, and justify action against targets. Administration leaders and lawyers mobilize playbook principles at each step: using framing techniques that invert reality based on fabricated facts and false equivalence; relying on manufactured legal authority, legal pretexts, and legal loopholes; and taking action through policy change, emergency power, and economic sanctions to gain institutional control over targets, hiding behind the illusion of regularity to obscure the underlying logic of authoritarianism. As this

441. *See infra* Subpart IV.A.2.

442. Joseph Fishkin, *The Art of Replacing the Law With the Deal*, BALKINIZATION (Oct. 4, 2025), https://balkin.blogspot.com/2025/10/the-art-of-replacing-law-with-deal.html [https://perma.cc/DXK4-SMVE].

443. For classic studies of framing, see David A. Snow & Robert D. Benford, *Master Frames and Cycles of Protest*, *in* FRONTIERS IN SOCIAL MOVEMENT THEORY 133 (Aldon D. Morris & Carol McClurg Mueller eds., 1992); Deborah A. Stone, *Causal Stories and the Formation of Policy Agendas*, 104 POL. SCI. Q. 281, 282 (1989).

Part explores, targeting in the U.S. context starts from efforts to capture the legal profession to attack other institutions: the courts, bureaucracy, universities, civil society, and media.

A. Legal Profession

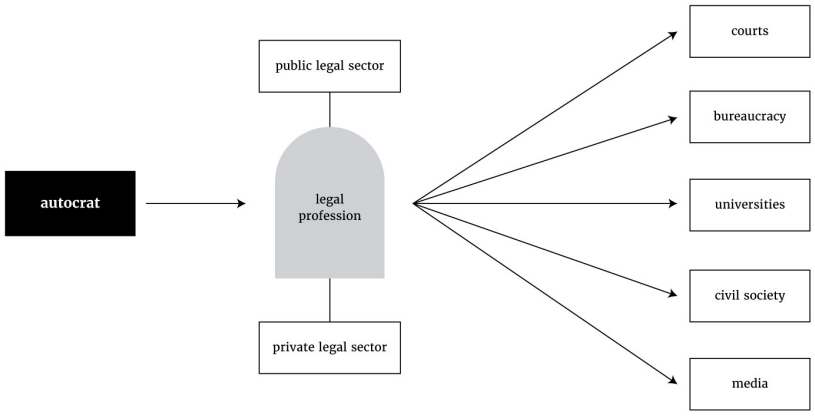
Because autocrats seek to control law as a means to target institutions and evade accountability, undermining the independence of lawyers and turning the profession into a tool of the state is a playbook imperative.[444] The key point, depicted in Figure 4, is that the legal profession is not simply one target among many. It is the crucial gateway through which attacks on other institutions take effect. In the U.S. case, professional capture enables democratic backsliding by strengthening legal capacity for, and softening legal resistance against, executive actions that use the form of law—presented as official rules invoking legal language—to weaken rule-of-law guardrails, often facilitating the very misconduct the actions claim to redress.

Capture follows a dual strategy: first, asserting authority over the *public legal sector*—government lawyers—to design, draft, and defend legal changes that degrade guardrails, and second, weakening effective resistance by the *private legal sector*—law firms and NGOs—as well as oversight by the professional bar. The pieces of this strategy are interconnected, forming a unified approach to disabling professional independence as a cornerstone of democracy. Because the playbook dictates that capture must be effectuated through what appear to be legally legitimate means, autocrats must coopt the norms of the profession—legal ethics—to justify changes that weaken lawyers' responsibility to the rule of law.[445]

444. Jasmine D. Cameron, Fernanda G. Nicola & Natalie Landau, *Attacks on U.S. Legal Profession Reflect Global Slide in Countries It Once Aided*, JUST SEC. (Oct. 13, 2025), https://www.justsecurity.org/122411/attacks-on-u-s-legal-profession-global-slide [https://perma.cc/M5H3-UHNV]; *see also* Cherese Thakur & Devi Pillay, *How Professionals Enabled State Capture*, *in* STATE CAPTURE IN SOUTH AFRICA: HOW AND WHY IT HAPPENED 109 (Mbongiseni Buthelezi & Peter Vale eds., 2024). For historical antecedents, see Dirk Uwer, *The Historical Backgrounds of the Gatekeeping Discussion: Lawyers and Their Associations Under Two Totalitarian German Regimes*, *in* LAWYERS, GATEKEEPING AND ACCESS TO JUSTICE: A CRITICAL ANALYSIS (Jonathan Soeharno & Birgit Spiesshofer eds., forthcoming 2026); Kenneth C.H. Willig, *The Bar in the Third Reich*, 20 AM. J. LEGAL HIST. 1 (1976).

445. TIMOTHY SNYDER, ON TYRANNY: TWENTY LESSONS FROM THE TWENTIETH CENTURY 38 (2017) (stating that a key lesson in resisting tyranny is remembering "professional ethics" because "[i]t is hard to subvert a rule-of-law state without lawyers").

Figure 4. Targeting the Legal Profession as the Gateway to Autocracy



1. Public Legal Sector

Autocrats seek to convert public legal offices into a corps of lawyers they can command against institutions and opponents. They do so by exploiting the lack of a clear constitutional mandate for government lawyers to undermine their autonomy. As seen through the lens of the second Trump administration, the goal is to transform the DOJ from what it has been and should be—an independent office protecting the Constitution from executive overreach—into what the president wants and has come dangerously close to achieving: a private firm whose lawyers operate above the law.

DOJ capture succeeds through control of personnel: pushing out independent lawyers and replacing them with loyalists willing to test professional boundaries. It starts, at the top, with installation of an AG whose allegiance to the president is ironclad. In the Trump DOJ, this initially occurred through the selection of lawyers whose flaws (like the failed first choice for AG, Matt Gaetz[446])

446. IN THE MATTER OF ALLEGATIONS RELATING TO REPRESENTATIVE MATT GAETZ, REPORT OF THE COMMITTEE ON ETHICS, H.R. REP. NO. 118-943 (Dec. 23, 2024); Michael Kaplan, *Matt Gaetz Ethics Report Says His Drug Use and Sex With a Minor Violated State Laws*, CBS NEWS (Dec. 23, 2024, at 19:38 ET), https://www.cbsnews.com/news/matt-gaetz-ethics-report-released/ [https://perma.cc/YR6N-39W3].

or thin qualifications (like the successful second choice, Pam Bondi[447]) made them outsiders deeply indebted and absolutely loyal—qualifications mobilized to provide unalloyed defense of the president in the public sphere and guarantee approval of executive action behind the scenes.

With the appointment of AG Bondi, the next step was to populate DOJ's key operational positions with loyalists who possessed substantial prosecutorial experience and organizational know-how capable of repurposing the department on the private firm model. To do this, the president tapped his own private defense lawyers in post-2020 criminal cases (both of whom worked as federal prosecutors in the Southern District of New York (SDNY) before uniting as small firm partners[448]) for the two most important positions under the AG—Deputy AG Todd Blanche and Principal Associate Deputy AG Emil Bove.[449] These lawyers were made responsible for aligning legal policy with White House political priorities and eliminating pockets of independence at lower departmental levels through terminations, pressure, and attrition.[450]

447. Devlin Barrett, *Bondi Confirmed as Attorney General*, N.Y. TIMES (Feb. 4, 2025), https://www.nytimes.com/2025/02/04/us/politics/pam-bondi-attorney-general-confirmation.html [https://perma.cc/ET95-BAC9]. Bondi had served as part of Trump's legal team during his first impeachment. Jack Goldsmith, *Trump Is the Law for the Executive Branch*, AM. ENTER. INST. (Feb. 24, 2025), https://www.aei.org/op-eds/trump-is-the-law-for-the-executive-branch [https://perma.cc/TQW9-8Z67]. White House Counsel David Warrington also served as counsel for Trump and his campaign. *Id.* FBI Director Kash Patel is another high-ranking official, also a lawyer, viewed as unqualified for the position. Patel transformed himself into a Trump loyalist by challenging the Steele dossier and Operation Crossfire Hurricane, and has advanced the administration's retribution campaign. *See* Emily Bazelon & Rachel Poser, *A Year Inside Kash Patel's F.B.I.*, N.Y. TIMES (Jan. 22, 2026), https://www.nytimes.com/interactive/2026/01/22/magazine/trump-kash-patel-fbi-agents.html [https://perma.cc/2LY5-DBUV]; Marc Fisher, *Kash Patel's Acts of Service*, NEW YORKER (Nov. 17, 2025), https://www.newyorker.com/magazine/2025/11/24/kash-patels-acts-of-service? [https://perma.cc/KD8U-Z8GF]; Ruth Marcus, *A Dangerous and Unqualified Choice for the FBI*, WASH. POST (Dec. 1, 2024), https://www.washingtonpost.com/opinions/2024/12/01/kash-patel-fbi-nomination-trump-unqualified [https://perma.cc/8XFR-A5HG].

448. Glenn Thrush, Adam Goldman, Jonah E. Bromwich & Maggie Haberman, *At Justice Dept., Trump's Former Criminal Defender Emerges as His Enforcer*, N.Y. TIMES (Feb. 13, 2025), https://www.nytimes.com/2025/02/07/us/politics/emil-bove-justice-fbi-trump-bondi.html [https://perma.cc/29ZL-XVUS]. Blanche and Bove both represented Trump in the New York hush money case, the federal election interference case, and the federal classified documents case. *Id.*; Mark Berman, *Trump Picked His Lawyer for a Top Justice Department Job. Does It Matter?*, WASH. POST (Nov. 28, 2024), https://www.washingtonpost.com/national-security/2024/11/28/todd-blanche-donald-trump-justice-attorney-general/ [https://perma.cc/4GX3-T4WM].

449. Berman, *supra* note 448. D. John Sauer, who won Trump's immunity case at the Supreme Court, was selected to be solicitor general. *Id.*

450. The administration has sought to drive career lawyers out by subverting the mission of offices, like the Civil Rights Division, and reversing years of work, like the January 6 pardons. *See*

Because capture erodes independence under legal cover, it requires justification that invokes the ideal of ethical lawyering to hollow out its core. The roadmap was unveiled in the president's January 20, 2025 Weaponization order, which directed the AG to "identify and take appropriate action to correct past misconduct by the Federal Government related to the weaponization of law enforcement" by the Biden administration.[451] While the order claimed to stop abuse, the intended effect was to weaponize the claim of "weaponization" to purge nonloyalist lawyers and agency staff who might oppose the administration's agenda. To do so, the order activated key playbook principles.

It inverted reality to cover up lawbreaking. The order was based on the false factual predicate that the Biden administration engaged in "third-world weaponization of prosecutorial power to upend the democratic process" directed toward a "systematic campaign against its perceived political opponents," with its premier example being the legitimate prosecution of January 6 rioters.[452]

It relied on manufactured legal authority. Because there was no evidence supporting the Biden weaponization claim, the order referenced findings of a 2023 House Judiciary Select Subcommittee on the Weaponization of the Federal Government, chaired by Trump ally, Congressman Jim Jordan (R-OH), which held "whistleblower" hearings to promote the weaponization narrative featuring accusations of a Hunter Biden coverup and systemic discrimination against conservatives.[453]

The order exploited legal loopholes. While there is no constitutional obligation to bring or maintain criminal cases, longstanding DOJ norms prohibit political interference with prosecutorial independence, which the order threatened by directing the AG to pursue "remedial action" against anyone found to have weaponized "departments and agencies exercising civil or criminal enforcement authority"—an invitation to fire current staff and retaliate against old enemies. In sum, purporting to address misconduct, the order used the pretext of

Bazelon & Poser, *supra* note 245; Suzanne Monyak & Ben Penn, *DOJ Fires and Reassigns Civil Rights Lawyers as New Hires Arrive*, BLOOMBERG L. (Aug. 25, 2025, at 10:51 PT), https://news.bloomberglaw.com/us-law-week/doj-fires-and-reassigns-civil-rights-lawyers-as-new-hires-arrive [https://perma.cc/L3L4-BW5M]; Tom Dreisbach, *Why a DOJ Prosecutor Resigned, Telling Coworkers and Bosses 'You Serve No Man'*, NPR (Mar. 20, 2025, at 16:00 ET), https://www.npr.org/2025/03/20/nx-s1-5330879/trump-justice-doj-prosecutor-resignation-jan-6 [https://perma.cc/ER5Q-867T].

451. Exec. Order No. 14147, *supra* note 391.

452. *Id.*

453. Some witnesses were later revealed to have ties to far-right activists, including Kash Patel, who provided financial support to witnesses. DEMOCRATIC STAFF OF H. COMM. ON THE JUDICIARY, 118th CONG., GOP WITNESSES: WHAT THEIR DISCLOSURES INDICATE ABOUT STATE OF THE REPUBLICAN INVESTIGATIONS 7 (Comm. Print 2023).

ending weaponization to politicize prosecution and force out career lawyers[454]—thus enabling the very weaponization it claimed to be fighting.

Bove emerged as the order's chief enforcer.[455] He first performed this role in dropping the case against New York City Mayor Eric Adams for taking bribes for political favors.[456] On February 10, 2025, after Adams's counsel met with Bove and SDNY prosecutors, led by Acting U.S. Attorney Danielle Sassoon, Bove instructed Sassoon to terminate the indictment in exchange for Adams's help with federal immigration enforcement.[457] Instead of following the order, Sassoon, a conservative Federalist Society member who had clerked for Justice Antonin Scalia,[458] wrote Bondi to lay out why she could not, consistent with her ethical duty of candor to the court, "seek a dismissal driven by improper considerations"—in this case, a political "*quid pro quo*."[459] Sassoon offered to resign since the reasons given for "dismissing the indictment are not ones I can in good faith defend as in the public interest and as consistent with the principles of impartiality and fairness that guide my decision-making."[460]

454. Spencer S. Hsu, *Seven Top D.C. Prosecutors Demoted in Purge by Trump U.S. Attorney*, WASH. POST (Feb. 28, 2025), https://www.washingtonpost.com/dc-md-va/2025/02/28/7-dc-prosecutors-demoted-trump [https://perma.cc/TDH5-K4RR]; Perry Stein, *Justice Department Struggles as Thousands Exit—and Few Are Replaced*, WASH. POST (Nov. 10, 2025), https://www.washingtonpost.com/national-security/2025/11/10/justice-department-hiring-stalled [https://perma.cc/U3EP-BKR4] (noting that in 2024, roughly ten thousand attorneys worked for the DOJ, but that since Trump took office, "around 5,500 people—not all of them attorneys—have quit the department, been fired or taken a buyout offered by the Trump administration").

455. Thrush, Goldman, Bromwich & Haberman, *supra* note 448. Bove was subsequently appointed as a judge to the Third Circuit Court of Appeals. Kayla Epstein, *Who Is Emil Bove, Trump's Former Lawyer and Pick for Lifetime Judge?*, BBC NEWS (July 30, 2025), https://www.bbc.com/news/articles/c4g2n74lv00o [https://perma.cc/P97M-6YRH].

456. William K. Rashbaum, Dana Rubinstein, Michael Rothfeld, Jonah E. Bromwich, Glenn Thrush, Benjamin Weiser & Emma G. Fitzsimmons, *Justice Department Tells Prosecutors to Drop Federal Corruption Case Against Eric Adams*, N.Y. TIMES (May 21, 2025), https://www.nytimes.com/live/2025/02/10/nyregion/eric-adams-charges [https://perma.cc/J2YE-JZMU]. This came after Bove authored a memo threatening prosecution of state and local officials for noncooperation with federal immigration enforcement. Memorandum from Emil Bove III, Acting Deputy Att'y Gen., Dep't of Just., to Emps. of Dep't of Just. (Jan. 21, 2025).

457. Letter from Danielle R. Sassoon, U.S. Att'y, S. Dist. of N.Y., to Hon. Pamela Jo Bondi, Att'y Gen. of U.S., Re: United States v. Eric Adams, 24 Cr. 556 (DEH), at 2 (Feb. 12, 2025), https://www.nytimes.com/interactive/2025/02/13/us/doc-annotation-letter-to-bondi.html [https://perma.cc/J9TN-7PQ8].

458. Benjamin Weiser & Jonah E. Bromwich, *For Departed Prosecutor, an Impressive Résumé*, N.Y. TIMES, Feb. 17, 2025, at A.15.

459. Letter from Danielle R. Sassoon, *supra* note 457, at 3 n.1, 7.

460. *Id.* at 2, 8. Sassoon's resignation was followed by those of five public corruption prosecutors in D.C. Perry Stein, Shayna Jacobs & Jeremy Roebuck, *Top N.Y. Prosecutor, Others Resign After Order to Drop Eric Adams Case*, WASH. POST (Feb. 13, 2025), https://www.washingtonpost

Bove responded that the Adams prosecution was "improper weaponization," suggesting that Biden-appointed SDNY U.S. Attorney Damian Williams had "rushed" the charging decision in advance of the 2024 election in pursuit of "potential political appointments in the event Kamala Harris won"—referencing Williams's personal website without addressing the substantial evidence against Adams or pointing to any specific instances of misconduct.[461] Bove accepted Sassoon's resignation "based on [her] choice to continue pursuing a politically motivated prosecution" and placed colleagues "principally responsible for this case . . . on off-duty, administrative leave," warning that the DOJ's Office of Professional Responsibility (OPR) would investigate their conduct.[462] The message was clear: in the Trump DOJ, prosecutorial independence was subordinated to politics.

In sending this message, Bove drew legal support from Bondi,[463] who had on her first day issued a one-page memorandum under authority of the Weaponization order.[464] Entitled "General Policy Regarding Zealous Advocacy on Behalf of the United States," the memo purported to present a straightforward statement of the DOJ's role flowing from the conventional principle that attorneys are "expected to zealously advance, protect, and defend their client's interests."[465] However, the memo quickly departed from convention: conflating the president with the client[466] and threatening that "any attorney who because of their personal political views or judgments declines to sign a brief or appear in court, refuses to advance good-faith arguments on behalf of the Administration, or otherwise

.com/national-security/2025/02/13/eric-adams-corruption-prosecutor-quits-justice-trump/ [https://perma.cc/NJ9Z-PC9Z].

461. Letter from Emil Bove, Acting Deputy Att'y Gen., to Danielle Sassoon, Acting U.S. Att'y, S. Dist. of N.Y., Re: United States v. Adams, 24 Cr. 556 (S.D.N.Y.), at 3–4 (Feb. 13, 2025), https://www.nytimes.com/interactive/2025/02/13/us/doc-annotation-memo-from-bove.html [https://perma.cc/7AGA-FF3Z].

462. *Id.* at 1.

463. *Id.* at 2.

464. Exec. Order No. 14147, *supra* note 391.

465. Memorandum for All Department Employees from Att'y Gen., Subject: General Policy Regarding Zealous Advocacy on Behalf of the United States (Feb. 5, 2025), https://www.justice.gov/ag/media/1388521/dl?inline [https://perma.cc/WW6C-UMPJ].

466. Although the memo started by affirming that "[i]t is the job of an attorney privileged to serve in the Department of Justice to zealously defend the interests of the *United States*," it blurred the lines by stating that the United States's interests were "set by the Nation's Chief Executive" and therefore DOJ lawyers did not have "latitude to substitute personal political views or judgments for those that *prevailed in the election*," implying that the president had authority to interpret law according to his view of election results. *Id.* (emphasis added). Further revealing the client conflation, the memo stated that a DOJ lawyer's refusal "to advance good-faith arguments . . . undermines the constitutional order and deprives the President of the benefit of *his* lawyers." *Id.* (emphasis added).

delays or impedes the Department's mission will be subject to discipline and potentially terminated, consistent with applicable law."[467] This formulation misrepresented the duties of government lawyers, who are not zealous advocates of the president but rather servants of the executive branch required to protect constitutional values and, in criminal cases, to ensure defendants are accorded "procedural justice."[468]

Rather than restating ethical first principles, the Bondi memo manufactured legal authority for the administration's underlying objective: purging nonloyalists.[469] This became apparent in the prominent case of Kilmar Ábrego García, an immigrant from El Salvador, who was legally present in the United States under an order withholding his removal because of the threat of gang violence in his home country.[470] Despite this, he was detained by ICE agents on March 12, 2025, and sent to CECOT on March 15 (in one of the three planes carrying Venezuelans removed under the AEA) on the allegation that he was part of the transnational gang MS-13—an allegation that District Court Judge Paula Xinis, presiding over his case, later concluded was based on a "vague, uncorroborated allegation from a confidential informant claiming that [Ábrego García] belonged to MS-13's 'Western' clique in New York—a place he has never lived."[471] On March 24, 2025, his family filed suit to secure his repatriation.[472] While the administration admitted in court filings that it had removed Ábrego García "because of an administrative error," it refused to return him on the grounds that he was no longer in government custody and asserted that the court lacked jurisdiction to dictate otherwise.[473]

467. *Id.*
468. MODEL RULES OF PRO. CONDUCT r. 3.8 cmt. (A.B.A. 2023); U.S. Dep't of Just., Just. Manual § 9-27.260 (2024). For analysis of prosecutor duties, see Bruce A. Green & Rebecca Roiphe, *Under Political Pressure: How Courts and Congress Can Help Prosecutors Seek Justice*, 135 YALE L.J. FORUM 138 (2025).
469. For discussion of how DOJ purging threatens to allow Trump to hold onto power, see Sara Zdeb, *The Real Reason Trump's Purge of Career DOJ Officials Should Alarm You*, JUST SEC. (Jan. 30, 2025), https://www.justsecurity.org/107110/trump-purge-justice-department [https://perma.cc/D9MX-EFVN].
470. Adam Liptak, *Supreme Court Sides With Wrongly Deported Migrant*, N.Y. TIMES (Apr. 13, 2025), https://www.nytimes.com/2025/04/10/us/politics/supreme-court-trump-deported-migrant.html [https://perma.cc/52QE-5GUK].
471. Abrego Garcia v. Noem, 777 F. Supp. 3d 501, 507, 508 n.5, 509 (D. Md. Apr. 6, 2025) (memorandum opinion).
472. Complaint for Injunctive Relief and Declaratory Judgment, Abrego Garcia v. Noem, No. 25-cv-00951 (D. Md. Mar. 24, 2025).
473. Defendants' Memorandum of Law in Opposition to Plaintiffs' Emergency Motion for Temporary Restraining Order at 3, 7, 10, Abrego Garcia v. Noem, No. 25-cv-00951 (D. Md. Mar. 31, 2025), Dkt. No. 11.

At the April 4 hearing on Ábrego García's preliminary injunction motion, the government was represented by DOJ lawyer Erez Reuveni, who had been involved in the earlier legal conflict over the Venezuelan deportations in front of Judge Boasberg. Reuveni was a fifteen-year OIL veteran with a sterling academic and professional record who had received an "excellent rating" and won awards during the first Trump administration for defending the Muslim Ban and suing sanctuary cities.[474] Because the facts were undisputed, Reuveni conceded that Ábrego García "should not have been removed."[475] He also acknowledged that documents supporting the government's decision were "not in the record," admitting: "that's the best I can do."[476] When asked why the government did not request Ábrego García's return, he replied, "when this case landed on my desk, the first thing I did was ask my clients that very question."[477] Following the hearing, Reuveni was asked by OIL chief Ensign why he did not argue the factually unsupported claim that Ábrego García was a terrorist, which would nullify the nonremoval order, and was then instructed by his supervisor, August Flentje, to sign an appeal brief making the same argument, which Reuveni refused to do, telling Flentje: "I didn't sign up to lie."[478]

The next day, Reuveni was removed from the case and suspended for failing to "follow a directive from . . . superiors."[479] Flentje, who had also argued in favor

474. Reuveni Whistleblower Disclosure, *supra* note 277, at 5; *see also* Sadie Gurman, *He Represented Contentious Immigration Cases for the Government. His Candor Cost Him His Job*, WALL ST. J. (Apr. 15, 2025, at 09:00 ET), https://www.wsj.com/us-news/law/this-lawyer-defended-republicans-and-democrats-his-candor-cost-him-his-job-b3515a38?reflink=desktopwebshare_permalink [https://perma.cc/9K3D-5QQC].

475. Notice of Filing of Official Transcript of Proceedings, Transcript at 19:11–13, Abrego Garcia v. Noem, No. 25-cv-00951 (D. Md. Apr. 6, 2025), Dkt. No. 33.

476. *Id.* at 21:20–22.

477. *Id.* at 35:21–22.

478. Reuveni Whistleblower Disclosure, *supra* note 277, at 24–25.

479. Glenn Thrush, *Justice Dept. Accuses Top Immigration Lawyer of Failing to Follow Orders*, N.Y. TIMES (Apr. 5, 2025), https://www.nytimes.com/2025/04/05/us/politics/justice-dept-immigration-lawyer-leave.html [https://perma.cc/85QH-S4YA]. The district court ordered Ábrego García's return after the April 4 hearing and issued a full opinion supporting the order on April 6. Abrego Garcia v. Noem, 777 F. Supp. 3d 501, 510 (D. Md. Apr. 6, 2025) (memorandum opinion), *stay denied*, No. 25-1345, 2025 WL 1021113, at *1 (4th Cir. Apr. 7, 2025) ("The United States Government has no legal authority to snatch a person who is lawfully present in the United States off the street and remove him from the country without due process. The Government's contention otherwise, and its argument that the federal courts are powerless to intervene, are unconscionable."). After the Supreme Court ordered the administration to "facilitate" Ábrego García's return, Noem v. Abrego Garcia, 145 S. Ct. 1017, 1019–20 (Apr. 10, 2025), the DOJ continued to evade compliance by attempting to link Ábrego García to gang affiliation based, among other things, on alleged tattoos that appeared to have been doctored. Juliet Macur, *Trump Has Made Claims About Abrego Garcia's Tattoos. Here's*

of the Muslim Ban during the first Trump administration, was suspended for "failure to supervise a subordinate."[480] Bondi then issued a statement justifying the personnel actions pursuant to her memo: "At my direction, every Department of Justice attorney is required to zealously advocate on behalf of the United States. Any attorney who fails to abide by this direction will face consequences."[481] On Fox News, Bondi used false equivalence to liken Reuveni's conduct to "a defense attorney walking in conceding something in a criminal matter. That would never happen in this country."[482] Reuveni was later fired.[483] His termination sent a message that cut deeper than Sassoon's resignation: DOJ lawyers were expected to strictly follow instructions to defend indefensible government positions—even if it meant lying in court—or lose their jobs. Other DOJ lawyers were terminated for not heeding this message,[484] contributing to a mass exodus from the DOJ, which

a Closer Look, N.Y. TIMES (May 8, 2025), https://www.nytimes.com/2025/05/08/us/kilmar-abrego-garcia-tattoos-ms-13.html [https://perma.cc/W6H9-DVBZ]. Upon his return on June 6, 2025 (the same day the ICE raids in Los Angeles commenced), Ábrego García was indicted in Tennessee for conspiracy to transport undocumented immigrants stemming from a 2022 traffic stop for which he was not charged, prompting the chief of the criminal division in the Nashville U.S. attorney's office to resign. *See* Alan Feuer, *Testimony Offers New Details on Justice Dept. Role in Abrego Garcia Prosecution*, N.Y. TIMES (Feb. 26, 2026), https://www.nytimes.com/2026/02/26/us/kilmar-abrego-garcia-justice-department-trump.html [https://perma.cc/SQ5V-7Q5W]. Ábrego García won a motion to dismiss for vindictive prosecution. Memorandum Opinion at 13, United States v. Abrego Garcia, No. 25-cr-00115 (M.D. Tenn. May 22, 2026) ("Because the presumption of vindictiveness remains unrebutted, the indictment must be dismissed."). While the deportation case remains pending, Judge Xinis has accused DOJ lawyers of misleading the appellate court by setting a deadline for her ruling (which they are not entitled to do) and, when it passed, appealing on the grounds of a "constructive denial." Jared Foretek, *Judge Says DOJ Misled 4th Circ. in Ábrego García Appeal*, LAW360 (May 12, 2026, at 17:05 ET), https://www.law360.com/articles/2476842 [https://perma.cc/B3E6-KLRA].

480. Alexander Mallin & Katherine Faulders, *DOJ Places Senior Lawyer on Leave in Case of Mistakenly Deported Man*, ABC NEWS (Apr. 6, 2025, at 06:40 PT), https://abcnews.com/Politics/doj-places-attorney-leave-after-struggling-maryland-migrant/story?id=120526466 [https://perma.cc/JZN8-4C67].

481. *Id.*

482. Letter from Scott Harshbarger, Chairman, Lawyers Defending Am. Democracy, Norm Eisen, Exec. Chair, Democracy Defenders Fund & Daniel N. Arshack, Lawyers for Rule of L., to Fla. Bar, Re: Ethics Complaint Against Pamela Jo Bondi, at 6 (June 5, 2025), https://ldad.org/wp-content/uploads/2025/06/Pamela-Bondi-Ethics-Complaint-6.5.25-1.pdf [https://perma.cc/GVY6-LB32].

483. Evan Perez, *Justice Department Fires Immigration Lawyer Who Argued Case of Mistakenly Deported Man*, CNN (Apr. 15, 2025, at 15:14 ET), https://www.cnn.com/2025/04/15/politics/doj-fires-immigration-lawyer-who-argued-abrego-garcia-case-source-says [https://perma.cc/6E8K-LF5J].

484. Alan Feuer, *Trump's Retribution Campaign Leaves D.C. U.S. Attorney's Office in Crisis*, N.Y. TIMES (Nov. 2, 2025), https://www.nytimes.com/2025/11/02/us/politics/trump-pirro-washington-prosecutors.html [https://perma.cc/CL9K-YPUR] (recounting that Jonathan

lost over one-fifth of its lawyers (more than 2500) between December 2024 and March 2026.[485]

Purging opens the door for capture by clearing out lawyers, like Sassoon and Reuveni, who resist unethical or illegal orders and replacing them with loyalists unbothered by rule-of-law norms. The result is to trade experience for cronyism.[486] This has been evident in the administration's push to appoint loyalists to lead key U.S. attorney's offices with power to bring criminal cases against political targets.[487] Because of the controversial nature of these appointments, some were made through a statutory loophole permitting 120-day

Hornok, a top aide to Jeanine Pirro, the Trump appointee running the office, fired a senior prosecutor with nearly twenty years of experience during a farewell gathering for departing colleagues, an episode cited as emblematic of instability and fear inside the office); Heather Knight & Hamed Aleaziz, *Trump Fired a U.S. Attorney Who Insisted on Following a Court Order*, N.Y. TIMES (Sep. 26, 2025), https://www.nytimes.com/2025/09/26/us/trump-fires-us-attorney-california-immigration.html [https://perma.cc/5DHP-5YC6] (stating that in July 2025, acting U.S. Attorney Michele Beckwith of California's Eastern District was fired hours after she told Gregory Bovino, head of Border Patrol's El Centro sector, that his agents were bound by a federal court order prohibiting indiscriminate immigration stops; Beckwith had served fifteen years in the Justice Department and became acting U.S. attorney after her predecessor, a Biden appointee, resigned).

485. *See* Eileen Sullivan & Andrea Fuller, *Trump Administration Sees Striking Exodus of Legal Talent*, N.Y. TIMES (May 31, 2026), https://www.nytimes.com/2026/05/31/us/politics/trump-administration-exodus-of-lawyers.html [https://perma.cc/RMD8-ES4F]; *see also* Sam Levine, *Justice Department Civil Rights Division Loses 70% of Lawyers Under Trump*, GUARDIAN (May 1, 2025, at 10:29 ET), https://www.theguardian.com/us-news/2025/may/01/civil-rights-division-doj-trump [https://perma.cc/D822-BDMV] (stating that more than 250 lawyers from the Civil Rights Division had "either left, been reassigned, or accepted a deferred resignation offer since January" 2025); Glenn Thrush, Alan Feuer, Mimi Dwyer, Ernesto Londoño & Michael S. Schmidt, *Demanding Support for Trump, Justice Dept. Struggles to Recruit Prosecutors*, N.Y. TIMES (Feb. 11, 2026), https://www.nytimes.com/2026/02/07/us/politics/doj-prosecutors-recruiting-trump.html [https://perma.cc/WG7F-SM9H] (stating that the Justice Department lost 8 percent of its work force between November 2024 and November 2025, and U.S. attorney's offices lost 14 percent).

486. *See, e.g.*, Perry Stein & Jeremy Roebuck, *Justice Dept. Hires Trump Loyalists to Defend His Agenda*, WASH. POST, Apr. 11, 2025, at A.4. On the link between autocracy and cronyism, see Susan Gago-Rodríguez & Manuel Núñez-Nickel, *Autocratic Tensions, Cronyism, and the Opacity of Business Information: Party Newspapers and Circulation Figures During the Francoist Dictatorship (1939–1975)*, 26 BUS. ETHICS: A EUR. REV. 80 (2017). A cronyism logic also underlies pardons that generate political debts. *See* Douglas Husak, *Pardons, Criminal Theory, and Political Sociology*, VERFASSUNGSBLOG (Aug. 21, 2025), https://verfassungsblog.de/pardons-criminal-theory-and-political-sociology/ [https://perma.cc/9EGJ-PJHE]; *see also* David McGowan, Fealty Oaths (Sep. 5, 2025) (unpublished manuscript), https://ssrn.com/abstract=5433934 [https://perma.cc/78UQ-3PW8].

487. U.S. attorney's offices are typically led by presidentially appointed officials confirmed by the Senate, who oversee criminal and civil litigation within federal judicial districts. 28 U.S.C. § 541; *see also U.S. Attorneys Listing*, U.S. DEP'T OF JUST., https://www.justice.gov/usao/us-attorneys-listing [https://perma.cc/GUL9-N5HE] (denoting office leaders who are appointed and confirmed, as well as those in acting or interim U.S. attorney positions).

interim appointments without Senate confirmation.[488] A prominent beneficiary of this loophole was Alina Habba, Trump's private lawyer in the frivolous *Trump v. Clinton* conspiracy suit, who was appointed interim U.S. attorney for the District of New Jersey, where she was tasked with targeting state Democrats.[489] Habba's legal experience included serving as managing partner for a boutique law firm formed by her first husband and as general counsel for a parking garage company owned by her second husband,[490] before being hired onto Trump's legal team in 2021 (after meeting him at a New Jersey golf club) to file a $100 million defamation suit against the *New York Times*,[491] which was dismissed.[492]

Another loophole appointee was Edward R. Martin, Jr., installed as interim U.S. attorney for Washington, D.C. on Trump's first day in office.[493] Martin, a St. Louis lawyer who started his own commercial firm, had a background that included pro bono work for conservative organizations, including the Eagle Forum Education and Legal Defense Fund (succeeding anti-Equal Rights

488. 28 U.S.C. § 546(c)(2) (stating that a person appointed as U.S. attorney may serve until the earlier of Senate confirmation or "the expiration of 120 days after appointment by the Attorney General"); *see also* Erica Orden, *Trump Bypasses the Senate—and the Courts—to Install Loyal US Attorneys*, POLITICO (Aug. 19, 2025, at 17:05 ET), https://www.politico.com/news/2025/08/19/trump-us-attorneys-senate-confirmation-bypass-00515124 [https://perma.cc/HE8M-TMV4] (detailing use of loophole in Los Angeles, Nevada, New Jersey, New Mexico, and New York).

489. Tracey Tully, *Top U.S. Prosecutor in New Jersey, a Trump Loyalist, Targets Governor*, N.Y. TIMES (Apr. 11, 2025), https://www.nytimes.com/2025/04/11/nyregion/trump-justice-department-habba-immigration.html [https://perma.cc/8N6F-VYWV]. Habba was forced to resign after an appellate court ruling that she had been improperly appointed. United States v. Giraud, 160 F.4th 390 (3rd Cir. Dec. 1, 2025); Jonah E. Bromwich, Tracey Tully & Devlin Barrett, *Alina Habba, a Trump Loyalist, Resigns as New Jersey's Top Prosecutor*, N.Y. TIMES (Dec. 8, 2025), https://www.nytimes.com/2025/12/08/nyregion/alina-habba-nj-us-attorney-resigns.html [https://perma.cc/5C9T-LJDJ].

490. Chris Smith, *"I'm a Tough Cookie." Alina Habba, Trump's Favorite Lawyer, Explains Herself*, VANITY FAIR (Sep. 24, 2025), https://www.vanityfair.com/news/story/alina-habba-isnt-going-anywhere [https://perma.cc/4UWC-3S27] (stating Habba was managing partner of ex-husband Matthew Eyet's firm); Nolan Hicks, *Parking? Lots! Trump Aide on Anti-Congestion Toll Push Is Married to Manhattan Garage Magnate*, STREETSBLOG NYC (Feb. 20, 2025, at 16:32 ET), https://nyc.streetsblog.org/2025/02/20/parking-lots-trump-aide-on-anti-congestion-toll-push-is-married-to-manhattan-garage-magnate [https://perma.cc/2PDR-TGD4] (stating Habba was married to CEO of Centerpark, Gregg Reuben); David A. Fahrenthold & Alice Crites, *To Sue* New York Times *and His Niece, Trump Hired Low-Profile N.J. Lawyer*, WASH. POST, Sep. 24, 2021, at A.3 (stating Habba was general counsel of Centerpark).

491. Fahrenthold & Crites, *supra* note 490, at A.3.

492. Liam Stack, *Judge Dismisses Trump's Lawsuit Against* The New York Times, N.Y. TIMES (May 3, 2023), https://www.nytimes.com/2023/05/03/nyregion/donald-trump-new-york-times-lawsuit.html [https://perma.cc/82SK-RWLX].

493. Press Release, U.S. Att'y's Off., D.C., Edward R. Martin, Jr. Appointed U.S. Attorney for the District of Columbia (Jan. 27, 2025), https://www.justice.gov/usao-dc/pr/edward-r-martin-jr-appointed-us-attorney-district-columbia [https://perma.cc/9RN8-3PD2].

Amendment activist Phyllis Schlafly as president), and stints as chairman of the St. Louis Board of Election Commissioners and Missouri Republican Party before becoming involved in Stop the Steal after the 2020 election.[494] Martin's only criminal experience prior to his appointment was representing January 6 defendants, which prepared him for his first acts as U.S. attorney: eliminating the January 6 prosecution unit, firing prosecutors who worked on January 6 cases, and ordering an internal review of their conduct.[495] Calling himself one of "President Trumps' lawyers [sic],"[496] Martin caused further controversy by telling the Georgetown University Law Center dean that his office would not hire any graduates "affiliated with a law school or university that continues to teach and utilize DEI."[497]

The high-level appointments of Habba and Martin underscore how capture hinges on hiring underqualified people in exchange for fidelity, elevating them to positions otherwise unattainable in a merit-based system. Loyalty has also become the touchstone for hiring at lower levels, where applicants for frontline assistant U.S. attorney positions are rigorously screened for fealty, formalized in

494. *Id.*; Alanna Durkin Richer & Michael Kunzelman, *D.C.'s New Top Prosecutor Advocated for Jan. 6 Rioters and Echoed Trump's False 2020 Election Claims*, PBS (Jan. 28, 2025, at 13:35 ET), https://www.pbs.org/newshour/politics/d-c-s-new-top-prosecutor-advocated-for-jan-6-rioters-and-echoed-trumps-false-2020-election-claims [https://perma.cc/GD3K-RXQM].

495. Dan Barry & Alan Feuer, *Reframing Jan. 6: After the Pardons, the Purge*, N.Y. TIMES (Aug. 24, 2025), https://www.nytimes.com/2025/08/24/nyregion/january-6-capitol-riot-prosecutors.html [https://perma.cc/V7UU-3ZZL]; *see also* Sonia Mittal, *Executive Branch Attacks on January 6 Prosecutors: A Notable Case of Democratic Backsliding*, 78 STAN. L. REV. ONLINE 52 (2025).

496. Edward R. Martin, Jr. (@USAO_DC), X (Feb. 24, 2025, at 12:18 PT), https://x.com/USAO_DC/status/1894119675786621225 [https://perma.cc/VRU2-HRT8].

497. Letter from Edward R. Martin, Jr., U.S. Att'y D.C., to William M. Treanor, Dean, Georgetown Univ. L. Ctr., Feb. 17, 2025 (on file with the *UCLA Law Review*). Martin was dropped as nominee and removed. Glenn Thrush, Alan Feuer, Maggie Haberman & Devlin Barrett, *Trump Withdraws U.S. Attorney Nominee, Whose Extremism Tested Limits for G.O.P. Senators*, N.Y. TIMES (May 8, 2025), https://www.nytimes.com/2025/05/08/us/politics/ed-martin-justice-department-republicans.html [https://perma.cc/JBP8-RLE6]. Another controversial loophole appointee was John Sarcone III as interim U.S. attorney for the Northern District of New York. After his 120-day term expired, a judge ruled him ineligible and district judges appointed a well-respected prosecutor to replace him; that prosecutor was promptly fired by Blanche. Jonah E. Bromwich, *U.S. Attorney Chosen to Replace Trump Pick Is Quickly Fired by White House*, N.Y. TIMES (Feb. 11, 2026), https://www.nytimes.com/2026/02/11/nyregion/donald-kinsella-ndny-sarcone-trump.html [https://perma.cc/G2AA-A9K8] (discussing conflict over Sarcone and quoting Blanche on social media: "Judges don't pick U.S. Attorneys, @POTUS does. See Article II of our Constitution. You are fired, Donald Kinsella."). The case of Sarcone's eligibility went on appeal to the Second Circuit. Alyssa Aquino, *2nd Circuit Dubious of Sarcone's Installation as Acting US Atty, but Suggests He Could Continue NYAG Probe*, LAW.COM (May 4, 2026, at 16:36 ET), https://www.law.com/newyorklawjournal/2026/05/04/2nd-circuit-dubious-of-sarcones-installation-as-acting-us-atty-but-suggests-he-could-continue-nyag-probe [https://perma.cc/5HZC-497B].

applications that ask candidates to "[i]dentify one or two relevant executive orders or policy initiatives that are significant to you, and explain how you would help implement if hired."[498]

Capture is further enabled by eliminating internal watchdogs and other pockets of departmental independence. This has been effectuated by hobbling the DOJ Public Integrity Section (formed in the wake of Watergate to prevent politically motivated prosecutions),[499] firing the heads of the Departmental Ethics Office and OPR (also established after Watergate to ensure ethical oversight),[500] reassigning the department's senior career ethics official,[501] and coopting the OLC.[502]

498. Thrush, Feuer, Dwyer, Londoño & Schmidt, *supra* note 485. Because the DOJ's transformation has resulted in depleted ranks, the AG has also sought to reduce lawyer discretion to decline cases that raise legal or ethical concerns. Aaron Parnas, *DOJ Moves to Eliminate Attorney Recusals in Sweeping Power Shift*, MTN (Jan. 19, 2026, at 09:46 ET), https://meidasnews.com/news/doj-moves-to-eliminate-attorney-recusals-in-sweeping-power-shift [https://perma.cc/L697-MPMU] (reporting that the Trump administration was preparing a proposed rule that would eliminate longstanding DOJ practices allowing individual prosecutors to recuse themselves from matters involving personal or professional conflicts of interest).

499. Phillip Bantz, *Alarms Sound as DOJ Anti-Corruption Unit Withers*, LAW360 (May 23, 2025, at 13:08 ET), https://www.law360.com/articles/2344469/alarms-sound-as-doj-anti-corruption-unit-withers [https://perma.cc/PX52-BDKY].

500. Christine Berger & Joe Gaeta, *The Department of Justice's Broken Accountability System*, BRENNAN CTR. FOR JUST. (Oct. 20, 2025), https://www.brennancenter.org/our-work/research-reports/department-justices-broken-accountability-system [https://perma.cc/C477-K4JV] (noting the termination of OPR head Jeffrey Ragsdale, who had served at the DOJ for nearly thirty-eight years); Perry Stein, Shayna Jacobs, Carol D. Leonnig & Ann E. Marimow, *Several Top Career Officials Ousted at Justice Department*, WASH. POST (Mar. 7, 2025), https://www.washingtonpost.com/national-security/2025/03/07/justice-department-trump-firings [https://perma.cc/5AN2-V4V7] (noting Ragsdale termination); Jack Karp, *Firing of DOJ Ethics Chief Draws Watchdog Groups' Concerns*, LAW360 (July 14, 2025, at 15:01 ET), https://www.law360.com/articles/2364253/firing-of-doj-ethics-chief-draws-watchdog-groups-concerns [https://perma.cc/5CGX-U57D] (discussing Bondi firing of Joseph Tirrell, who advised the DOJ on ethics matters); *see also* Devlin Barrett, *Dismissals at Justice Dept. Would Bypass Civil Service and Whistle-Blower Laws*, N.Y. TIMES (July 15, 2025), https://www.nytimes.com/2025/07/15/us/politics/justice-department-dismissals-civil-service-laws.html [https://perma.cc/L4W4-874F] (discussing Tirrell); Joseph W. Tirrell, *The Justice Department Is Lowering Its Ethical Guardrails*, ABOVE L. (Mar. 9, 2026, at 14:33 ET), https://abovethelaw.com/2026/03/the-justice-department-is-lowering-its-ethical-guardrails [https://perma.cc/4M5P-72D2] (raising concerns about noncompliance with the Hatch Act, designed to protect elections from "inappropriate political influence by government employees").

501. Sarah N. Lynch, *US Justice Department Senior Career Ethics Official Removed From Post, Source Says*, REUTERS (Jan. 27, 2025, at 14:49 PT), https://www.reuters.com/world/us/us-justice-department-senior-career-ethics-official-removed-post-source-says-2025-01-27 [https://perma.cc/4STG-FN3H].

502. Charlie Savage, *Trump Sidelines Justice Dept. Legal Office, Eroding Another Check on His Power*, N.Y. TIMES (Apr. 4, 2025), https://www.nytimes.com/2025/04/04/us/politics/trump-office-of-legal-counsel-doj.html [https://perma.cc/VB33-F6KN].

Taken as a whole, these interlocking moves to facilitate DOJ capture permit the president to consolidate power through three mechanisms that mobilize department lawyers for actions that depart from the legal logic of law enforcement to advance the political logic of authoritarianism.

First, control over lawyers in offices like OLC, with power to render definitive legal judgments for the executive branch, allows the president to manufacture authority necessary to promulgate otherwise suspect executive orders and push the boundaries of emergency power. An illustration of the latter was the secret OLC memo, discussed in Subpart III.B, using an expansive Article II legal theory of "self-defense" to authorize Caribbean boat strikes, which analysts across the ideological spectrum suggested were illegal under international and domestic law.[503] OLC authorization confers legal protection on officials who act according to its guidance. This could help explain why, when challenged by a podcaster who called the strikes "a war crime," Vice President Vance responded: "I don't give a shit what you call it."[504]

503. Marty Lederman, *The Many Ways in Which the September 2 Caribbean Strike Was Unlawful . . . and the Grave Line the Military Has Crossed*, JUST SEC. (Sep. 10, 2025), https://www.justsecurity.org/120296/many-ways-caribbean-strike-unlawful/ [https://perma.cc/T6MK-3GAR] (arguing that the attack appeared to violate domestic law, including the statutory prohibition on murder, which applied to the strike in question because there was no actual armed conflict; arguing further that the strike "almost certainly violated fundamental principles of customary international law"); Sarah Harrison & Mark Nevitt, *The Caribbean Strikes and the Collapse of Legal Oversight in U.S. Military Operations*, JUST SEC. (Oct. 23, 2025), https://www.justsecurity.org/123172/caribbean-strikes-legal-oversight-us-military [https://perma.cc/VCQ7-5H65] (stating that the strikes "lack a legal basis" and noting actions narrowing independent legal advice within the Pentagon, including the firing of Judge Advocate General's Corps (JAG) lawyers and the centralization of legal authority in the president and AG); John Yoo, *What's Wrong With a Military Campaign Against the Drug Trade*, WASH. POST (Sep. 23, 2025), https://www.washingtonpost.com/opinions/2025/09/23/trump-boat-strikes-drug-cartels-venezuela/ [https://perma.cc/6NXD-BXNF] (stating that the White House had provided no "compelling evidence" showing that cartels were "arms of the Venezuelan government," which was needed to legally justify the strikes); *see also* Celeste Kmiotek, *Was Trump's Strike on an Alleged Venezuelan Drug Boat Legal?*, ATL. COUNCIL (Sep. 12, 2025), https://www.atlanticcouncil.org/blogs/new-atlanticist/was-trumps-strike-on-an-alleged-venezuelan-drug-boat-legal [https://perma.cc/QCN7-6ZWA]; Charlie Savage, *Trump Claims the Power to Summarily Kill Suspected Drug Smugglers*, N.Y. TIMES (Sep. 4, 2025), https://www.nytimes.com/2025/09/04/us/politics/trump-drug-smugglers-military.html [https://perma.cc/6FVJ-YV7F]. President Trump and senior White House officials reportedly sidelined lawyers who raised red flags about the boat strikes. Ellen Nakashima, Warren P. Strobel & Alex Horton, *White House Blew Past Legal Concerns in Deadly Strikes on Drug Boats*, WASH. POST (Nov. 22, 2025), https://www.washingtonpost.com/national-security/2025/11/22/drug-boats-strikes-cia-legal-concerns [https://perma.cc/G36U-K5Y4].

504. Ben Johansen, *Vance Defends Strike on Alleged Drug Boat: 'Highest and Best Use of Our Military'*, POLITICO (Sep. 6, 2025, at 13:25 ET), https://www.politico.com/news/2025/09/06/vance-drug-strike-venezuela-00548816 [https://perma.cc/DSB3-Q4DR].

After the military invaded Venezuela on January 3, 2026 to capture President Maduro, using Army Rangers to enter a military base and kill Venezuelan forces and civilians, the OLC released another opinion concluding that this "extraordinary rendition" was permissible to serve "important national interests" and it was therefore reasonable for President Trump to conclude that the invasion did "not rise to the level of war in a constitutional sense" given that Maduro had been criminally indicted for drug smuggling.[505] International law scholars criticized this opinion for fabricating facts of warlike activities by Maduro—based on the same allegations of TdA infiltration alleged in the AEA cases—and using justifications that were designed for formal armed conflict as pretext for a coup.[506] The opinion, however, served a larger purpose: providing a "golden shield" for the president and top officials against criminal liability.[507]

The second way that capture unleashes executive power is by repurposing the prosecutorial service into a tool wielded to punish enemies and help friends.[508] To

505. Memorandum from T. Elliot Gaiser, Assistant Att'y Gen., to the Nat'l Sec. Council Legal Advisor (Dec. 23, 2025) (concluding that the president could reasonably determine that the operation would not rise to the level of an international armed conflict and that international law would not categorically prohibit the action, particularly if framed as law enforcement support rather than hostilities); Sealed Superseding Indictment, United States v. Maduro Moros, No. 20-cr-205 (S.D.N.Y. Jan. 3, 2026) (charging Nicolás Maduro Moros and multiple co-defendants with participating in a long-running conspiracy to traffic cocaine into the United States in coordination with designated foreign terrorist organizations).

506. Charlie Savage, *Justice Dept. Memo Approved Military Incursion Into Venezuela as Lawful*, N.Y. TIMES (Jan. 13, 2026), https://www.nytimes.com/2026/01/06/us/politics/justice-dept-memo-venezuela.html [https://perma.cc/AJ4Y-4AUU]. Obama White House Counsel Bob Bauer noted that existing precedent would permit the use of force based on a "national interest" test but stated that applying that test to an operation involving regime change and resource control was unprecedented. Bob Bauer, *Does It Matter That the Administration Prepared a Legal Opinion on Venezuela? Likely Not—but It Should Be Released, Along With Answers About Process*, EXEC. FUNCTIONS (Jan. 13, 2026), https://www.execfunctions.org/p/does-it-matter-that-the-administration [https://perma.cc/BTA3-6WBQ].

507. *See* JACK GOLDSMITH, THE TERROR PRESIDENCY: LAW AND JUDGMENT INSIDE THE BUSH ADMINISTRATION 144 (2007) (quoting CIA general counsel John Rizzo's description of the protection afforded by OLC's Torture Memos as a "golden shield"); Jack Goldsmith, *The Venezuela Boat Strikes and the Justice Department's Golden Shield*, EXEC. FUNCTIONS (Oct. 27, 2025), https://www.execfunctions.org/p/the-venezuela-boat-strikes-and-the [https://perma.cc/4CNP-JJ2G] (describing how an OLC opinion provides immunity from later criminal prosecution for anyone who acts in reliance on it); *see also* Alan Feuer, *Prosecutors Ask if Trump Will Blame His Lawyers as Defense in Election Case*, N.Y. TIMES (Oct. 10, 2023), https://www.nytimes.com/2023/10/10/us/politics/prosecutors-trump-blame-lawyers.html [https://perma.cc/4HNA-YKKS] (noting how reliance on lawyer opinions also may set up an "advice of counsel" defense to criminal charges).

508. *See, e.g.*, Letter from Members of Cong. to Att'y Gen. Pamela J. Bondi & Deputy Att'y Gen. Todd Blanche (Dec. 16, 2025), https://oversightdemocrats.house.gov/imo/media/doc/letter_to_pam_bondi4.pdf [https://perma.cc/FE2H-MJG4] (detailing concerns about a pattern of

advance this aim, the Weaponization order has served as a legal blank check to dole out benefits to allies framed as victims, while victimizing opponents through retaliatory investigations and indictments. This effort has been coordinated by the DOJ "Weaponization Working Group," created by Bondi to implement the executive order.[509] Initially chaired by Martin, the group was tasked with building cases against alleged perpetrators of weaponization, namely, former Special Counsel Smith, Manhattan DA Bragg, and others who sought to hold Trump accountable for conduct related to his first term.[510]

This came to a head in Virginia, where Martin led a pressure campaign against the U.S. attorney's office in the Eastern District to bring an indictment against former FBI Director Comey, who had authorized the 2016 election interference investigation, and New York AG James,[511] whose office had won a

DOJ interventions, dismissals, and other actions in matters involving clients represented by Bradley Bondi, the attorney general's brother, and questioning whether DOJ implemented adequate recusals or screening procedures to preserve impartiality).

509. Memorandum from Pamela Bondi, Att'y Gen., on Restoring the Integrity and Credibility of the Department of Justice (Feb. 5, 2025), https://www.justice.gov/ag/media/1388506/dl?inline [https://perma.cc/8V5B-YFJ4].

510. Alexander Mallin, *Bondi, as New AG, Launches 'Weaponization Working Group' to Review Officials Who Investigated Trump*, ABC NEWS (Feb. 5, 2025, at 14:14 PT), https://abcnews.com/US/bondi-new-ag-launches-weaponization-working-group-review/story?id=118501463 [https://perma.cc/72RX-JZV7]; *see also* Letter from Michelle Kuppersmith, Exec. Dir., Campaign for Accountability, to Fla. State Bar & Va. State Bar, Re: Complaint Against Lindsey Halligan, Florida Bar No. 109481, at 4 (Nov. 11, 2025); Letter from Norman L. Eisen, Richard W. Painter & Virginia Canter, to the Senate & House Judiciary Comm. 1 (Sep. 26, 2025). The Working Group also pursued other critics. When Senator Mark Kelly (D-AZ), a former astronaut and naval officer, along with six other veterans in Congress released a November 2025 video telling military personnel, "You can refuse illegal orders," in response to the president's threats of more National Guard deployments, Trump accused them of "SEDITIOUS BEHAVIOR, punishable by DEATH!" Nakashima, Strobel & Horton, *supra* note 503. After the defense secretary threatened a court-martial, the DOJ sought to secure an indictment against the senators but failed to persuade a Washington, D.C. grand jury to issue one. Perry Stein & Jeremy Roebuck, *Pam Bondi Lashes Out as Lawmakers Press Her on Epstein, Cases Against Trump Foes*, WASH. POST (Feb. 11, 2026), https://www.washingtonpost.com/national-security/2026/02/11/bondi-house-hearing-epstein-crime [https://perma.cc/MJW8-PXE2]. The president also established a "strike force" to investigate unsubstantiated claims that Obama officials weaponized intelligence information to investigate Trump in relation to Russian election interference in 2016. Glenn Thrush & Alan Feuer, *Justice Dept. Announces Task Force to Assess 'Weaponization' of Intelligence* (July 23, 2025), https://www.nytimes.com/2025/07/23/us/politics/doj-intel-weaponization-task-force.html [https://perma.cc/JW5D-D5F6].

511. Jonah E. Bromwich, Glenn Thrush, Alan Feuer & Michael S. Schmidt, *In Pursuing Trump Rival, Weaponization Czar Sidesteps Justice Dept. Norms*, N.Y. TIMES (Aug. 19, 2025), https://www.nytimes.com/2025/08/19/us/politics/trump-letitia-james-weaponization-czar.html [https://perma.cc/WE4G-3J7J]; Katelyn Polantz, Evan Perez & Hannah Rabinowitz, *The Weapon of Justice: Ed Martin's Influence at DOJ*, CNN (Oct. 30, 2025, at 15:00 ET), https://

fraud case against Trump's business for manipulating property values for tax benefits.[512] After the Trump-appointed U.S. attorney for that district, Erik Siebert, resigned rather than pursue indictments, Trump used the interim loophole to appoint Lindsey Halligan, an insurance lawyer with no prosecutorial experience, after he publicly pushed for the prosecution of Comey, James, and Senator Adam Schiff (D-CA), who had served as lead House manager in the first Trump impeachment.[513] Three days after starting the job, Halligan—in a highly unusual move—presented the Comey indictment to a grand jury by herself and followed through two weeks later by delivering the James indictment.[514] In the Comey case, Halligan was accused of misconduct for failing to present the final indictment to the grand jury before it was signed and misstating the law to suggest that the grand

www.cnn.com/2025/10/30/politics/ed-martin-doj-trump-political-prosecutions [https://perma.cc/3GTS-9HJR]. Martin posed for photos in front of Letitia James's home. Bromwich, Thrush, Feuer & Schmidt, *supra.* Federal Housing Finance Agency Director Bill Pulte sent DOJ a criminal referral alleging James had engaged in mortgage fraud. *See* Letter from Michelle Kuppersmith, Exec. Dir., Campaign for Accountability, to Fla. State Bar & Va. State Bar, Re: Complaint Against Lindsey Halligan, Florida Bar No. 109481, *supra* note 510, at 4.

512. Jonah E. Bromwich & Ben Protess, *Divided Court Eliminates Trump's Half-Billion-Dollar Fine in Fraud Case*, N.Y. TIMES (Aug. 21, 2025), https://www.nytimes.com/2025/08/21/nyregion/trump-fraud-james.html [https://perma.cc/P7A8-ELAL] (noting that James's office won a ruling against the Trump Organization in 2024, but the amount was reversed by a state appellate court). The case remains pending on appeal to New York's highest state court. Both James and Comey own property in the Eastern District of Virginia, giving that U.S. attorney's office jurisdiction over federal criminal prosecutions against them. *See* Sarah N. Lynch, Luc Cohen & Andrew Goudsward, *Letitia James, NY Attorney General and Trump Foe, Indicted for Mortgage Fraud*, REUTERS (Oct. 9, 2025, at 18:14 PT), https://www.reuters.com/world/new-york-ag-james-trump-foe-indicted-bank-fraud-2025-10-09/ [https://perma.cc/CQ3B-PB3Q] (stating James owned property in Norfolk, Virginia); Sophia Nguyen, *James Comey Is Trying to Master the Twist Ending. This Time, on Purpose*, WASH. POST (May 20, 2023), https://www.washingtonpost.com/books/2023/05/20/james-comey-central-park-west-mystery-novel/ [https://perma.cc/6NJ8-TZZ7] (noting Comey's home is in McLean, Virginia).

513. Alan Feuer, Glenn Thrush, Maggie Haberman & Devlin Barrett, *Trump Demands That Bondi Move 'Now' to Prosecute Foes*, N.Y. TIMES (Sep. 20, 2025), https://www.nytimes.com/2025/09/20/us/politics/trump-justice-department-us-attorneys.html [https://perma.cc/CY7W-SN3P].

514. Devlin Barrett & Glenn Thrush, *Trump's Handpicked Prosecutor Takes Over Comey and James Cases*, N.Y. TIMES (Sep. 22, 2025), https://www.nytimes.com/2025/09/22/us/politics/trump-lindsey-halligan-james-comey.html [https://perma.cc/66S2-7ZSV]; Alan Feuer, Jonah E. Bromwich & Maggie Haberman, *Trump Gets the Retribution He Sought, and Shatters Norms in the Process*, N.Y. TIMES (Sep. 25, 2025), https://www.nytimes.com/2025/09/25/us/politics/trump-retribution-comey-indictment.html [https://perma.cc/J8DV-H2CL]; Devlin Barrett, Glenn Thrush & Jonah E. Bromwich, *New York Attorney General Letitia James Is Indicted After Trump's Pressure Campaign*, N.Y. TIMES (Oct. 15, 2025), https://www.nytimes.com/2025/10/09/us/politics/letitia-james-indicted-trump.html [https://perma.cc/JNE2-L6TG]; *see also* Indictment, United States v. Comey, No. 25-cr-272 (E.D. Va. Sep. 25, 2025); Indictment, United States v. James, No. 25-cr-122 (E.D. Va. Oct. 9, 2025).

jury did not have to rely on the evidentiary record to find probable cause.[515] Both cases were dropped after a court determined that Halligan had been illegally installed because the period for interim appointments had already run with Siebert and the clock could not be restarted.[516]

While the Weaponization order has facilitated such prosecutorial abuse, it has also been a vehicle for corruption benefiting administration allies—and the president himself. This has been evident in a series of pardons, most prominently of January 6 rioters,[517] claimed to be victims of weaponization, some of whom were reported to make political donations to Trump and investments in Trump family businesses.[518] The self-dealing culminated in May 2026, when Acting AG

515. Alan Feuer & Devlin Barrett, *Trump Loyalist Admits Grand Jury Never Saw Final Comey Indictment*, N.Y. TIMES (Nov. 19, 2025), https://www.nytimes.com/2025/11/19/us/politics/comey-vindictive-prosecution-trump.html [https://perma.cc/6SBF-8DFB]; Benjamin Wittes, *The Situation: Malevolence, Incompetence, and the Strange Case of Lindsey Halligan*, LAWFARE (Nov. 18, 2025, at 11:10 ET), https://www.lawfaremedia.org/article/the-situation--malevolence--incompetence--and-the-strange-case-of-lindsey-halligan [https://perma.cc/CU9Y-ETBA].

516. United States v. Comey, 810 F. Supp. 3d 768 (E.D. Va. Nov. 24, 2025) (granting motion to dismiss indictment); United States v. James, 810 F. Supp. 3d 752 (E.D. Va. Nov. 24, 2025) (granting motion to dismiss indictment). The dismissals came after the administration sought to extend the appointments of Halligan and Habba by shifting their titles to special counsel to the DOJ; while this quickly failed in the case of Habba, the White House relied on secret authorization from OLC to continue the appointment of Halligan—despite a court order dismissing her indictments due to her invalid status—on the grounds that the order did not explicitly call for her removal. Devlin Barrett & Jonah E. Bromwich, *Halligan Continues as U.S. Attorney, Prompting Criticism From Judges*, N.Y. TIMES (Dec. 5, 2025), https://www.nytimes.com/2025/12/05/us/politics/halligan-us-attorney-judiciary.html [https://perma.cc/EY6P-LDCB]; United States' Response to the Court's January 6, 2026 Order, United States v. Jefferson, No. 25-cr-160 (E.D. Va. Jan. 13, 2026). Halligan resigned in January 2026. *See* Devlin Barrett & Glenn Thrush, *Halligan Leaves as U.S. Attorney After Mounting Pressure From Judges*, N.Y. TIMES (Jan. 20, 2026), https://www.nytimes.com/2026/01/20/us/politics/virginia-us-attorney-halligan.html [https://perma.cc/FRX5-L2ZQ].

517. *See* Alan Feuer, *Trump Grants Sweeping Clemency to All Jan. 6 Rioters*, N.Y. TIMES (Jan. 20, 2025), https://www.nytimes.com/2025/01/20/us/politics/trump-pardons-jan-6.html [https://perma.cc/GYH9-YH2R]; *see also* Alan Feuer & Adam Goldman, *Pardoned Jan. 6 Rioter Who Threatened Police Joins Justice Dept.*, N.Y. TIMES (July 1, 2025), https://www.nytimes.com/2025/07/01/us/politics/justice-department-rioter-weaponization.html [https://perma.cc/RWP4-AQ6V] (reporting that one January 6 rioter charged with encouraging the mob to kill police officers was named as an adviser to Ed Martin on the Weaponization Working Group).

518. Alison Durkee, *Here Are the Big-Time Donors and Business Allies Trump's Pardoned*, FORBES (May 7, 2026, at 15:23 ET), https://www.forbes.com/sites/alisondurkee/2026/05/07/democrats-investigate-whether-trumps-pardons-were-pay-to-play-here-are-the-big-time-donors-and-business-allies-hes-sprung-free [https://perma.cc/P65D-3L7U]. Trump also pardoned Giuliani, Eastman, and Powell, among others involved in efforts to overturn the 2020 presidential election. Alan Feuer & Glenn Thrush, *Trump Pardons Giuliani and Others Involved in Effort to Overturn 2020 Election*, N.Y. TIMES (Nov. 10, 2025), https://www.nytimes.com/2025/11/10/us/giuilani-pardon-trump-john-eastman-sidney-powell.html [https://perma.cc/CK6L-PXPE].

Blanche (named after Bondi was fired in April) announced the department had agreed to set up a $1.776 billion "Anti-Weaponization Fund" to be paid by DOJ as settlement of Trump's private lawsuit, filed after he was elected to his second term, over leaks of tax documents that occurred during his first.[519] The settlement fund—which was made soon after a judge cast legal doubt on whether there was a genuine case or controversy in the Trump lawsuit given the lack of adverse parties[520]—was set to allocate money to compensate victims of "weaponization and lawfare" presumed to include January 6 rioters.[521]

Despite Blanche's effort to justify the fund through false equivalence—citing an Obama-era settlement in a class action based on actual discrimination against Native American farmers in federal loan processing[522]—DOJ faced bipartisan backlash against using taxpayer money for a Trump "slush fund," forcing Blanche in June to promise that the fund would not be "moving forward."[523] Nevertheless, Blanche left in place a "release order" (signed only by him) that claimed to provide blanket immunity to Trump and his family from liability for tax investigations and "any matters currently pending or that could be pending . . . before Defendants or

519. Settlement Agreement, Trump v. IRS, No. 26-cv-20609 (S.D. Fla. May 18, 2026). Trump sought $10 billion in damages for leaks by an IRS contractor that included other taxpayers' information. *See* Alan Feuer & Andrew Duehren, *Judge Reopens Trump's I.R.S. Suit and Questions His 'Weaponization' Fund*, N.Y. TIMES (May 29, 2026), https://www.nytimes.com/2026/05/29/us/politics/trump-irs-lawsuit-ruling.html [https://perma.cc/S7WC-9CDP]. Blanche became Acting AG on April 2, 2026, after Bondi was fired in part for mishandling the release of the Epstein files. Tyler Pager & Glenn Thrush, *Trump Fires Pam Bondi as Attorney General*, N.Y. TIMES (Apr. 2, 2026), https://www.nytimes.com/2026/04/02/us/politics/trump-fires-bondi-attorney-general.html [https://perma.cc/GJD9-3M6U].

520. Order at 3, Trump v. IRS, No. 26-cv-20609 (S.D. Fla. Apr. 24, 2026).

521. Press Release, U.S. Dep't of Just., Off. of Pub. Affs., Justice Department Announces Anti-Weaponization Fund (May 18, 2026), https://www.justice.gov/opa/pr/justice-department-announces-anti-weaponization-fund [https://perma.cc/HDG6-B8PB] (announcing settlement-created fund "to provide a systematic process to hear and redress claims of others who suffered weaponization and lawfare"); Andrew Duehren, *Trump's Fund for People Who Claim Government Victimization, Explained*, N.Y. TIMES (May 26, 2026), https://www.nytimes.com/2026/05/18/us/politics/trump-anti-weaponization-fund.html [https://perma.cc/4WG6-8P5P] ("A lawyer for about 430 Jan. 6 defendants celebrated the creation of the fund and said he would seek payments for his clients from it.").

522. Order of the Att'y Gen., U.S. Dep't of Just. (May 18, 2026), https://www.justice.gov/opa/media/1441086/dl [https://perma.cc/AZ54-NMAE] (referencing *Keepseagle v. Vilsack*, 102 F. Supp. 3d 306 (D.D.C. 2015)).

523. Tyler Pager, Maggie Haberman, Alan Feuer, Devlin Barrett & Annie Karni, *Trump Backs Off Plan for $1.8 Billion Fund That Drew Political Backlash*, N.Y. TIMES (June 1, 2026), https://www.nytimes.com/2026/06/01/us/politics/trump-drop-weaponization-fund.html [https://perma.cc/2KDG-RSEH]; Alexander Mallin, *Acting AG Blanche Says Trump Administration Is Nixing $1.8 Billion 'Anti-Weaponization Fund'*, ABC NEWS (June 2, 2026, at 17:43 PT), https://abcnews.com/Politics/acting-ag-blanche-trump-administration-nixing-anti-weaponization/story?id=133528785 [https://perma.cc/9WD3-97FJ].

other agencies or departments"[524]—an unprecedented concession to a sitting president with control over the department he sued.[525] The president's continued insistence on the fund prompted suits challenging its validity,[526] and ultimately forced Blanche to rescind the fund and to narrow the release so that it applied only retroactively—a retreat necessary to secure his Senate confirmation as AG on August 8, 2026, on a 50–49 vote.[527]

The third goal of DOJ capture is to enable full-throated defense of executive action, such as the Anti-Weaponization Fund, when it ends up in court. Such defense requires replacing lawyers, like Reuveni, committed to a cautious approach that hews closely to law and fact with those willing to take zealous advocacy to the extreme, walking up to—and even crossing—ethical lines. The latter type of lawyering was on display in litigation over the president's birthright citizenship order,[528] which because it contradicted long-standing precedent was immediately subject to lawsuits forcing DOJ lawyers to defend it.[529] At a TRO

524. Order of the Att'y Gen., U.S. Dep't of Just. (May 19, 2026), https://www.justice.gov/opa/media/1441216/dl [https://perma.cc/36SM-8SLD].

525. Andrew Duehren & Alan Feuer, *Order Shielding Trump Family From I.R.S. Audits Will Remain, Blanche Says*, N.Y. TIMES (June 2, 2026), https://www.nytimes.com/2026/06/02/us/politics/trump-irs-settlement.html [https://perma.cc/DH2P-UHFK]. The fund led to the resignation of the Treasury Department's general counsel. Andrew Duehren, *Top Treasury Lawyer Resigns After Creation of 'Anti-Weaponization' Fund*, N.Y. TIMES (May 18, 2026), https://www.nytimes.com/2026/05/18/business/anti-weaponization-fund-brian-morrissey-treasury.html [https://perma.cc/5UN4-ND6A]. As part of the litigation, the district court judge originally presiding over the lawsuit issued an order maintaining jurisdiction despite the parties' voluntary dismissal. The order imposed nonmonetary sanctions under Rule 11 on Trump and his lawyers on the grounds that the suit was filed for the improper purpose of extracting a collusive settlement; the court also relied on its inherent authority to impose monetary sanctions on Trump and his lawyers, while chastising the DOJ for "abdicating its responsibility to zealously defend the interests of the United States," specifically referring Blanche to the New York State Bar. Order at 41–47, 51, 52 n.67, 54, Trump v. IRS, No. 26-cv-20609 (S.D. Fla. July 13, 2026).

526. *See* Zach Montague, *Lawsuit Argues Trump's $1.8 Billion Fund Excludes Those He Targeted*, N.Y. TIMES (May 22, 2026), https://www.nytimes.com/2026/05/22/us/politics/common-cause-lawsuit-trump-fund.html [https://perma.cc/GFV2-ASLX].

527. *See* Michael Gold, Glenn Thrush & Carl Hulse, *Blanche Is Confirmed as Attorney General After Overcoming G.O.P. Concerns*, N.Y. TIMES (Aug. 8, 2026), https://www.nytimes.com/2026/08/07/us/politics/todd-blanche-ag-murkowski.html [https://perma.cc/4AL5-VUCD]; *see also* Glenn Thrush, *Loyalty to Trump Proves a Double-Edged Sword for Attorney General Nominee*, N.Y. TIMES (July 31, 2026), https://www.nytimes.com/2026/07/31/us/politics/todd-blanche-ag-trump-immunity.html [https://perma.cc/YS83-VZBE].

528. Exec. Order No. 14160, *supra* note 362.

529. *See* Complaint, CASA, Inc. v. Trump, No. 25-cv-00201 (D. Md. Jan. 21, 2025) (brought by immigrant rights organizations); Complaint, Washington v. Trump, No. 25-cv-00127 (W.D. Wash. Jan. 21, 2025) (brought by state attorneys general); Complaint, New Hampshire Indonesian Cmty. Support v. Trump, No. 25-cv-38 (D.N.H. Jan. 20, 2025) (brought by the

hearing on January 23, 2025, Reagan-appointed District Court Judge John Coughenour, in a challenge brought by state attorneys general, pressed Acting Assistant Attorney General for the Civil Division Brett Shumate on how he could defend "a blatantly unconstitutional order": "I've been on the bench for over four decades, I can't remember another case where the question presented is as clear as this one."[530] When asked directly whether, in his opinion, the order was constitutional, Shumate's response was categorical: "It absolutely is."[531] Judge Coughenour was incredulous: "Frankly, I have difficulty understanding how a member of the Bar could state unequivocally that this is a constitutional order. It just boggles my mind."[532] After the hearing, doubling down on zealous advocacy, DOJ released a statement affirming it would "vigorously defend" the order, which "correctly interprets the 14th Amendment of the U.S. Constitution."[533]

While it is possible to assign loyalists fully committed to zealous advocacy in select high-stakes constitutional litigation, such as the birthright citizenship case, there can be limits to enforcing zealousness all the way down to the frontlines. The ICE raids in Minneapolis, dubbed Operation Metro Surge, tested these limits.[534] The groundwork for aggressive legal action was laid following the administration's established model with the appointment of Daniel Rosen, a commercial litigator with no criminal experience, to lead the Minneapolis U.S. attorney's office in

ACLU Immigrants' Rights Project). After the Supreme Court issued a stay of nationwide injunctions in the first two cases on the grounds that such injunctions were beyond the authority of lower courts, Trump v. CASA, Inc., 606 U.S. 831 (June 27, 2025), it overturned the order on the merits as violating the Fourteenth Amendment. Trump v. Barbara, 146 S. Ct. 2438, 2548 (June 30, 2026).

530. David Gutman, *Judge in Seattle Blocks Trump Order on Birthright Citizenship Nationwide*, SEATTLE TIMES (Jan. 23, 2025, at 12:44 PT), https://www.seattletimes.com/seattle-news/politics/judge-in-seattle-blocks-trump-order-on-birthright-citizenship-nationwide [https://perma.cc/6CAW-PV22].

531. *Id.*

532. *Id.*; Mike Baker & Mattathias Schwartz, *Judge Temporarily Blocks President's Plan to End Birthright Citizenship*, N.Y. TIMES (Feb. 3, 2025), https://www.nytimes.com/2025/01/23/us/politics/judge-blocks-birthright-citizenship.html [https://perma.cc/BMU8-PNX9]; Brad Wendel, *Getting Serious About Frivolous Litigation*, LEGAL ETHICS STUFF (Jan. 24, 2025), https://bradwendel.substack.com/p/getting-serious-about-frivolous-litigation [https://perma.cc/A57A-CWVG].

533. Eugene Johnson & Mike Catalini, *Federal Judge Temporarily Blocks Trump's Order Attempting to End Birthright Citizenship*, PBS (Jan. 23, 2025, at 18:36 ET), https://www.pbs.org/newshour/politics/federal-judge-temporarily-blocks-trumps-order-attempting-to-end-birthright-citizenship [https://perma.cc/P8TF-PMQY].

534. Ernesto Londoño & Hamed Aleaziz, *Immigration Agents and Protesters Face Off in Frigid Minnesota*, N.Y. TIMES (Dec. 17, 2025), https://www.nytimes.com/2025/12/17/us/immigration-agents-protesters-roof-minnesota.html?searchResultPosition=59 [https://perma.cc/YN8Q-9BQM].

October 2025.[535] After a right-wing influencer posted a video showing that some defendants in the office's welfare fraud investigation were Somalis, the administration sent immigration agents to Minneapolis—despite the fact that most Somalis were citizens or legal residents.[536] Following a small deployment of ICE and border patrol agents in December, the administration announced a major surge on January 6, 2026—one week after pulling the National Guard out of cities around the country—adding two thousand agents and sparking widespread protests.[537]

The next day, protester Renee Good was shot and killed in her vehicle by an ICE agent.[538] Ignoring calls to review the agent, Rosen ordered a criminal inquiry into the behavior of Good's partner, prompting the resignation of five career prosecutors, after which Blanche made clear there would be no civil rights investigation into Good's killing.[539] On Fox News, Bondi impugned the prosecutors who resigned as members of the "deep state" who "suddenly decided they didn't want to support the men and women at ICE."[540] In late January, while Bondi visited Minnesota, the DOJ launched investigations into state Democrats accused of conspiring to impede immigration enforcement by encouraging protests.[541] Governor Tim Walz received a letter from Bondi claiming "anti-law enforcement rhetoric" had caused violence against ICE agents to increase "approximately 1,300 percent."[542] On that basis, Bondi demanded that Walz "restore the rule of law," offering a deal in exchange for repeal of sanctuary city laws, local law enforcement cooperation with ICE, and DOJ "access to voter rolls to confirm that Minnesota's voter registration practices comply with federal law"[543]—revealing administration objectives that linked immigration enforcement to ongoing efforts to cast doubt on election integrity.

535. Ernesto Londoño, *Prosecutors Began Investigating Renee Good's Killing. Washington Told Them to Stop.*, N.Y. TIMES (Feb. 7, 2026), https://www.nytimes.com/2026/02/07/us/renee-good-investigation-minnesota-trump.html [https://perma.cc/VT3Y-X6F9].
536. *Id.*
537. *Id.*
538. *Id.*
539. *Id.*
540. *Id.*; *see also* Shawn McCreesh, *Trump Threatens to Invoke the Insurrection Act and Send Troops to Minnesota*, N.Y. TIMES (Jan. 15, 2026), https://www.nytimes.com/2026/01/15/us/politics/trump-insurrection-act-minnesota.html [https://perma.cc/EF9K-2BQR].
541. Londoño, *supra* note 535.
542. Letter from Pamela Bondi, Att'y Gen., to Tim Walz, Governor of Minn., at 1 (Jan. 24, 2026).
543. *Id.* at 3; *see also* Alan Feuer & Glenn Thrush, *Justice Dept. Playbook in Minnesota: Investigate Foes, Protect Allies*, N.Y. TIMES (Jan. 29, 2026), https://www.nytimes.com/2026/01/29/us/politics/minnesota-justice-department-trump-ice.html [https://perma.cc/33PW-AWE3]. After the national uproar following the killing of Alex Pretti, border czar Tom Homan

Despite DOJ threats,[544] no criminal charges were filed against Minnesota officials.[545] Instead, the only judicial findings of legal wrongdoing were made against the federal government for systematic noncompliance with judicial orders in relation to the immigration sweeps. The sweeps were challenged by volunteer lawyers, many with little or no immigration law experience, who filed over one thousand habeas petitions on behalf of arrested and detained immigrants, including long-term residents, people with pending asylum claims, and children.[546] Confronted with legal pushback, ICE repeatedly ignored the courts, resulting in a tense confrontation between U.S. Attorney Rosen and Patrick Schiltz, the conservative George W. Bush–appointed chief judge of the District of Minnesota. After Schiltz expressed "grave concerns about ICE's noncompliance with court orders," identifying 96 violations in 74 cases, Rosen accused Schiltz of citing information "far beyond the pale of accuracy"; Schiltz responded by documenting "113 additional orders that ICE . . . violated in 77 additional cases," including orders requiring the release of immigrants who were not legally deportable, leading Schiltz to warn that his court would "do whatever is required to protect the rule of law, including, if necessary the use of criminal contempt."[547]

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brokered a deal for greater access to county jails and announced an end to the operation on February 12, 2026. Ernesto Londoño, Mitch Smith & Pooja Salhotra, *Trump Administration to End Surge of Immigration Agents in Minnesota*, N.Y. TIMES (Feb. 12, 2026), https://www.nytimes.com/2026/02/12/us/minnesota-immigration-crackdown.html [https://perma.cc/B9FW-RQ89].

544. Blanche wrote "Walz and [Minneapolis Mayor Jacob] Frey—I'm focused on stopping YOU from your terrorism by whatever means necessary. This is not a threat. It's a promise." Todd Blanche (@DAGToddBlanche), X (Jan. 15, 2026, at 06:03 PT), https://x.com/DAGToddBlanche/status/2011620198751597028 [https://perma.cc/LB3M-RYRR].

545. Charges were filed against reporters, including former CNN anchor Don Lemon, who accompanied a group of protesters into Cities Church, which was headed by a pastor who also worked as an ICE official. Alan Feuer & Ernesto Londoño, *Missteps Mount as Case Against ICE Protesters in Minnesota Hits Snags*, N.Y. TIMES, AUG. 1, 2026, at A.14.

546. Max Nesterak, *Lawyers Filed Over 1,000 Lawsuits Challenging Immigrant Detentions During Operation Metro Surge*, MINN. REFORMER (Feb. 19, 2026, at 14:08 CT), https://minnesotareformer.com/2026/02/19/lawyers-filed-over-1000-lawsuits-challenging-immigrant-detentions-during-operation-metro-surge/ [https://perma.cc/7Y6Y-QRGE].

547. *See* Supplemental Order at 2–3, 6 & Appendices A & B, Juan T.R. v. Noem, No. 26-CV-0107 (D. Minn. Feb. 26, 2026); *see also* Ernesto Londoño & Hamed Aleaziz, *Top ICE Lawyer in Minnesota Departs as Immigration Lawsuits Overwhelm Courts*, N.Y. TIMES (Feb. 7, 2026), https://www.nytimes.com/2026/02/07/us/ice-lawyer-quits-minnesota.html [https://perma.cc/87RS-M9BL]. The order came after an effort by the DOJ to pressure Judge Schiltz to review a magistrate judge's denial of arrest warrants for five people, including reporter Don Lemon. *See* Steve Vladeck, *Chief Judge Schiltz and the Department of Justice*, ONE FIRST (Jan. 25, 2026), https://www.stevevladeck.com/p/205-chief-judge-schiltz-and-the-department [https://perma.cc/D9BU-7GSX]. The order also followed an email from Daniel Rosen challenging the veracity of Schiltz's earlier order listing ninety-six violations. *See* Supplemental Order, *supra*, at 2.

Frustration with DOJ attorneys reached a boiling point when District Court Judge Jerry Blackwell held a hearing to hold Julie Le in contempt for repeated failures by her client, ICE, to release immigrants from custody.[548] Le, herself a Vietnamese immigrant who started working as an ICE prosecutor in 2025, was detailed to Minneapolis in January 2026 to help DOJ handle the deluge of habeas cases.[549] As Judge Blackwell recounted violations of numerous orders to release five immigrants in cases assigned to Le,[550] she defended herself by stating she was given "no guidance or direction on what we need to do."[551] When specifically pushed on why the government imposed conditions on one detainee's release after the judge explicitly ordered no conditions, Le responded that she threatened to resign but told herself:

> Wait, Julie, stop. You need to go back and get more people out. That's why I'm still here. . . . sometime [sic] I wish you would just hold me in contempt, Your Honor, so that I can have a full 24 hours of sleep. I work days and nights just because people still [sic] in there. . . . What do you want me to do? The system sucks. This job sucks.[552]

After Judge Blackwell admonished that her frustrations were of "her own making," Le struck a conciliatory tone:

> I share the same concern with you, Your Honor. I am not white, as you can see. And my family's at risk as any other people that might get picked up too . . . . But . . . fixing a system, a broken system, I don't have a magic button to do it. I don't have the power or the voice to do it. I only can do it within the ability and the capacity that I have.[553]

For that reason, perhaps, the court did not sanction her. Instead, Le received the sanction meted out under the Bondi memo to other independent lawyers in the Trump DOJ: she was fired for her candor to the court.[554]

548. Transcript of Show Cause Hearing at 3–5, Segundo A.P.G. v. Bondi, No. 26-cv-603 (D. Minn. Feb. 3, 2026).
549. Maria Sacchetti, *Ex-DOJ Prosecutor Who Proclaimed 'This Job Sucks' Will Run for Congress*, WASH. POST (Mar. 11, 2026), https://www.washingtonpost.com/immigration/2026/03/11/julie-le-doj-immigration-lawyer-congress-minneapolis [https://perma.cc/9VK5-6H3M].
550. Transcript of Show Cause Hearing, *supra* note 548, at 14–24.
551. *Id.* at 12–13.
552. *Id.* at 30–31.
553. *Id.* at 34–35.
554. *See* Alan Feuer, Glenn Thrush & Hamed Aleaziz, *Prosecutor Fired After Voicing Frustration With Immigration Caseload*, N.Y. TIMES (Feb. 4, 2026), https://www.nytimes.com/2026/02/04/us/politics/prosecutor-immigration-outburst.html [https://perma.cc/P6NP-NBEA].

2. Private Legal Sector

The conflict in Minneapolis over the government's failure to follow judicial orders highlighted a growing trend with over four hundred cases of noncompliance and four thousand cases of unlawfully detained immigrants reported by early 2026.[555] This suggested that the constitutional crisis some feared would occur with executive defiance of the Supreme Court was already taking place at the lower court level. Resisting noncompliance by executive actors requires mobilization by lawyers outside the government to hold those actors to account. Therefore, while autocrats targeting the profession seek to capture the public legal sector to weaken guardrails, they also attempt to undermine the private legal sector by intimidating law firms and NGOs to limit litigation challenging executive action and stripping bar authority over government lawyers engaged in misconduct.[556]

While the Bondi memo made clear that DOJ lawyers were expected to zealously represent the president's interests or face reprisal, the law firm orders

555. Katherine Pompilio & Benjamin Wittes, *Three Hundred Habeas Cases in Which the Government Has Defied Court Orders*, LAWFARE (Apr. 3, 2026, at 15:39 ET), https://www.lawfaremedia.org/article/three-hundred-habeas-cases-in-which-the-government-has-defied-court-orders [https://perma.cc/XW3R-EVE4] (showing updated tracker listing 415 cases at the end of May); Mandy Taheri, *ICE Jailed People Illegally 4,400 Times, Hundreds of Judges Rule: Report*, NEWSWEEK (Feb. 14, 2026, at 14:27 ET), https://www.newsweek.com/ice-jailed-people-illegally-4400-times-hundreds-of-judges-rule-report-11525251 [https://perma.cc/AR5B-5F2Q]; *see also* Justin Jouvenal, *Trump Officials Accused of Defying 1 in 3 Judges Who Ruled Against Him*, WASH. POST (July 21, 2025), https://www.washingtonpost.com/politics/2025/07/21/trump-court-orders-defy-noncompliance-marshals-judges [https://perma.cc/CV4Z-NKPN]. For prominent cases alleging unlawful detention, see Chloe Atkins & Patrick Smith, *Palestinian Activist Mahmoud Khalil Can Fight Wrongful Detention Case in Federal Court, Judge Rules*, NBC NEWS (Apr. 30, 2025, at 05:32 PT), https://www.nbcnews.com/news/us-news/palestinian-activist-khalil-mahmoud-can-fight-wrongful-detention-case-rcna203654 [https://perma.cc/K9S7-B4RH]; Karoun Demirjian & Chris Cameron, *What to Know About Abrego Garcia and His Second Detention*, N.Y. TIMES (Aug. 25, 2025), https://www.nytimes.com/article/abrego-garcia-trump-deportations-el-salvador.html [https://perma.cc/BG5Z-25MG]. Demonstrating concern about the consequences of noncompliance, Trump's "One Big Beautiful" federal spending bill included a provision—eventually stripped out by the Senate parliamentarian as unrelated to the budget—that would have required litigants to post bonds to enforce contempt orders for governmental noncompliance with court rulings. *See* One Big Beautiful Bill Act, H.R. 1, 119th Cong. § 70302 (2025) (Rules Comm. print); Michael Milov-Cordoba & Robert Hogan, *Budget Bill Would Gut Federal Courts' Ability to Enforce Orders*, BRENNAN CTR. FOR JUST. (June 30, 2025), https://www.brennancenter.org/our-work/analysis-opinion/budget-bill-would-gut-federal-courts-ability-enforce-orders [https://perma.cc/8F4P-HG5V].

556. Christopher D. Hampson & Elise Bernlohr Maizel, *Ethics & Independence in Trump's War on Big Law*, 16 CALIF. L. REV. ONLINE 69 (2025); *see also* David Luban, *Taking Out the Adversary: The Assault on Progressive Public-Interest Lawyers*, 91 CALIF. L. REV. 209 (2003) (examining earlier efforts to constrain advocacy by NGOs).

that followed underscored that only the president was presumed entitled to zealous advocacy. From February to April 2025, the president issued seven executive actions targeting some of the nation's premier law firms[557]—the opening salvo in what turned out to be a concerted program to weaken the adversarial system. Following a similar structure, the orders started (in Section 1) by claiming to identify instances of lawyer misconduct posing "risks" to the legal system flowing from the twin problems of "weaponization" (in other words, prosecutions of Trump) and "discrimination" (in other words, DEI).[558] To fight these problems, the orders instructed government agencies to impose sanctions: suspending security clearances (Section 2);[559] reviewing (and threatening to revoke) government contracts to firms and "entities that disclose doing business with" them (specifically, clients) (Section 3);[560] investigating firms for racial

557. The firms were Covington & Burling, Perkins Coie, Paul Weiss, the Elias Law Group, Jenner & Block, WilmerHale, and Susman Godfrey. *See supra* note 8. The actions targeting Covington & Burling and the Elias Law Group were technically presidential memoranda, which unlike orders do not require cited legal authority or publication in the Federal Register, although they still are considered to have the force of law. *See Executive Orders: A Beginner's Guide*, LIBR. OF CONG., https://guides.loc.gov/executive-orders/order-proclamation-memorandum [https://perma.cc/EUA7-JEJS]; *see also* KENNETH R. MAYER, WITH THE STROKE OF A PEN: EXECUTIVE ORDERS AND PRESIDENTIAL POWER 35 (2001); Elena Kagan, *Presidential Administration*, 114 HARV. L. REV. 2245, 2290–95 (2001). In addition to the law firm orders, in March 2025, Equal Employment Opportunity Commission Acting Chair Andrea Lucas sent letters to twenty law firms seeking information about their DEI programs, including personal information about students who received positions, threatening legal action under Title VII for noncompliance. *See* Madeleine Ngo, *Trump Administration Questions Law Firms Over D.E.I. Employment Practices*, N.Y. TIMES (Mar. 17, 2025), https://www.nytimes.com/2025/03/17/us/politics/trump-dei-perkins-coie-law-firms.html [https://perma.cc/XQ5Z-TQU8]; *see also, e.g.*, Letter from Andrea R. Lucas, Acting Chair, U.S. Equal Emp. Opportunity Comm'n, to Perkins Coie LLP, Re: Review of Perkins Coie LLP's Compliance with Title VII of the Civil Rights Act of 1964 (Mar. 17, 2025). Several firms signed deals to eliminate their DEI programs. Amanda O'Brien, *White House Internal Communications Shed Light on Trump's Law Firm Deals*, LAW.COM (July 8, 2026, at 18:30 ET), https://www.law.com/americanlawyer/2026/07/08/white-house-internal-communications-shed-light-on-trumps-law-firm-deals [https://perma.cc/W6PU-UGHC] (citing agreements by Kirkland & Ellis, Latham & Watkins, Simpson Thacher, and A&O Shearman).

558. *See, e.g.*, Covington & Burling Memo, *supra* note 8 (responding to "the weaponization of the judicial process"); Perkins Coie Order, *supra* note 8 ("Addressing Risks from Perkins Coie LLP," including "discrimination" against the firm's "own attorneys and staff, and against applicants").

559. Covington & Burling Memo, *supra* note 8; Perkins Coie Order, *supra* note 8; Paul Weiss Order, *supra* note 7; Jenner & Block Order, *supra* note 8; WilmerHale Order, *supra* note 8; Susman Godfrey Order, *supra* note 8.

560. Covington & Burling Memo, *supra* note 8 (authorizing review of firm contracts only); Perkins Coie Order, *supra* note 8; Paul Weiss Order, *supra* note 7; Jenner & Block Order, *supra* note 8; WilmerHale Order, *supra* note 8; Susman Godfrey Order, *supra* note 8.

discrimination (again: DEI) (Section 4);[561] and barring firm lawyers' access to federal buildings (including courthouses) (Section 5).[562] The goal was clear: to prevent the big law sector, one of the few institutions with resources to effectively litigate against executive overreach, from doing just that.[563]

As with executive actions targeting government lawyers, the law firm orders unlocked playbook principles to undermine professional independence. Mobilizing the weaponization frame, the orders inverted reality by presenting false or misleading claims of misconduct by Trump legal opponents to justify firm sanctions, while obscuring the reality of actual misconduct by Trump's own lawyers. The first executive memo against Covington & Burling targeted the firm for representing former Special Counsel Smith against government investigation.[564] The memo—which Trump called "the deranged Jack Smith signing"[565]—suspended security clearances (making it impossible to access sensitive evidence) for Smith's lawyer, former deputy chief of DOJ's Public Integrity Section and current Covington partner Peter Koski, along with any other firm lawyer who "assisted former Special Counsel Jack Smith during his time as

561. Perkins Coie Order, *supra* note 8; Paul Weiss Order, *supra* note 7; Jenner & Block Order, *supra* note 8; WilmerHale Order, *supra* note 8; Susman Godfrey Order, *supra* note 8.

562. Perkins Coie Order, *supra* note 8; Paul Weiss Order, *supra* note 7; Jenner & Block Order, *supra* note 8; WilmerHale Order, *supra* note 8; Susman Godfrey Order, *supra* note 8.

563. *See, e.g.*, Jayanth K. Krishnan, Megan Riley & Vitor M. Dias, *Big Law's Immigration Advocates*, 2024 U. ILL. L. REV. 447, 459 (finding that immigrants with big law firm lawyers representing them in appellate cases won three times as often as those not represented by such lawyers during the first Trump administration); Molly Redden, *Trump's War on Big Law Means It's Harder to Challenge the Administration*, PROPUBLICA (Aug. 6, 2025, at 06:00 ET), https://www.propublica.org/article/trump-law-firms-accountability-environment-police-lgbtq [https://perma.cc/7MF7-NNH5] ("Some of the country's largest law firms have declined to represent clients challenging the Trump administration, more than a dozen attorneys and nonprofit leaders told ProPublica, while others have sought to avoid any clients that Trump might perceive as his enemies."). It is notable that, prior to the second Trump administration, big law firms took pride in their pro bono work against executive overreach, with firms representing Guantánamo detainees during the War on Terror, resulting in Supreme Court cases protecting detainee rights (*see, e.g.*, Boumediene v. Bush, 553 U.S. 723 (2008) (holding, in a case supported pro bono by WilmerHale and Covington & Burling, that detainees were entitled to habeas corpus)), and pushing back on policies, like the Muslim Ban, during the first Trump administration. *See* Sarah Abruzzese, *Official Quits After Remark on Lawyers*, N.Y. TIMES (Feb. 3, 2007), https://www.nytimes.com/2007/02/03/washington/03gitmo.html [https://perma.cc/Z4NF-CGE4]; Jonah Engel Bromwich, *Lawyers Mobilize at Nation's Airports After Trump's Order*, N.Y. TIMES (Jan. 29, 2017), https://www.nytimes.com/2017/01/29/us/lawyers-trump-muslim-ban-immigration.html [https://perma.cc/VPN6-PMNM]. On the economic and professional world of contemporary big law firm practice, see generally MITT REGAN & LISA H. ROHRER, BIGLAW: MONEY AND MEANING IN THE MODERN LAW FIRM (2021).

564. Josh Gerstein & Kyle Cheney, *Trump Targets Washington Law Firm That Aided Jack Smith*, POLITICO (Feb. 25, 2025, at 19:27 ET), https://www.politico.com/news/2025/02/25/donald-trump-jack-smith-covington-lawyers-022770 [https://perma.cc/E7YW-JE6X].

565. *Id.*

Special Counsel, pending a review and determination of their roles and responsibilities, if any, in the weaponization of the judicial process."[566] Not only did this invert reality (portraying Trump as the victim of political targeting he was effectuating), it created a pretext to violate the core tenet of adversarial justice: that everyone deserves a defense and lawyers cannot be punished for whom they represent.

Subsequent orders performed similar inversions by fabricating false or misleading facts. The second order against Perkins Coie stated that former lawyer Marc Elias had engaged in "dishonest" conduct by representing Hillary Clinton (and using the Steele dossier) in the 2016 election as well as George Soros–backed groups challenging voter suppression (recast in the order as an effort "to judicially overturn popular . . . election laws").[567] The Paul Weiss,[568] Jenner & Block,[569] and

566. Covington & Burling Memo, *supra* note 8; Devlin Barrett, Glenn Thrush, Maggie Haberman & Alan Feuer, *Trump Takes Aim at Law Firm Aiding Jack Smith*, N.Y. TIMES (Feb. 25, 2025), https://www.nytimes.com/2025/02/25/us/trump-jack-smith-law-firm-security.html [https://perma.cc/7ZQA-EVC7]; *Peter Koski*, COVINGTON & BURLING, https://www.cov.com/en/professionals/k/peter-koski [https://perma.cc/B9VS-F7MU].

567. Perkins Coie Order, *supra* note 8. The same claims about the Steele dossier were made in support of the order targeting the Elias Law Group. Preventing Abuses Memo, *supra* note 8.

568. The Paul Weiss order targeted the firm for the "harmful activity" of Mark Pomerantz, who had served in the Manhattan DA's office as part of the Bragg team investigating whether the Trump Organization misled lenders and tax authorities about property values, and Jeannie Rhee, who was opaquely referred to as "a Paul Weiss partner and former leading prosecutor in the office of Special Counsel Robert Mueller [who] brought a pro bono suit against individuals alleged to have participated in the events that occurred at or near the United States Capitol on January 6, 2021, on behalf of the District of Columbia Attorney General." Paul Weiss Order, *supra* note 7; Michael S. Schmidt, Matthew Goldstein, Jessica Silver-Greenberg & Ben Protess, *How a Major Democratic Law Firm Ended Up Bowing to Trump*, N.Y. TIMES (Mar. 21, 2025), https://www.nytimes.com/2025/03/21/us/politics/paul-weiss-trump.html [https://perma.cc/R54Q-JV3F]; Meghan Tribe & Tatyana Monnay, *Trump Fights Paul Weiss as Wall Street Seeks President's Ear*, BLOOMBERG L. (Mar. 17, 2025, at 02:00 PT), https://news.bloomberglaw.com/business-and-practice/trump-fights-paul-weiss-as-wall-street-seeks-presidents-ear [https://perma.cc/8WUQ-D86V].

569. The Jenner & Block order stated that the firm "condoned partisan 'lawfare,' and abused its pro bono practice" by representing LGBTQ+ groups (which the order claimed supported "attacks against women and children based on a refusal to accept the biological reality of sex") and immigrants, while it singled out the firm's hiring of "unethical Andrew Weissmann," another Mueller team member whose "career has been rooted in weaponized government and abuse of power." Jenner & Block Order, *supra* note 8 (referring to Weissmann's work prosecuting Arthur Andersen, which was found guilty of obstruction of justice for shredding documents in connection with Enron accounting fraud, a conviction overturned by the Supreme Court after Andersen went out of business); Katie Benner, *Prosecutor on Mueller's Team, Andrew Weissmann, Plans to Leave Soon*, N.Y. TIMES (Mar. 14, 2019), https://www.nytimes.com/2019/03/14/us/politics/andrew-weissmann-mueller.html [https://perma.cc/HSE8-GKX7]; Linda Greenhouse, *Justices Unanimously Overturn Conviction of Arthur Andersen*, N.Y. TIMES (May 31, 2005), https://www.nytimes.com/2005/05/31/business/justices-unanimously-overturn-conviction-of-arthur-andersen.html [https://perma.cc/U4PY-XF6G].

WilmerHale orders[570] charged those firms with misconduct for, among other things, hiring members of the Mueller team, while the Susman Godfrey order targeted the firm for "spearhead[ing] efforts to weaponize the American legal system and degrade the quality of American elections" by representing Dominion Voting Systems in its defamation suit against Fox News for making knowingly false claims that Dominion's machines were susceptible to hacking and had flipped votes for Biden (a suit that resulted in a settlement of nearly $800 million for Dominion).[571]

As these examples highlight, firms were strategically selected to create media content that mobilized conspiracies about lawyers, such as Mueller, claimed to be aligned with central villains in the deep state narrative.[572] These conspiracies then provided pretextual grounds to exploit discretionary loopholes in security clearance and contracting authority to impose economic pain—and use the threat of future targeting to subdue the big law firm sector. The key levers were the explicit threat of withdrawing federal contracts from clients (for example, Perkins Coie's client base included Amazon and Boeing, which received billions of dollars in federal contracts,[573] while Jenner & Block received more than 40 percent of its

570. The WilmerHale order claimed that the firm had "abused its pro bono practice" to "undermine justice and the interests of the United States" by helping immigrants secure legal status (which the order called "the obstruction of efforts to prevent illegal aliens from committing horrific crimes and trafficking deadly drugs within our borders"), while alleging firm complicity in "the weaponization of the justice system" by hiring Mueller and two colleagues after they "wielded the power of the Federal Government to lead one of the most partisan investigations in American history." WilmerHale Order, *supra* note 8.

571. Susman Godfrey Order, *supra* note 8; Jeremy W. Peters & Katie Robertson, *Fox Will Pay $787.5 Million to Settle Defamation Suit*, N.Y. TIMES (Apr. 18, 2023), https://www.nytimes.com/2023/04/18/business/media/fox-dominion-defamation-settle.html?smid=url-share [https://perma.cc/QA5E-BKVV].

572. Trump publicized the targeting on social media, for example, posting: "I'm suing the law firm of Perkins Coie for their egregious and unlawful acts, in particular the conduct of a specific member of this firm [Elias]." Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Apr. 23, 2025, at 06:35 PT), https://truthsocial.com/@realDonaldTrump/114387538306195784 [https://perma.cc/8ZL5-MDYJ].

573. Isaac Stanley-Becker, Aaron C. Davis, Josh Dawsey & Christian Davenport, *For Jeff Bezos and His Businesses, Washington Has Become More Important*, WASH. POST (Oct. 30, 2024), https://www.washingtonpost.com/nation/2024/10/30/bezos-business-federal-government [https://perma.cc/8Z2X-T8Q8]; Ellen Mitchell, *Boeing Wins Battle for $20B Fighter Jet Contract, Trump Announces*, HILL (Mar. 21, 2025, at 11:43 ET), https://thehill.com/policy/defense/5207562-pentagon-boeing-f-47 [https://perma.cc/Y2ZG-5QCH].

revenue from representing government contractors[574]) and the implicit threat of withholding necessary regulatory approval for client deals.[575]

The March 21 memo on "Preventing Abuses of the Legal System and the Federal Court" dramatically enlarged the scope of targeted lawyers and mobilized additional tools to punish them.[576] While the memo began by taking further aim at Elias for being "deeply involved in the creation of a false 'dossier,'" its primary target was immigration lawyers.[577] The memo was predicated on the unsupported assertion that "the immigration bar, and powerful Big Law pro bono practices, frequently coach clients to conceal their past or lie about their circumstances when asserting their asylum claims" to "deceive the immigration authorities and courts into granting . . . undeserved relief."[578] Claiming without evidence that lawyers for immigrants were making "fraudulent claims" leading to "heinous crimes against innocent victims,"[579] the memo expanded to a nearly unlimited number the list of law firms the administration could target for sanctions—given that major U.S. law firms routinely represented immigrant clients on a pro bono basis.[580] Further, the memo made clear that it was targeting "law partners" supervising junior lawyers handling pro bono cases, as well as individual immigration lawyers in NGOs, law schools, and private practice outside of big law firms, and law students authorized to appear under clinical supervision in immigration court.[581]

574. Jenner & Block LLP v. U.S. Dep't of Just., 784 F. Supp. 3d 76, 91 (D.D.C. May 23, 2025) (memorandum opinion).

575. Noam Scheiber, *Why Big Law Firms Aren't Standing Together Against Trump's Assault*, N.Y. TIMES (Apr. 19, 2025), https://www.nytimes.com/2025/04/19/business/trump-law-firms.html [https://perma.cc/4LS4-E8NJ].

576. Preventing Abuses Memo, *supra* note 8. Released emails showed that a White House senior policy strategist instructed DOJ Chief of Staff Chad Mizelle, Deputy White House Counsel (and America First Legal founder) Gene Hamilton, and the DOGE general counsel to "socialize" the memo to Bondi and White House Counsel David Warrington three days before it was issued. O'Brien, *supra* note 557.

577. Preventing Abuses Memo, *supra* note 8.

578. *Id.*

579. *Id.* (listing Laken Riley, Jocelyn Nungaray, and Rachel Morin as victims of immigrant crimes).

580. *See* Krishnan, Riley & Dias, *supra* note 563, at 459 (finding that big law firm lawyers represented immigrants in 241 appellate cases during the first Trump administration). For an earlier analysis of big law pro bono, see Steven A. Boutcher, *Lawyering for Social Change: Pro Bono Publico, Cause Lawyering, and the Social Movement Society*, 18 MOBILIZATION 179, 187 tbl.2 (2013) (finding that roughly one-third of law firms worked with immigration organizations on a pro bono basis).

581. Preventing Abuses Memo, *supra* note 8. The memo references 8 C.F.R. § 1003.101 (2026), which states the authority of immigration judges to sanction practitioners "in the public interest" for engaging in "criminal, unethical, or unprofessional conduct, or in frivolous behavior"—suggesting that those judges should use sanctions against lawyers in immigration proceedings. *Id.* It also references a federal regulation, 8 C.F.R. § 292.1 (2026), permitting law students to provide pro bono service to immigrants under lawyer supervision, implying that student advocates and their clinical faculty supervisors were within the scope of the order. *Id.*

The memo appropriated the language of legal ethics as the tool to subvert the ethical duties of targeted lawyers. It revolved around a lengthy exposition of Rule 11 and ABA Model Rule of Professional Conduct 3.1, both of which prohibit lawyers from bringing frivolous lawsuits that lack good faith legal claims and authentic facts.[582] Under this authority, the memo directed the AG to "seek sanctions against attorneys and law firms who engage in frivolous, unreasonable, and vexatious litigation against the United States or in matters before executive departments and agencies," and to refer such attorneys for "disciplinary action" by the bar.[583] While the memo's citation to the rules was performative—government lawyers confronting unethical opposing counsel were already free to seek discipline—it reinforced the memo's primary goal: allowing DOJ lawyers, from the AG on down, to engage in the abusive legal action against immigrants that they claimed to be preventing.

Moreover, the memo's threatened sanctions against lawyers providing pro bono service for some of the most underserved clients in American society inverted the underlying reality: the most prominent lawyers in the nation sanctioned for ethical misconduct worked for Trump. They were Trump's lawyers from 2020—Giuliani, Powell, Eastman, Clark, and others disciplined for ethical abuse and frivolous litigation.[584] And they were DOJ lawyers from 2025, including Habba (sanctioned in the *Clinton* suit[585]) and Martin, whose nomination as U.S. attorney for the District of Columbia was withdrawn after (among other things)

582. Preventing Abuses Memo, *supra* note 8; FED. R. CIV. P. 11; MODEL RULES OF PRO. CONDUCT r. 3.1 (A.B.A. 2023). The memo also threatened sanctions used in other law firm orders, calling on the AG to "review conduct by attorneys or their law firms in litigation against the Federal Government over the last 8 years" to consider "additional steps," "including reassessment of security clearances . . . or termination of any Federal contract." Preventing Abuses Memo, *supra* note 8.

583. Preventing Abuses Memo, *supra* note 8. In line with this directive, the DOJ sought sanctions against a pro bono attorney for representing a Laotian immigrant detained in Texas and sent to Guam. The DOJ acted because the lawyer raised the possibility that the client was being summarily deported under the AEA. Respondents-Defendants' Motion for Sanctions on Counsel for Petitioners-Plaintiffs, Xiong v. Albarran, No. 25-cv-00026 (D. Guam Aug. 1, 2025), Dkt. No. 34. The sanctions motion was denied. Decision & Order Denying Respondents-Defendants' Motion for Sanctions on Counsel for Petitioners-Plaintiffs, Xiong v. Albarran, No. 25-cv-00026 (D. Guam Apr. 20, 2026), Dkt. No. 46.

584. *In re* Giuliani, 214 N.Y.S.3d 366 (N.Y. App. Div. July 2, 2024) (No. 2021-00506) (per curiam) (disbarring Giuliani in New York); King v. Whitmer, 556 F. Supp. 3d 680 (E.D. Mich. 2021) (sanctioning Powell for *Kraken* lawsuit); *In re* Eastman, No. S292011 (Cal. Apr. 15, 2026) (ordering Eastman's disbarment in California); Report and Recommendation of the Board on Professional Responsibility, *In re* Clark, Bd. Dkt. No. 22-BD-039, Disciplinary Dkt. No. 2021-D193 (D.C. Bd. Pro. Resp. July 31, 2025) (recommending Clark's disbarment in Washington, D.C.).

585. Order on Sanctions, Trump v. Clinton, 653 F. Supp. 3d 1198, 1215, 1218, 1232–33 (S.D. Fla. Jan. 19, 2023), *aff'd in relevant part*, Trump v. Clinton, 161 F.4th 671 (11th Cir. Nov. 26, 2025).

an ethics complaint accused him of improper conduct, which included dismissing cases against January 6 defendants he represented and targeting the president's political opponents.[586]

As this highlights, a crucial aim of the law firm orders was to advance the administration's broader campaign to rewrite history, providing cover for the administration's own lawbreaking in pursuit of control over the private bar. That lawbreaking involved depriving clients of the right to choose their own counsel and counsel of the right to advocate their clients' viewpoints (anti-Trump or pro-immigrant). Because of this, four firms (Perkins Coie, Jenner & Block, WilmerHale, and Susman Godfrey) sued to enjoin the orders, contending that they retaliated against lawyers' speech in violation of the First Amendment,[587] and violated clients' Fifth and Sixth Amendment rights to counsel, among other arguments.[588]

Defending the orders, DOJ Deputy Associate AG Richard Lawson (who joined the department from the Trump-aligned think tank America First Policy Institute[589]) used false equivalence to foster the illusion that the orders represented

586. Letter from Senator Richard J. Durbin et al., to Off. of Disciplinary Couns., D.C. Ct. of Appeals, Re: Request for Disciplinary Investigation of Edward Robert Martin, Jr. (Mar. 6, 2025), https://www.judiciary.senate.gov/imo/media/doc/2025-03-06%20SJC%20Bar%20Complaint%20re%20Martin.pdf [https://perma.cc/CF68-T9FR] (alleging misconduct for, among other things, dismissing charges against an already convicted January 6 defendant that Martin had represented prior to becoming interim U.S. attorney and continued to represent). The withdrawal of Martin's nomination was primarily driven by his legal defense of January 6 rioters and ongoing association with a far-right January 6 defendant. Thrush, Feuer, Haberman & Barrett, *supra* note 497. Martin was appointed U.S. pardon attorney on May 14, 2025. *Pardon Attorney Edward R. Martin Jr.*, U.S. DEP'T OF JUST., OFF. OF THE PARDON ATT'Y (May 30, 2025), https://www.justice.gov/pardon/staff-profile/pardon-attorney-edward-r-martin-jr [https://perma.cc/4YY2-8U4N]. There were additional allegations of ethical misconduct by Martin during a conflict over his removal as head of the Eagle Forum in 2016. *See* Jeremy Kohler & Andy Kroll, *The Untold Story of How Ed Martin Ghostwrote Online Attacks Against a Judge—and Still Became a Top Trump Prosecutor*, PROPUBLICA (Apr. 24, 2025, at 05:00 ET), https://www.propublica.org/article/ed-martin-trump-interim-dc-us-attorney-secret-judge-attacks [https://perma.cc/LZ2J-4UZT].

587. For cases providing First Amendment protection for litigation, see Legal Servs. Corp. v. Velazquez, 531 U.S. 533, 549 (2001) (holding that a funding restriction on welfare reform advocacy was impermissible viewpoint-based discrimination in violation of the First Amendment); NAACP v. Button, 371 U.S. 415, 429 (1963) (confirming First Amendment protection for "vigorous advocacy, certainly of lawful ends, against governmental intrusion").

588. *See, e.g.*, Perkins Coie LLP v. U.S. Dep't of Just., 783 F. Supp. 3d 105, 137 (D.D.C. May 2, 2025) (memorandum opinion). Other claims included alleged violations of equal protection, *id.* at 166, due process, *id.* at 171, and the prohibition on vagueness, *id.* at 174.

589. Justin Henry, *DOJ Litigator for Trump's Big Law Fights Decamps for MAGA Group*, BLOOMBERG L. (Jan. 6, 2026, at 09:42 PT), https://news.bloomberglaw.com/business-and-practice/doj-litigator-for-trumps-big-law-fights-decamps-for-maga-group [https://perma.cc/E6ND-EYNQ]. After losing these cases, Lawson returned to America First Policy Institute. *Id.*

normal executive action. For example, when Perkins Coie challenged unsupported Section 1 findings of misconduct justifying the suppression of law firm speech, Lawson responded that the statements were themselves protected speech—merely "the Government's own opinions."[590] Defending Section 2 suspension of security clearances despite no evidence of security concerns,[591] Lawson cited precedent suggesting that clearance decisions were unreviewable, failing to note that precedent dealt with individualized determinations—not the blanket revocations at issue.[592]

Regarding Section 3's instruction to sever government ties with clients, which Jenner & Block argued unlawfully coerced third parties to suppress the firm's speech,[593] Lawson attempted to reframe Section 3 as a straightforward application of the government's proprietary right "to choose with whom it will do business, to the fulfillment of its public policy goals."[594] Lawson specifically contended that the president could prohibit procurement with discriminatory contractors (interpreted to mean those with DEI[595]) under a 1965 executive order by President Johnson, issued during the height of the Civil Rights Movement,

590. *See Perkins Coie*, 783 F. Supp. 3d at 140. In the *Jenner* case, Lawson's brief opposing summary judgment defended the order's unsupported claim that the firm "condoned partisan 'lawfare,' and abused its pro bono practice" as "nothing other than a textbook example of protected government speech." Defendants' Opposition to Plaintiff's Motion for Summary Judgment at 4, Jenner & Block LLP v. U.S. Dep't of Justice, No. 25-0916 (D.D.C. Apr. 17, 2025). At the summary judgment hearing on the Jenner order, Lawson argued that it was necessary to protect "critical American interests," to which the judge responded, "Give me a break." Aebra Coe, *'Give Me a Break': Judge Questions DOJ on Jenner Order*, LAW360 (Apr. 28, 2025, at 15:14 ET), https://www.law360.com/articles/2330952 [https://perma.cc/AE6G-A9XB].

591. *See Perkins Coie*, 783 F. Supp. 3d at 157–58; *see also* Jenner & Block LLP v. U.S. Dep't of Just., 784 F. Supp. 3d 76, 102 (D.D.C. May 23, 2025) (memorandum opinion) ("Section 2's process implicates no national security concern to speak of."). In the *Jenner & Block* case, Lawson sought to manufacture a national security concern based on the firm's "public praise" for Andrew Weissmann's role in the Mueller investigation, which the judge found was a "speech-based justification [that] doesn't even feign at national security . . . ." *Jenner & Block*, 784 F. Supp. 3d at 102.

592. *See Perkins Coie*, 783 F. Supp. 3d at 141–42 (citing Lee v. Garland, 120 F.4th 880 (D.C. Cir. 2024)).

593. *See Jenner & Block*, 784 F. Supp. 3d at 105 (agreeing with Jenner & Block in holding that the executive order "does precisely what the Supreme Court said just last year is forbidden: it engages in 'coercion against a third party to achieve the suppression of disfavored speech'" (quoting Nat'l Rifle Ass'n of Am. v. Vullo, 602 U.S. 175, 180 (2024))).

594. Defendant's Opposition to Plaintiff's Motion for Summary Judgment at 10, Jenner & Block LLP v. U.S. Dep't of Justice, No. 25-cv-00916 (D.D.C. Apr. 17, 2025), Dkt. No. 95.

595. The DOJ based this argument on its expansive reading of *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023), which it interpreted to preclude DEI, even though that issue was never before the Supreme Court in that case. *Jenner & Block*, 784 F. Supp. 3d at 107. As alleged evidence of discrimination, Jenner & Block was accused of following the Mansfield Rule, which is a voluntary certification program to promote diversity in hiring and promotion followed by many private sector companies. *Id.*

mandating nondiscrimination in government contracting[596]—ignoring the obvious irony that Trump's order sought to undermine the precise diversity goals that Johnson promoted. In the *Jenner & Block* case, in which the law firm itself had no government contracts and the clients that did had no connection to any alleged wrongdoing, the court flatly rejected Lawson's claim, calling Section 3 "an act of retaliation not sustainable on non-speech grounds,"[597] a conclusion reinforced in other cases.[598]

Overall, the lawsuits resulted in similar legal outcomes, with all four district courts holding that firms had standing and permanently enjoining the orders for violating the right to free speech.[599] In doing so, the courts expressed forceful disapproval of the administration's effort to undermine professional independence. In the *WilmerHale* case, District Court Judge Richard Leon stressed that the "cornerstone of the American system of justice is an independent judiciary and an independent bar willing to tackle unpopular cases, however daunting. The Founding Fathers knew this!"[600] In the *Perkins Coie* case, District Court Judge Beryl Howell sounded a similar note:

> No American President has ever before issued executive orders like the one at issue in this lawsuit targeting a prominent law firm with adverse actions to be executed by all Executive branch agencies but, in purpose

596. Exec. Order No. 11246, 30 Fed. Reg. 12319 (Sep. 24, 1965).
597. *Jenner & Block*, 784 F. Supp. 3d at 109.
598. *See, e.g.*, *Perkins Coie*, 783 F. Supp. 3d at 180; Wilmer Cutler Pickering Hale & Dorr LLP v. Exec. Off. of President, 784 F. Supp. 3d 127, 154–55 (D.D.C. May 27, 2025) (memorandum opinion). The *Perkins* court suggested that the order's threat to withdraw client contracts constituted an unconstitutional condition. *Perkins Coie*, 783 F. Supp. 3d at 150.
599. *Perkins Coie*, 783 F. Supp. 3d 105; *Jenner & Block*, 784 F. Supp. 3d 76; *Wilmer Cutler Pickering Hale & Dorr*, 784 F. Supp. 3d 127; Susman Godfrey LLP v. Exec. Off. of President, 789 F. Supp. 3d 15 (D.D.C. June 27, 2025) (memorandum opinion). The D.C. Circuit ordered the cases be consolidated on appeal as *Perkins Coie LLP v. U.S. Department of Justice*, Nos. 25-5241, 25-5265, 25-5277, 25-5310, 2026 U.S. App. LEXIS 3854 (D.C. Cir. Feb. 6, 2026) (order consolidating appeals), on the same day and before the same panel as *Zaid v. Executive Office of the President*, No. 26-5009 (D.C. Cir. Jan. 13, 2026). For background on the *Zaid* case, see Julian Mark, *Trump Suffers Several Defeats in Effort to Punish Opposing Lawyers*, WASH. POST (Dec. 26, 2025), https://www.washingtonpost.com/national-security/2025/12/26/trump-mark-zaid-lawyers-security-clearances [https://perma.cc/WE2E-F3PR] (noting ruling by a federal judge in Washington temporarily blocking Trump's attempt to strip the security clearance of Mark Zaid, a lawyer who represented the government whistleblower whose allegations about pressure on Ukraine led to Trump's first impeachment).
600. *Wilmer Cutler Pickering Hale & Dorr*, 784 F. Supp. 3d at 135, 151 (stating further: "Taken together, the provisions constitute a staggering punishment for the firm's protected speech!").

> and effect, this action draws from a playbook as old as Shakespeare, who penned the phrase: "The first thing we do, let's kill all the lawyers."[601]

Other firms sacrificed themselves.[602] The first was Paul Weiss, whose chairman Brad Karp put aside the firm's longstanding commitment to liberal causes to forge a pact with the president to provide $40 million in pro bono services to Trump-endorsed clients, end DEI, and admit "wrongdoing" by former partner Mark Pomerantz for his role in the Manhattan DA investigation into whether Trump and his company had committed financial fraud (which did not move forward despite what Pomerantz believed was sufficient evidence of guilt).[603] The pact, negotiated by Karp and Trump personal counsel Boris Epshteyn,[604] was made to appease private equity clients (like Apollo Global Management) worried about regulatory agencies blocking approval of deals, which the firm feared would cause a mass exodus in the profitable mergers and acquisitions (M&A) practice, leading to a death spiral.[605] The Paul Weiss agreement set the model followed by eight other M&A-heavy firms—including Skadden, Milbank, and Latham & Watkins[606]—which (together with Paul Weiss) promised to provide a total of $940

601. *Perkins Coie*, 783 F. Supp. 3d at 118–19 (quoting WILLIAM SHAKESPEARE, HENRY VI, PART 2, act 4, sc. 2, l. 75); *id.* at 119 (stating further: "The importance of independent lawyers to ensuring the American judicial system's fair and impartial administration of justice has been recognized in this country since its founding era.").

602. Danielle Kaye, Lauren Hirsch & Maureen Farrell, *Paul Weiss Deal With Trump Faces Backlash From Legal Profession*, N.Y. TIMES (Mar. 21, 2025), https://www.nytimes.com/2025/03/21/business/paul-weiss-trump-reaction.html [https://perma.cc/2XLB-QB22]; Fabio Bertoni, *What If the Big Law Firms Hadn't Caved to Trump?*, NEW YORKER (Oct. 25, 2025), https://www.newyorker.com/news/the-lede/what-if-the-big-law-firms-had-not-caved-to-trump [https://perma.cc/Q7EU-NRNQ]. In the first Trump administration, big law firms largely kept their distance from the administration, with notable exceptions like Jones Day, but even that firm drew the line at the election attack. Rachel Abrams, David Enrich & Jessica Silver-Greenberg, *Once Loyal to Trump, Law Firms Pull Back From His Election Fight*, N.Y. TIMES (Nov. 13, 2020), https://www.nytimes.com/2020/11/13/business/porter-wright-trump-pennsylvania.html [https://perma.cc/J3AE-CBJF]. On Jones Day's relationship to the first Trump administration, see generally DAVID ENRICH, SERVANTS OF THE DAMNED: GIANT LAW FIRMS, DONALD TRUMP, AND THE CORRUPTION OF JUSTICE (2022).

603. Schmidt, Goldstein, Silver-Greenberg & Protess, *supra* note 568; *Read the Full Text of Mark Pomerantz's Resignation Letter*, N.Y. TIMES (Mar. 23, 2022), https://www.nytimes.com/2022/03/23/nyregion/mark-pomerantz-resignation-letter.html [https://perma.cc/Y4XA-CVBP].

604. *See* O'Brien, *supra* note 557 (noting that Paul Weiss was represented by Bill Burck of Quinn Emanuel Urquhart & Sullivan while the president enlisted Bob Giuffra, the Sullivan & Cromwell co-chair, and that email exchanges about the deal copied Gene Hamilton, Chad Mizelle, and deputy counsel to the president Gary Lawkowski, among others).

605. Scheiber, *supra* note 575.

606. *Id.* The full list of firms that struck deals is A&O Shearman; Cadwalader, Wickersham & Taft; Kirkland & Ellis; Latham & Watkins; Milbank; Paul, Weiss, Rifkind, Wharton & Garrison; Simpson Thacher & Bartlett; Skadden, Arps, Slate, Meagher & Flom; and Willkie Farr &

million of "pro bono Legal Services, during the Trump administration and beyond, to causes that the President and [firms] support."[607]

The agreements, which aside from the Paul Weiss deal were not made in response to specific orders, caused public backlash against firms accused of "bend[ing] the knee."[608] Beyond the president's assertion that the firms had agreed "to support causes including assisting our Nation's veterans, fairness in the justice system, and combating anti-Semitism,"[609] precisely which clients would receive free service was left unclear (as were other details about the agreements). While

Gallagher. Michael S. Schmidt, Maggie Haberman, Matthew Goldstein, Jessica Silver-Greenberg, Ben Protess & William K. Rashbaum, *Law Firms Made Deals With Trump. Now He Wants More From Them.*, N.Y. TIMES (Apr. 16, 2025), https://www.nytimes.com/2025/04/16/us/politics/law-firms-deals-trump.html [https://perma.cc/TD64-S6WQ]; Matthew Goldstein, *Five More Big Law Firms Reach Deals With Trump*, N.Y. TIMES (Apr. 11, 2025), https://www.nytimes.com/2025/04/11/business/trump-law-firms-kirkland-ellis-latham-watkins.html [https://perma.cc/HV5W-GFN8]. Under the Skadden deal, the firm also committed its separate fellowship program to provide five Trump fellows. Ella Lee, *Trump Gets $100M Deal With Skadden Law Firm Amid Pressure Campaign*, HILL (Mar. 28, 2025, at 13:37 ET), https://thehill.com/homenews/administration/5220137-trump-skadden-100-million-pro-bono [https://perma.cc/M5S7-VZDS].

607. Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Mar. 28, 2025, at 10:57 PT), https://truthsocial.com/@realDonaldTrump/posts/114241348699704594 [https://perma.cc/YF4Z-TER3] (making this announcement, repeated in other deals, in relation to the $100 million Skadden agreement).

608. Elizabeth Williamson, *The Website Where Lawyers Mock 'Yellow-Bellied' Firms Bowing to Trump*, N.Y. TIMES (May 19, 2025), https://www.nytimes.com/2025/05/18/us/politics/law-firms-trump-above-the-law.html [https://perma.cc/Q6T6-JN3F].

609. Paul Weiss Remedial Order, *supra* note 8, at 13685 (describing Paul Weiss's commitment to provide $40 million in pro bono services in exchange for withdrawing sanctions); *see also* Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Apr. 1, 2025, at 13:47 PT), https://truthsocial.com/@realDonaldTrump/posts/114264667777137553 [https://perma.cc/QJA4-259G] (stating that Willkie Farr & Gallagher had agreed to provide "at least $100 Million Dollars in pro bono Legal Services . . . to the following areas: Assisting Veterans and other Public Servants, including, among others, members of the Military, Gold Star families, Law Enforcement, and First Responders; Ensuring fairness in our Justice System; and Combatting Antisemitism"); Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Apr. 2, 2025, at 11:05 PT), https://truthsocial.com/@realDonaldTrump/posts/114269692330126501 [https://perma.cc/32Q6-2MFW] (using similar language to describe $100 million deal with Milbank); Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Apr. 11, 2025, at 09:19 PT), https://truthsocial.com/@realDonaldTrump/posts/114320237164839938 [https://perma.cc/QLX9-QANZ] (using similar language to describe $100 million deal with Cadwalader, Wickersham & Taft); Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Apr. 11, 2025, at 09:21 PT), https://truthsocial.com/@realDonaldTrump/posts/114320245355397433 [https://perma.cc/WR8G-WXL8] (using similar language to describe deals totaling $500 million with Kirkland & Ellis, A&O Shearman, Simpson Thacher & Bartlett, and Latham & Watkins). Because there were no released records of the deals other than what the president posted on Truth Social, House Democrats sent inquiries seeking details. *See, e.g.*, Letter from Dave Min, Member of Cong., to Brad S. Karp, Managing Partner, Paul Weiss (Apr. 24, 2025), https://min.house.gov/sites/evo-subsites/min.house.gov/files/evo-media-document/04.24.25-letters-to-law-firms-on-trump-administration-agreements-all.pdf [https://perma.cc/NQ8A-GH95].

firm leaders, like Kirkland & Ellis's W. Neil Eggleston, insisted that they retained ultimate authority to "determine which matters we take on—both pro bono and otherwise,"[610] Trump asserted a contrary view: declaring the agreements created a pro bono war chest to conduct government business, such as negotiating trade deals and supporting DOGE,[611] while also suggesting that pro bono would be directed toward defending police officers accused of violating citizens' civil rights.[612] As evidence emerged that some firms were in fact doing volunteer work for government agencies,[613] the law firm pacts turned the meaning of pro bono on its head: mobilizing free lawyers on behalf of government actors engaged in abuse rather than vulnerable members of the community who suffered at the government's hand.[614]

Whether the agreements produced legal work that counted as pro bono under professional rules,[615] however, was largely a moot point. This is because the

610. Letter from W. Neil Eggleston, Kirkland & Ellis LLP, to The Hon. Richard Blumenthal, Ranking Member, Senate Permanent Subcomm. on Investigations 1 (Apr. 14, 2025).

611. Schmidt, Haberman, Goldstein, Silver-Greenberg, Protess & Rashbaum, *supra* note 606.

612. Exec. Order No. 14288, 90 Fed. Reg. 18765 (Apr. 28, 2025) ("Strengthening and Unleashing America's Law Enforcement to Pursue Criminals and Protect Innocent Citizens").

613. *See* Michael S. Schmidt, Matthew Goldstein & Maggie Haberman, *Two Big Law Firms Said to Be Doing Free Work for Trump Administration*, N.Y. TIMES (Aug. 20, 2025), https://www.nytimes.com/2025/08/20/us/politics/law-firms-free-work-trump-administration.html [https://perma.cc/HDY5-EEWG] (stating that some firms were doing work on behalf of the Commerce Department); *see also* Michael S. Schmidt & Jessica Silver-Greenberg, *How a Top Law Firm Went From Standing Up to Trump to Bending the Knee*, N.Y. TIMES (Aug. 3, 2026), https://www.nytimes.com/2026/08/02/us/politics/paul-weiss-trump.html [https://perma.cc/9SDS-Y25Y] (acknowledging Paul Weiss's free work for the Commerce Department in the summer of 2025).

614. Cynthia Godsoe & Evan A. Davis, *Ethical Issues Raised by Agreements Between Certain Law Firms and Donald Trump*, LAW.COM (Apr. 29, 2025, at 10:00 ET), https://www.law.com/newyorklawjournal/2025/04/29/ethical-issues-raised-by-agreements-between-certain-law-firms-and-donald-trump/ [https://perma.cc/QV3K-XHCJ]. For a critique of contemporary pro bono, see Tanina Rostain, *The Pro Bono Industrial Complex*, 74 UCLA L. REV. (forthcoming 2027).

615. MODEL RULES OF PRO. CONDUCT r. 6.1 (A.B.A. 2023) (defining pro bono as voluntary service to "persons of limited means" or organizations "in matters that are designed primarily to address the needs of persons of limited means," as well as to "governmental and educational organizations in matters in furtherance of their organizational purposes, *where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate*" (emphasis added)). An ethics complaint filed against firms argued that the services would not qualify as pro bono because they would not be done voluntarily and would not be dedicated to underserved clients. *See* Complaint Before the Attorney Grievance Committee, In re Paul, Weiss, Rifkind, Wharton & Garrison LLP et al. at 9 (N.Y. App. Div. June 23, 2025). In New York, state legislators proposed a bill to deny pro bono recognition of any work done pursuant to an agreement with the administration. Mike Vilensky & Tatyana Monnay, *NY Bill Aims to Exclude Trump Work From Bar Pro Bono Hours*, BLOOMBERG L. (May 16, 2025, at 13:04 PT), https://news.bloomberglaw.com/new-york-brief/ny-law-aims-to-block-trump-pro-bono-work-from-bar-requirements [https://perma.cc/879P-V79Z].

agreements accomplished other goals crucial to the administration's project of professional capture. First, they sent a clear message to the entire big law sector that capitulation was an appropriate profit-maximizing strategy, thus facilitating the administration's divide-and-conquer approach to deter other firms from doing pro bono work for disfavored causes and from promoting diversity.[616] Second, because pro bono is a scarce resource, by committing firm lawyers to volunteer for the administration, the agreements forced a reduction in the amount of pro bono available to underserved groups that legitimately needed it. Third, this reduction constrained the larger U.S. public interest law sector, which relies heavily on big law firms for voluntary resources and monetary largesse.[617] Fourth, even if firms were still willing to take on cases against the government, the agreements could preclude them from doing so under professional conflict of interest rules.[618] Finally, the agreements sent the message that professional service to the president was no different from service in defense of vulnerable people targeted by his administration. This was a final false equivalence, but one in line with the broader strategy to not just coopt pro bono but to transform its meaning: from pro bono publico, literally "for the public good," to pro bono Trump.

616. In the wake of the agreements, firms reduced pro bono litigation against the government, particularly on behalf of immigrants. Shayna Jacobs, Clara Ence Morse & Mark Berman, *Nation's Biggest Law Firms Back Off From Challenging Trump Policies*, WASH. POST (Oct. 26, 2025), https://www.washingtonpost.com/national-security/2025/10/26/smaller-law-firms-struggle-trump-administration-initiatives [https://perma.cc/BLK9-8XXX]; Mike Spector, Brad Heath, Kristina Cooke, Joseph Tanfani & David Thomas, *How Trump's Crackdown on Law Firms Is Undermining Legal Defenses for the Vulnerable*, REUTERS (Aug. 3, 2025), https://www.reuters.com/investigations/trumps-war-big-law-leads-firms-retreat-pro-bono-work-underdogs-2025-07-31 [https://perma.cc/D6ZQ-V7MK]. Firms have also rolled back DEI initiatives. Sara Randazzo, *Law Firms Loved Diversity, Until It Became a Liability*, REUTERS (June 15, 2026, 03:08 PT), https://www.reuters.com/legal/government/law-firms-loved-diversity-until-it-became-liability-2026-06-15 [https://perma.cc/8FYQ-56C5].

617. *See* Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1, 45–46 (2004) [hereinafter, Cummings, *The Politics of Pro Bono*]; Scott Cummings, Opinion, *There's a Darker Reason Trump Is Going After Those Law Firms*, N.Y. TIMES (May 15, 2025), https://www.nytimes.com/2025/05/15/opinion/trump-law-firms-attacks.html [https://perma.cc/VWP8-4VMJ].

618. MODEL RULES OF PRO. CONDUCT r. 1.7 (A.B.A. 2023). The D.C. Bar issued an ethics opinion stating that law firm agreements could violate ethics rules by compromising professional independence, particularly by creating conflicts of interest and restricting a lawyer's right to practice free from external interference. D.C. Bar Legal Ethics Comm., Ethics Op. 391 (Oct. 2025) ("Lawyers and Law Firms that Contemplate Agreeing With Governments to Conditions That May Limit or Shape Their Law Practices"), https://www.dcbar.org/for-lawyers/legal-ethics/ethics-opinions-210-present/ethics-opinion-391 [https://perma.cc/M6JW-E6LT].

This cooptation of legal ethics to subvert professional independence—also a key feature of the Bondi memo's attack on DOJ—reinforced the second prong of the administration's campaign against the private legal sector: degrading the capacity of the organized bar to regulate government lawyers. The starting point in this campaign is the fact that in America, where the organized bar operates primarily through bar associations with authority delegated from state supreme courts to admit and discipline lawyers,[619] *federal* government lawyers are regulated by *state* bars. This means that DOJ lawyers are subject to discipline for violating the rules of professional conduct of the jurisdictions in which they practice, conferring independent regulatory authority on bars to ensure DOJ lawyers follow the same ethical rules as their peers. It is for this reason that the administration has targeted the bar through intertwined legal and political strategies.

The legal strategy follows the playbook by seeking to manufacture authority to overturn the longstanding principle of bar oversight of DOJ. This principle is codified in the 1998 McDade Amendment, a federal statute requiring DOJ lawyers to observe ethical standards "governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State," giving express congressional authorization under the Supremacy Clause for state bars to regulate federal lawyers.[620] The specific threat to current DOJ lawyers who have engaged in misconduct in authorizing executive actions and defending them in court is that they could be disciplined by their respective bars—and potentially lose their right to practice—for violating a range of professional rules.[621] The threat of discipline heightened in 2024 after decisions from three of the most important bar associations—New York, California, and Washington, D.C.—sanctioning

619. RHODE, LUBAN, CUMMINGS, ENGSTROM & BARTON, *supra* note 77, at 52. This discussion uses the term "bar" as shorthand for all state supreme court-designated entities that regulate the conduct of lawyers.

620. Ethical Standards for Attorneys for the Government, 28 U.S.C. § 530B ("McDade Amendment"). The Amendment was passed after efforts by the DOJ to exempt prosecutors from state ethics rules, particularly after AG Janet Reno issued the Reno Rule exempting prosecutors from the prohibition on lawyers contacting represented parties. Stephen Gillers, *Because They Are Lawyers First and Foremost: Ethics Rules and Other Strategies to Protect the Justice Department From a Faithless President*, 57 GA. L. REV. 163, 199–200 (2022).

621. *See infra* notes 913–24.

architects of the 2020 Stop the Steal campaign[622]—Giuliani,[623] Eastman,[624] and Clark[625]—for their actions promoting the false claim of voting fraud to overturn the election.

The D.C. Bar's proceeding against Clark—a DOJ lawyer at the time of his misconduct—is the test case for department accountability. Accordingly, that bar association, which oversees lawyers licensed to practice in the District of Columbia where DOJ headquarters sits, has come into the crosshairs of administration legal attacks. These attacks build from, and are coordinated with, Clark's own defense against discipline for urging DOJ leadership to send the "proof of concept" letter (described in Subpart II.D) falsely stating that the department had "identified significant concerns" with voting affecting the outcome of the 2020 election.[626] Based on his efforts to send this letter, Clark was charged by the D.C. disciplinary counsel with "attempt[ing] to engage in conduct involving dishonesty" and "conduct that would seriously interfere with the administration of justice," in violation of D.C. Bar Rule of Professional Conduct 8.4.[627]

622. These cases were initiated by lawyer-led civil society organizations created during the first Trump administration to hold lawyers to democratic duties. *See* Cummings, *supra* note 13, at 599.

623. *In re* Giuliani, 214 N.Y.S.3d 366 (N.Y. App. Div. July 2, 2024) (disbarring Giuliani for lying under oath in a federal lawsuit challenging the 2020 presidential election results in Pennsylvania, as well as lying in legislative hearings and public media); *In re* Giuliani, 323 A.3d 424 (D.C. Sep. 26, 2024) (per curiam) (disbarring Giuliani in Washington, D.C. as reciprocal discipline for his New York disbarment). The New York Appellate Division, in issuing an interim suspension, rejected Giuliani's arguments that he could not be sanctioned because he was exercising his First Amendment rights and lacked knowledge of the falsity of his statements. *In re* Giuliani, 146 N.Y.S.3d 266, 270–80 (N.Y. App. Div. June 24, 2021) (per curiam).

624. *In re* Eastman, No. SBC-23-O-30029 (Cal. State Bar Ct. Hearing Dep't Mar. 27, 2024), *aff'd*, No. SBC-23-O-30029 (Cal. State Bar Ct. Rev. Dep't June 13, 2025), *petition for review denied*, No. S292011 (Cal. Apr. 15, 2026) (disbarring Eastman for failing to support the Constitution and "moral turpitude" in connection with his misrepresentations in court filings and legal memos that contributed to the fake elector scheme). Eastman filed a petition to the U.S. Supreme Court arguing that his disbarment violates the First Amendment. Petition for Writ of Certiorari, Eastman v. State Bar of Cal., No. 25A1445 (Sept. 11, 2026).

625. Report and Recommendation of Hearing Committee Number Twelve, *supra* note 190, at 6.

626. *See* Draft Letter from Jeffrey A. Rosen, *supra* note 191.

627. Specification of Charges at 9, *In re* Clark, No. 2021-D193 (D.C. Bd. Pro. Resp. July 19, 2022) (citing violations of Rules 8.4(a), (c), and (d)). The D.C. process for lawyer discipline formally sits outside of the D.C. Bar. It is overseen by the Board on Professional Responsibility, whose members are appointed by the D.C. Court of Appeals; complaints are filed by the Office of Disciplinary Counsel and the Board's recommendations for lawyer discipline are ultimately reviewed by the D.C. Court of Appeals. RULES GOVERNING D.C. BAR r. XI §§ 4–6. This disciplinary apparatus is commonly referred to as the D.C. Bar, and this Article follows that usage while recognizing the formal distinction.

Clark's answer to bar charges followed the playbook. His brief flooded the zone with scattershot claims difficult to address by virtue of their sheer volume, fostering the illusion that it must present a valid challenge—even as it distorted law and fact in an unprecedented assault on D.C. Bar authority.[628] Seeking to abrogate oversight of DOJ legal analysis and advice-giving, Clark's brief argued that the bar lacked jurisdiction under the constitutional mandate that the president "take Care that the Laws be faithfully executed,"[629] citing an OLC opinion stating that bar rules are preempted insofar as they are "inconsistent with the requirements or exigencies of federal service"[630]—failing to explain why the "exigencies" of service required lying.[631] Reframing his effort to disseminate false information on DOJ letterhead as mere "dissent from the 'consensus view'" of his superiors according to his "independent professional judgment," Clark further contended that the Supremacy Clause preempted the McDade Amendment (and thus D.C. Bar regulation) because that regulation impeded DOJ lawyers in the "internal deliberations of the Executive Branch"[632]—again, skating over the fact that there were no "deliberations" but rather an effort to subvert the considered conclusions of DOJ officials who actually conducted investigations.

Clark made other novel arguments, including that: the McDade Amendment did not apply to the D.C. Bar because the District of Columbia is not a "State";[633] the D.C. Bar (which sits under the D.C. Court of Appeals, itself established by Congress) could not be delegated regulatory authority over DOJ lawyers "interacting with the President" under the "major questions" and *Chevron* doctrines;[634] Clark's good faith "legal opinion" was protected free speech;[635] his conduct was "not subject to discipline by the D.C. Bar under the doctrine of official immunity";[636] and the charges should fail as a matter of law since "it is logically and legally impossible" to violate a rule by taking "a position in confidential internal pre-decisional policy deliberations on contested issues of fact, law, and policy."[637] On the question of fact, Clark inverted reality by continuing to insist, against all

628. Answer of Respondent, *In re* Clark, No. 2021-D193 (D.C. Bd. Pro. Resp. Sep. 1, 2022) (asserting fifty-four affirmative defenses, many with only a few sentences of argument). Clark was represented by Charles Burnham of D.C.-based Burnham & Gorokhov, PLLC, along with Harry MacDougald from Georgia and Robert Destro from Ohio appearing pro hac vice. *Id.*
629. U.S. CONST. art. II, § 3.
630. Answer of Respondent, *supra* note 628, at 3–4.
631. Report and Recommendation of Hearing Committee Number Twelve, *supra* note 190, at 120.
632. Answer of Respondent, *supra* note 628, at 6–7.
633. *Id.* at 7–8.
634. *Id.* at 11–12.
635. *Id.* at 13.
636. *Id.* at 14.
637. *Id.* at 16.

objective evidence, that "[s]ignificant bodies of information about election irregularities available *before* January 3, 2021 justified" his actions,[638] and that, in any event, the charges should be tossed out because they were brought for "political reasons" that discriminated against Clark's conservative beliefs.[639]

The disciplinary committee, in a 213-page opinion, systematically rejected these arguments.[640] Based on an exhaustive review of evidence that covered testimony from over twenty witnesses, including former Acting AG Rosen and Acting Deputy AG Donoghue, the committee concluded that there was clear and convincing evidence that "Clark attempted dishonesty and did so with truly extraordinary recklessness" in seeking "to take over responsibility for investigations into election matters" in which he had no experience, "relying on what was, at best, a fraction of the information any reasonable attorney would expect to act on, to insist on sending a letter—with significant false and misleading statements" intended to "intervene in the election process" over "emphatic statements that the letter was false from those within the DOJ most knowledgeable about the situation."[641] The committee found "especially troubling" Clark's arguments suggesting that "thousands of Justice Department lawyers who took an oath to follow the District of Columbia Rules of Professional Conduct should not be held to that oath"—arguments the committee concluded "attack[ed] the very idea of holding lawyers to bar standards"[642] and sought to exempt Clark from the rules of the bar he voluntarily joined.[643]

On July 31, 2025, the full D.C. Board on Professional Responsibility increased Clark's sanction from the committee's proposed two-year suspension[644] to disbarment.[645] In doing so, the board stated:

> Lawyers must observe the highest standard of professional conduct. At a minimum, they must be honest. While dishonesty is always intolerable, the facts here are significantly aggravating to warrant disbarment: Respondent was prepared to cause the Justice Department to tell a lie about the status of its investigation of an important national

638. *Id.* at 19 (emphasis in original).
639. *Id.* at 20, 28.
640. Report and Recommendation of Hearing Committee Number Twelve, *supra* note 190.
641. *Id.* at 4–5.
642. *Id.* at 200.
643. *Id.* at 124 (rejecting Clark's interpretation of the McDade Amendment, emphasizing that it "requires lawyers to meet the requirements of their own bar, *in order to* practice in the Justice Department"); *see also id.* at 150 (concluding that Clark had not shown immunity permitted him to practice "without complying with [D.C.'s] Rules of Professional Conduct").
644. *Id.* at 6.
645. Report and Recommendation of the Board on Professional Responsibility at 5–6, *In re* Clark, Bd. Dkt. No. 22-BD-039, Disciplinary Dkt. No. 2021-D193 (D.C. Bd. Pro. Resp. July 31, 2025).

> issue (the integrity of the 2020 Presidential election). Lawyers cannot advocate for any outcome based on false statements and they certainly cannot urge others to do so. Respondent persistently and energetically sought to do just that on an important national issue. He should be disbarred as a consequence and to send a message to the rest of the Bar and to the public that this behavior will not be tolerated.[646]

This message was clearly received by the DOJ. On November 7, 2025, in a fireside chat at the Federalist Society's National Lawyers Convention, then-Deputy AG Blanche called the D.C. Bar "one of the most activist, obnoxious bars when it comes to going after conservative lawyers," threatening that "we're going to do everything we can to take these activist bars . . . out of the picture."[647]

Four months later, the DOJ delivered on this threat by publishing a proposed rule that would effectively prevent any bar, including the D.C. Bar and others with authority over U.S. attorney's offices around the country, from disciplining DOJ lawyers.[648] The rule picked up directly where Clark's arguments left off: inverting reality by purporting to fulfill the McDade Amendment's mandate that the department uphold "the highest standards of ethics among its attorneys" when in fact the intent was to undermine ethical enforcement.[649] To hide this intent, the rule started by invoking the manufactured authority of the president's Weaponization order and Preventing Abuses memo to target a fabricated foe: "political activists [who] have weaponized the bar complaint and investigation process," thus "chilling the zealous advocacy by Department attorneys on behalf of the United States."[650] Seeking to exploit a loophole, the rule claimed McDade never mandated that state bars exercise *direct* enforcement authority, only that their rules be enforced, which gave the AG "discretion to displace State bar enforcement and to create an entirely Federal enforcement mechanism."[651]

646. *Id.* at 6. After the Supreme Court decision in *Trump v. United States*, Clark sought interlocutory appeal to the D.C. Court of Appeals on the question of immunity, which was rejected. Order, *In re* Clark, No. 24-BG-0719 (D.C. Sep. 4, 2024). A decision on the merits of Clark's disbarment is pending before the D.C. Court of Appeals.

647. Overley, *supra* note 26. Blanche has issued other threats against lawyers. *See, e.g.*, Josh Gerstein, *Blanche Warns Lawyers Who Criticize Justice Department*, POLITICO (Dec. 4, 2025, at 12:15 ET), https://www.politico.com/news/2025/12/04/jtodd-blanche-ustice-department-white-collar-crime-00676708 [https://perma.cc/T8JD-GF8P] ("The Justice Department's No. 2 official suggested Thursday that lawyers might have a harder time winning lenient treatment for corporate clients if they've publicly accused the Trump administration of being lax on white-collar crime.").

648. Review of State Bar Complaints and Allegations Against Department of Justice Attorneys, 91 Fed. Reg. 10780 (Mar. 5, 2026).

649. *Id.* at 10781.

650. *Id.* at 10782.

651. *Id.* at 10784.

Exercising this discretion, the rule would give the AG, through OPR, "the right to review in the first instance any allegations that a current or former Department attorney violated an ethics rule while engaging in that attorney's duties for the Department" and "request the State bar disciplinary authorities to suspend their investigations or disciplinary proceedings, and direct Department personnel not to provide any non-public information . . . until the completion of OPR's review."[652] While claiming that the rule would not require a state bar "to defer to OPR's findings," the rule would only give state bars authority to impose "additional sanctions if the Department *determines that an attorney violated an ethics rule*"—suggesting that if OPR exonerated an attorney, a state bar would not have authority to impose its own discipline.[653] Performing the illusion of regularity, the rule was presented as a modest procedural reform giving the DOJ first pass at reviewing the ethical conduct of its own lawyers through OPR. But while OPR has operated effectively in the past—most notably, recommending sanctions for lawyers who authored the Torture Memos[654]—it is no longer independent, underscoring that the true goal of the rule was to immunize DOJ lawyers from accountability by overriding good faith oversight.

As the department received a deluge of public comments objecting that the rule contradicted the McDade Amendment and could not be legally enforced against bars as a matter of federalism and separation of powers,[655] the DOJ took quick action to demonstrate precisely what enforcement would look like—redeploying the weaponization frame. On May 13, 2026, Blanche, along with Principal Associate Deputy AG R. Trent McCotter and Associate AG Stanley Woodward, Jr., filed suit on behalf of DOJ against the D.C. Bar seeking to shut down Clark's case as an example of "[w]eaponizing state bar discipline against Executive Branch attorneys. . . ."[656] Following the roadmap laid out in Clark's own

652. *Id.*
653. *Id.* at 10784–85 (emphasis added).
654. U.S. DEP'T OF JUSTICE, OFF. OF PRO. RESP., *supra* note 388, at 260.
655. *See* Emily Sawicki, *ABA, State Bars Blast DOJ Proposal to Block Bar Probes*, LAW360 (Apr. 8, 2026, at 15:31 ET), https://www.law360.com/articles/2462359/aba-state-bars-blast-doj-proposal-to-block-bar-probes [https://perma.cc/2N4Y-J4U6] (noting over forty-seven thousand submissions including by the ABA and several bar associations); *see also* Letter from Norman Eisen, Exec. Chair, Democracy Defs. Fund & Scott Harshbarger, Chairman, Lawyers Defending Am. Democracy, to Hon. Todd Blanche, Re: Review of State Bar Complaints and Allegations Against Department of Justice Attorneys, 91 Fed. Reg. 10780 (Mar. 5, 2026) (Apr. 6, 2026), https://www.democracydefendersfund.org/wp-content/uploads/2026/06/2026-06-16-democracy-defenders-fund-todd-blanche-must-not-be-allowed-2.pdf [https://perma.cc/6NQ5-Z9YU] (writing on behalf of 129 former federal and state judges).
656. Complaint for Declaratory and Injunctive Relief at 1, United States v. Fox, No. 26-cv-01658 (D.D.C. May 13, 2026). The complaint was formally against the D.C. Office of Disciplinary

legal defense, the complaint distorted the facts of Clark's case, presenting (in three cursory pages) Clark's scheme to send out the proof of concept letter to help overturn the election as nothing more than a routine "pre-decisional" draft for circulation that was considered and rejected by his superiors.[657]

Based on this reframing, the DOJ complaint asserted that the bar was violating federal supremacy by interfering with normal executive branch "internal deliberations," seeking to punish Clark simply because his "inchoate views differed from the agency's final views."[658] This risked "chilling the candid legal advice of Government attorneys who might provide an opinion with which the D.C. Board on Professional Responsibility happens to disagree," while interfering with "separation of powers."[659] The complaint's sleight of hand transformed Clark's dangerous effort to subvert the election into a mere "internal disagreement" in the routine course of executive branch "deliberations."[660] It fundamentally misrepresented the fact that Clark's views were not "inchoate"—they were outright false. And it omitted the critical detail that the "agency's final views" carried the day only because DOJ leaders threatened to resign if Clark followed through on the plan.[661] To mask its weak legal claims, the complaint tapped into deep state conspiracy, attacking Disciplinary Counsel Jack Meltzer for his "history of partisan politics," referencing his social media posts criticizing Supreme Court Justices Clarence Thomas and Samuel Alito.[662]

The DOJ suit complemented a broader political operation against independent bar authority. This has included right-wing activists leveling claims of conservative lawyer persecution to undermine the bar's legitimacy,[663] raising funds to help Trump lawyers mount defenses against ethics charges,[664] and

Counsel and its top officials, the D.C. Board on Professional Responsibility and its chair, and the D.C. Court of Appeals and its chief judge. *Id.*

657. *Id.* at 13–16.
658. *Id.* at 15.
659. *Id.* at 7.
660. *Id.* at 1.
661. SELECT COMM. TO INVESTIGATE THE JAN. 6TH ATTACK ON THE U.S. CAPITOL, *supra* note 193, at 400–01.
662. Complaint for Declaratory and Injunctive Relief, *supra* note 656, at 18–19.
663. Timothy A. Canova, *The California Bar Is on Trial in Its Persecution of Trump Campaign Lawyer John Eastman*, FEDERALIST (June 22, 2023), https://thefederalist.com/2023/06/22/the-california-bar-is-on-trial-in-its-persecution-of-trump-campaign-lawyer-john-eastman [https://perma.cc/7TPX-DGAT].
664. Anna Massoglia, *Prosecutors Allege Pressure Tactics After Trump's Political Operation Paid Over $44 Million to Witness Lawyers*, OPEN SECRETS (Sep. 22, 2023, at 10:53 ET), https://www.opensecrets.org/news/2023/09/prosecutors-allege-pressure-tactics-after-trumps-political-operation-paid-over-44-million-to-witness-lawyers [https://perma.cc/E65D-R4BK].

disseminating the narrative of ethics as "ideology"[665] to reframe good faith enforcement as "barfare." The political campaign against professional independence has also featured escalating government attacks on the ABA for statements condemning the administration's assault on the rule of law,[666] resulting in the withdrawal of millions of dollars in federal grants,[667] rescission of the ABA's historical role evaluating judicial nominees,[668] and threats to eliminate its power to accredit law schools[669]—all part of a retributive campaign to silence the national voice of the legal profession.

Focusing on the D.C. Bar, administration allies have attempted to capture its leadership to hinder enforcement capacity. Thus far, this effort—centered on a bid by Bondi's brother to become bar president[670]—has failed.[671] However, the

665. *Ethics or Ideology? Bar Associations and the Boundaries of Professional Discipline*, FEDERALIST SOC'Y (Aug. 27, 2025, at 14:00 ET), https://fedsoc.org/events/ethics-or-ideology-bar-associations-and-the-boundaries-of-professional-discipline [https://perma.cc/G4BH-UL48].

666. *See, e.g.*, William R. Bay, *The ABA Supports the Rule of Law*, A.B.A. (Feb. 10, 2025), https://www.americanbar.org/news/abanews/aba-news-archives/2025/02/aba-supports-the-rule-of-law [https://perma.cc/FX6B-H4Y4].

667. Tatyana Monnay, *Trump Attacks on ABA Threaten Group's Funding and Membership*, BLOOMBERG L. (Mar. 7, 2025, at 02:30 PT), https://news.bloomberglaw.com/business-and-practice/trump-attacks-on-aba-threaten-groups-funding-and-membership [https://perma.cc/P9HA-S57U].

668. Letter from Pamela Bondi, Att'y Gen., to William R. Bay, President, A.B.A. (May 29, 2025), https://www.justice.gov/ag/media/1402156/dl?inline [https://perma.cc/4UBH-DXWP] ("Unfortunately, the ABA no longer functions as a fair arbiter of nominees' qualifications, and its ratings invariably and demonstrably favor nominees put forth by Democratic administrations. . . . Specifically, the Office of Legal Policy will no longer direct nominees to provide waivers allowing the ABA access to nonpublic information, including bar records. Nominees will also not respond to questionnaires prepared by the ABA and will not sit for interviews with the ABA.").

669. Tatyana Monnay, *Justice Department Targets ABA for Law School Diversity Rule*, BLOOMBERG L. (Mar. 5, 2025, at 13:15 PT), https://news.bloomberglaw.com/business-and-practice/justice-department-targets-aba-over-law-school-diversity-rule [https://perma.cc/3TQK-MVRJ]; Karen Sloan, *Texas Plans to End ABA's Role in State's Law School Oversight*, REUTERS (Sep. 29, 2025, at 10:18 PT), https://www.reuters.com/legal/legalindustry/texas-plans-end-abas-role-states-law-school-oversight-2025-09-29 [https://perma.cc/2DSY-F2LB].

670. Allan Smith & Ryan J. Reilly, *Trump Allies Launch a Bid to Take Control of a Powerful Washington Legal Group*, NBC NEWS (Mar. 7, 2025, at 16:05 PT), https://www.nbcnews.com/politics/trump-administration/trump-allies-bradley-bondi-control-dc-bar-association-rcna195253 [https://perma.cc/LWW3-CVMF].

671. Brad Bondi lost the election for D.C. Bar president by a lopsided 34,982 to 3490 vote. Ryan J. Reilly, *Pam Bondi's Brother Loses His D.C. Bar Election in a Blowout*, NBC NEWS (June 9, 2025, at 10:43 PT), https://www.nbcnews.com/politics/politics-news/pam-bondi-brother-loses-dc-bar-election-blowout-rcna211869 [https://perma.cc/2ZXW-H8GF]. In response to his loss, Bondi issued a statement saying he was "disgusted by how rabid partisans lurched this election into the political gutter, turning a professional campaign into baseless attacks, identity politics,

administration has continued to pursue control over the D.C. Court of Appeals, which controls the bar and the disciplinary enforcement system,[672] by supporting a bill to abolish the independent judicial nomination commission to give the president authority to pack the court with loyalists and thereby dictate legal ethics enforcement in the District of Columbia.[673] These efforts echo the actions of authoritarians elsewhere,[674] who disable oversight of government lawyers to unleash executive action and mobilize the disciplinary apparatus against independent lawyers willing to stand up for the rule of law. The Trump administration's campaign against the American legal profession—capturing the DOJ and liberating its lawyers from accountability by attacking the private bar—sounds the alarm that this is now happening in the United States.

B. Courts

Capturing the bar facilitates attacks on other democratic guardrails. Courts are central targets because they have authority conferred by their constitutional status to interpret law and thereby check executive power. For this reason, autocrats seek to capture the courts to undermine judicial independence and avoid legal accountability. The simplest route to capture is to empty the existing court system of independent jurists and install loyalists screened for ideological conformity and commitment to use law for political ends of the ruling party.[675] This requires delegitimizing current judges to justify their termination, while gaining control over the selection process to install replacements.

The strategy for doing so depends on pathways available in specific countries. In Hungary, as described in Subpart II.A, a parliamentary supermajority passed laws in 2011 restructuring the constitutional court and reducing the mandatory retirement age for judges on the supreme court so the ruling party could appoint loyalist replacements.[676] In Poland, the Law and Justice Party, following its

and partisan recrimination." Brad Bondi, LINKEDIN (June 9, 2025, at 12:06 ET), https://www.linkedin.com/feed/update/urn:li:activity:7337872670828490753 [https://perma.cc/NAY2-XVW5].

672. *See* D.C. CODE §§ 11-2501–11-2502; RULES GOVERNING D.C. BAR r. XI §§ 4–6.

673. District of Columbia Judicial Nominations Report Act of 2025, H.R. 5125, 119th Congress § 2(c) (2025). The D.C. Court of Appeals has nine members. Three judges were appointed by President Trump (Deahl, Crowell, and Nash) and the terms of three others are set to expire by the end of 2027 (Beckwith, Easterly, and McLeese). *Court of Appeals Judges*, DC CTS., https://www.dccourts.gov/court-of-appeals/court-of-appeals-judges [https://perma.cc/8UF6-9V88].

674. Gülçin Balamir Coşkun & Ertuğ Tombuş, *Criminalising the Legal Profession*, VERFASSUNGSBLOG (Apr. 24, 2025), https://verfassungsblog.de/tuerkey_barassociation_ruleoflaw [https://perma.cc/Z27S-YCGU].

675. Scheppele, *supra* note 27, at 551–52.

676. *See* discussion *supra* notes 91–98.

parliamentary victory in 2015, refused to swear in opposition judges and rushed through new pro-government appointees to the constitutional court, while gaining control over the ordinary court system by passing a mandatory retirement law, coopting the judicial selection council, and creating a new disciplinary commission.[677] In Mexico, the constitution was amended by a supermajority congressional vote and majority state ratification in 2024 to require direct election for all judges, allowing the popular ruling party to eventually gain a judicial majority on the supreme court.[678] In Israel, the government in 2025 shifted judicial selection for high court judges into the hands of parliament.[679] These are different legal paths toward the same end of judicial capture.

In the United States, where direct capture is practically difficult in the short term owing to the constitutional status of the appointment process for federal judges with lifetime tenure and the high bar for constitutional amendment,[680] the administration has mobilized two alternative strategies to weaken courts: avoiding judicial authority and undermining judicial independence. Strategies of avoidance have been most visible in immigration cases, in which the administration and its lawyers have been accused of moving immigrants without judicial notice to undisclosed locations to evade judicial scrutiny,[681] along with defiance of judicial orders as alleged in the Venezuelan AEA case in front of Judge Boasberg and documented by Judge Schiltz in Minneapolis in response to ICE raids.[682]

677. CHRISTIAN DAVIES, FREEDOM HOUSE, HOSTILE TAKEOVER: HOW LAW AND JUSTICE CAPTURED POLAND'S COURTS, 2–6 (2018), https://freedomhouse.org/sites/default/files/2020-02/poland%20brief%20final_0.pdf [https://perma.cc/44NH-4W7U].

678. James Wagner, *Mexico's Contentious Judiciary Overhaul Becomes Law*, N.Y. TIMES (Sep. 15, 2024), https://www.nytimes.com/2024/09/15/world/americas/mexico-overhaul-judiciary-law.html [https://perma.cc/M5DG-CNG6].

679. Aaron Boxerman, *In Controversial Shake-Up, Israeli Lawmakers Give Themselves More Power to Choose Judges*, N.Y. TIMES (Mar. 27, 2025), https://www.nytimes.com/2025/03/27/world/middleeast/israel-netanyahu-judges.html [https://perma.cc/GVB9-5CL5]; Amichai Cohen & Yuval Shany, *Israel's Renewed Judicial Overhaul*, LAWFARE (Mar. 3, 2025, at 10:33 ET), https://www.lawfaremedia.org/article/israel-s-renewed-judicial-overhaul [https://perma.cc/6AWC-HDQH].

680. U.S. CONST. art. III, § 1; *id.* art. V.

681. The practice of removal without notice, illustrated in the Ábrego García case, resulted in an order by the chief judge of the federal district court in Maryland blocking removal for forty-eight hours after the filing of a habeas petition. Standing Order 2025-01, *In re* Petitions for Writs of Habeas Corpus – Alien Detainee, Misc. No. 00-308 (D. Md. May 21, 2025). In response, the DOJ sued all fifteen federal district court judges in Maryland on the grounds that they were interfering with its authority over immigration; the suit was dismissed. Memorandum Opinion, United States v. Russell, No. 25-cv-02029 (D. Md. Aug. 26, 2025).

682. *See supra* notes 288, 547. In another example of defiance from the Ábrego García case, DOJ argued that it did not have to engage in discovery due to "the false premise that the United

Another strategy of judicial avoidance comes in the form of clever legal maneuvers by lawyers that exploit loopholes to circumvent, or at least significantly delay, Supreme Court review of the merits of constitutionally suspect actions,[683] with the premier example being the birthright citizenship case. There, three separate federal district courts issued nationwide injunctions blocking the executive order as a likely violation of the Fourteenth Amendment.[684] Deferring arguments on the merits of the case, the DOJ turned to the Supreme Court's shadow docket, filing an application for a partial stay on the procedural ground that district courts lacked authority to issue nationwide injunctions and could stop executive action only in relation to individual plaintiffs.[685] According to this theory, every person denied citizenship under the order would have to file suit to stop its enforcement, a result that state attorneys general in the Washington case in front of Judge Coughenour argued would throw state programs depending on citizenship into chaos.[686] When Justice Elena Kagan asked in oral argument why the government did not simply call the merits question, given this legitimate concern, Solicitor General D. John Sauer replied: "It is very difficult for me to attempt the hypothetical."[687] Following up, Justice Ketanji Brown Jackson chastised the administration for creating a "catch me if you can" regime not "remotely consistent with the rule of law."[688]

States can or has been ordered to facilitate Abrego Garcia's release from custody in El Salvador," to which the court shot back: "Defendants—and their counsel—well know that the falsehood lies not in any supposed 'premise,' but in their continued mischaracterization of the Supreme Court's Order." *See* Order at 1–2, Abrego Garcia v. Noem, 348 F.R.D. 594, No. 25-cv-00951 (D. Md. Apr. 22, 2025).

683. Such maneuvering is a form of what Daniel Deacon and Leah Litman call "legalistic noncompliance." Daniel T. Deacon & Leah M. Litman, *Legalistic Noncompliance*, 75 DUKE L.J. 1437 (2026).

684. The three cases granting nationwide injunctions were: *CASA, Inc. v. Trump*, 763 F. Supp. 3d 723 (D. Md. Feb. 5, 2025); *Washington v. Trump*, 765 F. Supp. 3d 1142 (W.D. Wash. Feb. 6, 2025); and *New Jersey v. Trump*, 766 F. Supp. 3d 266 (D. Mass. Feb. 13, 2025). For an overview of the litigation at the time, see Jacey Fortin, *Federal Judge Deals Another Blow to Trump's Birthright Citizenship Order*, N.Y. TIMES (Feb. 6, 2025), https://www.nytimes.com/2025/02/06/us/federal-judge-trump-birthright-citizenship.html [https://perma.cc/8BDM-743Z].

685. *See* Application for a Partial Stay of the Injunction Issued by the United States District Court for the District of Maryland, Trump v. CASA, Inc., 606 U.S. 831 (Mar. 13, 2025) (No. 24A884). The Supreme Court, consolidating the three pending cases, sided with the administration, ruling that the universal injunctions likely exceeded federal courts' authority under the Judiciary Act of 1789 and therefore should be stayed. Trump v. CASA, Inc., 606 U.S. 831, 841–42 (June 27, 2025).

686. Plaintiff States' Motion for Preliminary Injunction at 3–4, Washington v. Trump, 765 F. Supp. 3d 1142 (W.D. Wash. Jan. 27, 2025) (No. 25-cv-00127).

687. Transcript of Oral Argument at 28, Trump v. CASA, Inc., 606 U.S. 831 (May 15, 2025) (No. 24A884).

688. *Id.* at 74–75.

To undermine judicial independence, the administration has advanced a multipronged approach: using media to assail independent judges who rule against the government combined with proposed legislative efforts to terminate their tenure. The media strategy inverts reality by fabricating claims of bias against targeted judges. Trump honed this strategy during his first administration: calling District Court Judge James Robart, a George W. Bush appointee who enjoined the first Muslim Ban, a "so-called judge";[689] arguing that Justice Sonia Sotomayor should recuse herself in cases against him because she dissented from a Supreme Court ruling on an immigration matter favoring the government;[690] and castigating District Court Judge Jon Tigar as an "Obama judge" for putting a hold on the administration's effort to block asylum seekers at the border.[691] These attacks continued during the 2020 election, when Trump denounced court rulings against legal challenges as the product of left-wing "lunatics,"[692] and after 2020, when he railed against District Court Judge Tanya Chutkan in the election

689. Reena Flores, *Trump Tweets on "So-Called Judge" After Travel Ban Stay*, CBS NEWS (Feb. 4, 2017, at 20:55 ET), https://www.cbsnews.com/news/trump-tweets-on-so-called-judge-after-travel-ban-stay [https://perma.cc/2LRS-L2MC].

690. Donald J. Trump (@realDonaldTrump), X (Feb. 24, 2020, at 20:09 PT), https://x.com/realDonaldTrump/status/1232155591537254400 [https://perma.cc/K7X7-9YZV] ("'Sotomayor accuses GOP appointed Justices of being biased in favor of Trump.' @IngrahamAngle @FoxNews This is a terrible thing to say. Trying to 'shame' some into voting her way? She never criticized Justice Ginsberg [sic] when she called me a 'faker'. Both should recuse themselves."). The ruling at issue upheld the administration's public charge rule making immigration more difficult. Wolf v. Cook County, 589 U.S. 1190, 1191 (2020) (Sotomayor, J., dissenting).

691. Adam Liptak, *Trump Takes Aim at Appeals Court, Calling It a 'Disgrace'*, N.Y. TIMES (Nov. 20, 2018), https://www.nytimes.com/2018/11/20/us/politics/trump-appeals-court-ninth-circuit.html [https://perma.cc/KGQ6-33TS]. Trump's comment prompted a rare rebuke from Chief Justice John Roberts, followed by a counter-rebuke by Trump. *See* Adam Liptak, *Chief Justice Defends Judicial Independence After Trump Attacks 'Obama Judge'*, N.Y. TIMES (Nov. 21, 2018), https://www.nytimes.com/2018/11/21/us/politics/trump-chief-justice-roberts-rebuke.html [https://perma.cc/29LW-YKHC] ("We do not have Obama judges or Trump judges, Bush judges or Clinton judges."). President Trump responded: "Sorry Chief Justice John Roberts, but you do indeed have 'Obama judges,' and they have a much different point of view than the people who are charged with the safety of our country. It would be great if the 9th Circuit was indeed an 'independent judiciary,' but if it is why....." Donald J. Trump (@realDonaldTrump), X (Nov. 21, 2018, at 12:51 PT), https://x.com/realdonaldtrump/status/1065346909362143232 [https://perma.cc/FA6M-DDK3]. For a compendium of Trump attacks on courts, see *In His Own Words: The President's Attacks on the Courts*, BRENNAN CTR. FOR JUST. (Feb. 14, 2020), https://www.brennancenter.org/our-work/research-reports/his-own-words-presidents-attacks-courts [https://perma.cc/NW5T-AR4A].

692. *See 'Lunatic': Trump's Long History of Abusing Judges Who Oppose Him*, AL JAZEERA (Mar. 20, 2025), https://www.aljazeera.com/news/2025/3/20/lunatic-trumps-long-history-of-abusing-judges-who-oppose-him [https://perma.cc/WE3M-BS5A].

interference case as "a highly partisan Obama appointed Judge,"[693] and against Judge Arthur Engoron in the New York financial fraud case as a "TRUMP HATING, RADICAL LEFT, DEMOCRAT OPERATIVE JUDGE."[694]

This strategy has been amplified since the 2024 election. Soon after, Trump assailed the New York state judge who refused to stay his ruling in the hush money case on presidential immunity grounds, stating: "In a completely illegal, psychotic order, the deeply conflicted, corrupt, biased, and incompetent Acting Justice Juan Merchan has completely disrespected the United States Supreme Court, and its Historic Decision on Immunity."[695] Since taking office, these attacks have escalated. For example, after Judge Boasberg enjoined the AEA deportation of Venezuelan immigrants to CECOT, Trump called him a "troublemaker and agitator," stating: "I'm just doing what the VOTERS wanted me to do. This judge, like many of the Crooked Judges' [sic] I am forced to appear before, should be IMPEACHED!!!"[696] Taking such attacks to the extreme, Trump's Memorial Day 2025 social media post excoriated the "SCUM THAT SPENT THE LAST FOUR YEARS TRYING TO DESTROY OUR COUNTRY . . . THROUGH JUDGES WHO ARE ON A MISSION TO KEEP MURDERERS, DRUG DEALERS, RAPISTS, GANG MEMBERS, AND RELEASED PRISONERS FROM ALL OVER THE WORLD," going on to condemn these "USA HATING JUDGES WHO SUFFER FROM AN IDEOLOGY THAT IS SICK."[697]

Fabricating facts to promote a cynical one-sided view of bias (deliberately obfuscating claims of bias against the president's own handpicked judges) provides the pretext for legal action designed to advance more sweeping court packing schemes. This centers on calls to remove federal judges who do not side

693. Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Oct. 15, 2023, at 20:28 PT), https://truthsocial.com/@realDonaldTrump/posts/111242571403804808 [https://perma.cc/JE3G-UTPA].

694. Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Nov. 2, 2023, at 06:57 PT), https://truthsocial.com/@realDonaldTrump/posts/111341304119203197 [https://perma.cc/99VK-G4YY].

695. Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Dec. 17, 2024, at 07:44 PT), https://truthsocial.com/@realDonaldTrump/posts/113668931932678096 [https://perma.cc/7RWN-7TB2].

696. Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Mar. 18, 2025, at 06:05 PT), https://truthsocial.com/@realDonaldTrump/posts/114183576937425149 [https://perma.cc/J395-5AG3]. Trump's call for Judge Boasberg's impeachment prompted another rebuke from Chief Justice John Roberts. *See* Adam Liptak, *Rebuking Talk From Trump, Roberts Calls Impeaching Judges Over Rulings Improper*, N.Y. TIMES (Mar. 18, 2025), https://www.nytimes.com/2025/03/18/us/chief-justice-roberts-impeachment-trump.html [https://perma.cc/6KDT-H7S2].

697. Donald J. Trump (@realDonaldTrump), TRUTH SOC. (May 26, 2025, at 04:22 PT), https://truthsocial.com/@realDonaldTrump/posts/114573871728757682 [https://perma.cc/UV9W-BQPA].

with the government through impeachment, along with legislative proposals to prevent targeted judges from hearing cases on executive power.[698] The president has personally championed impeachment—a campaign amplified by Musk, who called for the impeachment of any judge ruling against DOGE.[699] Responding to the call, congressional Republicans have introduced articles of impeachment against several judges, including Boasberg, but have yet to move forward.[700] After Senator Ted Cruz (R-TX) held a judiciary subcommittee hearing on "Impeachment: Holding Rogue Judges Accountable,"[701] House Speaker Mike Johnson (R-LA) endorsed impeachment efforts, leading Associate Deputy AG Aakash Singh to instruct all U.S. attorneys to submit the "most egregious examples" of judges interfering with the administration's agenda.[702] While impeachment cases would be unlikely to succeed in a Senate trial, given the two-thirds vote requirement, the threat nonetheless may have a chilling effect.[703]

698. Jacob Knutson, *Musk, Trump Allies Use Impeachment Threats to Intimidate Federal Judges—What You Need to Know*, DEMOCRACY DKT. (Mar. 4, 2025), https://www.democracydocket.com/analysis/elon-musk-house-republicans-impeaching-judges-intimidation [https://perma.cc/BL5H-G2CM].

699. Nick Robins-Early, *Elon Musk Lashes Out at US Judges as They Rule Against DOGE*, GUARDIAN (Mar. 22, 2025, at 06:00 ET), https://www.theguardian.com/technology/2025/mar/22/elon-musk-doge-judges-usaid [https://perma.cc/XAE3-RSJ8].

700. H.R. Res. 229, 119th Cong. (2025) (seeking impeachment of Boasberg on the grounds that he "did knowingly and willfully use his judicial position to advance political gain while interfering with the President's constitutional prerogatives and enforcement of the rule of law"). DOJ also brought a formal judicial misconduct complaint against Boasberg for comments he allegedly made during a meeting of the U.S. Judicial Conference. *See* U.S. Dep't of Just., Complaint Against United States District Court Chief Judge James E. Boasberg (July 28, 2025) (submitted to the D.C. Circuit Court of Appeals pursuant to 28 U.S.C. § 351(a) and the Rules for Judicial-Conduct and Judicial-Disability Proceedings). After being transferred to the Sixth Circuit out of concern that judges on the D.C. Circuit might have to recuse themselves, the complaint was dismissed. *In re* Complaint of Jud. Misconduct, No. 06-25-90173 (Jud. Council of the Sixth Cir. Dec. 19, 2025).

701. Press Release, Sen. Ted Cruz, Sen. Cruz Chairs Hearing on Judicial Overreach, Urges Impeachment of Judges Boasberg and Boardman (Dec. 4, 2025) (calling for the impeachment of Judge Boasberg for issuing a nondisclosure order to keep subpoenas from Jack Smith secret for one year).

702. *See* Meredith Lee Hill & Hailey Fuchs, *'I'm for It': Johnson Endorses Impeachment for Judges Who Rule Against Trump*, POLITICO (Jan. 21, 2026, at 13:39 ET), https://www.politico.com/live-updates/2026/01/21/congress/johnson-backs-judicial-impeachment-00739286 [https://perma.cc/8BZ5-BCYS]; Ben Penn, *Trump DOJ Asks US Attorneys for Judicial Impeachment Fodder*, BLOOMBERG L. (Feb. 10, 2026, at 11:28 PT), https://news.bloomberglaw.com/us-law-week/trump-doj-seeks-judicial-impeachment-fodder-from-top-prosecutors [https://perma.cc/36ZE-RP4W].

703. *See* Courtney Bublé, *Trump Ally Seeks to Limit Judges' Sway Over White House*, LAW360 (Feb. 13, 2025, at 19:28 ET), https://www.law360.com/articles/2297750/trump-ally-seeks-to-limit-judges-sway-over-white-house [https://perma.cc/U5PB-J6GP]; Carl Hulse, *House Republicans Want to Impeach Judges. Here's How the Process Would Work*, N.Y. TIMES (Mar.

Following the playbook, jurisdiction-stripping proposals seek to exploit a constitutional loophole: federal judges below the Supreme Court are not mandated by the Constitution; rather, they are established under constitutional authority by Congress, which in theory could make changes to their jurisdiction.[704] Speaker Johnson suggested that this authority would allow Congress to limit funding and even disestablish specific judgeships, and Republican proposals to curtail federal judicial power have been floated.[705]

If targeted judges can be removed, Republican congressional control would permit their replacement with judges like District Court Judge Aileen Cannon of Florida, who was accused by critics of slow-walking the classified documents case against Trump to ensure it would not be decided until after 2024,[706] and whom the president, in turn, has praised as "the absolute model of what a judge should be"[707]—a compliment critics suggest is code for a loyalist who can be counted on

20, 2025), https://www.nytimes.com/2025/03/20/us/politics/trump-judges-impeach-congress.html [https://perma.cc/VD5E-JDBQ].

704. U.S. Const. art. III, § 1.

705. Emily Brooks, *Johnson Stresses Congress's Power Over Courts: 'Desperate Times Call for Desperate Measures'*, HILL (Mar. 25, 2025, at 12:24 ET), https://thehill.com/homenews/house/5212930-mike-johnson-congress-power-courts/ [https://perma.cc/S9X8-3LFL]; Lisa Mascaro, *Republicans Eye Actions Against the Courts and Judges as Trump Rails Against Rulings*, AP NEWS (Mar. 25, 2025, at 14:30 PT), https://apnews.com/article/trump-judge-boasberg-musk-impeachment-1019459fc9517231204b814fd6f36127 [https://perma.cc/3TZ7-XAWB]. On the legality of eliminating judgeships, see Michael C. Dorf, *Is House Speaker Mike Johnson's Proposal to Eliminate Federal Judgeships Constitutional?*, VERDICT (Apr. 2, 2025), https://verdict.justia.com/2025/04/02/is-house-speaker-mike-johnsons-proposal-to-eliminate-federal-judgeships-constitutional [https://perma.cc/25YR-SJD9]. Republicans also have sought to move forward legislation to expand the number of federal judgeships to give the president an opportunity to appoint more judges during his term. Debra Cassens Weiss, *Bill to Create 66 New Federal Judgeships Advances*, ABA J. (Mar. 6, 2025, at 13:56 CT), https://www.abajournal.com/news/article/bill-to-create-66-new-federal-judgeships-advances [https://perma.cc/8FJS-P6ZU]. On Trump's potential to reshape the judiciary even in the absence of new judgeships, see David Smith, *Trump Could Reshape Judiciary With 300 Judge Appointments, Analysis Shows*, GUARDIAN (Mar. 18, 2025, at 06:00 ET), https://www.theguardian.com/us-news/2025/mar/18/trump-judge-appointments-analysis [https://perma.cc/BB44-WY6G].

706. *See, e.g.*, Alan Feuer & Eileen Sullivan, *For Judge in Trump Documents Case, Unusual Rulings Are Business as Usual*, N.Y. TIMES (July 15, 2024), https://www.nytimes.com/2024/06/20/us/politics/trump-documents-case-unusual-rulings.html [https://perma.cc/4QDY-LF4Z] (discussing pro-Trump maneuvers by Judge Cannon); Marilyn W. Thompson, *Judge Cannon Should Be Removed From Trump Case, Watchdog Group Argues in New Legal Filing*, PROPUBLICA (Sep. 3, 2024, at 18:45 ET), https://www.propublica.org/article/judge-aileen-cannon-trump-documents-case-ethics-complaint-crew-jack-smith [https://perma.cc/Y57S-7EHB].

707. Rebecca Beitsch, *Trump Praises Cannon in Justice Department Speech*, HILL (Mar. 14, 2025, at 16:23 ET), https://thehill.com/homenews/administration/5195778-trump-praises-aileen-cannon-doj [https://perma.cc/N9AY-YAZJ].

for pro-government rulings.[708] Significantly, such loyalty runs to the president, not conservative legal principles—a point underscored after an appellate court ruled to block the tariffs, prompting the president to attack Leonard Leo, former head of the Federalist Society, as a "sleazebag" who gave "bad advice" on first-term judges who issued the ruling.[709] In his second administration, the president has imposed a stricter loyalty test, demonstrated by his appointment to the Third Circuit of former defense lawyer and DOJ enforcer Emil Bove—who Trump assured supporters would "never let you down!"[710]—in a move widely criticized, including by mainstream conservatives, as signaling a dangerous threat to judicial independence.[711]

C. Bureaucracy

Following the logic of professional and judicial capture, attacks on the bureaucracy seek to erode independent agency expertise as a counterweight to executive power.[712] As with other playbook strategies, there are different legal routes to the same end. In Hungary, Fidesz used parliamentary power to eliminate

708. *See* Henry Gass, *A MAGA Judiciary? Trump Rift With Federalist Society Signals a Search for Loyal Judges*, CHRISTIAN SCI. MONITOR (June 4, 2025, at 14:42 ET), https://www.csmonitor.com/USA/Justice/2025/0604/trump-leonard-leo-federalist-society [https://perma.cc/9MED-5A6M]. For a critical analysis of movement judges, see Robert L. Tsai & Mary Ziegler, *Abortion Politics and the Rise of Movement Jurists*, 57 U.C. DAVIS L. REV. 2149 (2024).

709. Donald J. Trump (@realDonaldTrump), TRUTH SOC. (May 29, 2025, at 17:10 PT), https://truthsocial.com/@realDonaldTrump/posts/114593880455063168 [https://perma.cc/D9CT-DBNK]. The *Wall Street Journal* editorial board strongly criticized Trump's statement. Editorial Board, *Donald Trump vs. His Own Judges*, WALL ST. J. (May 30, 2025, at 17:45 ET), https://www.wsj.com/opinion/donald-trump-vs-his-own-judges-65426dbf [https://perma.cc/2G3W-WY77].

710. Donald J. Trump (@realDonaldTrump), TRUTH SOC. (May 28, 2025, at 12:03 PT), https://truthsocial.com/@realDonaldTrump/posts/114587010981213926 [https://perma.cc/US8B-JWD2] (stating further that Bove "will end the Weaponization of Justice, restore the Rule of Law, and do anything else that is necessary to, MAKE AMERICA GREAT AGAIN"); Glenn Thrush & Charlie Savage, *Trump Says He'll Nominate Bove to Federal Appeals Court*, N.Y. TIMES (May 28, 2025), https://www.nytimes.com/2025/05/28/us/politics/trump-emil-bove-judge.html [https://perma.cc/SHF8-5VGK].

711. Gass, *supra* note 708; *see also* Avalon Zopp, *Sullivan & Cromwell Partner Who Handled Trump Case Confirmed to Second Circuit*, LAW.COM (July 14, 2026, at 13:24 ET), https://www.law.com/nationallawjournal/2026/07/14/sullivan--cromwell-partner-who-handled-trump-case-confirmed-to-second-circuit/ [https://perma.cc/3UXZ-J2M8] (noting that the partner, Matthew Schwartz, had represented Trump in his appeal of the Stormy Daniels hush money conviction).

712. *See* Kutsal Yesilkagit, Michael Bauer, B. Guy Peters & Jon Pierre, *The Guardian State: Strengthening the Public Service Against Democratic Backsliding*, 84 PUB. ADMIN. REV. 414, 417 (2024) (discussing the role of an independent bureaucracy in upholding the rule of law).

civil service protection, stack agencies with loyalists, and consolidate oversight.[713] In the United States, because autocratic legalism runs through executive action demarcating the administrative state as the central locus of legal conflict, it has put stress on courts to adjudicate the boundaries of the unitary executive theory as the basis for bureaucratic capture.[714] As discussed in Subpart III.D, the administration has used executive action to run a law reform campaign, inviting litigation against its actions and relying on DOJ lawyers to make the case in court for unsettling longstanding precedent upholding congressionally authorized limits on executive power over agencies.[715] This campaign has succeeded to a significant degree with the Supreme Court holding that the president's Article II power overrides statutory protections for appointed officials exercising executive authority (*Trump v. Slaughter*),[716] potentially carving out an exception for governors of the Federal Reserve (*Trump v. Cook*).[717] *Slaughter* will have broad implications for pending lower court cases challenging a range of agency actions and is predicted to validate many of the administration's already implemented decisions.[718] This Subpart does not review the logic, status, or impact of these cases. Rather, it provides examples illustrating how the targeting strategy that underlies them has followed the playbook to advance bureaucratic control.

This strategy flows directly from Project 2025, which mobilized the deep state conspiracy to justify dismantling and restructuring federal agencies to eliminate

713. *See supra* Subpart II.A and notes 101–108.

714. *See* Nick Bednar, *The Constitutionality of the Civil Service*, LAWFARE (Feb. 17, 2026, at 10:05 ET), https://www.lawfaremedia.org/article/the-constitutionality-of-the-civil-service [https://perma.cc/NC73-WQ69] (assessing constitutionality under Article II of rule rescinding civil service protection for any federal employee who exercises "substantive policymaking or administrative authority," which would encompass "managers, attorneys, adjudicators, clerks, surgeons, engineers, and similar roles," excluding only the "most ministerial" positions). For analysis of the use of bureaucratic law to pursue otherwise illegal measures, see Bas Schotel, *Bureaucratic Law and Manifestly Illegal Measures: The Legal Anatomy of Autocratic Policy Tools*, HAGUE J. RULE OF L. (2026), https://doi.org/10.1007/s40803-026-00267-w [https://perma.cc/64YT-U689].

715. *See* Humphrey's Ex'r v. United States, 295 U.S. 602 (1935), *overruled by* Trump v. Slaughter, 146 S. Ct. 2283 (June 29, 2026).

716. *Slaughter*, 146 S. Ct. at 2291–2311 (striking down statute protecting members of the FTC against termination unless for "inefficiency, neglect of duty, or malfeasance in office" as contrary to separation of powers).

717. Trump v. Cook, 146 S. Ct. 2234, 2242–56 (June 29, 2026) (denying government's application for stay of preliminary injunction against removal of a member of the Federal Reserve Board of Governors contrary to a statutory for-cause termination provision, noting that protection from removal was consistent with the Constitution based on the history of central bank independence).

718. Adam Sella & Karl Russell, *See How the Makeup of Independent Agencies Has Changed Under Trump*, N.Y. TIMES (June 29, 2026), https://www.nytimes.com/2026/06/29/us/politics/independent-agencies-trump.html [https://perma.cc/M94M-KYJS].

their independence.[719] Toward that end, the administration has specifically overridden congressional authorization to gut agencies through a combination of funding cuts and contract rescissions,[720] buyouts and terminations of employees covered by civil service laws,[721] and firings of appointees in statutorily protected positions to make way for loyalist replacements.[722] These efforts have relied on fabricated facts of bias against conservatives or other misconduct to create legal pretexts for purging. In one prominent example, the administration sought to fire Holly Paz, an IRS commissioner in charge of the large business and international division, disseminating debunked claims to the press that she had targeted conservative nonprofits for adverse tax rulings nearly two decades earlier.[723] In a similar pretextual move, the president (thus far unsuccessfully) has attempted to fire Lisa Cook as a governor of the Federal Reserve Board—a position from which

719. Paul Dans, *A Note on "Project 2025"*, *in* MANDATE FOR LEADERSHIP, *supra* note 30, at xiii, xiv ("The federal government is a behemoth, weaponized against American citizens and conservative values, with freedom and liberty under siege as never before.").

720. *See* Complaint for Declaratory and Injunctive Relief, Nat'l Treasury Emps. Union v. Vought, No. 25-cv-381 (D.D.C. Feb. 9, 2025) (describing effort by Consumer Financial Protection Bureau chief Russell Vought to starve the agency of funds); Complaint, Colorado v. U.S. Dep't of Health & Hum. Servs., No. 25-cv-00121 (D.R.I. Apr. 1, 2025) (challenging the department's cutoff of $11 billion in public health funding).

721. *See* Annette Choi, Danya Gainor & Kate Carroll, *Tracking Trump's Overhaul of the Federal Workforce*, CNN (July 14, 2025, at 17:00 ET), https://www.cnn.com/politics/tracking-federal-workforce-firings-dg [https://perma.cc/7BN6-QQ6X] (finding that over 50,000 workers had been laid off or targeted for layoffs); Elaine Kamarck, *How Many People Can the Federal Government Lose Before It Crashes?*, BROOKINGS INST. (Nov. 21, 2025), https://www.brookings.edu/articles/how-many-people-can-the-federal-government-lose-before-it-crashes [https://perma.cc/RQC5-V595] (noting "unprecedented number of cuts to the workforce" during the first ten months of the Trump administration); Eileen Sullivan, *More Than 150,000 Federal Workers Accepted Trump's Resignation Incentives*, N.Y. TIMES (July 31, 2025), https://www.nytimes.com/2025/07/31/us/politics/firings-federal-workers-trump-administration.html [https://perma.cc/M2XF-HJLH] (stating that more than 150,000 federal workers have accepted offers to retire or resign early). In a high-profile example, Maurene Comey, a ten-year veteran of the SDNY U.S. attorney's office and daughter of former FBI Director James Comey, was fired in July 2025 without cause despite her latest "outstanding" review. Complaint at 2, Comey v. U.S. Dep't of Just., No. 25-cv-07625 (S.D.N.Y. Sep. 15, 2025). The court rejected the DOJ's argument that she should have to pursue redress through the Merit Systems Protection Board. Opinion and Order, Comey v. U.S. Dep't of Just., No. 25-cv-07625 (S.D.N.Y. Apr. 28, 2026). On the administration's efforts to control the Merit Systems Protection Board, see *Harris v. Bessent*, 160 F.4th 1235 (D.C. Cir. Dec. 5, 2025) (upholding the president's right to terminate the board's chair).

722. The Court's ruling in *Trump v. Slaughter* clears the way for resolution of other cases that challenged the termination of members of the National Labor Relations Board, Trump v. Wilcox, 145 S. Ct. 1415 (May 22, 2025), and the Consumer Product Safety Commission, Trump v. Boyle, 145 S. Ct. 2653 (July 23, 2025).

723. *See* First Amended Complaint, Paz v. IRS, No. 25-cv-03256 (D.D.C. Dec. 1, 2025).

a governor can be removed only for "cause" under the authorizing statute—on the grounds that she lied on a mortgage application before she was appointed.[724]

The creation and operation of DOGE,[725] a nonstatutory department designed to "drive out . . . massive waste and fraud,"[726] highlight how inverted reality is used to weaken disfavored agencies and access information that may be used for improper purposes.[727] Musk, an unappointed and democratically unaccountable private citizen initially in charge of DOGE, repeatedly made false claims through his social media company, X, as justification for attacks on programs and incursions into sensitive private data. In a high-profile example involving the Labor Department, on April 10, 2025, Musk posted on X: "Your tax dollars were going to pay fraudulent unemployment claims for fake people born in the future!"[728] For support, he cited an "initial survey" by DOGE reportedly revealing that "24.5k people over 115 years old claimed $59M in benefits" and "28k people between 1 and 5 years old claimed $254M in benefits"[729]—figures that Labor Secretary Lori Chavez-DeRemer conveyed to the president.[730] Musk's claim, however, was easily disproven. The department database he suggested was a smoking gun did not identify new cases of people fraudulently receiving benefits but instead documented records of fraudulent claims filed under the first Trump

724. Trump v. Cook, 146 S. Ct. 2234, 2245 (June 29, 2026). The specific allegation against Cook, that she falsely claimed a property in Atlanta was her primary residence, rested on evidence that was called into question by disclosures showing that she listed the Atlanta property as a "vacation home" on loan documents. Tony Romm, Ben Casselman & Colby Smith, *Documents Raise Questions About Fraud Claims Against Fed Governor*, N.Y. TIMES (Sep. 13, 2025), https://www.nytimes.com/2025/09/13/business/lisa-cook-mortgage-fed-trump.html [https://perma.cc/GUM3-66DT].

725. Exec. Order No. 14158, 90 Fed. Reg. 8441 (Jan. 20, 2025) ("Establishing and Implementing the President's 'Department of Government Efficiency'"); *see also* Complaint, Lentini v. Dep't of Gov't Efficiency, No. 25-cv-00164 (D.D.C. Jan. 20, 2025) (challenging DOGE under Federal Advisory Committee Act).

726. Statement by President-Elect Donald J. Trump Announcing That Elon Musk and Vivek Ramaswamy Will Lead the Department of Government Efficiency "DOGE" (Nov. 12, 2024), https://www.presidency.ucsb.edu/documents/statement-president-elect-donald-j-trump-announcing-that-elon-musk-and-vivek-ramaswamy [https://perma.cc/PA89-R6VU].

727. *See generally* Hannah Natanson & Meryl Kornfield, *The Year Trump Broke the Federal Government: How DOGE and the White House Carried Out a Once-Unthinkable Transformation of the Nation's Sprawling Bureaucracy*, WASH. POST (Dec. 21, 2025), https://www.washingtonpost.com/politics/interactive/2025/trump-federal-government-workers-doge [https://perma.cc/3UVN-V44Y].

728. Elon Musk (@elonmusk), X (Apr. 10, 2025, at 10:31 PT), https://x.com/elonmusk/status/1910173756724564323 [https://perma.cc/9W4J-LW42].

729. *Id.*

730. Matt Sedensky, *DOGE Trumpets Unemployment Fraud That the Government Already Found Years Ago*, AP NEWS (Apr. 15, 2025, at 14:32 PT), https://apnews.com/article/doge-trump-musk-unemployment-aa033544cb4e7167d0f310f0f93bbede [https://perma.cc/2CAG-D2WK].

administration's COVID-19 emergency aid program that the department maintained to protect people whose identities had been stolen.[731]

In a similar inversion echoing the 2020 election attack, Musk claimed that the Social Security Administration (SSA) was giving benefits to tens of millions of dead people and, when proven wrong, continued to spread the lie.[732] DOGE was permitted to access SSA data—including social security numbers, bank accounts, and immigration status—which officials planned to share with a political advocacy group known for making unsupported claims of election fraud,[733] suggesting that the purpose of data collection may have been less about efficiency than potential election interference.

Musk's false statements were emblematic of a broader pattern of using fabricated facts to weaken agencies with disfavored programs, such as distributing public benefits to low-income people, protecting the environment, promoting education standards, and enforcing consumer and worker rights.[734] The effort to shutter the Consumer Financial Protection Bureau (CFPB), created in the wake of the 2008 global financial crisis, is a case in point. When then-Acting Director Russell Vought ordered CFPB headquarters to close in February 2025, employees filed suit to prevent dismantling the agency in violation of its statutory mandate

731. *See* Emily Badger, *Musk's Latest Fraud Finding Isn't What It Seems*, N.Y. TIMES (Apr. 12, 2025), https://www.nytimes.com/2025/04/12/upshot/musk-doge-fraud-claims.html [https://perma.cc/6SMS-BFQW].

732. Emily Badger & Minho Kim, *Millions of Dead People on Social Security? The Agency's Own Data Say Otherwise*, N.Y. TIMES (Feb. 19, 2025), https://www.nytimes.com/2025/02/19/upshot/social-security-fraud-claim-musk.html [https://perma.cc/5RFB-KV4G].

733. Yunior Rivas, *Exclusive: New Records Show Paper Trail of DOGE Voter Data Pact With Election Deniers*, DEMOCRACY DKT. (Apr. 29, 2026), https://www.democracydocket.com/news-alerts/exclusive-new-records-show-paper-trail-of-doge-voter-data-pact-with-election-deniers/ [https://perma.cc/7GQA-KDHF]; Yunior Rivas, *DOGE Worked With Political Group to Probe Voter Rolls, Trump Administration Admits*, DEMOCRACY DKT. (Feb. 6, 2026), https://www.democracydocket.com/news-alerts/doge-worked-with-political-group-to-probe-voter-rolls-trump-admin-admits/ [https://perma.cc/AA6X-ULJ2]; *see also* Am. Fed'n of State, Cnty. & Mun. Emps., AFL-CIO v. Soc. Sec. Admin., 172 F.4th 361, 371 n.8 (4th Cir. Apr. 10, 2026).

734. *See, e.g.*, New York v. Kennedy, No. 25-cv-00196 (D.R.I. May 5, 2025) (challenging efforts to dismantle the Department of Health and Human Services); Petition for Review, Mass. v. EPA, No. 26-1061 (D.C. Cir. Mar. 19, 2026) (challenging "Rescission of the Greenhouse Gas Endangerment Finding and Motor Vehicle Greenhouse Gas Emission Standards Under the Clean Air Act"); Second Amended Complaint, New York v. McMahon, No. 25-cv-10601 (D. Mass. Jan. 9, 2026) (challenging reduction in force in the Department of Education); Complaint for Declaratory and Injunctive Relief, Nat'l Treasury Emps. Union v. Vought, *supra* note 720 (detailing attack on Consumer Financial Protection Bureau); Complaint for Declaratory and Injunctive Relief, Wilcox v. Trump, No. 25-cv-00334 (D.D.C. Feb. 5, 2025) (challenging termination of National Labor Relations Board member, the first Black woman to serve as chair, without cause in violation of National Labor Relations Act).

under the Dodd-Frank Act.[735] In defending that suit, three DOJ lawyers—Eric Hamilton, Brad Rosenberg, and Liam Holland—filed a brief that sought to invert the reality of the shutdown by fostering the illusion of regularity: portraying it as a normal effort to ensure that staff was "focused only on aspects of the mission that are, in fact, urgently required by law," buttressed by declarations of the chief operating officer asserting that the shutdown was a routine effort to ensure the agency was "more efficient and accountable."[736]

District Court Judge Amy Berman Jackson did not buy it. Upon review of the DOJ lawyers' briefs on plaintiffs' preliminary injunction motion, she concluded that "the defendants' eleventh hour attempt to suggest immediately before the hearing that the stop work order was not really a stop work order at all was so disingenuous that the Court is left with little confidence that the defense can be trusted to tell the truth about anything."[737] The case was appealed to the D.C. Circuit, which stayed the district court's reinstatement order, stating that the government could go forward with employee terminations based on "a particularized assessment."[738] Immediately thereafter, a junior lawyer for DOGE assigned to the case sent an email that purported to comply with the order, stating to colleagues that he would conduct "an individualized assessment to, consistent with the DC Circuit's stay, ensure that only nonstatutory positions" were part of a 90 percent staff reduction.[739] However, internal documents revealed that the email was pretextual—parroting the language of legal compliance to cover up mass firings, the precise numbers of which were being debated up to the last minute before the email was sent.[740]

735. Complaint for Declaratory and Injunctive Relief, Nat'l Treasury Emps. Union v. Vought, *supra* note 720.

736. Letter from Hal R. Lieberman & Nick Bourland, Legal Accountability Ctr., to Mass. Off. of Bar Couns., Re: Liam C. Holland, at 4–5 (July 31, 2025). Identical ethics complaints were filed against Hamilton and Rosenberg. Letter from Hal R. Lieberman & Nick Bourland, Legal Accountability Ctr., to Off. of Disciplinary Couns., D.C. Ct. of Appeals et al., Re: Eric J. Hamilton, Esq. (July 31, 2025); Letter from Hal R. Lieberman & Nick Bourland, Legal Accountability Ctr., to Off. of Disciplinary Couns., D.C. Ct. of Appeals & Va. State Bar, Re: Brad P. Rosenberg, Esq. (July 31, 2025).

737. Nat'l Treasury Emps. Union v. Vought, 774 F. Supp. 3d 1, 57 (D.D.C. Mar. 28, 2025).

738. Nat'l Treasury Emps. Union v. Vought, No. 25-5091, 2025 WL 1721068 (D.C. Cir. Apr. 11, 2025).

739. Stacy Cowley, *New Details Emerge on Trump Officials' Sprint to Gut Consumer Bureau Staff*, N.Y. TIMES (Apr. 27, 2025), https://www.nytimes.com/2025/04/27/business/cfpb-layoffs-trump-musk-doge.html [https://perma.cc/PH8A-7T4N].

740. *Id.* The district court's preliminary injunction protecting the CFPB's staff and operations from cuts was stayed by the D.C. Circuit. Nat'l Treasury Emps. Union v. Vought, 149 F.4th 762 (D.C. Cir. Aug. 15, 2025). The case was reheard en banc by the full D.C. Circuit in February 2026, after which the court issued a limited remand to determine whether the existing

Bureaucratic capture also facilitates corruption by allowing agencies to be mobilized in favor of the financial interests of the president and allies.[741] In one of the most notable examples, since 2025, the Securities and Exchange Commission (SEC) has loosened regulation of cryptocurrency companies, like Binance, which had a securities lawsuit against it dropped after it received a $2 billion investment benefiting Trump's crypto company, World Liberty Financial.[742] The SEC has also entered lenient settlements with defendants charged with securities violations, including Chinese billionaire Justin Sun, who was granted a favorable deal after purchasing $75 million worth of crypto tokens from the same Trump company.[743]

preliminary injunction should be modified pending appeal. Richard J. Andreano, Jr., John L. Culhane, Jr. & Alan S. Kaplinsky, *District Court Moves Quickly on Limited Remand in* NTEU v. Vought*; Judge Jackson Seeks Expedited Schedule*, BALLARD SPAHR (June 23, 2026), https://www.consumerfinancemonitor.com/2026/06/23/district-court-moves-quickly-on-limited-remand-in-nteu-v-vought-judge-jackson-seeks-expedited-schedule [https://perma.cc/ZP8V-CF77].

741. For a list of Trump's conflict-of-interest deals, see *Tracking Trump's Visits to His Properties and Other Conflicts of Interest*, CREW (updated Feb. 11, 2026), https://www.citizensforethics.org/reports-investigations/crew-reports/tracking-trumps-visits-to-his-properties-and-other-conflicts-of-interest [https://perma.cc/RRM8-SLVZ]; *Trump's Take*, CTR. FOR AM. PROGRESS, https://www.americanprogress.org/feature/trumps-take/#section-6 [https://perma.cc/8ELC-FAWC]; Eric Lipton, *Trump's Moneymaking Run: Unrivaled in Presidential History*, N.Y. TIMES (June 30, 2026), https://www.nytimes.com/2026/06/30/us/politics/trump-moneymaking-presidential-history.html [https://perma.cc/2JZF-3UWA]; see also Editorial Board, *A Comprehensive Accounting of Trump's Culture of Corruption*, N.Y. TIMES (June 7, 2025), https://www.nytimes.com/2025/06/07/opinion/trump-corruption.html [https://perma.cc/3HT4-X7CR] (detailing deals struck during political negotiations for Trump Organization real estate projects in the Middle East and Qatar's donation of a $200 million airplane to serve as Air Force One); *A Rolex, a Gold Bar, a Trade Deal and the Ethics of Presidential Gifts*, NPR (Nov. 14, 2025, at 17:21 ET), https://www.npr.org/2025/11/14/nx-s1-5609341/a-rolex-a-gold-bar-a-trade-deal-and-the-ethics-of-presidential-gifts [https://perma.cc/7KPB-DAS9] (detailing gifts by a delegation of Swiss executives seeking trade relief, which included a gold-plated clock from the CEO of Rolex, after which the administration reduced Swiss tariffs from 39 percent to 15 percent). Trump also asked his own Justice Department to pay him $230 million in compensation for his defense against federal investigations into election interference. Devlin Barrett & Tyler Pager, *Trump Said to Demand Justice Dept. Pay Him $230 Million for Past Cases*, N.Y. TIMES (Oct. 21, 2025), https://www.nytimes.com/2025/10/21/us/politics/trump-justice-department-compensation.html [https://perma.cc/NN5L-S7KW].

742. Sharon LaFraniere & David Yaffe-Bellany, *S.E.C. Settles Its Case Against Justin Sun, an Investor in the Trumps' Crypto Coins*, N.Y. TIMES (Mar. 5, 2026), https://www.nytimes.com/2026/03/05/us/politics/sec-justin-sun.html [https://perma.cc/U7CC-EHH6].

743. *Id.*

D. Universities

The attack on universities, also broadcast in Project 2025,[744] is designed to assert federal authority over institutions that play a crucial role in generating empirical knowledge,[745] while serving as sites of dissent against government policy and centers of critical thought.[746] Following the playbook, university targeting takes what are genuine policy concerns about problems with American universities—their cost and inaccessibility, lack of faculty accountability, and left-wing ideological tilt[747]—and repurposes them to pursue government control over core academic functions, specifically, hiring and curriculum. Because autocracy is an ideological project to convince the public of its legitimacy, expunging academic content to align instruction with the government's master narrative is essential for long-term success. As described in Subpart III.E, in the U.S. context, the university playbook has targeted apex private and public institutions with funding rescission to set an example that pressures other schools to fall in line.[748]

As with other targeting strategies, this one built on a prior organizational and intellectual base that channeled long-simmering critiques of universities as inhospitable to conservative viewpoints and tolerant of antisemitism.[749] A key actor was lawyer Kenneth Marcus, a Berkeley Law graduate who worked in the Department of Education (DOE) during the George W. Bush administration and in 2011 established the Brandeis Center to use "law-based initiatives to combat

744. Lindsey M. Burke, *Department of Education*, *in* MANDATE FOR LEADERSHIP, *supra* note 30, at 319, 351–61.

745. *See* Vicki C. Jackson, *The Trump Administration's Attack on Knowledge Institutions*, VERFASSUNGSBLOG (Mar. 28, 2025), https://verfassungsblog.de/education-democracy-america [https://perma.cc/PH5W-CQTJ].

746. *See generally* TODD GITLIN, THE SIXTIES: YEARS OF HOPE, DAYS OF RAGE (1987); BRIAN SOUCEK, THE OPINIONATED UNIVERSITY: ACADEMIC FREEDOM, DIVERSITY, AND THE MYTH OF NEUTRALITY IN AMERICAN HIGHER EDUCATION (2026).

747. Sarah Wood, *Americans Have Less Confidence in Higher Ed: Why?*, U.S. NEWS & WORLD REP. (Aug. 7, 2023), https://www.usnews.com/education/best-colleges/applying/articles/americans-have-less-confidence-in-higher-education [https://perma.cc/CX6D-N7JS].

748. THE DAILY: *The Conservative Activist Pushing Trump to Attack U.S. Colleges* (N.Y. Times Podcasts, Apr. 11, 2025), https://www.nytimes.com/2025/04/11/podcasts/the-daily/christopher-rufo-dei-critical-race-theory.html?showTranscript=1.

749. *See* AM. ASS'N OF UNIV. PROFESSORS, THE RIGHT-WING ATTACKS ON HIGHER EDUCATION: AN ANALYSIS OF THE STATE LEGISLATIVE LANDSCAPE 3–5 (2024), https://www.aaup.org/sites/default/files/Higher-Ed-Legislative-Landscape.pdf [https://perma.cc/PX2N-AVDV] (describing legislation advancing viewpoint diversity, cutting DEI, and curtailing faculty tenure).

anti-Semitism."[750] In 2015, Marcus published a book making the case for a workable definition of antisemitism,[751] which informed an influential framework put forth the following year by the International Holocaust Remembrance Alliance (IHRA).[752] Because the IHRA definition states that manifestations of antisemitism "might include the targeting of the state of Israel, conceived as a Jewish collectivity,"[753] critics have argued that it conflates dissent against Israeli policy with antisemitism.[754] During the first Trump administration, Marcus was appointed assistant secretary for civil rights in the DOE and helped draft the 2019 executive order on "Combating Anti-Semitism," which instructed agencies to enforce Title VI according to the IHRA definition.[755]

The university campaign accelerated after Hamas's October 7, 2023 attack on Israel, when the House Education and Workforce Committee summoned university presidents to defend their response to campus protest.[756] The public reaction against Penn's Elizabeth Magill and Harvard's Claudine Gay—provoked by their legalistic answers to New York Republican Congresswoman Elise Stefanik's questions about what they would do if students called for genocide—led to their resignations.[757] This was followed by a Stefanik-sponsored resolution

750. *Our History*, BRANDEIS CTR., https://brandeiscenter.com/our-history/ [https://perma.cc/R6QK-LVRQ]; Vimal Patel, *The Man Who Helped Redefine Campus Antisemitism*, N.Y. TIMES (Mar. 24, 2024), https://www.nytimes.com/2024/03/24/us/politics/kenneth-marcus-college-antisemitism-complaints.html [https://perma.cc/AUD2-H25T].

751. KENNETH L. MARCUS, THE DEFINITION OF ANTI-SEMITISM (2015).

752. *IHRA Non-Legally Binding Working Definition of Antisemitism*, IHRA (May 26, 2016), https://holocaustremembrance.com/wp-content/uploads/2024/01/IHRA-non-legally-binding-working-definition-of-antisemitism-1.pdf [https://perma.cc/KSB2-BATB] ("Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.").

753. *Id.*

754. Chris McGreal, *UN Urged to Reject Antisemitism Definition Over 'Misuse' to Shield Israel*, GUARDIAN (Apr. 24, 2023, at 10:58 ET), https://www.theguardian.com/news/2023/apr/24/un-ihra-antisemitism-definition-israel-criticism [https://perma.cc/LW59-PAUR].

755. Exec. Order No. 13899, 84 Fed. Reg. 68779 (Dec. 11, 2019) ("Combating Anti-Semitism"). Title VI is codified at 42 U.S.C. § 2000d *et seq.*

756. *See* Annie Karni, *Questioning University Presidents on Antisemitism, Stefanik Goes Viral*, N.Y. TIMES (Dec. 8, 2023), https://www.nytimes.com/2023/12/07/us/politics/elise-stefanik-antisemitism-congress.html [https://perma.cc/N49A-AM67].

757. Valerie Strauss, *How Harvard, Penn, MIT Leaders Answered—or Skirted—Questions on Antisemitism*, WASH. POST (Dec. 6, 2023), https://www.washingtonpost.com/education/2023/12/06/3-elite-college-presidents-answered-questions-antisemitism [https://perma.cc/V2UA-ZYK8] (noting that Gay responded, "The rules around bullying and harassment are quite specific. And if the context in which that language is used amounts to bullying and harassment, then we take . . . action against it."); Jennifer Schuessler, Anemona Hartocollis, Michael Levenson & Alan Blinder, *Harvard President Resigns After Mounting Plagiarism Accusations*,

condemning universities' responses to antisemitism[758] and additional congressional hearings.[759]

Around the same time, the Heritage Foundation—fresh off completing Project 2025—launched "Project Esther" to cast critics of Israel as "effectively a terrorist support network," while using the threat of financial penalties and lawsuits against universities to crack down on pro-Palestinian student and faculty speech.[760] The project's "pitch materials" focused on withdrawing funds from universities, banning pro-Palestinian groups, and suspending faculty, alongside "lawfare" strategies against universities and students[761]—previewing the playbook to come.

In spring 2024, Marcus's Brandeis Center sued UCLA, which had some of the nation's most violent campus encounters,[762] for permitting an encampment the lawsuit labeled a "Jew Exclusion Zone,"[763] and sued Harvard for failing to address "cruel anti-Semitic bullying, harassment, and discrimination."[764] There were additional suits against these schools and others,[765] some by lawyers well known in

N.Y. TIMES (Jan. 2, 2024), https://www.nytimes.com/2024/01/02/us/harvard-claudine-gay-resigns.html [https://perma.cc/JET9-C25P] (noting that Magill and Gay's resignations followed reaction against their exchange with Stefanik).

758. H.R. Res. 927, 118th Cong. (2023).

759. *See, e.g.*, Letter from Jason Smith, Chairman, H. Comm. on Ways & Means, to Alan M. Garber, Interim President, Harvard Univ., et al., at 4 (Jan. 10, 2024), https://waysandmeans.house.gov/wp-content/uploads/2024/01/Chair-Smith-Letter-to-Universities-on-Antisemitism.pdf [https://perma.cc/YBP6-YAV9].

760. *See* Katie J.M. Baker, *The Group Behind Project 2025 Has a Plan to Crush the Pro-Palestinian Movement*, N.Y. TIMES (May 20, 2025), https://www.nytimes.com/2025/05/18/us/project-esther-heritage-foundation-palestine.html [https://perma.cc/M3SZ-YNR2].

761. *Id.*

762. *See* Noah Goldberg, *UCLA Sought Extra Police but Canceled Requests in Days Before Protest Camp Was Attacked*, L.A. TIMES (May 2, 2024, at 16:14 PT), https://www.latimes.com/california/story/2024-05-02/ucla-canceled-campus-police-requests-for-outside-help [https://perma.cc/RW82-B3CD].

763. Complaint for Damages and Jury Trial Demand at 5, Weinberg v. Nat'l Students for Just. in Palestine, No. 25-cv-03714 (C.D. Cal. Apr. 25, 2025), Dkt. No. 1.

764. Complaint, Louis D. Brandeis Ctr. for Hum. Rts. Under L. v. President & Fellows of Harvard Coll., No. 24-cv-11354-RGS (D. Mass. May 22, 2024). In June 2024, Marcus testified to the House Ways and Means Committee that the government needed to crack down on "student radicalism" and urged the DOJ and DOE to conduct an "investigation into material support of terrorism" as identified through affiliation with student groups, and to revoke universities' federal funding. *Hearing on the Crisis on Campus: Antisemitism, Radical Faculty, and the Failure of University Leadership Before the H. Comm. on Ways & Means*, 118th Cong. 4 (2024) (statement of Kenneth L. Marcus, Founder & Chairman, Louis D. Brandeis Ctr. for Hum. Rts. Under L.).

765. These included suits against Columbia, Complaint, Torres v. Carlson, No. 25-cv-03474 (S.D.N.Y. Apr. 25, 2025); NYU, Complaint, Ingber v. N.Y. Univ., No. 23-cv-10023 (S.D.N.Y. Nov. 14, 2023); and Penn, Complaint, Yakoby v. Univ. of Pa., No. 23-cv-04789 (E.D. Pa. Dec. 5, 2023).

the conservative legal movement.[766] At UCLA, *Frankel v. Regents* was brought by former Solicitor General Paul Clement with lawyers from the Becket Fund for Religious Liberty, who claimed that the university "once considered among the most prestigious public institutions in the world, has deteriorated into a hotbed of antisemitism."[767]

Marcus's suit against Harvard proceeded alongside *Kestenbaum v. President and Fellows of Harvard College*,[768] both of which argued that the university violated Title VI by failing to protect Jewish students.[769] The *Kestenbaum* complaint relied heavily on President Gay's congressional testimony and allegations of a double standard in dealing with bias against Jews,[770] while arguing that Harvard's DEI policies violated the Supreme Court's decision to end affirmative action in *Students for Fair Admissions v. Harvard*,[771] although that decision did not address DEI. The day after President Trump's inauguration, Harvard settled both suits, agreeing to adopt the IHRA definition,[772] presumably to show good faith efforts to address antisemitism—and possibly placate the new president.

766. For example, the suit against Haverford College (Jews at Haverford v. Corp. of Haverford Coll., No. 24-cv-02044 (E.D. Pa. May 13, 2024)) was brought by Jerome Marcus, a Pennsylvania lawyer who sued over poll watcher rules in the 2020 presidential election. *See* Donald J. Trump for President, Inc. v. Phila. Cnty. Bd. of Elections, No. 20-cv-05533 (E.D. Pa. Nov. 5, 2020). Marcus was previously involved in legal strategy around the Paula Jones sexual harassment lawsuit that culminated in Bill Clinton's impeachment. *See* Don Van Natta Jr. & Jill Abramson, *The President's Trial: The Lawsuit; Quietly, a Team of Lawyers Kept Paula Jones's Case Alive*, N.Y. TIMES (Jan. 24, 1999), https://www.nytimes.com/1999/01/24/us/president-s-trial-lawsuit-quietly-team-lawyers-kept-paula-jones-s-case-alive.html [https://perma.cc/FUB4-CTX8].

767. Complaint at 2, Frankel v. Regents of the Univ. of Cal., No. 24-cv-04702 (C.D. Cal. June 5, 2024). The district court ordered a preliminary injunction barring UCLA from offering any activities or areas not "fully and equally accessible to Jewish students." Frankel v. Regents of the Univ. of Cal., 744 F. Supp. 3d 1015, 1028 (C.D. Cal. Aug. 13, 2024), *appeal dismissed*, No. 24-5003, 2024 WL 4803385 (9th Cir. Aug. 26, 2024).

768. *See* Complaint at 8–10, Kestenbaum v. President & Fellows of Harvard Coll., No. 24-cv-10092 (D. Mass. Jan. 10, 2024) (citing Trump's Executive Order No. 13899 and IHRA's definition of antisemitism in arguing that "Anti-Zionism is discriminatory and antisemitic when expressed in terms of, for example: applying double standards not applicable to other countries or peoples in assessing Israel's legitimacy and conduct").

769. *Frankel* Complaint, *supra* note 767, at 64; *Kestenbaum* Complaint, *supra* note 768, at 5.

770. *Kestenbaum* Complaint, *supra* note 768, at 53–65.

771. 600 U.S. 181 (2023).

772. *See* Press Release, Harvard Univ., Harvard and Students Against Antisemitism Announce Settlement of Lawsuit (Jan. 21, 2025), https://www.harvard.edu/media-relations/2025/01/21/press-release-settlement-harvard-saa [https://perma.cc/4EW9-5YCM]; Max J. Krupnick, *Harvard Settles Antisemitism Lawsuits*, HARV. MAG. (Jan. 22, 2025), https://www.harvardmagazine.com/2025/01/harvard-settles-antisemitism-lawsuits [https://perma.cc/M9WR-LYWW]; *see also* Tovia Smith, *Harvard Agrees to Adopt a Broad Definition of Antisemitism to Settle Two Lawsuits*, NPR (Jan. 22, 2025, at 05:00 ET), https://www.npr.org/2025/01/22/g-s1-44170/harvard-antisemitism-lawsuits-settlement [https://perma.cc/DJY2-TTGW].

The opposite happened. After Trump issued the January 29, 2025 executive order to "Combat Anti-Semitism" and established the Task Force under its auspices, the DOE canceled federal funding to Columbia and sent letters to sixty universities threatening similar Title VI penalties.[773] As described in Subpart III.E, this was followed by funding freezes at several major universities,[774] culminating in high-profile confrontations with two of America's top-ranked private and public schools: Harvard and UCLA.[775]

That the administration's goal extended beyond fighting antisemitism became clear in the Harvard case. On April 11, 2025, government lawyers sent a letter to Harvard's president and board chair with a sweeping list of demands including: "governance and leadership reforms"; "merit-based" hiring and changes to admissions; audits of "the student body, faculty, staff, and leadership for viewpoint diversity, such that each department, field, or teaching unit must be individually viewpoint diverse"; audits of "programs and departments that most

773. Michael C. Bender, *Trump Officials Warn 60 Colleges of Possible Antisemitism Penalties*, N.Y. TIMES (Mar. 10, 2025), https://www.nytimes.com/2025/03/10/us/politics/trump-colleges-antisemitism.html [https://perma.cc/LN3U-GRW9]. In parallel, the DOE also sought to crack down on DEI. On February 14, 2025, under authority granted by the president's executive order on "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," Exec. Order No. 14173, 90 Fed. Reg. 8633, 8633–35 (Jan. 21, 2025), the acting assistant secretary for civil rights at the DOE sent "Dear Colleague" letters to schools threatening "potential loss of federal funding" if the schools failed to follow the *Students for Fair Admissions v. Harvard* case, which the administration interpreted to prohibit DEI programs or any other use of race in decision-making. Zach Montague, *Education Dept. Gives Schools Two Weeks to Eliminate Race-Based Programs*, N.Y. TIMES (Feb. 17, 2025), https://www.nytimes.com/2025/02/17/us/politics/education-dept-race-based-programs.html [https://perma.cc/2HZ6-DCYZ]; Letter from Craig Trainor, Acting Assistant Sec'y for C.R., U.S. Dep't of Educ., to Harvard Univ. (Feb. 14, 2025), https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf [https://perma.cc/2ZYH-65JB]. The administration subsequently announced investigations into roughly fifty schools. *See* Juliana Kim, *Over 50 Universities Are Under Investigation as Part of Trump's Anti-DEI Crackdown*, NPR (Mar. 14, 2025, at 16:27 ET), https://www.npr.org/2025/03/14/g-s1-53831/dei-universities-education-department-investigation [https://perma.cc/N7ZS-S4Z7]. Enforcement of the Dear Colleague letter was blocked in court and the administration eventually dropped its appeal. Am. Fed. of Teachers v. Dep't of Educ., 796 F. Supp. 3d 66, 123 (D. Md. Aug. 14, 2025) (holding letter unlawful and granting motion for summary judgment); Am. Fed. of Teachers v. Dep't of Educ., No. 25-2228 (4th Cir. Jan. 22, 2026), Dkt. No. 27 (granting motion to voluntarily dismiss).

774. *See supra* notes 419–25. In addition to funding cuts, the administration directed immigration enforcement against noncitizen students claimed to pose security threats, which prompted some universities to deputize campus police. Kate Payne, *Florida Universities to Deputize Campus Police for Immigration Enforcement*, AP NEWS (Apr. 11, 2025, at 14:00 PT), https://apnews.com/article/florida-university-police-federal-immigration-enforcement-visas-ff488622d288af00f69109429cee673d [https://perma.cc/ZKE5-AFEC]; Sarah Wood, *ICE on Campus: What You Need to Know*, U.S. NEWS & WORLD REP. (Mar. 18, 2025, at 13:14 ET), https://www.usnews.com/news/education-news/articles/ice-on-campus-what-you-need-to-know [https://perma.cc/9BP3-789N].

775. *See supra* Subpart III.E.

fuel antisemitism" (a list that included the Divinity School, Medical School, and Law School International Human Rights Clinic); elimination of DEI; and student discipline reform.[776]

Three days later, after Harvard rejected the demands, the administration announced "a freeze on $2.2 billion in multi-year grants and $60M in multi-year contract value to Harvard University."[777] Shortly after Harvard sued to block the freeze,[778] it released a report proposing to improve the university's system for addressing antisemitism.[779] Nonetheless, the administration issued another freeze order and began sending termination letters, followed by announcement of $60 million more in funding cuts.[780] During this period of escalating conflict, the government also began investigating Harvard's tax-exempt status,[781] canceled foreign student visas,[782] and instructed agencies to terminate outstanding contracts worth another $100 million in federal funds.[783] These actions departed from stated efforts to protect Jewish students, instead imposing economic pain to make an example of Harvard that sent a clear message to the higher education field: agree to administration demands for control or face debilitating financial consequences.

University legal efforts to fight back have thus far proven successful, while underscoring that legal success does little to appease the administration. In the

776. Letter from Josh Gruenbaum, Comm'r, Fed. Acquisition Serv., Sean R. Keveney, Acting Gen. Couns., U.S. Dep't of Health & Hum. Servs. & Thomas E. Wheeler, Acting Gen. Couns., U.S. Dep't of Educ., to Alan Garber, President, Harvard Univ. & Penny Pritzker, Lead Member, Harvard Corp. 1–4 (Apr. 11, 2025), https://static01.nyt.com/newsgraphics/documenttools/092f8701fdf305fd/4d7d152d-full.pdf [https://perma.cc/SN3X-AXBK].

777. President & Fellows of Harvard Coll. v. U.S. Dep't of Health & Hum. Servs., 798 F. Supp. 3d 77, 95–96 (D. Mass. Sep. 3, 2025) (memorandum and order) (citing the "April 14 Freeze Order").

778. Complaint for Declaratory & Injunctive Relief, President & Fellows of Harvard Coll. v. U.S. Dep't of Health & Hum. Servs., 798 F. Supp. 3d 77 (D. Mass. 2025) (No. 25-cv-11048) (filed Apr. 21, 2025).

779. Final Report, Presidential Task Force on Combating Antisemitism and Anti-Israeli Bias, Harvard University (Apr. 29, 2025).

780. *President & Fellows of Harvard Coll.*, 798 F. Supp. 3d at 98–101.

781. Andrew Duehren & Maggie Haberman, *I.R.S. Is Said to Be Considering Whether to Revoke Harvard's Tax-Exempt Status*, N.Y. TIMES (Apr. 16, 2025), https://www.nytimes.com/2025/04/16/us/politics/trump-irs-harvard.html [https://perma.cc/FE6C-V9LC].

782. *See* Complaint, President & Fellows of Harvard Coll. v. U.S. Dep't of Homeland Sec., No. 25-cv-11472 (D. Mass. May 23, 2025) (seeking preliminary injunction against termination of student visas); Order Granting Plaintiff's Motion for a Preliminary Injunction, President & Fellows of Harvard Coll. v. U.S. Dep't of Homeland Sec., No. 25-cv-11472 (D. Mass. June 20, 2025), *appeal docketed*, No. 25-1627 (1st Cir. July 1, 2025).

783. *See* Stephanie Saul, *Trump Intends to Cancel All Federal Funds Directed at Harvard*, N.Y. TIMES (May 29, 2025), https://www.nytimes.com/2025/05/27/us/harvard-trump-federal-funds.html [https://perma.cc/SDK9-897K].

Harvard case, District Court Judge Allison Burroughs granted Harvard's motion for summary judgment,[784] restoring frozen funds and rejecting administration claims of combating antisemitism as pretextual: "In fact, a review of the administrative record makes it difficult to conclude anything other than that Defendants used antisemitism as a smokescreen for a targeted, ideologically-motivated assault on this country's premier universities, and did so in a way that runs afoul of the APA [Administrative Procedure Act], the First Amendment and Title VI."[785] That case went on appeal as negotiations continued,[786] motivated by the fact that even if universities won restoration of funds cut retroactively, they would have no claim on new funding and therefore the administration could still exploit loopholes to deny future grants based on its own policy priorities.[787] To increase pressure, in March 2026, the DOJ filed a new lawsuit against Harvard claiming it violated Title VI after the October 7 Hamas attack by remaining "deliberately indifferent to a level of hostility on its campus" against Jewish and

784. *President & Fellows of Harvard Coll.*, 798 F. Supp. 3d at 92, 123 (ruling that Harvard was entitled to summary judgment on its retaliation-based First Amendment claim and suggesting also that the administration's imposition of viewpoint-based conditions on funding unrelated to legitimate government interests was unconstitutional); Order Entering Final Judgment, President & Fellows of Harvard Coll. v. U.S. Dep't of Health & Hum. Servs., No. 25-cv-11048 (D. Mass. Oct. 20, 2025).

785. *President & Fellows of Harvard Coll.*, 798 F. Supp. 3d at 136; *see also id.* at 137 ("The idea that fighting antisemitism is Defendants' true aim is belied by the fact that the majority of the demands they are making of Harvard to restore its research funding are directed, on their face, at Harvard's governance, staffing and hiring practices, and admissions policies—all of which have little to do with antisemitism and everything to do with Defendants' power and political views.").

786. *See* Notice of Appeal, President & Fellows of Harvard Coll. v. Dep't of Health & Hum. Servs., No. 25-cv-11048 (D. Mass. Dec. 18, 2025).

787. *See* Adam Sella, Mark Arsenault, Stephanie Saul & Michael C. Bender, *Research Funding Slows Again for Universities Targeted by White House*, N.Y. TIMES (May 29, 2026), https://www.nytimes.com/2026/05/29/us/politics/trump-university-research-funding.html [https://perma.cc/HF8B-83WU] (noting that Judge Burroughs had banned the administration from blocking new funding based on retaliation but that the National Science Foundation continued to slow down funding to targeted schools); *see also* Michael S. Schmidt, Michael C. Bender & Alan Blinder, *Why Trump and Harvard Have Not Reached a Deal*, N.Y. TIMES (Dec. 3, 2025), https://www.nytimes.com/2025/12/03/us/politics/trump-harvard.html [https://perma.cc/6NPE-AJ9G] (stating that one sticking point was Trump's demand for a direct payment of $500 million to the government). After suggesting that he would cut a deal without financial penalties, the president changed course to demand Harvard pay a $1 billion fine, followed by a DOJ suit against the university for admissions records. *See* Michael C. Bender & Alan Blinder, *Justice Department Sues Harvard for Admissions Records*, N.Y. TIMES (Feb. 13, 2026), https://www.nytimes.com/2026/02/13/us/politics/harvard-lawsuit-admissions-doj-trump.html [https://perma.cc/VL97-WEZS].

Israeli students and "intentionally refus[ing] to enforce its campus rules . . . when the victims were Jews or Israelis."[788]

On the day UCLA settled the *Frankel* lawsuit over the encampment—on terms that included a $6.45 million payment, more than $2 million of which went to Jewish community organizations, and affirmative measures to combat antisemitism on campus[789]—the DOJ issued a notice claiming the university had been "deliberately indifferent to a hostile environment for Jewish and Israeli students in violation of the Equal Protection Clause and Title VI" in relation to the same underlying factual events and would therefore pay a "heavy price."[790] This was followed by federal grant suspensions totaling nearly $600 million.[791] To restore funding, the administration demanded payment of almost double that amount ($1 billion) and structural reforms including stricter oversight of curriculum, limitations on protest, removal of "any secretive or proxy-based 'diversity' hiring processes," adoption of a binary definition of sex and prohibition on biologically male students competing "in any athletic program restricted to women," and appointment of a "Resolution Monitor" to ensure compliance.[792]

788. Complaint at 2–3, United States v. President & Fellows of Harvard Coll., No. 26-cv-11352 (D. Mass. Mar. 20, 2026).

789. Press Release, UC Off. of the President, University of California Announces Settlement in Litigation Related to Antisemitism on Campus, Makes Significant Contributions to Organizations Committed to Fighting Antisemitism (July 29, 2025), https://www.universityofcalifornia.edu/press-room/university-california-announces-settlement-litigation-related-antisemitism-campus-makes [https://perma.cc/Q7WK-R5D6]; Jaweed Kaleem & Daniel Miller, *UCLA Violated Jewish Students' Civil Rights With 'Deliberate Indifference,' Feds Say*, L.A. TIMES (July 29, 2025, at 12:59 PT), https://www.latimes.com/california/story/2025-07-29/ucla-settles-lawsuit-jewish-students [https://perma.cc/BQJ4-9HRB].

790. Letter from Harmeet K. Dhillon, Assistant Att'y Gen., C.R. Div., U.S. Dep't of Just., to Dr. Michael V. Drake, President, Univ. of Cal., Re: U.S. Department of Justice Notice of Findings Regarding the University of California, Los Angeles 1 (July 29, 2025), https://www.justice.gov/crt/media/1409416/dl?inline [https://perma.cc/6SEK-7TNL]; Press Release, U.S. Dep't of Just., Off. of Pub. Affs., Justice Department Finds the University of California-Los Angeles in Violation of Federal Civil Rights Law (July 29, 2025), https://www.justice.gov/opa/pr/justice-department-finds-university-california-los-angeles-violation-federal-civil-rights [https://perma.cc/46ZQ-EPJ5].

791. *See* Jaweed Kaleem, *UC Says Trump's Grant Suspensions at UCLA Total $584 Million, a 'Death Knell' for Research*, L.A. TIMES (Aug. 6, 2025, at 07:00 PT), https://www.latimes.com/california/story/2025-08-06/ucla-584-million-trump-federal-grant-cuts-negotiations [https://perma.cc/G6EC-D37K].

792. Resolution Agreement Between the United States of America and UCLA at 4–6, 9, 14 (2025), https://ucop.edu/communications/_files/confidential-rule-408-communication-ucla-08-08-25.pdf [https://perma.cc/T5BP-JKS4].

A suit by the American Association of University Professors, a membership group representing faculty,[793] won a preliminary injunction restoring funding to UCLA based on the "undisputed record . . . that Defendants have engaged in coercive and retaliatory conduct in violation of the First Amendment and Tenth Amendment" and "have flouted the requirements of Title VI and IX and cancelled funding in an arbitrary and capricious manner while ignoring required procedural safeguards."[794] In issuing the ruling, District Court Judge Rita Lin asserted that the administration had "repeatedly and publicly announced a playbook of initiating civil rights investigations of preeminent universities to justify cutting off federal funding, with the goal of bringing universities to their knees and forcing them to change their ideological tune."[795] In a surprise move, the administration agreed to dismiss its appeal in February 2026.[796]

Two weeks later, the surprise was revealed as a bait and switch as Assistant AG Harmeet Dhillon of the Civil Rights Division filed a new Title VII lawsuit against UCLA seeking injunctive relief and damages on the grounds that the university's DEI office "routinely ignored complaints of antisemitism" and "continues to mishandle them," resulting in a hostile environment for Jewish faculty and staff.[797] In response to ongoing pressure, UCLA and Harvard have

793. The university itself declined to sue. Eric He, *No Deal, No Defiance: UC's Trump Fight Grinds on, Leaving UCLA in Limbo*, POLITICO (Dec. 28, 2025, at 16:00 ET), https://www.politico.com/news/2025/12/28/uc-facultys-fight-with-trump-has-put-the-university-in-a-tough-spot-00694193 [https://perma.cc/J6XS-HYSH].

794. Am. Ass'n of Univ. Professors v. Trump, 815 F. Supp. 3d 907, 931 (N.D. Cal. Nov. 14, 2025) (granting injunction).

795. *Id.* at 930.

796. Order, Am. Ass'n of Univ. Professors v. Trump, No. 25-cv-07864, 2026 WL 1049175 (N.D. Cal. Feb. 11, 2026).

797. Complaint & Jury Demand at 2–3, United States v. Regents of the Univ. of Cal., No. 26-cv-01946 (C.D. Cal. Feb. 24, 2026); *see also* Alan Blinder, Michael C. Bender & Anemona Hartocollis, *Justice Department Sues University of California Over Antisemitism*, N.Y. TIMES (Mar. 3, 2026), https://www.nytimes.com/2026/02/24/us/justice-department-ucla-lawsuit.html [https://perma.cc/4ZB2-EX2Q]. The UCLA suit is part of a broader DOJ strategy of suing universities to crack down on programs supporting diversity. Michael C. Bender & Alan Blinder, *Lawsuits Are the New Trump Tactic in the Fight to Overhaul Education*, N.Y. TIMES (Apr. 1, 2026), https://www.nytimes.com/2026/04/01/us/trump-lawsuits-education-agenda.html [https://perma.cc/J6T8-H4BB].

modified DEI programs,[798] frozen hiring, and imposed other budget-cutting measures.[799]

These legal battles are part of an overarching plan to reshape the regulatory apparatus of universities and law schools by asserting greater control over accreditation, which is required for students to access federal loans (and, in the case of law schools, to permit graduates to enter most state bars).[800] Currently, the government recognizes a host of regional private accreditors for universities and the ABA for law schools.[801] However, the administration has initiated reforms to the accreditation standards—which the president called his "secret weapon"—as a lever to force changes to diversity programs and faculty governance, while

798. Josephine Murphy, *Trump's DEI Crackdown: How Federal Pressure Influences the UC, UCLA*, DAILY BRUIN (June 7, 2026, at 19:59 PT), https://dailybruin.com/2026/06/07/trumps-dei-crackdown-how-federal-pressure-influences-the-uc-ucla [https://perma.cc/8GZE-XB7N] (stating that "UC removed diversity statements in its hiring processes in March 2025" and "replaced its Department of Equity, Diversity and Inclusion with the Office of Culture and Inclusive Excellence in October"); Dhruv T. Patel, *Harvard Renames Diversity Office as Trump Demands Dismantling of DEI*, HARV. CRIMSON (Apr. 29, 2025), https://www.thecrimson.com/article/2025/4/29/harvard-oedib-renamed/ [https://perma.cc/PS4T-WKB3] (stating that the university would "rename its Office of Equity, Diversity, Inclusion, and Belonging to 'Community and Campus Life'").

799. Jaweed Kaleem, *University of California Orders Hiring Freeze, Cuts in Response to Trump Threats*, L.A. TIMES (Mar. 19, 2025, at 15:33 PT), https://www.latimes.com/california/story/2025-03-19/university-of-california-hiring-freeze-budget-trump-funding-cuts [https://perma.cc/WJ4A-SHJ3]; Ben Unglesbee, *UCLA Consolidates IT, Pauses Faculty Hiring as Trump Administration Seeks $1B Payment*, HIGHER ED DIVE (Aug. 21, 2025), https://www.highereddive.com/news/ucla-pauses-faculty-hiring-consolidates-it-trump-administration-1-billion/758346/ [https://perma.cc/B4SS-UYJB]; Max J. Krupnick, *Harvard Announces Hiring Freeze*, HARV. MAG. (Mar. 12, 2025, at 09:45 ET), https://www.harvardmagazine.com/2025/03/harvard-announces-hiring-freeze [https://perma.cc/R52Z-KWLD].

800. *See* Sharon Otterman, *Trump Escalates Attack on Columbia by Threatening Its Accreditation*, N.Y. TIMES (June 4, 2025), https://www.nytimes.com/2025/06/04/nyregion/columbia-trump-accreditation-civil-rights.html [https://perma.cc/NQ77-4CQ6]; *Why Accreditation Matters*, COUNCIL OF RECOGNIZED ACCREDITING COMM'NS, https://www.c-rac.org/why-accreditation-matters [https://perma.cc/6PRV-C43F]. The One Big Beautiful Bill also revamped federal student lending by tightening gainful employment rules, eliminating some professional loan programs, and instituting borrowing caps—changes that threaten the financial stability of universities and professional schools. Adam Looney, Jordan Matsudaira & Clare McCann, *How OBBBA Reshapes Student Lending*, BROOKINGS INST. (Jan. 28, 2026), https://www.brookings.edu/articles/how-obbba-reshapes-student-lending/ [https://perma.cc/C7XJ-MRWH].

801. Sara Randazzo & Meridith McGraw, *Trump Signs Executive Order Targeting University Accreditors*, WALL ST. J. (Apr. 23, 2025, at 18:27 ET), https://www.wsj.com/us-news/education/trump-accreditors-executive-order-universities-4e4366cc [https://perma.cc/A6PL-GLAX]; Evan Yi, Madison Weiss & Sara Partridge, *The Trump Administration Moves to Tighten Grip on Colleges*, CTR. FOR AM. PROGRESS (July 14, 2026), https://www.americanprogress.org/article/the-trump-administration-moves-to-tighten-grip-on-colleges/ [https://perma.cc/39LQ-ANT9].

codifying more conservative curricular programming.[802] This has already produced change at the law school level, where the ABA preemptively voted to suspend its standard requiring DEI in the face of administration threats.[803]

At the university level—following a Project 2025 proposal—a new accreditor, the Commission for Public Higher Education (CPHE), was launched in June 2025 by Florida Governor Ron DeSantis with the backing of six Southern state university systems.[804] The CPHE provides a conservative accreditation alternative aiming to rewrite standards to require schools to meet conservative priorities, like eliminating DEI and promoting intellectual diversity,[805] thereby disrupting what Project 2025 called the "federal accreditation cartel."[806] Commentators have raised concerns that federal recognition of CPHE would sanction an accreditor controlled by conservative state politicians like DeSantis,[807] creating a model that the administration could scale up by aligning accreditation

802. Randazzo & McGraw, *supra* note 801; Yi, Weiss & Partridge, *supra* note 801. After the president signed an executive order on "Reforming Accreditation to Strengthen Higher Education," Exec. Order No. 14279, 90 Fed. Reg. 17529 (Apr. 23, 2025), the DOE drafted a new rule to significantly change existing standards. Yi, Weiss & Partridge, *supra* note 801.

803. Julianne Hill, *ABA Legal Ed Council Votes to Repeal Diversity and Inclusion Standard*, ABA J. (May 15, 2026, at 15:31 CT), https://www.abajournal.com/web/article/aba-legal-ed-council-votes-to-repeal-diversity-and-inclusion-standard [https://perma.cc/3VR3-4L3T] (stating that the council of the ABA Section of Legal Education and Admissions to the Bar voted to repeal Standard 206, which required law schools to "demonstrate by concrete action a commitment to diversity and inclusion"). In August 2026, the ABA's House of Delegates sent the proposed repeal back to the council, which acted to formally repeal the standard the following month. Christine Charnosky, *ABA Law School Diversity Standard Survives—for Now*, LAW.COM (Aug. 4, 2026, at 12:34 ET), https://www.law.com/2026/08/04/aba-law-school-diversity-standard-survivesfor-now/ [https://perma.cc/6AHT-NRNJ]; Christine Charnosky, *ABA Council Repeals Diversity Standard Amid Uncertainty About the Organization's Future as a Law School Accreditor*, LAW.COM (Sep. 8, 2026, at 11:47 ET), https://www.law.com/2026/09/08/aba-council-repeals-diversity-standard-amid-uncertainty-about-the-organizations-future-as-a-law-school-accreditor-/ [https://perma.cc/H9LP-2URH].

804. *See* Josh Moody, *10 Institutions Seek Recognition by New Accreditor*, INSIDE HIGHER ED (Nov. 13, 2025), https://www.insidehighered.com/news/governance/accreditation/2025/11/13/10-universities-seek-recognition-new-accreditor [https://perma.cc/8QJP-BWN7]. The CPHE is a coalition of the State University System of Florida, University System of Georgia, University of North Carolina System, University of South Carolina System, Texas A&M University System, and University of Tennessee System. *Clarity on Accreditation for Institutions and the Public*, CPHE, https://cphe.org/frequently-asked-questions/ [https://perma.cc/R6KZ-DDKT].

805. Michael Shires, *The New Accreditation Rules Explained*, AM. FIRST POL'Y INST. (June 12, 2026), https://www.americafirstpolicy.com/issues/the-new-accreditation-rules-explained [https://perma.cc/TXV3-7MXX].

806. Burke, *Department of Education*, *supra* note 744, at 320.

807. *See, e.g.*, Jeremy Bauer-Wolf, *A New State-Led Accreditor Risks Politicizing College Oversight*, NEW AM. (Feb. 12, 2026), https://www.newamerica.org/insights/a-new-state-led-accreditor-risks-politicizing-college-oversight [https://perma.cc/MVU3-8WHC].

rules, making it harder for existing independent accreditors to maintain federal recognition without slanting their criteria in a pro-CPHE direction.[808]

E. Civil Society

Civil society organizations are cornerstones of strong democracies, channeling citizen energy into voluntary projects that cannot be controlled by centralized government and that push back against executive efforts to consolidate power.[809] Autocrats target civil society by seeking to undercut the financial viability of NGOs whose agendas do not conform to the party line, taking particular aim at legal NGOs that represent individuals and groups against the government. The goal of autocrats is not to eliminate NGOs but rather to starve opposition groups of funds and replace them with GONGOs so that the appearance of civil society remains though its liberal democratic spirit has been extinguished.

Following the playbook, the Trump administration has imposed economic pain to eviscerate civil society groups abroad through the elimination of USAID,[810] and curtail them at home through actions such as the attempted abrogation of the AmeriCorps service program.[811] It has also sought to invert reality and

808. DOE undertook a negotiated rulemaking process in 2026 to make changes for Title IV programs, resulting in recommendations from the Accreditation, Innovation, and Modernization Committee to change standards that, among other things, would create a streamlined approval process for new accreditors. *See* Shires, *supra* note 805.

809. *See* Małgorzata Szuleka, *First Victims or Last Guardians? The Consequences of Rule of Law Backsliding for NGOs: Case Studies of Hungary and Poland* 6–8 (CEPS Papers in Liberty & Security in Eur., Ser. No. 2018-06, Apr. 2018), https://cdn.ceps.eu/wp-content/uploads/2018/04/MSzuleka_RoLandNGOs.pdf [https://perma.cc/8ZPC-8QNY]. On the importance of civil society to democracy, see generally ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY (2000).

810. Exec. Order No. 14169, 90 Fed. Reg. 8619 (Jan. 20, 2025) ("Reevaluating and Realigning United States Foreign Aid"). Several challenges were filed against the shutdown of USAID. *See* Am. Fed'n of Gov't Emps. v. Trump, No. 25-cv-00352 (D.D.C. Feb. 6, 2025) (pending on appeal from dismissal); Glob. Health Council v. Trump, No. 25-cv-00402 (D.D.C. Feb. 11, 2025) (pending on appeal from preliminary injunction). The administration launched America First Global Health Strategy, a new foreign aid program controlled by the Department of State and focused on extending influence in Africa. *See* Marc Caputo, *Inside Trump's $11 Billion Health Plan to Replace "Neo-Colonial" USAID*, AXIOS (Jan. 14, 2026), https://www.axios.com/2026/01/14/trump-foreign-aid-africa-usaid [https://perma.cc/X52R-RWTB].

811. Aishvarya Kavi, *States Sue After AmeriCorps Cuts Leave Communities Scrambling*, N.Y. TIMES (Apr. 29, 2025), https://www.nytimes.com/2025/04/29/us/politics/americorps-grant-cuts.html [https://perma.cc/5ZWJ-UXFB]. After District Court Judge Deborah Boardman granted a preliminary injunction blocking the termination of AmeriCorps grants and programs in the plaintiff states, the government released $184 million in funding. Order at 2, Md. v. Corp. for Nat'l & Cmty. Serv., No. 25-cv-01363 (D. Md. June 5, 2025) (granting preliminary injunction); Press

manufacture authority to undermine the liberal NGO sector, highlighted by a June 2025 DOGE subcommittee hearing, chaired by Representative Marjorie Taylor Greene (R-GA), called "Public Funds, Private Agendas: NGOs Gone Wild," which purported to show how "[r]adical, left-wing Democrats have bankrolled NGOs to advance their destructive agenda at the expense of American taxpayers."[812]

Liberal legal NGOs are a key target because they are led by lawyers whose mission is to represent vulnerable groups against government actors.[813] Law firm targeting, discussed earlier, is a central part of this strategy since law firm pro bono programs are a critical resource enabling legal aid and public interest law groups to provide effective legal service.[814] Disabling pro bono is therefore a means to a larger end: placing a financial stranglehold on the NGO legal sector created during the civil rights era to promote access to justice and protect liberal democratic institutions.[815] The law firm agreements are designed to redirect resources toward a new infrastructure of pro-Trump NGOs, like America First Legal, which litigates against DEI and LGBTQ+ rights.[816] Undermining liberal legal NGOs is also at the heart of the administration's proposal to eliminate federal funding for the Legal Services Corporation, which has provided financial support to legal aid groups since the 1970s.[817]

Release, Rob Bonta, Att'y Gen., Trump Administration Releases Illegally Withheld AmeriCorps Funding in Face of Multistate Lawsuit (Oct. 2, 2025), https://oag.ca.gov/news/press-releases/attorney-general-bonta-trump-administration-releases-illegally-withheld [https://perma.cc/B4CE-AUHW].

812. Press Release, House Comm. on Oversight & Gov't Reform, DOGE Subcommittee Announces Hearing to Expose NGOs' Use of Federal Funds to Advance Radical Agenda (May 28, 2025), https://oversight.house.gov/release/doge-subcommittee-announces-hearing-to-expose-ngos-use-of-federal-funds-to-advance-radical-agenda/ [https://perma.cc/L4XS-FC3G].

813. On the administration's intertwined attacks on lawyers and NGOs, see generally Rachel Leingang & Dharna Noor, *Fear Spreads as Trump Targets Lawyers and Non-Profits in 'Authoritarian' Takedown*, GUARDIAN (Apr. 10, 2025, at 08:00 ET), https://www.theguardian.com/us-news/2025/apr/10/trump-administration-authoritarian [https://perma.cc/EU9V-3NXC].

814. *See generally* Cummings, *The Politics of Pro Bono*, *supra* note 617 (analyzing the institutionalization of pro bono as a feature of the U.S. access-to-justice system).

815. *See* CHEN & CUMMINGS, *supra* note 18, at 58–79 (describing history of the public interest law movement); Laura Beth Nielsen & Catherine R. Albiston, *The Organization of Public Interest Practice: 1975–2004*, 84 N.C. L. REV. 1591, 1594–98 (2006) (discussing importance of public interest NGOs for access to justice).

816. *Our Strategic Focus Areas*, AM. FIRST LEGAL, https://aflegal.org/priorities [https://perma.cc/NNE9-ZFWT]; *see also* Robert Draper, *America First Legal, a Trump-Aligned Group, Is Spoiling for a Fight*, N.Y. TIMES (Mar. 21, 2024), https://www.nytimes.com/2024/03/21/us/politics/stephen-miller-america-first-legal.html [https://perma.cc/V69R-XS5N].

817. *See* Press Release, Legal Servs. Corp., White House Budget Proposes Eliminating LSC, Defunding Civil Legal Aid for Millions of Low-Income Americans (May 30, 2025), https://

Immigrant rights organizations are particularly at risk, highlighted by the Preventing Abuses memo, which authorized the pursuit of sanctions against immigration lawyers.[818] Additional legislative proposals target immigrant rights organizations. Following the Hungarian model,[819] the proposed FENCE Act would remove tax exemption for organizations that "engage in a pattern or practice of providing financial assistance, benefits, services, or other material support to individuals which [they] know[] or reasonably should know to be unlawfully present in the United States."[820] This proposal would penalize organizations for helping undocumented immigrants exercise a range of protected legal rights, including employment rights and the right to seek permanent status on congressionally authorized grounds, which include qualifying for asylum or being the victim of domestic violence.[821] Another proposal, the Think Tank and Nonprofit Foreign Influence Disclosure Act,[822] would require disclosure of foreign funders, moving in the direction of the Russian "foreign agent" law[823] and proposals made in Slovakia and Hungary requiring NGOs to provide extensive information about the source and use of foreign funds and to turn over private

www.lsc.gov/press-release/white-house-budget-proposes-eliminating-lsc-defunding-civil-legal-aid-millions-low-income-americans [https://perma.cc/2RGC-VBSQ]. Despite the White House's initial effort to facilitate an "orderly closeout" of the Legal Services Corporation, Congress approved a budget appropriation of more than $500 million for the 2026 fiscal year. *See* Press Release, A.B.A., Budget Proposal for 'Orderly Closeout' of Legal Services Corp. Is 'Devastation,' Says Legal Aid Leader (June 25, 2025), https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/june-25-wl/lsc-budget-proposal-0625wl/?login [https://perma.cc/AW6M-TRQ4]; Suzanne Monyak, *Spending Deal Revives Funds to DOJ 'Peacemakers' Office, Grants*, BLOOMBERG L. (Jan. 5, 2026, at 10:19 PT), https://news.bloomberglaw.com/us-law-week/spending-deal-revives-funds-to-doj-peacemakers-office-grants [https://perma.cc/C4C2-Y2T5].

818. Mike Scarcella, Andrew Goudsward & Sara Merken, *Trump Targets Lawyers in Immigration Cases, Lawsuits Against Administration*, REUTERS (Mar. 24, 2025, at 07:09 PT), https://www.reuters.com/legal/trump-signs-memo-aimed-preventing-abuse-legal-system-federal-courts-2025-03-22 [https://perma.cc/Z2P8-3HU3].

819. *See* OPEN SOC'Y FOUNDS., *supra* note 117.

820. Fixing Exemptions for Networks Choosing to Enable Illegal Migration Act, S. 497, 119th Cong. § 2 (2025).

821. *See, e.g.*, Sure-Tan, Inc. v. NLRB, 467 U.S. 883 (1984) (holding that undocumented immigrants are protected by federal labor law); Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980) (recognizing the right to seek asylum on protected grounds); AM. IMMIGR. COUNCIL, VIOLENCE AGAINST WOMEN ACT (VAWA) PROVIDES PROTECTIONS FOR NONCITIZEN WOMEN AND VICTIMS OF CRIME (Nov. 2019), https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/violence_against_women_act_provides_protections_for_noncitizen_women_and_victims_of_crime.pdf [https://perma.cc/62HH-7JGX] (explaining grounds for legal status for immigrant victims of violence and crime).

822. H.R. 3966, 119th Cong. (2025).

823. *Putin Signs Expanded 'Foreign Agent' Law*, MOSCOW TIMES (July 14, 2022), https://www.themoscowtimes.com/2022/07/14/putin-signs-expanded-foreign-agents-law-a78298 [https://perma.cc/Y3FU-HG33].

information about donors, staff, and volunteers—with failure to comply risking financial penalties imposed on individual NGO representatives.[824]

Another strategy for choking off resources for civil society is to limit publicly subsidized debt relief for graduates pursuing NGO careers. The Public Service Loan Forgiveness (PSLF) program, enacted in 2007 during the George W. Bush administration, cancels outstanding qualified federal student loan debt for borrowers who have made income-based repayments for ten years while working in an NGO or government agency.[825] In March 2025, President Trump issued an executive order attacking the program by inverting reality: "The PSLF Program has misdirected tax dollars into activist organizations that not only fail to serve the public interest, but actually harm our national security and American values, sometimes through criminal means."[826] Based on these fabricated facts, the order instructed DOE to make revisions to the program falsely equating previously eligible "public service" with "illegal" activities that would henceforth be disqualified from debt relief, including work on immigrant rights (equating it with "supporting terrorism"), transgender rights (equating it with "child abuse"), civil rights (equating it with "illegal discrimination"), and the defense of protest (equating it with "trespassing, disorderly conduct, public nuisance").[827]

Relying on the pretext of preventing public harm, the DOE published a final rule codifying a new definition of "qualified employer" that excludes those determined to have a "substantial illegal purpose," such as "aiding and abetting violations of Federal immigration laws" and "supporting terrorism."[828] In doing

824. Amend. Act No. 213/1997 Coll. (Apr. 16, 2025) (Slovk.); Proposed Bill No. T/11923, 16QG30W00001 (May 13, 2025) (Hung.).

825. Philip G. Schrag, *Federal Student Loan Repayment Assistance for Public Interest Lawyers and Other Employees of Governments and Nonprofit Organizations*, 36 HOFSTRA L. REV. 27, 34 (2007).

826. Exec. Order No. 14235 § 1, 90 Fed. Reg. 11885, 11885 (Mar. 7, 2025) ("Restoring Public Service Loan Forgiveness").

827. *Id.* The American Federation of Teachers filed suit seeking to compel the DOE to maintain income-based repayment. Order at 2, Am. Fed'n of Teachers v. Dep't of Educ., No. 25-cv-00802 (D.D.C. Oct. 23, 2025) (following settlement ordering department to "continue processing loan cancellations for borrowers who are eligible").

828. William D. Ford Federal Direct Loan (Direct Loan) Program, 90 Fed. Reg. 48966 (Oct. 31, 2025) (to be codified at 34 C.F.R. § 685.219). The rule was set to take effect on July 1, 2026. Three lawsuits challenged the rule change. Complaint at 2–3, Massachusetts v. U.S. Dep't of Educ., No. 25-cv-13244 (D. Mass. Nov. 3, 2025) (challenging rule as a violation of the APA insofar as it uses ill-defined terms designed to "crack down on specific activities disfavored by this Administration"); Complaint at 2, Nat'l Council of Nonprofits v. McMahon, No. 25-cv-13242 (D. Mass. Nov. 3, 2025) (challenging change under APA on the grounds that it is an "attempt to target organizations and jurisdictions whose missions and policies do not align with [administration] political positions on immigration, race, gender, free speech, and public

so, the DOE discourages lawyers and other professionals from pursuing long-term careers in NGOs associated with liberal causes, while reallocating public subsidies to those who work in organizations and government positions favored by the administration. The use of regulatory rulemaking to reshape the NGO sector escalated with the May 2026 proposal by the OMB (headed again by lawyer and Project 2025 architect Russell Vought) to rewrite the federal Uniform Guidance to bar federal grants to organizations engaged in activities deemed anathema to Trump administration policy, such as promoting DEI and "gender ideology," registering voters, supporting women receiving abortions, and serving undocumented immigrants.[829]

Punitive measures to squelch dissent and eliminate NGOs that advocate for immigrant rights specifically and liberal causes more broadly have also been deployed. Following the use of National Guard troops to suppress protest against immigration raids, some NGOs involved in organizing were targeted for providing assistance to undocumented immigrants on the false grounds that they were "bankrolling the unrest."[830] Republicans called on immigrant rights NGOs to "cease and desist" their "unlawful activities," claiming that protest support was "not protected speech" and falsely equating such support with "aiding and abetting criminal conduct."[831] This conflation has opened the door to criminal prosecutions against organizational leaders for exercising First Amendment rights and the revocation of tax-exempt status from NGOs for providing assistance to immigrants.

In the wake of Charlie Kirk's September 2025 assassination, the president ratcheted up anti-NGO rhetoric. He called for a sweeping crackdown on liberal

protest"); Complaint for Declaratory and Injunctive Relief at 3, Robert F. Kennedy Center for Just. & Hum. Rts. v. McMahon, No. 25-3860 (D.D.C. Nov. 4, 2025) (challenging rule change under APA because its "vague language" does not provide nonprofits with "guidance to know what activities or forms of advocacy could trigger exclusion"). The rule change was vacated on summary judgment. Memorandum Opinion, Robert F. Kennedy Center for Just. & Hum. Rts. v. McMahon, 2026 U.S. Dist. LEXIS 144895 (D.D.C. June 30, 2026).

829. Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198, 32231, 32232, 32249, 32253 (May 29, 2026) (to be codified at 2 C.F.R. pt. 1 et seq.).

830. *See* Rachel Uranga, *Beleaguered L.A. Immigrant Advocates Are Now Threatened With Federal Probes*, L.A. TIMES (June 11, 2025, at 10:15 PT), https://www.latimes.com/california/story/2025-06-11/republican-senator-launches-investigation-into-immigrant-advocates-saying-they-are-bankrolling-unrest [https://perma.cc/7HUG-RYBA]. Senator Cruz proposed a bill in the wake of the Los Angeles raids designed to empower the Justice Department to pursue RICO criminal charges against NGOs "who fund or coordinate violent interstate riots." Press Release, Sen. Ted Cruz, Sen. Cruz Introduces Bill Targeting NGOs and Adversaries Funding Violent Riots (July 22, 2025), https://www.cruz.senate.gov/newsroom/press-releases/sen-cruz-introduces-bill-targeting-ngos-and-adversaries-funding-violent-riots [https://perma.cc/34TX-L5E6].

831. Uranga, *supra* note 830.

groups falsely claimed to be domestic terrorist organizations engaged in coordinating political violence and threatened to withhold tax exemption from organizations like Soros's Open Society Foundations[832]—directly borrowing from the Orbán playbook in Hungary. In April 2026, the DOJ followed through by indicting the Southern Poverty Law Center (SPLC), which had used a covert network to infiltrate violent extremist groups like the Ku Klux Klan and others associated with the far right (while strongly criticizing Kirk's Turning Point USA[833]), on the grounds that by paying informants the group had engaged in wire fraud and money laundering.[834] True to the playbook, Blanche's announcement of the indictment inverted reality by declaring that SPLC was "manufacturing racism to justify its existence" and "[u]sing donor money to allegedly profit off Klansmen," suggesting SPLC was supporting the very extremist groups that it sought to dismantle.[835] This inversion—at the heart of a broader portfolio of strategies to target liberal legal NGOs, their philanthropic patrons, and big firm

832. Zolan Kanno-Youngs, Andrew Duehren, Kenneth P. Vogel & Katie Rogers, *Trump Invokes Kirk's Killing in Justifying Measures to Silence Opponents*, N.Y. TIMES (Sep. 22, 2025), https://www.nytimes.com/2025/09/16/us/politics/trump-kirk-free-speech-hate-speech-left.html [https://perma.cc/4BQ5-3NZY]. After Kirk's death, the president signed a memorandum giving the IRS greater authority to revoke the tax-exempt status of NGOs deemed involved with political violence. *See* Presidential Memorandum on Countering Domestic Terrorism and Organized Political Violence, 2025 DAILY COMP. PRES. DOC. 958 (Sep. 25, 2025). This was followed by H.R. 6800, which would authorize the Treasury Department to rescind tax exemption for organizations that provide material support to terrorists. *See* Termination of Tax-Exempt Status of Terrorist Supporting Organizations Act, H.R. 6800, 119th Cong. § 1 (2025). The AG directed all personnel to prioritize investigating and prosecuting "domestic terrorism" and "political violence." Memorandum from Pamela Bondi, U.S. Att'y Gen., to All Fed. Prosecutors, Law Enf't Agencies & DOJ Grant-Making Components, Implementing National Security Presidential Memorandum–7: Countering Domestic Terrorism and Organized Political Violence (Dec. 4, 2025), http://s3.documentcloud.org/documents/26371599/bondi-memo-on-countering-domestic-terrorism-and-organized-political-violence-1.pdf [https://perma.cc/3HUL-NPBC]. Liberal foundations issued a joint letter defending the NGO sector and condemning Trump's effort to exploit political violence as a pretext to crack down on liberal groups. *See* Theodore Schleifer, *100 Liberal Philanthropies Prepare to Push Back Against Trump Crackdown*, N.Y. TIMES (Sep. 26, 2025), https://www.nytimes.com/2025/09/17/us/politics/trump-liberal-philanthropies-pushback.html [https://perma.cc/N8FB-5BNH].

833. Associated Press, *Southern Poverty Law Center Indicted on Federal Fraud Charges*, NPR (Apr. 21, 2026, at 20:46 ET), https://www.npr.org/2026/04/21/g-s1-118275/southern-poverty-law-center-fraud-charges-paid-informants [https://perma.cc/7YJQ-TX2U].

834. Indictment at 1, 6, 11, United States v. S. Poverty L. Ctr., No. 26-CR-139 (M.D. Ala. Apr. 21, 2026).

835. Press Release, U.S. Dep't of Just., Off. of Pub. Affs., Federal Grand Jury Charges Southern Poverty Law Center for Wire Fraud, False Statements, and Conspiracy to Commit Money Laundering (Apr. 21, 2026), https://www.justice.gov/opa/pr/federal-grand-jury-charges-southern-poverty-law-center-wire-fraud-false-statements-and [https://perma.cc/NUE7-6SSG] (stating that the DOJ would "hold the SPLC and every other fraudulent organization operating with the same deceptive playbook accountable").

pro bono partners—seeks to chill advocacy against administration efforts to reshape democratic institutions in its far-right image and degrade the capacity of civil society resistance.[836]

F. Media

The final playbook target is the media. Its importance stems from the centrality of communication—and specifically disinformation—strategies in executing playbook principles: convincing the public that long-term autocratic rule is legally justified in service of democracy.[837] The surest way to control media is to take over the main channels of public communication and aggressively censor independent outlets. That strategy has been successfully deployed in North Korea, Russia, and Venezuela, where state media has operated as a propaganda mouthpiece for the government.[838] Because the media ecosystem in the United States is multifaceted and more resistant to top-down control, the playbook follows a diverse approach albeit with aspects of the state capture model.

Efforts to undermine media independence build on the existing system of corporate ownership. Key pillars are Fox News and X, which are owned by administration allies and routinely put out coverage that inverts reality to reinforce the Trump master narrative.[839] During the 2024 election, Musk made nearly ninety false or misleading posts about voter fraud to his more than two hundred million followers on X;[840] since the election, he has continued to disseminate false

836. *See* Rebecca Beitsch, *Trump Legal Attack on Southern Poverty Law Center Stirs Fears for Nonprofits*, HILL (May 9, 2026, at 17:00 ET), https://thehill.com/regulation/court-battles/5869875-nonprofit-splc-legal-battle [https://perma.cc/M6UD-5SCZ].

837. For analysis of how autocrats use information to solidify control, see SERGEI GURIEV & DANIEL TREISMAN, SPIN DICTATORS: THE CHANGING FACE OF TYRANNY IN THE 21ST CENTURY (2022).

838. *See North Korea*, REPORTERS WITHOUT BORDERS, https://rsf.org/en/country/north-korea [https://perma.cc/ZN9B-CPRZ]; Maya Vinokour, *Russia's Media Is Now Totally in Putin's Hands*, FOREIGN POL'Y (Apr. 5, 2022, at 15:21 ET), https://foreignpolicy.com/2022/04/05/russia-media-independence-putin [https://perma.cc/98SR-Q8YR]; Iria Puyosa, Andrés Azpúrua & Daniel Suárez Pérez, *How Venezuela Became a Model for Digital Authoritarianism*, ATL. COUNCIL (July 22, 2024), https://www.atlanticcouncil.org/in-depth-research-reports/how-venezuela-became-a-model-for-digital-authoritarianism [https://perma.cc/N5WR-F8ZN].

839. *See* Jane Mayer, *The Making of the Fox News White House*, NEW YORKER (Mar. 4, 2019), https://www.newyorker.com/magazine/2019/03/11/the-making-of-the-fox-news-white-house [https://perma.cc/5U9N-9W8V].

840. *See* Kanishka Singh & Sheila Dang, *Musk & X Are Epicenter of US Election Misinformation, Experts Say*, REUTERS (Nov. 4, 2024, 19:52 PT), https://www.reuters.com/world/us/wrong-claims-by-musk-us-election-got-2-billion-views-x-2024-report-says-2024-11-04 [https://perma.cc/4LMB-37C5].

or misleading information in line with administration views despite a falling out.[841] Fox News has also amplified disinformation, often repeating Trump attacks on the mainstream press as "fake news."[842] The explosion of right-wing online influencers and podcasters[843]—pioneered by Steve Bannon at Breitbart News (now at War Room) and including prominent broadcasts like former Fox host Tucker Carlson's shows on X and YouTube, and *The Ben Shapiro Show*[844]—has moved right-wing content into the digital world, where it is easily accessible and provides a gateway to extremism and conspiracy.[845]

To clear space for disinformation to flourish, the administration of President Trump—who has long vilified journalists reporting on his misconduct—has used pretexts, such as the need to stop press leaks, to intensify attacks on independent

841. *See Latest Fact-Checks on Elon Musk*, POLITIFACT (NOV. 4, 2025, 19:52 PT), https://politifact.com/factchecks/list/?category=&ruling=false&speaker=elon-musk [https://perma.cc/H777-QBKY]; Tamsin Paternoster, Estelle Nilsson-Julien & James Thomas, *Musk vs the EU: Fact-Checking the Tech Billionaire's X Claims on Europe*, EURONEWS (DEC. 12, 2025, at 16:26 GMT+1), https://www.euronews.com/my-europe/2025/12/11/musk-vs-the-eu-fact-checking-the-tech-billionaires-x-claims-on-europe [https://perma.cc/CHP7-YAEL]; Shawn McCreesh, *Trump and Musk's Relationship Melts Down in Spectacular Fashion*, N.Y. TIMES (June 5, 2025), https://www.nytimes.com/2025/06/05/us/politics/trump-elon-musk-fight.html [https://perma.cc/648Z-T6EC].

842. *See* Alexander Hall, *White House Lists Dozens of 'Hoaxes' Pushed by Media, Critics in Trump's First 100 Days*, FOX NEWS (Apr. 29, 2025, at 21:30 ET), https://www.foxnews.com/media/white-house-lists-dozens-hoaxes-pushed-media-critics-trumps-first-100-days [https://perma.cc/MX7X-J5BT].

843. *See, e.g.*, REBECCA LEWIS, ALTERNATIVE INFLUENCE: BROADCASTING THE REACTIONARY RIGHT ON YOUTUBE (2018), https://datasociety.net/wp-content/uploads/2018/09/DS_Alternative_Influence.pdf [https://perma.cc/KZS6-CNDZ]; Megan Squire & Hannah Gais, *Inside the Far-Right Podcast Ecosystem, Part 4: Far-Right Podcasting, Past and Present*, S. POVERTY L. CTR. (Sep. 29, 2021), https://www.splcenter.org/resources/hatewatch/inside-far-right-podcast-ecosystem-part-4-far-right-podcasting-past-and-present [https://perma.cc/NLA5-W9LX].

844. Luke Winkie, *How the Right Won Podcasting*, SLATE (Nov. 1, 2024, at 05:40 ET), https://slate.com/culture/2024/11/podcasts-politics-right-spotify-tucker-carlson-charlie-kirk-candace-owens-joe-rogan.html [https://perma.cc/F8BT-DW7Y].

845. William Allchorn, *A Digital Megaphone: The Far Right's Use of Podcasts for Radicalisation*, GNET (Oct. 22, 2024), https://gnet-research.org/2024/10/22/a-digital-megaphone-the-far-rights-use-of-podcasts-for-radicalisation [https://perma.cc/S9VN-CFLV]. *But see* Stuart A. Thompson, *MAGA's Media Machine Is Starting to Splinter*, N.Y. TIMES, Aug. 1, 2026, at A1. The National Science Foundation under Trump canceled funding for disinformation research. Alexandra Kelley & David DiMolfetta, *NSF Cancels Over 400 Grants Covering Disinformation, Deepfakes and STEM Education*, NEXTGOV/FCW (Apr. 22, 2025), https://www.nextgov.com/policy/2025/04/nsf-cancels-over-400-grants-covering-disinformation-deepfakes-and-stem-education/404731 [https://perma.cc/M6U9-FHWC].

media.[846] These attacks have involved investigating journalists,[847] limiting the White House press pool to friendly reporters (while banning the Associated Press for failing to use the term "Gulf of America"),[848] prohibiting reporting on unclassified information while restricting press access to the Pentagon,[849] and terminating freedom of information staff.[850] The president has also routinely turned to court to counter legitimate stories portraying him in a critical light, filing defamation lawsuits that use the threat of economic sanctions to chill investigative coverage.[851]

This chilling effect is further facilitated by control over the agency with regulatory authority over media, the Federal Communications Commission (FCC), which is chaired by Brendan Carr, a lawyer and coauthor of Project 2025,

846. *See* Angela Fu, *The Numbers That Defined the Trump Administration's Attacks Against the Press in 2025*, POYNTER (Dec. 22, 2025), https://www.poynter.org/reporting-editing/2025/united-states-press-freedom-donald-trump [https://perma.cc/8ADH-EPFR]; Timothy Richardson & Viktorya Vilk, *'Quiet, Piggy,' 'Terrible Reporter': President Trump Escalates Assault on Journalists*, PEN AM. (Nov. 21, 2025), https://pen.org/president-trump-escalates-assault-on-journalists [https://perma.cc/NRE9-F6Y6].

847. AG Bondi rescinded rules against subpoenaing journalists and their sources while the FBI investigated a *Washington Post* reporter for alleged disclosure of confidential information. *See* Memorandum from Pamela Bondi, Att'y Gen., to All Dep't Emps., Updated Policy Regarding Obtaining Information From, or Records of, Members of the News Media (Apr. 25, 2025), https://www.poynter.org/wp-content/uploads/2025/06/Pam-Bondi-April-25-Memo.pdf [https://perma.cc/ZNC5-HA59]; Perry Stein & Jeremy Roebuck, *FBI Executes Search Warrant at* Washington Post *Reporter's Home*, WASH. POST (Jan. 14, 2026), https://www.washingtonpost.com/national-security/2026/01/14/washington-post-reporter-search [https://perma.cc/83MG-Z8RL].

848. *See* David Bauder, *Trump Says AP Will Be Curtailed at the White House Until It Changes Its Style to Gulf of America*, AP NEWS (Feb. 18, 2025), https://www.ap.org/media-center/ap-in-the-news/2025/trump-says-ap-will-be-curtailed-at-the-white-house-until-it-changes-its-style-to-gulf-of-america [https://perma.cc/8ZMC-GUFK]; Eli Stokols, *White House Seizes Control of Press Pool, Will Decide Which Outlets Cover Events With President*, POLITICO (Feb. 25, 2025, at 14:59 ET), https://www.politico.com/news/2025/02/25/trump-white-house-press-pool-access-00206001 [https://perma.cc/6E6R-6AXZ].

849. *See* Morgan Lee, *Pentagon Now Requires Approval to Report Even Unclassified Information*, NBC WASH. (Sep. 21, 2025, at 02:15 ET), https://www.nbcwashington.com/news/politics/pentagon-now-requires-approval-to-report-even-unclassified-information/3991461 [https://perma.cc/KD9V-VG8J]; *see also* N.Y. Times v. Dep't of Def., No. 25-cv-04218 (D.D.C. Mar. 20, 2026) (blocking department policy restricting press credentials for a *New York Times* reporter).

850. *See* Zachary Cohen, Alayna Treene & Hadas Gold, *'Good Luck With That.' Trump Administration Terminates Privacy Officials at Agency Overseeing Government Hiring and Firing*, CNN (Feb. 18, 2025, at 12:14 ET), https://www.cnn.com/2025/02/18/politics/opm-privacy-team-fired [https://perma.cc/9XEA-QZXZ].

851. *See* Kenneth P. Vogel, Kate Conger & Ryan Mac, *Under Siege From Trump and Musk, a Top Liberal Group Falls Into Crisis*, N.Y. TIMES (July 25, 2025), https://www.nytimes.com/2025/07/25/us/politics/media-matters-musk-crisis.html [https://perma.cc/297S-PBLU] (detailing how Media Matters for America, a liberal nonprofit watchdog organization, has been driven to the brink of collapse under a combined wave of lawsuits and government investigations from Musk and the Trump administration).

whose first acts as chair included reinstating complaints against the networks ABC, CBS, and NBC for allegedly biased coverage of the 2024 presidential campaign—but declining to reinstate a complaint against Fox News.[852] A notable example of Trump's intertwined use of litigation and regulatory capture was a $10 billion suit he filed just days before the 2024 election against CBS's *60 Minutes* for editing an interview with Vice President Kamala Harris during the campaign.[853] Trump was in mediation in April 2025 while CBS's parent company, Paramount, was seeking FCC approval for an $8 billion merger with Skydance Media.[854] As Carr's review extended well beyond the normal clock with no announced timeline for decision, CBS settled in July 2025, paying $16 million toward a future Trump presidential library and Trump's legal fees.[855] Three weeks later, Carr announced the merger's approval.[856] A similar use of regulatory oversight and licensing has been deployed against other networks.[857] After late-night comedian Jimmy

852. *See* David Bauder, *President Trump Says CBS and '60 Minutes' Should 'Pay a Big Price' for Going After Him*, AP NEWS (Apr. 13, 2025, at 20:50 PT), https://apnews.com/article/trump-cbs-60-minutes-2c8a32df63f3ec50cfffe94a26436fda [https://perma.cc/S2KZ-QRRK]; Ted Johnson, *New FCC Chair Revives Complaints About ABC, CBS and NBC Content That His Predecessor Rejected as "At Odds With the First Amendment"*, DEADLINE (Jan. 22, 2025, at 13:48 PT), https://deadline.com/2025/01/fcc-complaints-trump-cbs-nbc-abc-1236263995 [https://perma.cc/XA3M-2AM7].

853. Complaint, Trump v. CBS Broadcasting Inc., No. 24-cv-00236 (N.D. Tex. Oct. 31, 2024), Dkt. No. 1. The demand was raised to $20 billion in an amended complaint. Amended Complaint at 57, Trump v. Paramount Global, No. 24-cv-00236 (N.D. Tex. Feb. 7, 2025), Dkt. No. 36.

854. Todd Spangler, *Skydance-Paramount Merger Agreement, Which Is Still Pending FCC Approval, Extended for 90 Days*, VARIETY (Apr. 7, 2025, at 14:08 PT), https://variety.com/2025/biz/news/skydance-paramount-merger-extension-fcc-approval-1236362262 [https://perma.cc/ZGX5-4HYL].

855. *See* Benjamin Mullin, Michael M. Grynbaum, Lauren Hirsch & David Enrich, *Paramount to Pay Trump $16 Million to Settle '60 Minutes' Lawsuit*, N.Y. TIMES (July 2, 2025), https://www.nytimes.com/2025/07/02/business/media/paramount-trump-60-minutes-lawsuit.html [https://perma.cc/3RF9-YKGU] (noting that the amount was identical to what ABC paid in December 2024 to settle a Trump defamation case against George Stephanopoulos).

856. *See* Benjamin Mullin, *F.C.C. Approves Skydance's $8 Billion Merger With Paramount*, N.Y. TIMES (July 28, 2025), https://www.nytimes.com/2025/07/24/business/media/fcc-skydance-merger-paramount.html [https://perma.cc/72A3-KJWQ]. Afterward, CBS blocked Stephen Colbert from airing an interview with a Texas Democrat out of concerns that it would violate FCC rules, although it was also suggested that CBS's decision was influenced by the fact that its parent, the newly merged Paramount Skydance, was pursuing the purchase of Warner Bros. Discovery. *See* Scott Nover, *Stephen Colbert Says CBS Blocked Interview With Texas Democrat Over FCC Concerns*, WASH. POST (Feb. 17, 2026), https://www.washingtonpost.com/business/2026/02/17/colbert-blocked-talarico-interview [https://perma.cc/X7RD-A2V7].

857. David Enrich, *Trump's New Line of Attack Against the Media Gains Momentum*, N.Y. TIMES (Feb. 7, 2025), https://www.nytimes.com/2025/02/07/business/media/trump-media-lawsuits.html [https://perma.cc/7JVB-DMVW]; *see also* Edward Helmore, *How the US Right Wing Is Taking Over News Media and Choking Press Freedom*, GUARDIAN (Sep. 14, 2025, at 08:00 ET), https://www.theguardian.com/us-news/2025/sep/14/rightwing-news-media-journalism [https://

Kimmel said "the MAGA gang" was "desperately trying to characterize this kid who murdered Charlie Kirk as anything other than one of them," Carr threatened sanctions against ABC unless it took action against Kimmel, which it did by briefly suspending his show before he returned to a record audience.[858]

As this suggests, the key lever of influence over media is the threat of economic harm, which may be withdrawn if outlets agree to self-censor. Major newspapers owned by billionaires with significant economic interests in front of the government are prime targets. A prominent example is the *Washington Post*, owned by Jeff Bezos, whose space company, Blue Origin, holds a government contract estimated at more than $2 billion, while his online retail company, Amazon, requires a host of annual regulatory approvals.[859] Before the election, Bezos blocked the paper's endorsement of Harris and instructed the *Post*'s editorial staff to run only opinion pieces "in support and defense of two pillars: personal liberties and free markets," which prompted the resignation of the opinion editor.[860]

A direct route of control is to capture existing state-supported media. In the United States, the most important outlet has been National Public Radio (NPR), which is widely followed.[861] Defunding NPR has been a longstanding Republican

perma.cc/QX7R-JYSF] (describing elevation of conservatives to influential positions at CBS and CNN).

858. *See* John Koblin, *Jimmy Kimmel's Return Draws 6.2 Million Viewers, Ratings Show*, N.Y. TIMES (Sep. 24, 2025), https://www.nytimes.com/2025/09/24/business/media/jimmy-kimmel-ratings.html [https://perma.cc/42ZQ-MMWV]; John Koblin & Michael M. Grynbaum, *Jimmy Kimmel, Somber but Defiant, Defends Free Speech in Return to ABC*, N.Y. TIMES (Sep. 23, 2025), https://www.nytimes.com/2025/09/23/business/media/jimmy-kimmel-return-monologue.html [https://perma.cc/DK6U-4BMZ].

859. *See* Stephanie Denning, *Why Jeff Bezos Bought the Washington Post*, FORBES (Sep. 20, 2018, at 09:49 ET), https://www.forbes.com/sites/stephaniedenning/2018/09/19/why-jeff-bezos-bought-the-washington-post [https://perma.cc/E764-KKAR]; Spencer Soper & Matt Day, *Bezos Space Ambitions at Risk With Musk's Man at NASA*, BLOOMBERG (May 8, 2025, at 03:00 PT), https://www.bloomberg.com/news/articles/2025-05-08/bezos-space-ambitions-at-risk-with-musk-s-man-at-nasa [https://perma.cc/Q6GQ-ZAUM].

860. Richard Luscombe, Washington Post *Opinion Editor Departs as Bezos Pushes to Promote 'Personal Liberties and Free Markets'*, GUARDIAN (Feb. 26, 2025, at 17:55 ET), https://www.theguardian.com/media/2025/feb/26/jeff-bezos-washington-post-opinion [https://perma.cc/GK2Z-95TH]. Patrick Soon-Shiong, the billionaire owner of the *Los Angeles Times*, also refused to endorse Harris and instructed the paper not to publish articles critical of Trump. *See* Dani Anguiano, LA Times *Owner Asks Editorial Board to 'Take a Break' From Writing About Trump*, GUARDIAN (Dec. 18, 2024, at 14:02 ET), https://www.theguardian.com/media/2024/dec/18/la-times-patrick-soon-shiong-trump [https://perma.cc/YU8Y-48P3].

861. *See* Scott Nover, *Trump Asks Congress to Defund PBS and NPR*, WASH. POST (June 3, 2025), https://www.washingtonpost.com/style/media/2025/06/03/trump-pbs-npr-rescission [https://perma.cc/7C8J-BDLT]; *see also NPR Audience*, NPR, https://www.nationalpublicmedia.com/audience/ [https://perma.cc/2PVZ-VJKH] (stating that NPR's audience across platforms is forty-two million per week).

goal, built on exaggerated claims of the network's liberal bias.[862] Following the principle of manufacturing authority, Representative Taylor Greene called the directors of NPR and the Public Broadcasting Service (PBS) television network before her subcommittee on government efficiency to discuss purported bias in February 2025.[863] On May 1, the president issued an executive order, "Ending Taxpayer Subsidization of Biased Media," which accused NPR and PBS of failing to present "a fair, accurate, or unbiased portrayal of current events" and instructed the Corporation for Public Broadcasting to "cease direct funding to NPR and PBS, consistent with my Administration's policy to ensure that Federal funding does not support biased and partisan news coverage"; the order further cut off "indirect funding" by terminating federal support for local public radio and television affiliates.[864] After NPR sued to block the order,[865] Congress narrowly voted to rescind more than $1 billion already allocated to the Corporation for Public Broadcasting, in a move predicted to eliminate scores of small public news stations that relied on its funding.[866] In light of this rescission and the prospect of no future congressional appropriations, the Corporation's board voted in January 2026 to dissolve, cutting NPR and PBS loose from all federal funds.[867]

The future vision of federally supported broadcasting may be glimpsed from Trump's earlier order shutting down Voice of America (VOA), established during World War II to counter Nazi disinformation and disseminate American

862. *See* Audrey Fahlberg, *Republicans* Finally *Defund Public Broadcasting*, NAT'L REV. (July 18, 2025, at 18:28 ET), https://www.nationalreview.com/the-weekend-jolt/republicans-finally-defund-public-broadcasting [https://perma.cc/U5W3-5HLZ].

863. Erin Doherty & Andrew Solender, *MTG-Led Panel Plans Hearing to Grill NPR and PBS Heads*, AXIOS (Feb. 3, 2025), https://www.axios.com/2025/02/03/marjorie-taylor-greene-hearing-npr-pbs [https://perma.cc/G7K9-76HL].

864. Exec. Order No. 14290, 90 Fed. Reg. 19415 (May 1, 2025) ("Ending Taxpayer Subsidization of Biased Media").

865. *See* Benjamin Mullin, *NPR Sues Trump Over Order to Cut Funding*, N.Y. TIMES (May 27, 2025), https://www.nytimes.com/2025/05/27/business/media/npr-trump-lawsuit-executive-order-funding.html [https://perma.cc/F5A9-HYKR]. In the *NPR* lawsuit, the court issued a permanent injunction blocking the order on First Amendment grounds. NPR v. Trump, No. 25-cv-01674, 2026 WL 877434 (D.D.C. Mar. 31, 2026) (memorandum opinion and order).

866. Rescissions Act of 2025, Pub. L. No. 119-28, 139 Stat. 467 (2025); Scott Neuman & Lexie Schapitl, *Congress Rolls Back $9 Billion in Public Media Funding and Foreign Aid*, NPR (July 18, 2025, at 00:17 ET), https://www.npr.org/2025/07/18/nx-s1-5469912/npr-congress-rescission-funding-trump [https://perma.cc/4H5T-JMLF].

867. Marc Rivers & Patrick Jarenwattananon, *The Corporation for Public Broadcasting Votes to End Operations*, NPR (Jan. 6, 2026, at 17:04 ET), https://www.npr.org/2026/01/06/nx-s1-5668292/the-corporation-for-public-broadcasting-votes-to-end-operations [https://perma.cc/F4MF-SZ6U].

perspectives around the globe.[868] Battling legal challenges to reinstate the program and prevent termination of worldwide staff,[869] the administration has used the VOA infrastructure to channel content from One America News Network, a "far-right, pro-Trump network that has propagated conspiracies around COVID-19 and the 2020 presidential election."[870] As this underscores, control of the media is used to amplify an autocrat's message, widening the reach of conspiracy theories used as pretexts for legal action to erode the rule of law—bringing the playbook full circle.

V. REVERSE ENGINEERING THE PLAYBOOK TO PROTECT DEMOCRACY

This Article has demonstrated how the Trump administration's executive actions in its first year reflect a coordinated and systematic campaign to weaken core institutions of American democracy. An effective response must move from identifying principles and tactics used to effectuate backsliding, presented in Parts III and IV, to countermobilization that pushes back before legal change codifies control that becomes difficult to unwind. To do this requires learning key lessons from countries, like Hungary under Orbán, that have fallen out of democracy; those, like Brazil, that have arrested decline; and those—like Hungary after Orbán and others—that have succeeded in defeating entrenched autocratic rule.[871] This

868. Exec. Order No. 14238, 90 Fed. Reg. 13043 (Mar. 14, 2025) ("Continuing the Reduction of the Federal Bureaucracy"); Minho Kim, *Hundreds of Federal Workers at Voice of America Receive Layoff Notices*, N.Y. TIMES (June 20, 2025), https://www.nytimes.com/2025/06/20/us/politics/voice-america-layoffs.html [https://perma.cc/2U9T-ABE5].

869. Democracy Forward and Munger, Tolles & Olson challenged the withholding of funds, winning a preliminary injunction and disbursement. Middle East Broadcasting Networks, Inc. v. United States, No. 25-cv-966, 2025 WL 1291342 (D.D.C. Apr. 25, 2025) (granting preliminary injunction); *en banc reconsideration granted and stay denied*, 2025 WL 1521355 (D.C. Cir. May 28, 2025); Defendants' Status Report, Middle East Broadcasting Networks, Inc. v. United States, No. 25-cv-00966 (D.D.C. Sep. 2, 2025). Other cases, including *Abramowitz v. Lake*, brought by a team composed of the Government Accountability Project, Emery Celli Brinckerhoff Abady Ward & Maazel, government employee unions, Democracy Forward, and Democracy Defenders Fund, challenged the termination of staff. The district court in *Abramowitz* granted summary judgment for plaintiffs and ordered that VOA be restored and its staff reinstated. *See* Abramowitz v. Lake, 824 F. Supp. 3d 1 (D.D.C. Mar. 17, 2026), *stay granted pending appeal*, Widakuswara v. Lake, No. 25-5144, 2026 WL 970265 (D.C. Cir. Mar. 31, 2026) (per curiam).

870. Ben Johansen, Sophia Cai & Irie Sentner, *VOA Prepares for Shuttering*, POLITICO (May 28, 2025, at 17:15 ET), https://www.politico.com/newsletters/west-wing-playbook-remaking-government/2025/05/28/voa-prepares-for-shuttering-00373146 [https://perma.cc/7BRJ-ENG8].

871. Quico Toro, *Brazil Stood Up for Its Democracy. Why Didn't the U.S.?*, ATLANTIC (Feb. 23, 2025), https://www.theatlantic.com/international/archive/2025/02/brazil-bolsonaro-coup/681788 [https://perma.cc/VM83-ZUQH]; Scheppele, *How Viktor Orbán Loses*, *supra* note 86; *see also*

final Part distills lessons into a framework for *reverse engineering* the autocratic legal playbook. As it argues, precisely because lawyers have been at the vanguard of pushing democracy into decline, they must play a leading role in changing its course, working in concert with allies in the private sector and civil society to strengthen democratic resilience.

A. Think Like an Autocrat

The first, and perhaps most difficult, lesson is to think like an autocrat. Instead of waiting for what happens next, pro-democracy movements must look ahead to what changes other leaders have made to solidify long-term power. This is challenging because people used to a functioning system are disinclined to believe that institutions that have withstood stress in the past can be fundamentally repurposed in the present. Yet evidence from countries that have undergone autocratization makes clear that when leaders target democratic institutions with a playbook similar to what the Trump administration has used, they do not walk away to permit resumption of normal politics but rather seek to tilt the playing field toward a singular goal: unchecked permanent power. Pro-democracy forces in the United States must act as if that is the president's plan and take action to prevent it. While resistance movements may hope that this worst-case scenario does not come to pass, they must plan as if it will—following the logic of better safe than sorry.

What it means to do this in the U.S. case may be illustrated by a thought experiment: What would it look like for President Trump to follow through on his expressed interest in pursuing a constitutionally prohibited third term in office? To begin, it is important to recognize that seeding public discourse with far-fetched, even illegal, ideas that prime people to accept their legitimacy is a well-worn playbook move, pioneered through the voter fraud myth. This move dovetails with the related strategy of testing legal boundaries by engaging in small(ish) violations (like mobilizing the military in response to a fabricated rebellion and ignoring court orders) to gauge public reaction before committing larger violations planned to come. Following the logic of thinking like an autocrat means taking the president at his word—that he will seek to stay in power beyond

Filip Milačić, *How to Flip the Script on the Authoritarian Playbook*, J. DEMOCRACY (Sep. 2025), https://www.journalofdemocracy.org/online-exclusive/how-to-flip-the-script-on-the-authoritarian-playbook [https://perma.cc/T5J7-AK7H] (analyzing how democratic defenders can resist modern authoritarian tactics by learning lessons from other countries, using examples of how Polish and Israeli civil society movements used knowledge of Hungary's experience to slow takeovers in their countries).

his second term. And it means presuming that the question is not whether this is happening but only how.

Putting oneself in the mindset of an autocrat conjures legal pathways for a third presidential term. The first would be to directly amend the Constitution to eliminate the two-term limit.[872] This would build on an already proposed House Joint Resolution, introduced by Representative Andrew Ogles (R-TN), to "increase the number of times a person may be elected" to three.[873] Reverse engineers must therefore imagine how the administration might attempt to pass such an amendment. Doing so in compliance with the Constitution would be nearly impossible following normal legal procedure because an amendment must be proposed by two-thirds of both houses of Congress or of the states (thirty-four of fifty) and ratified by three-fourths of the states (thirty-eight of fifty).[874] Instead of taking solace in this fact, a reverse engineer would take the next step to ask: What would an autocrat who ran into that roadblock do?

He could try to win two-thirds control of Congress or mobilize legislatures from two-thirds of states to make an official proposal and then mount a successful amendment ratification campaign. Because the political odds are heavily stacked against this strategy in the normal course, an autocrat might imagine an alternative in which he would pressure enough state legislatures to gain a proposal and then tamper with the voting systems in enough states to win ratification.[875] If outright tampering were not feasible, an autocrat could run an amendment campaign, claim voter fraud after the fact, and override the results to declare passage—effectively following the playbook tried in the 2020 and 2022 presidential elections in the United States and Brazil.

A second route to a third term not requiring an amendment would be to exploit a potential loophole in the Constitution as it stands. Pursuing this path, Trump might turn to the Twenty-Second Amendment, which prohibits a person from being "elected to the office of the *President* more than twice,"[876] to run as *vice president* in 2028 and then assume the presidency in a swap—a version of the Russian "tandemocracy" between Prime Minister Vladimir Putin and "puppet" President Dmitry Medvedev that allowed Putin to circumvent the constitutional

872. U.S. CONST. amend. XXII, § 1.
873. H.J. Res. 29, 119th Cong. (2025).
874. U.S. CONST. art. V; *see also Constitutional Amendment Process*, OFF. OF THE FED. REG., https://www.archives.gov/federal-register/constitution [https://perma.cc/U2P8-R5VF].
875. On the role of electoral manipulation in autocracy, see Jennifer Gandhi & Ellen Lust-Okar, *Elections Under Authoritarianism*, 12 ANN. REV. POL. SCI. 403, 412–13 (2009); Andreas Schedler, *Elections Without Democracy: The Menu of Manipulation*, 13 J. DEMOCRACY 36, 41–46 (2002).
876. U.S. CONST. amend. XXII, § 1 (emphasis added).

bar on a third consecutive presidential term (a bar that was later eliminated).[877] President Trump has already floated this option, suggesting that "there are ways" of having a third term through "the vice-presidential thing."[878]

A third path to a third term would be to simply disregard the Constitution altogether. This path, which Trump has suggested in apparent jest,[879] would run through a state of emergency declaration based on a fabricated national security threat—such as alleged foreign interference or an active war[880]—to suspend or cancel the 2028 election, permitting Trump to stay in power. To suppress inevitable protest against such action, the administration could mobilize the military, as it has done in response to protests against ICE. As Subpart III.C showed, the administration has already prepared this ground by violating the norm against domestic military deployment and manufacturing legal authority to federalize the National Guard (and suggesting possible application of the Insurrection Act),[881] while purging top military lawyers, whose job is to keep the president within constitutional limits when acting as commander in chief.[882]

877. Tatiana Stanovaya, *Russia Prepares for New Tandemocracy*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Jan. 20, 2020), https://carnegieendowment.org/posts/2020/01/russia-prepares-for-new-tandemocracy [https://perma.cc/798Z-GWXF]; Derek S. Hutcheson & Ian McAllister, *Consolidating the Putin Regime: The 2020 Referendum on Russia's Constitutional Amendments*, 6 RUSSIAN POL. 355, 356 (2021).

878. Richard Primus, *Trump's Third-Term Ambitions Are Very Revealing*, ATLANTIC (May 14, 2025), https://www.theatlantic.com/ideas/archive/2025/05/trump-third-term-legal-case/682794 [https://perma.cc/66F2-YV32].

879. Sara Boboltz, *'You Like This Idea': Trump Jokes About Canceling 2028 Elections to Fight War*, HUFFPOST (Aug. 18, 2025, at 15:21 ET), https://www.huffpost.com/entry/trump-jokes-suspending-elections-war_n_68a36a7ce4b00feff7d0974d [https://perma.cc/792F-G4TL].

880. A draft executive order has circulated among Trump allies that would use unsubstantiated claims of Chinese interference in the 2020 election to authorize a national emergency requiring voter ID and prohibiting mail-in ballots in the midterm elections. The chief advocate for the order is Peter Ticktin, a Florida lawyer who went to the New York Military Academy with Trump and was part of the legal team, with Habba, that filed the frivolous 2022 lawsuit alleging a conspiracy against Trump. *See* Isaac Arnsdorf, *Trump, Seeking Executive Power Over Elections, Is Urged to Declare Emergency*, WASH. POST (Feb. 26, 2026), https://www.washingtonpost.com/politics/2026/02/26/trump-elections-executive-order-activists [https://perma.cc/256H-EW23].

881. *See* discussion *supra* notes 318–38.

882. *See* Paul Rosenzweig, *Firing the 'Conscience' of the Military*, ATLANTIC (Mar. 3, 2025), https://www.theatlantic.com/ideas/archive/2025/03/trump-jag-military-lawyers-fired/681888 [https://perma.cc/2Z4F-743U]. The president also fired top military leaders. *See, e.g.*, Phil Stewart & Idrees Ali, *Trump Fires Top US General in Unprecedented Pentagon Shakeup*, REUTERS (Feb. 22, 2025, at 11:33 PT), https://www.reuters.com/world/us/trump-pushes-out-top-us-general-nominates-retired-three-star-2025-02-22/ [https://perma.cc/8EQV-SWSK].

Capturing legal decision-making within the Department of Defense and DOJ also eases the path to "nationalize" elections based on claims of voter fraud.[883]

A final play for a third term would be for Trump to just run again[884]—claiming a higher constitutional authority to stay on as president and daring state officials, courts, and popular protests to stop him.[885] The point is: because the president has figured out ways around other guardrails, a reverse engineer must assume he has a plan for getting around term limits and take it seriously when he says he is "not joking" about his desire to stay in office.[886] These explicit statements, buttressed by reports that the president has discussed options with legal advisors, like former Harvard Law School professor and Trump impeachment lawyer Alan Dershowitz, along with administration-generated media references to Trump as a king above the Constitution, can be discounted as loose talk only at grave democratic peril.[887]

883. *See* Arnsdorf, *supra* note 880; Erica L. Green, Michael Gold & Robert Jimison, *Trump Repeats Call to 'Nationalize' Elections, as White House Walks It Back*, N.Y. TIMES (Feb. 3, 2026), https://www.nytimes.com/2026/02/03/us/politics/trump-save-act-elections.html [https://perma.cc/7LRH-TMJ6]. For congressional elections, the Constitution states that the "Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations . . . ." U.S. CONST. art. I, § 4. For presidential elections, the Constitution provides: "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress . . . ." U.S. CONST. art. II, § 1, cl. 2. Voter fraud claims are also behind the administration's push for the Safeguard American Voter Eligibility Act (SAVE Act), which would require documentary proof of citizenship in person to register to vote—a requirement that critics warn would lead to significant voter disenfranchisement. Gréta Bedekovics & Sydney Bryant, *The SAVE Act Would Disenfranchise Millions of Citizens*, CTR. FOR AM. PROGRESS (Jan. 26, 2026), https://www.americanprogress.org/article/the-save-act-would-disenfranchise-millions-of-citizens/ [https://perma.cc/2J4N-A3SP].

884. The president has reportedly already passed out "Trump 2028" hats in the White House. Brianna Tucker & Niha Masih, *Alan Dershowitz Muses Over the Constitutionality of a Third Trump Term*, WASH. POST (Dec. 18, 2025), https://www.washingtonpost.com/politics/2025/12/18/alan-dershowitz-trump-third-term [https://perma.cc/6KMT-Z4C6].

885. Trump stated that he knows he is "not allowed" to run again but would "like to" anyway. Kaia Hubbard, *What Has Trump Said About Seeking a Third Term? Here Are Remarks He Has Made About Running Again.*, CBS NEWS (Dec. 3, 2025, at 10:47 ET), https://www.cbsnews.com/news/what-trump-has-said-about-pursuing-a-third-term [https://perma.cc/R4JD-X4ML].

886. Tyler Pager, *The Strategies Behind Trump's Repeated Musing About a Third Term*, N.Y. TIMES (Apr. 1, 2025), https://www.nytimes.com/2025/03/31/us/politics/trump-third-term.html [https://perma.cc/43XP-48LY].

887. *See* Tucker & Masih, *supra* note 884; Benjamin Oreskes, *'Long Live the King': Trump Likens Himself to Royalty on Truth Social*, N.Y. TIMES (Feb. 23, 2025), https://www.nytimes.com/2025/02/19/us/politics/trump-king-image.html [https://perma.cc/CE6V-RB9R]; Julia Reinstein, *Trump Post Has Critics Saying He's Declaring Himself Above the Law*, ABC NEWS (Feb. 16, 2025, at 14:05 PT), https://abcnews.com/Politics/trump-post-critics-declaring-law/

B. Plug Legal Loopholes

The next lesson for reverse engineers is to plug loopholes. This means scouring legal systems to identify weaknesses in targeted institutions and acting preemptively to buttress them, thereby making loopholes more difficult to exploit. A version of this idea has been seen in efforts to constitutionalize protections, like reproductive rights, in European countries anticipating antiabortion legal mobilization to make it impossible for national courts to adopt their own version of the U.S. Supreme Court's decision in *Dobbs*.[888]

Because the playbook itself is a set of principles operationalized through specific changes in national legal rules, the moves to reverse engineer the playbook will also be context specific. In the United States, at the broadest level, plugging loopholes would seek to systematically address constitutional and other legal vulnerabilities discussed in Parts III and IV, such as limiting the exercise of emergency power under laws like the AEA and Insurrection Act used to override immigrant and protester rights, and discretionary authority over federal funding used to target law firms and universities.

A critical application of proactive loophole closing would seek to counter efforts to capture the legal profession as the gateway to autocracy. Because capture is the key that unlocks attacks on other guardrails, reverse engineers should focus on fortifying professional duties of government lawyers against efforts to weaken them described in Subpart IV.A.[889] This should include, in opposition to the Bondi memo, clarifying that government lawyers are not bound by the duty of zealous advocacy to represent the president's political interests. To the contrary, they have a heightened duty of independence to represent the interests of their clients—defined as specific institutions of the executive branch (not individuals) and the

story?id=118880089 [https://perma.cc/2SJS-BVP5]. Trump has used social media to suggest he has a divine right to rule—by, for example, depicting himself as a religious figure—and then has denied accountability after backlash. *See, e.g.*, Aishvarya Kavi, *Trump Denies Posting Image of Himself as Pope, Laughing Off Critics*, N.Y. TIMES (May 7, 2025), https://www.nytimes.com/2025/05/05/us/politics/trump-pope-photo-ai.html [https://perma.cc/97XD-UPNL].

888. Eleonora Bottini, Margaux Bouaziz & Stéphanie Hennette-Vauchez, *Enshrining Abortion Rights in the French Constitution*, VERFASSUNGSBLOG (Mar. 9, 2024), https://verfassungsblog.de/enshrining-abortion-rights-in-the-french-constitution [https://perma.cc/C3JS-MSUH].

889. How to address duties of government lawyers depends on the regulatory context. For example, in the Netherlands, government lawyers are not required to be members of the bar but rather are considered independent professionals with a separate code of conduct promulgated by the executive branch—a code that could be vulnerable to rescission by a motivated leader. *See* CODE OF CONDUCT (Nederlandse Orde van Advocaten 2018); *see also* Nienke Doornbos & Arnt Mein, *Professional Ethical Dilemmas of Government Lawyers*, *in* RESEARCH HANDBOOK ON THE SOCIOLOGY OF LEGAL ETHICS, *supra* note 37, at 258, 271 (expressing pessimism that Dutch government lawyers adequately raise and discuss rule of law concerns).

broader public—and to uphold constitutional values against abuses of executive power.[890]

To further strengthen government lawyer duties, the bar should elevate the comment of ABA Model Rule 8.4 to the level of a binding rule mandating that "[l]awyers holding public office assume legal responsibilities going beyond those of other citizens,"[891] including the duty to protect the rule of law, inscribed in the Preamble, which should also be explicitly made enforceable.[892] The rules should also detail, at a minimum, that a lawyer's duty to the rule of law: (1) prohibits recklessly false or misleading claims that undermine the integrity of democratic institutions, like elections, whether made in court or in the course of legal advising; and (2) requires a heightened duty to verify facts, avoid misleading legal argument, and exercise independent legal judgment to protect settled democratic institutions and uphold constitutional values in authorizing government action and defending it in court.[893] Additional rulemaking on government lawyer independence should codify the formal opinion of the New York City Bar Association, issued in response to the Bondi memo, underscoring that "no government lawyer may follow a policy that requires them to follow instructions regardless of consequences."[894]

To give such rules maximum effect would require the D.C. Bar to adopt them and make clear that they apply to *all* DOJ lawyers working in the District of Columbia—thereby closing the existing loophole created by federal regulation and D.C. Bar rules. This loophole arises from the gap in disciplinary power over DOJ lawyers practicing in the District of Columbia who do not hold a D.C. Bar license but are required to follow D.C. rules of conduct under the McDade

890. *See* MODEL RULES OF PRO. CONDUCT r. 1.13 cmt. [9] (A.B.A. 2023); Margaret Tarkington, *Introduction: The Ethics of Lawyers in Government*, 52 IND. L. REV. 265 (2019); W. Bradley Wendel, *Government Lawyers, Democracy, and the Rule of Law*, 77 FORDHAM L. REV. 1333 (2009).

891. MODEL RULES OF PRO. CONDUCT r. 8.4 cmt [7] (A.B.A. 2023).

892. *Id.*: PREAMBLE & SCOPE cmt [6] ("[A] lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.").

893. *See* Scott L. Cummings, *What Ethics Cases from the U.S. Election in 2020 Teach About What Government Lawyers Owe Democracy in 2025 and Beyond*, LEGAL ETHICS (forthcoming 2026).

894. *See* Comm. on Pro. Ethics, N.Y.C. Bar Ass'n, Formal Op. 2025-1 at 8 (2025) ("The Ethical Responsibilities of Lawyers Who Advise, Represent, or Act on Behalf of Government Officers and Agencies"). The opinion also states that "even assuming that the President is the final arbiter of the objectives of his administration, and DOJ lawyers must accept all his lawful objectives, all lawyers retain their personal discretion as to how to achieve lawful objectives. This conclusion necessarily requires lawyers to retain the discretion to reject those objectives that cannot be achieved by means that are consistent with the law and with the lawyer's personal obligations under the Rules." *Id.* at 5–6.

Amendment. The D.C. unauthorized practice of law (UPL) rule permits non-D.C. Bar members who are employed by the U.S. government to "provide legal services to the United States as an employee of the United States" and practice before D.C. federal courts so long as they are members of another bar.[895] The UPL rule interacts with D.C. Bar Rule of Professional Conduct 8.5(a), which only confers authority to discipline lawyers "admitted to practice" in D.C., to create the unusual situation of DOJ lawyers not admitted in D.C. (but allowed to practice there according to the UPL exception) having to follow the D.C. Bar's rules under McDade but not being subject to D.C. Bar discipline.[896]

This lacuna enables a potential regulatory race to the bottom by allowing lawyers like former AG Bondi to be licensed only in (and thus regulated by) friendly home states, in her case, Florida, whose bar took the position during her tenure that it could not investigate complaints against a sitting constitutional officer because that "could encroach on the authority of the federal government"[897]—a basis nowhere in its ethics rules.[898] The D.C. Bar could close the loophole by amending its rules to mandate that all D.C.-based government lawyers be licensed by the D.C. Bar (for example, through an admission process that did not require sitting for the full bar examination) or, if not, that they be subject to discipline by the D.C. Bar for actions within the District of Columbia.[899]

895. D.C. APP. R. 49(c)(1)–(3) (stating further that practice in federal court requires notice).

896. *See* D.C. BAR RULES OF PRO. CONDUCT r. 8.5 (2024) ("Disciplinary Authority; Choice of Law").

897. Letter from Scott Harshbarger, *supra* note 482 (citing Letter from Allie F. Huston, Bar Couns., Fla. Bar (May 20, 2025)).

898. When it was pointed out that the rules at the time made no exception for federal constitutional officers, the Florida Bar proposed to amend its rules. *Florida Bar Rule Proposals*, FLA. BAR (May 20, 2026), https://www.floridabar.org/the-florida-bar-news/florida-bar-rules-proposals-16/ [https://perma.cc/LBN7-PQCN] (noting proposal to amend Rule 3-7.16(d) to require any complaint against a Florida constitutional officer or "a federal constitutional officer" to be brought within six years after the officer vacates office). In a similar vein, the Texas Supreme Court has held that the state's disciplinary commission has no authority under separation of powers doctrine to discipline the state attorney general or his first assistant for representations made in initial litigation pleadings. Webster v. Comm'n for Lawyer Discipline, 704 S.W.3d 478, 484 (Tex. Dec. 31, 2024); *see also* Leslie C. Levin, *Texas Two-Steps Away From Government Lawyer Accountability, Montana Does Not Follow*, STATE CT. REP. (Mar. 6, 2026), https://statecourtreport.org/our-work/analysis-opinion/texas-two-steps-away-government-lawyer-accountability-montana-does-not [https://perma.cc/V2Y6-QZRD] (analyzing the *Webster* case).

899. The latter change would bring D.C. Bar Rule of Professional Conduct 8.5(a) in line with the ABA Model Rule, which provides that a "lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction." MODEL RULES OF PRO. CONDUCT r. 8.5(a) (A.B.A. 2023). The D.C. rules already permit admission of out-of-state lawyers by transferring a qualifying bar examination score or being a member in good standing of another bar for a specified time period. D.C. APP. R. 46(c), (d).

Although this change would not protect the D.C. Bar against rule reversal in the future, nor address the constitutional challenges at the heart of the Clark case described above,[900] it could strengthen the bar's position in the near term and make it more difficult to change course by conditioning any future rule rescission on a supermajority vote.

Action by the bar to fill ethics loopholes to deter government lawyer overreach would complement normative loophole plugging by courts: specifically, reversing the presumption of regularity accorded to government decision-making and, by extension, the presumption of good faith accorded to DOJ lawyers. This begins by explicitly recognizing that DOJ lawyer defense of executive action—which in normal times might deserve deference—is part of an overall package of rule-of-law backsliding that should no longer warrant the default of good faith.[901] Ryan Goodman and colleagues have provided the empirical fact base for this reversal by compiling a list of over two hundred cases in which judges across the ideological spectrum have identified instances of inaccurate information presented in government legal positions (ranging from obfuscation to outright falsehoods), noncompliance with court orders, and "arbitrary and capricious" administrative action.[902] According deference to DOJ lawyers and the officials on whose behalf they appear, while appropriate under normal constitutional conditions, is not warranted during times of acute democratic stress precipitated by coordinated attacks on institutional targets. As Mary McCord has argued, this is especially true in cases implicating emergency authority, in which "the reasons for historical deference to the judgment of the Executive Branch in matters of national security and foreign policy have been severely undermined."[903]

There is evidence that courts are retreating from the traditional presumption of good faith. This was evident in the National Guard cases, described in Subpart III.C, in which judicial deference to executive characterizations of rebellion and interference under § 12406 was strongly contested and shifted over time, showing how effective litigation may reveal patterns of pretextual argumentation that undermine judicial confidence in executive action. Initially, the Ninth Circuit

900. *See* Answer of Respondent, *supra* note 628.

901. *See* Mattathias Schwartz, *Losing Trust in Justice Dept., Judges Call Out Its Lawyers' Behavior*, N.Y. TIMES (June 1, 2026), https://www.nytimes.com/2026/06/01/us/justice-department-lawyers-judges-trump.html [https://perma.cc/2AY7-3QN2] (noting that judges, in a reversal, are criticizing DOJ lawyers' lack of candor).

902. *See* Ryan Goodman, Siven Watt, Audrey Balliette, Margaret Lin, Michael Pusic & Jeremy Venook, *The "Presumption of Regularity" in Trump Administration Litigation (4th Edition)*, JUST SEC. (Mar. 19, 2026), https://www.justsecurity.org/120547/presumption-regularity-trump-administration-litigation [https://perma.cc/6QMZ-V65A].

903. Mary B. McCord, *When Deference Is No Longer Due*, JUST SEC. (Oct. 14, 2025), https://www.justsecurity.org/122485/when-deference-is-no-longer-due [https://perma.cc/54XT-NZ8Z].

followed traditional norms giving the president the benefit of the doubt in deploying troops to Los Angeles,[904] using a "highly deferential standard of review" to conclude "it is likely that the President lawfully exercised his statutory authority."[905] Relying on the 1827 Supreme Court case of *Martin v. Mott*,[906] the Ninth Circuit stressed that courts could review only whether the president had a "colorable basis for invoking" § 12406.[907]

Over time, however, as the administration used the same pretexts to justify military crackdown and chill protest in other cities, courts adopted a more skeptical approach. This skepticism was evident in the Chicago case, where the Seventh Circuit refused to stay the district court's "well-supported" order blocking troop deployment,[908] after which the Ninth Circuit agreed to an en banc rehearing of its decision to stay an injunction against National Guard federalization in Portland, where the trial judge had concluded that giving the president "'a great level of deference' is not equivalent to ignoring facts on the ground."[909] While the Supreme Court's decision to leave the Chicago injunction in place rested on other

904. Newsom v. Trump, 786 F. Supp. 3d 1235, 1250 (N.D. Cal. June 12, 2025) (concluding that while the court could not "question Defendants' factual assertions" regarding what had occurred on the ground, it could consider whether "those factual assertions, if true, constitute a rebellion or make the President unable to execute federal law").

905. Newsom v. Trump, 141 F.4th 1032, 1040, 1052 (9th Cir. June 19, 2025) (per curiam) (staying district court order).

906. 25 U.S. 19 (1827). The Ninth Circuit rejected the state's argument that reliance on *Martin* was misplaced because the question in that case was whether individual military personnel could disobey a president's decision to call the militia into federal service during a time of declared war—not, as here, whether a president could engineer circumstances to justify the open-ended use of military personnel. *Newsom*, 141 F.4th at 1048–51; *see also* Adam Liptak, *A 200-Year-Old Precedent Holds the Key to Trump's Troop Deployment*, N.Y. TIMES (Oct. 21, 2025), https://www.nytimes.com/2025/10/21/us/politics/supreme-court-national-guard-precedent.html [https://perma.cc/HT7V-26BY]; Joshua Braver & John Dehn, *Deference Due? Trump, the National Guard, and the Misuse of* Martin v. Mott, VOLOKH CONSPIRACY (Oct. 14, 2025, at 14:19 ET), https://reason.com/volokh/2025/10/14/deference-due-trump-the-national-guard-and-the-misuse-of-martin-v-mott [https://perma.cc/KN3B-MREJ].

907. *Newsom*, 141 F.4th at 1052. This position elicited a vigorous dissent from the Ninth Circuit's refusal to rehear the case en banc by Judge Marsha S. Berzon, who argued that the court "should have considered whether the President was likely to succeed in showing that he complied with the very specific terms of the purely statutory grant of authority when he ordered the California National Guard onto the streets of Los Angeles over the objection of state authorities" and its failure to do so risked the country devolving "into one in which the use of military force displaces the rule of law." Newsom v. Trump, 158 F.4th 984, 988–89 (9th Cir. Oct. 22, 2025) (Berzon, J., dissenting from denial of rehearing en banc).

908. Illinois v. Trump, 155 F.4th 929, 929, 940 (7th Cir. Oct. 16, 2025) (per curiam).

909. Oregon v. Trump, 802 F. Supp. 3d 1277, 1292 (D. Or. Oct. 4, 2025) (granting motion for temporary restraining order), *granting stay pending appeal*, 157 F.4th 1013 (9th Cir. Oct. 20, 2025), *granting rehearing en banc*, 159 F.4th 1159 (9th Cir. Oct. 28, 2025) (per curiam).

legal grounds,[910] it sent a signal that courts understood the subtext of these cases—testing the limits of emergency power—and that they would stand as a bulwark against the president's effort to exploit statutory loopholes to flex military might. While this bulwark is essential, to follow through on withdrawing traditional deference requires courts to take the further step of sanctioning DOJ lawyers for bad faith conduct, which thus far they have been reluctant to do.[911]

C. Wrench the Gears

Wrenching the gears means seizing opportunities to raise legitimate legal objections and use available legal processes to hinder backsliding rather than attempting to keep a low profile for fear of "poking the bear."[912] This strategy includes testing legal mobilization in alternative arenas—like state bars—to bring external scrutiny that raises the cost of wrongdoing and slows it down. Because lawyers are key actors enabling backsliding, wrenching the gears involves the pursuit of sanctions for misconduct to impair their right to practice and thereby weaken their power to provide legitimacy to executive action. Although lawyers at the top of the administration are political actors whose conduct may not be affected by threat of discipline, sanctions may influence public perception of their legitimacy. Furthermore, frontline government lawyers—such as Julie Le in the Minneapolis case—may care more about their reputation and ability to practice law in the future and therefore confronting them with the threat of sanctions may cause them to disobey improper government orders or resign. Mobilizing sanctions to hinder government lawyers hinges on assertive action by the organized bar, applying old rules to the new context of democratic backsliding rather than hewing closely to formalistic doctrines developed under normal conditions in an effort to stay under the radar.

910. The Court held that the statutory requirement that the president be unable to execute federal laws with "regular forces" referred to "*the regular military*" not ICE or local law enforcement; therefore, "before the President can federalize the Guard under § 12406(3), he likely must have statutory or constitutional authority to execute the laws with the regular military," which he had failed to show. Trump v. Illinois, 146 S. Ct. 432, 434 (Dec. 23, 2025). This interpretation was raised in an amicus brief. Brief of Professor Martin S. Lederman as Amicus Curiae in Support of Respondents at 8, Trump v. Illinois, 146 S. Ct. 432 (2025) (No. 25A443), 2025 WL 3016387, at *8 (U.S. Oct. 21, 2025).

911. Even in the case on the Anti-Weaponization Fund settlement, the court imposed sanctions only on Trump and his private attorneys. *See* Order, Trump v. IRS, *supra* note 525, at 46–47, 52–53.

912. Taylor Giorno, *'Don't Poke the Bear': How Lobbyists Are Helping Clients Dodge Trump's Truth Social Wrath*, NOTUS (Dec. 24, 2025, at 05:29 ET), https://www.notus.org/donald-trump/truth-social-lobbying-k-street-corporate-guidance [https://perma.cc/26JD-XAHQ].

As discussed above, state ethics rules apply to federal government lawyer action in court and in advising behind the scenes. To the extent that DOJ lawyers in court make frivolous arguments in defense of executive actions, fail to comply with court orders,[913] misrepresent or hide facts,[914] or pursue prosecutions without probable cause,[915] they are subject to discipline. Government lawyers may also be subject to discipline for providing legal authorization and advice outside of court in support of executive action in violation of duties of independence,[916] competence,[917] and honesty.[918] OPR has taken the position that deliberately skewed legal advice, such as that provided by OLC lawyers in the Torture Memos, may violate a lawyer's duty to exercise independent legal judgment.[919] The cases disbarring Trump's 2020 lawyers (Giuliani, Eastman, and Clark) hold that lawyers serving a president may be sanctioned for recklessly disregarding facts in the course of representation, including in public statements and legal memos, particularly when misrepresentations target democratic institutions.[920] Moreover, government lawyers must follow rules generally applicable to all lawyers that prohibit assisting a client in committing a crime or fraud,[921] undertaking conflicting representation without consent,[922] neglecting to supervise subordinate lawyers, failing to report a lawyer for serious misconduct,[923] and engaging in conduct impairing the administration of justice,[924] among others.

These rules and related precedent are relevant to evaluating Trump administration lawyer conduct authorizing and defending executive action, including the law firm orders,[925] university funding rescissions,[926] Venezuelan

913. MODEL RULES OF PRO. CONDUCT r. 3.1 & 3.4(c) (A.B.A. 2023).
914. *Id.* r. 3.3.
915. *Id.* r. 3.8(a).
916. *Id.* r. 2.1.
917. *Id.* r. 1.1.
918. *Id.* r. 8.4(c).
919. *See* U.S. DEP'T OF JUST., OFF. OF PRO. RESP., *supra* note 388, at 260. Obama's Associate Deputy AG ultimately rejected the findings of the report. *See* Memorandum from David Margolis, Assoc. Deputy Att'y Gen., to Att'y Gen. (Jan. 5, 2010), https://irp.fas.org/agency/doj/opr-margolis.pdf [https://perma.cc/D22W-5R85].
920. *See In re* Giuliani, 214 N.Y.S.3d 366 (N.Y. App. Div. July 2, 2024) (per curiam); Decision and Order of Involuntary Inactive Enrollment, *In re* Eastman, No. SBC-23-O-30029 (Cal. State Bar Ct. Hearing Dep't Mar. 27, 2024), *aff'd*, No. SBC-23-O-30029 (Cal. State Bar Ct. Rev. Dep't June 13, 2025), *petition for review denied*, No. S292011 (Cal. Apr. 15, 2026); Report and Recommendation of the Board on Professional Responsibility, *In re* Clark, Bd. Dkt. No. 22-BD-039, Disciplinary Dkt. No. 2021-D193 (D.C. Bd. Pro. Resp. July 31, 2025).
921. MODEL RULES OF PRO. CONDUCT r. 1.2(d) (A.B.A. 2023).
922. *Id.* r. 1.7, 1.9 & 1.10; *see also* r. 1.8 (defining specific conflict rules for government attorneys).
923. *Id.* r. 5.1 & 8.3.
924. *Id.* r. 8.4(d).
925. *See* discussion *supra* notes 557–98.
926. *See* discussion *supra* notes 773–97.

boat strikes and Maduro abduction,[927] birthright citizenship order,[928] creation of DOGE,[929] and abrogation of the CFPB.[930] To the extent that actions facially contradict existing law or rest on false or misleading factual predicates,[931] there may be grounds for holding the lawyers behind them to account for violating professional duties. At the most aggressive end of the disciplinary spectrum, the bar in some jurisdictions, including D.C., may exercise expedited review to impose temporary suspension in cases of imminent harm to the public.[932]

Since early 2025, there have been over twenty ethics complaints filed against government lawyers for actions detailed in this Article. They include complaints of misconduct by lawyers at the very top of the DOJ—former AG Pam Bondi,[933]

927. *See* discussion *supra* notes 289–295, 503–507. Military lawyers executing illegal orders may also be held to violate the military's Rules of Professional Conduct for Lawyers. Eugene R. Fidell, Daniel Maurer & Steven J. Lepper, *Professional Responsibility and the Boat Strikes*, JUST SEC. (Dec. 1, 2025), https://www.justsecurity.org/125965/professional-responsibility-boat-strikes [https://perma.cc/KXJ5-D44H].

928. *See* discussion *supra* notes 362–368, 528–533. Kristin A. Collins, Gerald Neuman & Rachel E. Rosenbloom, *Another Reason Trump's Birthright Citizenship Order Is Unlawful*, JUST SEC. (May 15, 2025), https://www.justsecurity.org/113422/birthright-citizenship-statute [https://perma.cc/7QQU-S8G2].

929. *See* Does 1–26 v. Musk, 771 F. Supp. 3d 637, 685–87 (D. Md. Mar. 18, 2025) (granting preliminary injunction against dismantling USAID on grounds that Musk's position at DOGE likely violated the Appointments Clause and that DOGE's actions likely violated separation of powers), *granting stay pending appeal*, 2025 WL 1020995 (4th Cir. Mar. 28, 2025); Does 4, 7, 22, 27, 28 & 29 v. Musk, No. 25-0462, 2025 WL 2346258 (D. Md. Aug. 13, 2025) (denying motion to dismiss except for claims against the president); Does 4, 7, 22, 27, 28 & 29 v. Musk, 350 F.R.D. 246 (D. Md. Aug. 18, 2025) (certifying class action by current or recently terminated USAID employees and contractors).

930. *See* discussion *supra* notes 735–740.

931. On misleading statements in executive orders, see Linda Qiu, *6 Inaccurate Claims Trump Has Used to Justify His Flurry of Orders*, N.Y. TIMES (Feb. 7, 2025), https://www.nytimes.com/2025/02/06/us/politics/trump-executive-orders-fact-check.html [https://perma.cc/56K3-GB6S]; Alexander Ward, Lara Seligman & Michael R. Gordon, *Secret U.S. Memo Authorizing Drug-Boat Strikes Cites Chemical Weapon Threat*, WALL ST. J. (Nov. 14, 2025, at 17:34 ET), https://www.wsj.com/politics/national-security/justice-department-drug-boat-strike-memo-83711582 [https://perma.cc/MQ6Q-PPSB].

932. For example, the D.C. Court of Appeals is authorized to temporarily suspend an attorney upon petition of the Board on Professional Responsibility "supported by an affidavit showing that an attorney appears to pose a substantial threat of serious harm to the public." RULES GOVERNING D.C. BAR r. XI § 3(c)(1).

933. Letter from Peggy A. Quince, Chief Just., Fla. Supreme Court (Ret.) & Board Member, Lawyers Defending Am. Democracy, to Fla. Bar, Re: Ethics Complaint Against Pamela Jo Bondi (Bar # 886440) (May 27, 2026), https://www.democracydefendersfund.org/wp-content/uploads/2026/06/2026-05-27-ethics-complaint-filed-against-pam-bondi-alleges-pattern.pdf [https://perma.cc/47FU-F8AW] (refiling complaint after Bondi's resignation and alleging violations of special rules for prosecutors and supervisory duties in relation to her involvement in pushing out DOJ lawyers, releasing the Epstein files, failing to oversee and rectify violations of court orders in Minneapolis, and advancing political prosecutions and investigations without probable cause).

current AG Todd Blanche,[934] former Principal Associate Deputy AG Emil Bove,[935] and current Deputy Assistant AG Drew Ensign[936]—as well as the trio of lawyers handling the CFPB case.[937] They also include complaints against current and

934. Letter from Virginia Canter, Chief Couns. & Dir. for Ethics & Anti-corruption, Democracy Defs. Fund, to Att'y Grievance Comm., Sup. Ct. of the State of N.Y., Re: Ethics Complaint Against Todd Blanche (Registration No. 4192456) (June 22, 2026), https://ldad.org/wp-content/uploads/2026/06/Todd-Blanche-Ethics-Complaint.pdf [https://perma.cc/TK3Q-D62V] (alleging multiple violations in connection with the creation of the Anti-Weaponization Fund, prosecutions of Comey and Ábrego García, and failure to properly disclose the Epstein files); Letter from Amb. Norman Eisen (ret.), Exec. Chair & Co-Founder, Democracy Defs. Fund, to Jolene Ann Lauria, Designated Agency Ethics Official, Dep't Ethics Office, U.S. Dep't of Just. (June 16, 2026), https://www.democracydefendersfund.org/wp-content/uploads/2026/06/2026-06-16-democracy-defenders-fund-todd-blanche-must-not-be-allowed-1.pdf [https://perma.cc/Q2FE-8UKZ] (alleging a disqualifying conflict of interest in the rulemaking process for the DOJ rule suspending state bar review of DOJ lawyers since Blanche was subject to an ethics complaint); Letter from Michelle Kuppersmith, Exec. Dir., Campaign for Accountability, to Jorge Dopico, Esq., Chief Couns. Att'y Grievance Comm., First Jud. Dep't, N.Y., Re: Complaint Against Todd Blanche, New York Atty. Regis. No. 4192456 (May 27, 2026), https://s3.documentcloud.org/documents/28166615/todd-blanche-bar-complaint-campaign-for-accountability-2-27-26.pdf [https://perma.cc/VF4X-4Q6M] (alleging misconduct by Blanche in the prosecution of Ábrego García). The Campaign Legal Center also brought a complaint against Blanche to the DOJ's Office of Inspector General for conflicts of interest in crypto prosecutions affecting his financial interests. Letter from Kedric L. Payne, Gen. Couns., Campaign Legal Ctr., to Don R. Berthiaume, Acting Inspector Gen., U.S. Dep't of Just. (Jan. 22, 2026), https://campaignlegal.org/sites/default/files/2026-01/CLC%20Complaint%20_%20Blanche%20_%20DOJ%20OIG%20%281%29.pdf [https://perma.cc/NA4T-JYKZ].

935. Letter from Ron Fein, Chief Couns., Am. Oversight, to Att'y Grievance Comm. for the First Dep't, Sup. Ct., App. Div., N.Y. (Feb. 19, 2025), https://www.documentcloud.org/documents/25539647-20250219-ao-ltr-to-ny-atty-grievance-cmte-re-bove-final-with-exhibits/ [https://perma.cc/C4B7-W5UR] (alleging misconduct by Bove in dismissal of Adams prosecution); Letter from Michelle Kuppersmith, Exec. Dir., Campaign for Accountability, to Jorge Dopico, Esq., Chief Couns. Att'y Grievance Comm., First Jud. Dep't, N.Y., Re: Complaint Against Emil Joseph Bove III, New York Atty. Regis. No. 4700696 (Feb. 21, 2025), https://www.documentcloud.org/documents/25541345-cfa-new-york-attorney-grievance-complaint-emil-joseph-bove-iii/ [https://perma.cc/EF35-954Z] (alleging misconduct in Adams dismissal); Letter from Sen. Sheldon Whitehouse & Sen. Richard Blumenthal, to Att'y Grievance Comm., Sup. Ct., App. Div., N.Y. (Sep. 4, 2025), https://www.whitehouse.senate.gov/wp-content/uploads/2025/09/2025-09-04-Emil-Bove-NY-Bar-Complaint-Followup-Letter-FINAL.pdf [https://perma.cc/L39A-L2HS] (refiling complaint against Bove for misconduct in Adams case, which was referred by New York State Bar to OPR when Bove was still employed at DOJ, and adding allegations related to the Greenhouse Gas Reduction Fund and noncompliance with court orders in immigration cases).

936. Letter from Scott Harshbarger, *supra* note 276 (alleging Ensign engaged in conduct violating duties of candor and supervision, and prohibitions against frivolous claims and conduct prejudicial to justice in the Venezuelan AEA and Ábrego García cases).

937. Complaints against Hamilton, Rosenberg, and Holland, *supra* note 736; *see also* Alan Feuer, *Legal Watchdog Files Bar Complaints Against Justice Dept. Lawyers*, N.Y. TIMES (July 31, 2025), https://www.nytimes.com/2025/07/31/us/politics/justice-department-lawyers-complaint.html [https://perma.cc/64Z5-UGG5].

former U.S. attorneys—Alina Habba,[938] Lindsey Halligan,[939] Ed Martin,[940] Jeanine Pirro,[941] and John Sarcone[942]—along with lawyers in top agency positions—FCC Chair Brendan Carr[943] and Equal Employment Opportunity Commission

938. Letter from Michelle Kuppersmith, Exec. Dir., Campaign for Accountability, to Off. of Att'y Ethics, N.J., Re: Complaint Against Alina Habba, New Jersey Atty. Regis. No. 018592010 (June 24, 2025), https://s3.documentcloud.org/documents/25983507/cfa-nj-office-of-attorney-ethics-alina-habba-62425.pdf [https://perma.cc/EBV5-PL6X] (alleging Habba violated ethics in vindictive investigations and charges against New Jersey Democrats).

939. Letter from Michelle Kuppersmith, Exec. Dir., Campaign for Accountability, to Fla. State Bar & Va. State Bar, Re: Complaint Against Lindsey Halligan, Florida Bar No. 109481, *supra* note 510 (alleging ethical breaches in prosecutions of Comey and James).

940. Letter from Sen. Richard J. Durbin et al., *supra* note 586 (alleging conflicts of interest regarding Martin's representation of January 6 defendants and improper extrajudicial statements); Letter from Congressman Dave Min & Congressman Sean Casten, to Off. of Disciplinary Couns. D.C. Ct. of Appeals (July 16, 2025), https://min.house.gov/sites/evo-subsites/min.house.gov/files/evo-media-document/ed-martin-letter-to-dc-bar-association-2-combined.pdf [https://perma.cc/9ZQZ-L9M4] (alleging misconduct by Martin in relation to public statements threatening prosecutions of critics of Elon Musk and DOGE, targeting Georgetown University Law Center, and threatening Jack Smith, among others).

941. Letter from Scott Harshbarger, Chairman, Lawyers Defending Am. Democracy, to Att'y Grievance Comm., Sup. Ct. of the State of N.Y., Re: Ethics Complaint Against Jeanine Pirro (July 21, 2026), https://ldad.org/wp-content/uploads/2026/07/Pirro-Ethics-Complaint.pdf [https://perma.cc/7FRE-RQM3] (alleging misconduct in prosecuting six members of Congress for calling on military personnel to refuse to follow illegal orders, the chair of the Federal Reserve, and defendants in relation to the administration's takeover of the D.C. police department).

942. Letter from Michelle Kuppersmith, Exec. Dir., Campaign for Accountability, to Monica A. Duffy, Chief Att'y, Att'y Grievance Comm., Albany, N.Y., Re: Complaint Against John A. Sarcone III, New York Atty. Regis. No. 2776755 (Aug. 6, 2025), https://s3.documentcloud.org/documents/26041326/cfa-ny-bar-complaint-john-a-sarcone-iii.pdf [https://perma.cc/KK22-KG2G] (alleging John Sarcone, while interim U.S. attorney for the Northern District of New York, lied about an encounter with an armed man). In addition, Freedom of the Press Foundation filed a complaint against Assistant U.S. Attorney Gordon Kromberg for seeking a search warrant that did not follow statutory protections to investigate a *Washington Post* reporter. Letter from Seth A. Stern, Dir. of Advoc., Freedom of the Press Found., to Va. State Bar (Feb. 6, 2026), https://media.freedom.press/media/documents/Kromberg_1-combined_4.pdf [https://perma.cc/7YKG-FR75]. Thirteen congressmembers called on OPR to investigate the U.S. attorney for the Central District of California, Bill Essayli, for unsupported prosecutions and investigations of administration targets. Letter from Congressman Dave Min et al., to Couns., Off. of Pro. Resp., U.S. Dep't of Just. (Dec. 2, 2025), https://min.house.gov/sites/evo-subsites/min.house.gov/files/evo-media-document/essayli-doj-opr-letter.pdf [https://perma.cc/Q67A-EZ66].

943. Letter from Seth A. Stern, Dir. of Advoc., Freedom of the Press Found., to Off. of Disciplinary Couns., D.C. Ct. of Appeals, Re: Disciplinary Complaint Against Brendan Carr, Esq. (July 28, 2025), https://media.freedom.press/media/documents/Letter_to_Office_of_Disciplinary_Counsel_re_Brendan_Carr_2_1.pdf [https://perma.cc/8W4W-LRF9] (alleging dishonesty, conduct prejudicial to the administration of justice, and other misconduct by Carr in relation to approval of Paramount merger after Trump's settlement with CBS, along with other abuses of power).

(EEOC) Chair Andrea Lucas.[944] Finally, complaints have been brought against the president's personal attorney, Boris Epshteyn, for his involvement in law firm targeting,[945] and against law firms themselves for entering deals.[946]

The result of these complaints has been mixed. The D.C. Bar opened proceedings against Martin for threatening to sanction the Georgetown University Law Center over DEI and contacting judges to intervene in his discipline case,[947] and found professional misconduct against Sarcone.[948] In

944. Letter from Michael J. Teter, Exec. Dir., Legal Accountability Ctr., to Va. State Bar, Intake Off., Re: Complaint Against Andrea Lucas, Esq. (Virginia Bar ID # 82357) (Apr. 22, 2026), https://static1.squarespace.com/static/67367bde1a5ffd49c54fcf7e/t/69e943e4c2072a1899269882/1776894948202/Lucas%2BBar%2BComplaint.pdf [https://perma.cc/Y2RF-G7KH] (alleging EEOC Chair Andrea Lucas committed misconduct by instructing the commission not to investigate complaints of discrimination against LGBTQ+ people while demanding DEI information from law firms).

945. Letter from Scott Harshbarger, Chairman, Lawyers Defending Am. Democracy, to Att'y Grievance Comm., Sup. Ct. of the State of N.Y., Re: Professional Responsibility Investigation of Boris Epshteyn, Registration No. 4595732 (Mar. 16, 2026), https://ldad.org/wp-content/uploads/2026/03/Ethics-Complaint-Epshteyn-Attorney-Grievance-Committee-Complaint-1.pdf [https://perma.cc/5WTN-K2XK] (alleging Epshteyn violated rules prohibiting restrictions on a lawyer's right to practice, conflicts of interest, and prejudice to the administration of justice in negotiating law firm settlements).

946. Complaint Before the Attorney Grievance Committee, In re Paul, Weiss, Rifkind, Wharton & Garrison LLP et al., *supra* note 615 (seeking discipline of nine firms that entered agreements with the administration on grounds that the agreements violate the duty to maintain the independence of the legal profession, give nonlawyers control over lawyers' professional judgment, and reflect adversely on the firms' honesty and fitness); Letter from Suparna Reddy, Senior Couns., Free Speech for People, to Att'y Grievance Comm. for the First Dep't, Sup. Ct., App. Div., N.Y. (Apr. 2, 2026), https://freespeechforpeople.org/wp-content/uploads/2026/04/paul-weiss-ethics-complaint-ny-2026.04.02.pdf [https://perma.cc/YV48-9E78] (requesting investigation into Paul Weiss for engaging in bribery and extortion, and conflicts of interest in its deal with the administration).

947. Specification of Charges, No. 2025-D047 (D.C. Bd. Pro. Resp., Mar. 6, 2026); *see also* Devlin Barrett, *D.C. Bar Begins Disciplinary Proceedings Against Ed Martin*, N.Y. TIMES (Mar. 10, 2026), https://www.nytimes.com/2026/03/10/us/politics/dc-bar-ed-martin-disciplinary-hearing.html [https://perma.cc/E2VJ-2R68]. Martin has sought to remove his case to federal court, with support of the DOJ. Emily Sawicki, *DOJ Says Pardon Atty's Ethics Case Belongs in Federal Court*, LAW360 (May 12, 2026, at 16:55 ET), https://www.law360.com/articles/2476489/doj-says-pardon-atty-s-ethics-case-belongs-in-federal-court [https://perma.cc/U7DA-J97Y]. The D.C. Bar declined to launch an investigation against Martin based on another complaint alleging a conflict of interest in dismissing a case against a January 6 defendant. *See* Letter from Hamilton P. Fox, III, D.C. Off. of Disciplinary Couns., to Jennifer Jensen (Feb. 28, 2025), https://s3.documentcloud.org/documents/25881094/jensen-decision-letter-ed-martin.pdf [https://perma.cc/SD7R-3ZET]; Anna Bower, *D.C. Bar Disciplinary Panel Declines to Investigate Ed Martin*, LAWFARE (Apr. 7, 2025, at 11:06 ET), https://www.lawfaremedia.org/article/d.c.-bar-disciplinary-panel-declines-to-investigate-ed-martin [https://perma.cc/C47N-7ZSG].

948. Letter from Elena Jaffe Tastensen, Chair, Att'y Grievance Comm., Third Dep't, State of N.Y., Sup. Ct., App. Div., to Michelle Kuppersmith, Exec. Dir., Campaign for Accountability (Apr. 1,

contrast, the Florida Bar refused to hear complaints against former AG Bondi,[949] the New York Bar refused to pursue one of the Bove complaints (instead referring it to OPR),[950] the Maryland and D.C. Bars declined investigations into Carr,[951] the Virginia Bar refused to investigate Halligan (while the Florida Bar retracted a statement that it had opened an investigation into her conduct),[952] and the New York Bar declined to investigate capitulating law firms.[953]

As a result, there is debate over the efficacy of ethics enforcement as a tool of democratic accountability. While some scholars worry about slipshod complaints, vague ethical standards, and backlash,[954] others argue that principled

2026), https://s3.documentcloud.org/documents/28112673/agc-correspondence-john-sarcone-bar-complaint-campaign-for-accountability.pdf [https://perma.cc/7WQW-995Z]; Courtney Bublé, *NY Ethics Panel Finds US Attorney Committed Misconduct*, LAW360 (May 11, 2026, at 16:37 ET), https://www.law360.com/articles/2476125/ny-ethics-panel-finds-us-attorney-committed-misconduct [https://perma.cc/L5QA-D3TT].

949. Letter from Allie F. Huston, *supra* note 897.

950. Letter from Jorge Dopico, Chief Att'y, N.Y. Att'y Grievance Comm., First Dep't, to Off. of Pro. Resp., U.S. Dep't of Just. (May 27, 2025), https://www.whitehouse.senate.gov/wp-content/uploads/2025/06/2025.0793-R-OA.pdf [https://perma.cc/ZB6V-QVGA].

951. Monty Tayloe, *Bar Complaints Against Carr Rejected in Maryland and DC*, COMMC'NS DAILY (Jan. 14, 2026), https://communicationsdaily.com/article/view?search_id=86803&id=2576649 [https://perma.cc/84V6-LD5N]; *see also* Joe Patrice, *Ethics Authority Won't Pursue Brendan Carr Charges Because Alleged Misconduct Was Too . . . Obvious?*, ABOVE L. (Jan. 9, 2026, at 13:00 ET), https://abovethelaw.com/2026/01/ethics-authority-wont-pursue-brendan-carr-charges-because-alleged-misconduct-was-too-obvious [https://perma.cc/GQ2D-PHZT] (noting Maryland Bar's refusal to act on complaint against Carr for threatening to use his FCC authority to punish Disney and ABC in response to comments made by Jimmy Kimmel on the grounds that bar counsel may decline a complaint based on "published news reports or third party sources where the complainant appears to have no personal knowledge").

952. Letter from Intake Dep't, Va. State Bar to Michelle Kuppersmith, Exec. Dir., Campaign for Accountability, Re: Complaint About Lindsey Robyn Michelle Halligan (Nov. 14, 2025), https://s3.documentcloud.org/documents/26327152/va-bar-11-14-25-response-to-cfa-lindsey-halligan-complaint.pdf [https://perma.cc/GPC7-6N9B] (refusing to initiate investigation against Lindsey Halligan because "[w]hether a lawyer violated federal law or agency regulations is a matter for determination by federal law enforcement and not the Virginia State Bar"); Jonah E. Bromwich & Devlin Barrett, *Florida Bar Retreats From Statement Saying Lindsey Halligan Was Under Scrutiny*, N.Y. TIMES (Mar. 6, 2026), https://www.nytimes.com/2026/03/06/us/politics/lindsey-halligan-florida-bar.html [https://perma.cc/VMV5-69LM]. The Virginia Bar also declined to investigate the complaint against Assistant U.S. Attorney Gordon Kromberg. Charlie Savage, *Bar Punts on Ethics Complaint Over Application to Search Reporter's Home*, N.Y. TIMES (Feb. 12, 2026), https://www.nytimes.com/2026/02/12/us/politics/virginia-bar-ethics-prosecutor-reporter.html [https://perma.cc/P7LL-ZCDN].

953. Roy Strom, *Law Firms' Trump Deals Escape NY Lawyer Ethics Investigation*, BLOOMBERG L. (Oct. 9, 2025, at 10:35 PT), https://news.bloomberglaw.com/business-and-practice/law-firms-trump-deals-escape-ny-lawyer-ethics-investigation?utm_source=reddit.com&utm_medium=lawdesk [https://perma.cc/U7QY-9BBU].

954. Ben Miller, *Bar Complaints Offer 'Imperfect Tool' to Challenge Trump's DOJ*, BLOOMBERG L. (Sep. 18, 2025, at 09:09 PT), https://news.bloomberglaw.com/banking-law/bar-complaints

bar action is a necessary though by no means sufficient tool to limit rule-of-law attacks given the weakness of government lawyer oversight in other parts of the system.[955] On the cautious side of the line, Brad Wendel suggests that ethics rules do not provide a strong lever for disciplining lawyers drafting unconstitutional orders given the blurry boundary between what counts as illegal conduct, frivolous legal argument, and good faith argument for extending or changing law.[956] There are legitimate reasons for such caution, including that courts have tools to sanction lawyers for misconduct in court, while much of DOJ lawyers' behind-the-scenes work remains obscure and misleading claims in official actions are often couched in general terms that make them difficult to punish.[957]

Yet lessons from the first year of the second Trump administration and evidence from other backsliding countries suggest that caution may hamstring existing mechanisms of accountability. As Leslie Levin shows, U.S. courts have traditionally been reluctant to take action against DOJ lawyers[958]—a point underscored by the paucity of court sanctions over the past year despite evidence of noncompliance with judicial orders from Minnesota and elsewhere.[959] Even

-offer-imperfect-tool-to-challenge-trumps-doj [https://perma.cc/7CAE-97NM] (citing some former DOJ attorneys being "dismayed" at complaints against career attorneys).

955. *See* Jamie Conrad, *Senior Government Lawyers Are Shirking Ethics Rules With Impunity*, LAWFARE (Feb. 9, 2026, at 14:00 ET), https://www.lawfaremedia.org/article/senior-government-lawyers-are-shirking-ethics-rules-with-impunity [https://perma.cc/U3GC-6ZEZ]; Ellen Yaroshefsky & Abbe Lyn Smith, *The Legal Profession's Duty to Hold Attorney General Pam Bondi Accountable*, A.B.A. CRIM. JUST. MAG. (Jan. 20, 2026), https://www.americanbar.org/groups/criminal_justice/resources/magazine/2026-winter/legal-professions-duty-hold-attorney-general-pam-bondi-accountable/ [https://perma.cc/5PKX-TPL3].

956. *See* Brad Wendel, *The Ethics of Drafting Unenforceable Executive Orders*, LEGAL ETHICS STUFF (Mar. 31, 2025), https://bradwendel.substack.com/p/the-ethics-of-drafting-unenforceable [https://perma.cc/3357-NBYH]. Wendel agrees, however, that well-supported bar complaints can be an effective tool raising public awareness of DOJ misconduct. *Id.*

957. *Cf.* Phillip Bantz, *Why Ethics Complaints Against Halligan Face 'Very High Bar'*, LAW360 (Oct. 16, 2025, at 22:57 ET), https://www.law360.com/pulse/articles/2400677 [https://perma.cc/6WLE-2H97] (discussing challenges to proving prosecutorial misconduct in relation to Halligan's indictment of Comey and James).

958. Leslie C. Levin, *The Use of State Discipline to Sanction Attorneys General and Other High-Ranking Legal Officers*, 39 GEO. J. LEGAL ETHICS 197 (forthcoming 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5753303.

959. *See* Mattathias Schwartz, Zach Montague & Ernesto Londoño, *Judges Grow Angry Over Trump Administration Violating Their Orders*, N.Y. TIMES (Feb. 24, 2026), https://www.nytimes.com/2026/02/23/us/politics/judges-contempt-immigration-trump.html [https://perma.cc/Y4FU-83G5]. There are only a small number of reported cases of judicial sanctions. In one, District Judge Laura M. Provinzino in Minnesota held DOJ lawyer Matthew Isihara in civil contempt and imposed a $500 daily fine for failure to return "identification documents" to an immigrant who was ordered released with his property. Mattathias Schwartz & Seamus Hughes, *Justice Dept. Lawyer Is Found in Contempt by Federal Judge*, N.Y. TIMES (Feb. 18, 2026), https://www

when ethics complaints do not have immediate results, they can still have a positive effect by educating the public and courts about why government lawyers should be given less deference, further undermining the presumption of regularity,[960] while deterring extreme misconduct, particularly on the frontlines of immigration enforcement. In addition, well-done ethics complaints, and the bar opinions they help produce, can play an important historical and empirical role: providing records documenting executive abuse and counteracting truth subversion by rebutting administration efforts to fabricate facts.[961]

Finally, caution may undercut bar legitimacy by sending the message that while everyday lawyers will be disciplined for low-level infractions, egregious cases of government abuse by the most powerful lawyers in the land violating core democratic duties will be ignored. Moreover, the stay-under-the-radar argument presumes a default position in which the bar would be permitted to maintain independence under full autocracy or, if captured, would not be used to pursue the president's enemies. However, the experience of other countries, and evidence of bar targeting already underway in the United States, belie this assumption. A common result of autocratization is bar capture and weaponization of bar discipline against independent lawyers and jurists—whether the bar stands up to fight or not.[962] An effective counterstrategy is therefore to directly challenge government lawyer misconduct while there is still independent regulatory authority to do so, even if this means making novel use of legal doctrine and enforcement tools.[963] While legal ethics enforcement cannot on its own stop

.nytimes.com/2026/02/18/us/politics/justice-department-minnesota-contempt.html [https://perma.cc/LUE3-WC2M]. Other courts have threatened sanctions against DOJ lawyers but not ordered them. *See, e.g.*, Jack Karp, *DOJ Rebuked Over Lack of Candor for 'Imperious Client'*, LAW360 (Mar. 20, 2026, at 15:59 ET), https://www.law360.com/articles/2455596/doj-rebuked-over-lack-of-candor-for-imperious-client- [https://perma.cc/8E3V-ET89] (noting that in the matter of *Gimenez Rivero v. Mina*, the court ordered U.S. attorneys in Florida to show cause why they should not be sanctioned for failing to cite binding contrary authority requiring bond release for a detained fifteen-year-old Venezuelan immigrant with a pending asylum application); *see also* Brad Wendel, *This Is How It's Done*, LEGAL ETHICS STUFF (Feb. 13, 2026), https://bradwendel.substack.com/p/this-is-how-its-done [https://perma.cc/58A5-ERWU].

960. Alan Z. Rozenshtein, *What Happens When Courts Can't Trust the Executive Branch?*, LAWFARE (Apr. 10, 2025, at 10:21 ET), https://www.lawfaremedia.org/article/what-happens-when-courts-can-t-trust-the-executive-branch [https://perma.cc/RL25-GB7C].

961. *See, e.g.*, Decision and Order of Involuntary Inactive Enrollment, *In re* Eastman, *supra* note 194.

962. *Cf.* Coşkun & Tombuş, *supra* note 674 (discussing criminal case against the Istanbul Bar Association for issuing a statement condemning the Turkish army's killing of journalists in Syria).

963. *Cf.* Report and Recommendation of Hearing Committee Number Twelve, *supra* note 190, at 5 (noting that "we have limited guidance on what sanction is appropriate for this extraordinary conduct").

backsliding, in the spirit of small acts wrenching the gears, maintaining the credible threat of enforcement can make government lawyers more circumspect or, at least, cause them to devote energy to playing defense.

D. Counter Disinformation

Given the centrality of inverting reality to autocratic governance, countries resisting backsliding take aggressive steps to limit disinformation, particularly around elections, with Brazil the leading example for countering Bolsonaro's 2022 voter fraud campaign. While the legal and political tools to counter disinformation vary by country—and the United States is hamstrung by lax media regulation, expansive speech protections, and lack of political will[964]—it is instructive to review the Brazilian case as a road not taken that highlights missed opportunities in America and elsewhere, with lessons for future reverse engineering.

Brazil's successful countermobilization built on robust national-level election institutions with strong judicial backing.[965] At the top of Brazil's system is the Superior Electoral Court (Tribunal Superior Eleitoral, or TSE), composed of seven judges appointed to a fixed term, overseen by the Supreme Court.[966] To combat disinformation, the TSE implemented a twofold strategy.

First, the TSE used its rulemaking power to issue tough regulations on the use of social media and the internet for electoral propaganda.[967] Based on a broad interpretation of election law, the TSE enhanced its powers to promptly stop disinformation while establishing rules covering social media companies and their users.[968] One of the key initiatives was the Permanent Program for Confronting

964. *See, e.g.*, Leslie Gielow Jacobs, *Freedom of Speech and Regulation of Fake News*, 70 AM. J. COMP. L. i278 (2022).

965. Simone Rodrigues da Silva Bohn, David Fleischer & Francisco Whitaker, *A Fiscalização das Eleições* [*Elections Oversight*], *in* CAMINHOS DA TRANSPARÊNCIA [PATHWAYS TO TRANSPARENCY] 335–54 (Bruno Wilhelm Speck ed., 2002).

966. Constituição da República Federativa do Brasil de 1988 [1988 Constitution of the Federative Republic of Brazil] arts. 118–21, Diário Oficial da União [D.O.U.] (Oct. 5, 1988).

967. Emmanuel Teófilo Furtado Filho, Emanuel Freitas de Silva & Ítalo Said de Castro, *A legitimação do processo democrático: o TSE e a atuação contra a desinformação nas eleições presidenciais de 2022* [*The Legitimation of the Democratic Process: The TSE and Action Against Disinformation in the 2022 Presidential Elections*], 11 REVISTA AGENDA POLÍTICA 3, 38–63 (2023).

968. The main TSE rule on this matter is Resolução 23.714/2022. Lucas Henrique Muniz da Conceição, *Electoral Justice and the Supreme Federal Court in Brazilian Democracy*, *in* JUDICIAL REVIEW AND ELECTORAL LAW IN A GLOBAL PERSPECTIVE 219, 219–39 (Cristina Fasone, Edmondo Mostacci & Graziella Romeo eds., 2024).

Disinformation, established in 2021 to address adverse impacts of false claims on the credibility of electoral institutions.[969]

Second, the TSE aggressively addressed cases of disinformation during the 2018 and 2020 elections, issuing rulings later applied in 2022,[970] when Bolsonaro mobilized the voter fraud myth to cast doubt on election integrity before the election and then to call his loss into question.[971] Aggressive legal action by the TSE blocked the myth's spread to contain its impact on public opinion. Under Justice de Moraes, the Supreme Court and TSE issued orders requiring the removal of fake content and profiles from social media platforms,[972] which companies followed to avoid fines, liability, and suspension.[973]

This assertive posture continued after Bolsonaro left office. In a counterexample to the path taken between the first and second Trump administrations in the United States, the TSE banned Bolsonaro from running for any political office until 2030,[974] a position backed by the Supreme Court, which

969. *See* Angelica Mari, *Telegram and the Brazilian Electoral Court Sign Agreement to Fight Disinformation*, ZDNET (May 19, 2022, at 14:59 ET), https://www.zdnet.com/article/telegram-and-brazilian-electoral-court-sign-agreement-to-tackle-disinformation [https://perma.cc/8RC4-TMWH].

970. For an analysis of how the Superior Electoral Court gradually built its institutional and normative response to disinformation based on the 2018 and 2020 electoral cycles, culminating in the 2022 regulations, see Furtado Filho, Freitas de Silva & Said de Castro, *supra* note 967.

971. *See* Shannon Bond, *Brazilians Are About to Vote. And They're Dealing With Familiar Viral Election Lies*, NPR (Sep. 27, 2022, at 05:00 ET), https://www.npr.org/2022/09/27/1124835910/2022-brazil-election-presidential-disinformation [https://perma.cc/M3R9-HFUJ].

972. The main case regarded the app Telegram. *See* Jack Nicas, *Brazil Blocks Telegram Over Disinformation Concerns*, N.Y. TIMES (Mar. 18, 2022), https://www.nytimes.com/2022/03/18/world/americas/brazil-bans-telegram.html [https://perma.cc/6SSF-K9L7]; Jack Nicas & André Spigariol, *Brazil Lifts Its Ban on Telegram After Two Days*, N.Y. TIMES (Mar. 20, 2022), https://www.nytimes.com/2022/03/20/world/americas/brazil-telegram-bolsonaro.html [https://perma.cc/XFW9-5VXA].

973. Months before the 2022 election, eight companies (Google, Meta, Telegram, TikTok, Twitter, Kwai, LinkedIn, and Spotify) and TSE entered into agreements aimed at ensuring the legitimacy of the electoral process and countering disinformation. For an analysis of the content and account moderation policies of some of these platforms during Brazil's 2022 elections, see Alexandre Arns Gonzales & Rachel Callai Bragatto, *The Politics of Content Moderation by Digital Platforms*, *in* DEMOCRACY UNDER ATTACK: SOCIAL MEDIA AND DISINFORMATION IN BRAZILIAN ELECTIONS 15, 15–31 (Marisa von Bülow, Leonardo Avritzer & Eliara Santana eds., 2024).

974. Jack Nicas, *Brazil Bars Bolsonaro From Office for Election-Fraud Claims*, N.Y. TIMES (June 30, 2023), https://www.nytimes.com/2023/06/30/world/americas/bolsonaro-brazil-banned-office.html [https://perma.cc/9SWJ-9UD3]. The court concluded that the former president abused his political power when he called a meeting with ambassadors at the presidential palace to raise baseless doubts about the electronic voting system. Ação de Investigação Judicial Eleitoral (AIJE) [Action of Electoral Judicial Investigation], No. 0600814-85.2022.6.00.0000,

dismissed lawsuits attacking the TSE's rulemaking process and later upheld Bolsonaro's criminal conviction.[975] These decisions reflected a broader posture adopted by the Supreme Court to contain concrete threats posed by Bolsonaro's use of the playbook.[976] That posture included an assertive stand against X for refusal to comply with judicial orders to remove malicious propaganda from its platform,[977] resulting in X's temporary suspension in 2024 and fines totaling $5 million.[978]

Although the Brazilian approach may be impossible in the current U.S. political environment, it serves as a guidepost for how aggressive institutional action can impede the reconsolidation of autocratic forces after democratic transitions. It also provides inspiration to ongoing efforts in the United States and elsewhere by independent journalists, politicians, and citizen-activists who recognize that social media is the main information source for many people and are searching for ways to present truthful information in formats that go viral to reach diverse audiences.[979] To build a more stable democratic future, these efforts

Tribunal Superior Eleitoral [TSE] (Braz.), https://www.tse.jus.br/comunicacao/arquivos/voto-corregedor-benedito-goncalves-aije-0600814-85-07-07.2023/@@display-file/file/TSE-Voto-Corregedor-AIJE-060081485.pdf [https://perma.cc/MUU9-4DWL].

975. OSCAR VILHENA VIEIRA, BATTLE OF POWERS: BRAZIL: FROM DEMOCRATIC TRANSITION TO CONSTITUTIONAL RESILIENCE 257–81 (Bradley Hayes trans., 2024); Ana Ionova, *Bolsonaro to Start Serving 27-Year Sentence Over Coup Plot*, N.Y. TIMES (Nov. 25, 2025), https://www.nytimes.com/2025/11/25/world/americas/bolsonaro-arrest-prison-sentence.html [https://perma.cc/3WHZ-ZY2J].

976. VILHENA VIEIRA, *supra* note 975, at 257–81.

977. *See* Jon Lee Anderson, *The Brazilian Judge Taking on the Digital Far Right*, NEW YORKER (Apr. 7, 2025), https://www.newyorker.com/magazine/2025/04/14/the-brazilian-judge-taking-on-the-digital-far-right [https://perma.cc/BZ6P-BFBG].

978. José Marques & Constança Rezende, *Justice Allows the Return of X in Brazil After Musk's Company Complies With Court Orders*, FOLHA DE S. PAULO (Oct. 9, 2024, at 11:29 BRT), https://www1.folha.uol.com.br/internacional/en/business/2024/10/justice-allows-the-return-of-x-in-brazil-after-musks-company-complies-with-court-orders.shtml [https://perma.cc/T3V5-FEBR]. On June 26, 2025, the Brazilian Supreme Court overturned a provision of the Internet Bill of Rights, ruling that social media companies may be held liable for user content promoting hate speech, racism, antidemocratic actions, and violence unless they can prove they have taken all reasonable measures to monitor and remove it. *Brazil's Supreme Court Makes Social Media Directly Liable for Illegal Content*, LE MONDE (June 27, 2025, at 07:47 CET), https://www.lemonde.fr/en/pixels/article/2025/06/27/brazil-s-supreme-court-makes-social-media-directly-liable-for-illegal-content_6742766_13.html [https://perma.cc/UAA5-X2TP].

979. *See, e.g.*, JIM EGAN, CRAIG T. ROBERTSON, AMY ROSS ARGUEDAS, NIC NEWMAN, RASMUS KLEIS NIELSEN, MITALI MUKHERJEE & RICHARD FLETCHER, REUTERS INSTITUTE DIGITAL NEWS REPORT 2026 (2026) (noting various strategies that news creators use to reach audiences).

must be strengthened alongside those by state and local officials to regulate new technology and limit its negative impact on the quality of public discourse.[980]

E. Mobilize Collective Resistance

Research on resistance to backsliding demonstrates what does not work: silence and strategic capitulation, which only hasten democratic decline.[981] When Hugo Chávez rose to power in Venezuela, elites in mainstream political parties sought to manage his populist appeal by endorsing legislation that gradually eroded checks on his power by weakening judicial independence and extending term limits.[982] A similar dealmaking approach characterized some U.S. Republicans in the first Trump administration, who believed that they could achieve desired policy outcomes through strategic alliance without destabilizing the system.[983] However, as these examples highlight, compromise is a high-risk strategy—increasing executive legitimacy—that often does not work.

What does work—or, at least, what has the potential of being effective even if providing no guarantee—is collective resistance.[984] Popular protests contributed to the overthrow of authoritarian governments in Tunisia, Egypt, and Libya during the Arab Spring.[985] Hundreds of thousands of Brazilians took to the streets in 2021 to protest Bolsonaro's handling of COVID-19, which killed more than half a million Brazilians and turned the public against the president.[986] Massive protest marches in the wake of the first Trump election were critical in undermining his

980. *See* BROOKINGS INST., DEMOCRACY PLAYBOOK 2025: SEVEN PILLARS TO DEFEND DEMOCRACY IN 2025 AND BEYOND 12 (Norman Eisen & Jonathan Katz eds., 2025), https://www.brookings.edu/wp-content/uploads/2025/01/v4_democracy-playbook-2025.pdf [https://perma.cc/FD8R-RYZ7].

981. SNYDER, *supra* note 445, at 17.

982. LEVITSKY & ZIBLATT, *supra* note 33, at 16–19.

983. *See generally* TIM ALBERTA, AMERICAN CARNAGE: ON THE FRONT LINES OF THE REPUBLICAN CIVIL WAR AND THE RISE OF PRESIDENT TRUMP (2019).

984. *See* Steven Levitsky, Lucan Way & Daniel Ziblatt, *How Will We Know When We Have Lost Our Democracy?*, N.Y. TIMES (May 8, 2025), https://www.nytimes.com/2025/05/08/opinion/trump-authoritarianism-democracy.html [https://perma.cc/6VPR-3G5Z]; Maria J. Stephan, *Big Tents and Collective Action Can Defeat Authoritarianism*, JUST SEC. (June 3, 2025), https://www.justsecurity.org/113995/collective-action-defeats-authoritarianism/ [https://perma.cc/K9WC-WAVA].

985. *See* Michael Safi, Antonio Voce, Frank Hulley-Jones & Lydia McMullan, *How the Arab Spring Engulfed the Middle East—and Changed the World*, GUARDIAN (Jan. 25, 2021, at 08:00 GMT), https://www.theguardian.com/world/ng-interactive/2021/jan/25/how-the-arab-spring-unfolded-a-visualisation [https://perma.cc/G4NJ-XQ4G].

986. *See* Tom Phillips, *Mass Protests in Brazil Call for Jair Bolsonaro's Impeachment*, GUARDIAN (Oct. 2, 2021, at 14:53 ET), https://www.theguardian.com/world/2021/oct/02/mass-protests-in-brazil-call-for-bolsonaros-impeachment [https://perma.cc/EG3S-GEX4].

legitimacy.[987] The nationwide June 2025 "No Kings" protests in reaction to the president's crackdown on immigration, followed by October protests against National Guard deployment, expressed wide public disapproval,[988] reinforced by Minneapolis activists, who used encrypted communications and coordinated outreach to document abuse and force DHS to withdraw agents from the city.[989]

While collective action by lawyers in the absence of wider mobilization is not sufficient to topple autocrats, it is an important complementary force, leveraging the prestige of the profession against attacks on legal institutions while lending authority to counter arguments that autocrats are following law to implement popular mandates.[990] The critical importance of professional action can be seen in other countries where lawyers have gone to the streets in controversies over court packing.[991] Pakistani lawyers in 2007 famously donned black suits in protest marches against President Pervez Musharraf's dismissal of the Supreme Court's chief justice, stopping an attempted judicial coup.[992] Collective action by Polish judges, joined by European colleagues, following the Law and Justice Party's 2015 election contributed to wider democratic mobilization that led to the party's subsequent defeat.[993] Lawyers also went to the streets in opposition to Prime Minister Benjamin Netanyahu's proposal to take greater control over the committee that selects judges, including those to the Israeli Supreme Court.[994] These efforts stymied, even if they did not always defeat, judicial capture.

987. *See* Robert Booth & Alexandra Topping, *Two Million Protest Against Trump's Inauguration Worldwide*, GUARDIAN (Jan. 22, 2017, at 13:40 ET), https://www.theguardian.com/lifeandstyle/2017/jan/22/two-million-protest-against-trumps-inauguration-worldwide [https://perma.cc/8LGF-HYP2].

988. *See* Grace Eliza Goodwin & Caitlin Wilson, *Millions Turned Out for Anti-Trump 'No Kings' Protests Across US*, BBC NEWS (Oct. 18, 2025), https://www.bbc.com/news/articles/c93xgyp1zv4o [https://perma.cc/P6MS-QJMH].

989. *See* Julie Bosman, *How ICE Crackdowns Set Off a Resistance in American Cities*, N.Y. TIMES (Jan. 14, 2026), https://www.nytimes.com/2026/01/14/us/ice-protests-activism.html [https://perma.cc/KD95-SPX7].

990. *See* Bruce A. Green & Eli Wald, *Lawyers, the Rule of Law, and the Executive Orders Targeting Law Firms*, 78 OKLA. L. REV. ___ (forthcoming 2026); Eli Wald, *The Role of Lawyers in Mature Democracies When the Rule of Law Is Under Attack*, *in* RESEARCH HANDBOOK ON THE SOCIOLOGY OF LEGAL ETHICS, *supra* note 37, at 365.

991. For an excellent analysis, see Renee Knake Jefferson, *When Lawyers Protest*, 124 MICH. L. REV. 1425 (2026).

992. *Lawyers Protest Against Musharraf*, BBC NEWS (Mar. 12, 2007, at 11:40 GMT), http://news.bbc.co.uk/2/hi/south_asia/6441133.stm [https://perma.cc/EZ3U-7BT7].

993. Christian Davies, *Judges Join Silent Rally to Defend Polish Justice*, GUARDIAN (Jan. 12, 2020, at 02:17 ET), https://www.theguardian.com/world/2020/jan/12/poland-march-judges-europe-protest-lawyers [https://perma.cc/RC6Z-9RQG].

994. AFP, *Lawyers Rally Outside Tel Aviv Court Against 'Dangerous' Judicial Overhaul*, TIMES ISR. (Jan. 12, 2023, at 19:12 IST), https://www.timesofisrael.com/lawyers-rally-outside-tel-aviv-court-against-dangerous-judicial-overhaul [https://perma.cc/L23Z-CBED].

Two decades ago, Terence Halliday, Lucien Karpik, and Malcolm Feeley theorized that the "legal complex"—the collectivity of legal and judicial actors across professional sectors—was oriented toward building political liberalism and in critical moments would rise to its defense.[995] The past year has challenged this theory in the U.S. case, revealing two lessons about the American legal profession that depart to some degree from prior assumptions and experience.

The first lesson is that lawyers as a whole cannot be counted on to defend democracy. In the administration's first year, American lawyers—a diverse and divided group—have failed to take strong, public, and sustained collective action. This failure has been particularly glaring at the elite level, where leadership is key because it sends the signal that those with the most to lose are prepared to do so. The reasons boil down to the idea that this too shall pass, in which case it is better to keep a low profile. While, as discussed earlier, there are reasons to be cautious, studies of democratic erosion suggest that backsliding relies on missed opportunities to stand up to clear rule-of-law violations, like law firm targeting or no-process deportations, which set precedents making it harder to act as decline accelerates.[996] Such missed opportunities have been evident in the failure of top law firms to present a unified front with those targeted by executive orders,[997] and law school leaders' lack of solidarity against the administration's attacks on academic freedom and the rule of law.[998]

The second lesson is more optimistic. In the face of much disappointment, the first year of the second Trump administration has also taught that in a diverse legal profession, there are diverse modes of resistance by lawyers in different sectors—which can be built on to mobilize the wider profession. Such resistance requires that lawyers do two things at once: call out failures of leadership while

995. *See* Terence C. Halliday, Lucien Karpik & Malcolm M. Feeley, *The Legal Complex in Struggles for Political Liberalism*, *in* FIGHTING FOR POLITICAL FREEDOM: COMPARATIVE STUDIES OF THE LEGAL COMPLEX AND POLITICAL LIBERALISM 1, 2 (Terence C. Halliday, Lucien Karpik & Malcolm M. Feeley eds., 2007); *see also* Lucien Karpik & Terence C. Halliday, *The Legal Complex*, 7 ANN. REV. L. & SOC. SCI. 217 (2011).

996. *See, e.g.*, LEVITSKY & ZIBLATT, *supra* note 33, at 53–71 (discussing failure of Republican gatekeeping in relation to Trump).

997. Deborah Pearlstein, *They Are America's Most Powerful Law Firms. Their Silence Is Deafening.*, N.Y. TIMES (Mar. 25, 2025), https://www.nytimes.com/2025/03/25/opinion/trump-law-firms.html [https://perma.cc/RJ5E-N7VJ].

998. A similar lack of coordination has also characterized the response by U.S. universities, despite Harvard's challenge, as well as that of leading corporations, exemplified by Mark Zuckerberg's decision to have Meta stop working with third-party fact-checking organizations to moderate content on Facebook—a change he made after a post-election visit to Mar-a-Lago. *See* Huo Jingnan, Shannon Bond & Bobby Allyn, *Meta Says It Will End Fact-Checking as Silicon Valley Prepares for Trump*, NPR (Jan. 7, 2025, at 17:03 ET), https://www.npr.org/2025/01/07/nx-s1-5251151/meta-fact-checking-mark-zuckerberg-trump [https://perma.cc/T966-AGHL].

holding up examples of principled action that can be brought to scale. Since the beginning of 2025, some American lawyers have not only displayed courage in dangerous conditions but also demonstrated the capacity for innovation in response to new forms of democratic attack. While a comprehensive catalog of lawyer action is beyond the scope of this Article, what follows is an initial accounting of individual and institutional actions that provide a roadmap for a stronger professional movement to counter the autocratic legal playbook.

Lawyer disobedience and defection. Despite enormous pressure, many DOJ lawyers have shown what it means to follow the profession's highest principles by disobeying legally dubious orders—in immigration cases and political prosecutions detailed above—leading to defections that have stretched resources thin and weakened organizational capacity to do democratic harm.[999] There have been similar defections by lawyers in the private legal sector. Law firm partners have left firms like Paul Weiss that struck deals with the administration,[1000] while associates have resigned from capitulating firms like Skadden and urged others to resist,[1001] demonstrating that exit and voice are powerful tools of professionalism.[1002] In other examples, Skadden Fellowship alumni wrote a letter to the firm's chair expressing concern over Skadden's agreement with the

999. Jack Karp, *DOJ Understaffing Takes Toll After 'Unprecedented' Exodus*, LAW360 (Mar. 18, 2026, at 16:49 ET), https://www.law360.com/pulse/articles/2454662/doj-understaffing-takes-toll-after-unprecedented-exodus [https://perma.cc/N6VZ-S76F]; *see also* Mary-Beth Moylan, *Resistance Is Not Futile: Lawyers Who Left Government Service in Furtherance of Professional Duties*, 57 U. PAC. L. REV. 519 (2026).

1000. Ashleigh Fields, *Top Paul Weiss Lawyers Leave Firm After Trump Deal: Report*, HILL (May 23, 2025, at 19:50 ET), https://thehill.com/regulation/court-battles/5317092-top-paul-weiss-lawyers-leave-firm-after-trump-deal-report [https://perma.cc/2DPU-Z5JM]; *Top Washington Lawyer Creates Firm to Defend Officials Targeted by Trump*, GUARDIAN (May 2, 2025, at 13:33 ET), https://www.theguardian.com/us-news/2025/may/02/trump-washington-law-firm-abbe-lowell [https://perma.cc/2JHY-6RCB].

1001. Rachel Cohen, a Skadden associate in Chicago who prepared an open letter calling on major firms to condemn the administration's attacks and then resigned in protest, was awarded the Konrad Redeker Prize for Rule of Law, Courage, and Resilience by the German law firm Redeker Sellner Dahs. *See* Press Release, Redeker Sellner Dahs, Konrad Redeker Prize for Rule of Law, Courage, and Resilience Launched (June 7, 2025), https://www.redeker.de/en/news/konrad-redeker-prize-rule-courage-resilience-launched [https://perma.cc/AJ2X-JNL8]; *see also* Sam Stein, *An Uprising at a Big Law Firm Targeted by Trump*, BULWARK (Apr. 11, 2025), https://www.thebulwark.com/p/uprising-at-big-law-firm-allen-overy-shearman-targeted-by-trump-associates-letter [https://perma.cc/ZSK3-UHLL] (stating that more than five hundred associates at A&O Shearman had signed a letter urging the firm not to enter a consent decree with Trump).

1002. *See generally* ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS, AND STATES (1970).

administration, while other lawyers publicly shamed firm leaders for capitulation.[1003]

Civil society innovation. Some ex-government and ex-firm lawyers have found homes in civil society rule-of-law groups, which have significantly expanded in number and scale since the first Trump administration, forming a new network across the political spectrum. In one of the most hopeful signs of democratic resilience, these groups have performed a range of rule-of-law-enhancing functions—key among them being legal resistance. NGOs, often acting without pro bono support because of law firm retrenchment, have been in the vanguard of litigation against the federal government.[1004] For example, Democracy Forward, started in 2017, has over 100 lawyers who have filed more than 150 lawsuits against the second Trump administration to stop immigrant deportations, National Guard deployment, agency shutdowns, and the Anti-Weaponization Fund, among other legal actions in response to executive overreach.[1005] The Washington Litigation Group and Justice Connection were created by ex-DOJ lawyers to provide pro bono services to government employees retaliated against or fired.[1006]

1003. Letter from Skadden Alumni to Jeremy London, Exec. Partner, Skadden, Arps, Slate, Meagher & Flom LLP (Apr. 3, 2025), https://www.commoncause.org/wp-content/uploads/2025/04/Skadden-Alumni-Letter-Finalv2.pdf [https://perma.cc/8QEM-NT5X] (condemning the firm's agreement with the administration and characterizing the decision as emboldening actions that undermine the rule of law, freedom of speech, and the adversarial system); Mike Vilensky, *Brad Karp Heckled at Gala as He Defends Paul Weiss Pro Bono*, BLOOMBERG L. (Nov. 8, 2025, at 06:12 PT), https://news.bloomberglaw.com/business-and-practice/brad-karp-heckled-at-gala-as-he-defends-paul-weiss-pro-bono [https://perma.cc/M5CT-36ZK].

1004. Jack Karp, *Nonprofits, Not BigLaw, Lead Legal Challenges to Trump*, LAW360 (Jan. 21, 2026, at 16:51 ET), https://www.law360.com/pulse/articles/2430969/nonprofits-not-biglaw-lead-legal-challenges-to-trump [https://perma.cc/5D68-YEZA] (reviewing more than four hundred lawsuits and finding that the ten most active big law firms collectively handled just over fifty cases, representing approximately 13 percent of the total litigation reviewed, while Democracy Forward and the ACLU together accounted for nearly one hundred cases); *see also* Amanda O'Brien & Abigail Adcox, *The Chill on Big Law Pro Bono Is Thawing, but Law Firms Still Avoid Confrontations*, LAW.COM (July 7, 2026, at 10:00 ET), https://www.law.com/americanlawyer/2026/07/07/the-chill-on-big-law-pro-bono-is-thawing-but-law-firms-still-avoid-confrontations- [https://perma.cc/RY53-4BVB] (quoting Democracy Forward CEO Skye Perryman as stating there is a high volume of litigation but not by "the elite law firms that used to carry a lot of the pro bono load").

1005. *See* O'Brien & Adcox, *supra* note 1004; *Our Work: Legal Actions*, DEMOCRACY FORWARD, https://democracyforward.org/work/legal [https://perma.cc/L62P-CYG8].

1006. Reid J. Epstein, *New Group Aims to Help Justice Dept. Employees Alarmed by Trump*, N.Y. TIMES (Jan. 31, 2025), https://www.nytimes.com/2025/01/31/us/politics/trump-justice-department.html [https://perma.cc/UL78-GZMM]; Eileen Sullivan, *New Firm Seeks to Confront Trump on Executive Power*, N.Y. TIMES (Aug. 4, 2025), https://www.nytimes.com/2025/08/04/us/politics/trump-appeals-firings.html [https://perma.cc/4KS7-5DES]. The

This work has complemented efforts by existing public interest organizations, like the ACLU and Public Counsel, which have actively litigated cases involving immigration raids and removals.[1007] Beyond direct litigation, Protect Democracy and other groups have used integrated advocacy combining legal and political strategies to challenge election interference, while promoting coalition-building and public education on rule-of-law issues.[1008] In a similar vein, Democracy Rising Collaborative, Lawyers Defending American Democracy, Lawyers for Good Government, the Legal Accountability Center, and States United Democracy Center have been active in submitting ethics complaints against administration lawyers,[1009] filing amicus briefs in major cases,[1010] and raising awareness through public events, such as the 2025 "National Law Day of Action."[1011]

Solo and small firm mobilization. As NGOs have risen to fill the gap created by the retreat of big law firms, they have been assisted by pro bono and low bono litigation support from previously underutilized sectors of the bar.[1012] For

Washington Litigation Group is representing the D.C. Office of Disciplinary Counsel in defending against the DOJ's suit in the Jeffrey Clark case. Emily Sawicki, *DC Disciplinary Counsel Enlists Nonprofit in DOJ Fight*, LAW360 (June 8, 2026, at 16:37 ET), https://www.law360.com/articles/2486766/dc-disciplinary-counsel-enlists-nonprofit-in-doj-fight [https://perma.cc/N2ND-SPRG].

1007. *See, e.g.*, Vasquez Perdomo v. Noem, 790 F. Supp. 3d 850, 862 (C.D. Cal. July 11, 2025). Relatedly, civil rights organizations have sought to block federal efforts to purchase local warehouses to detain immigrants. Jonathan O'Connell & Douglas MacMillan, *ICE Buys Warehouses for Mass Detention Network, Rattling Locals*, WASH. POST (Jan. 30, 2026), https://www.washingtonpost.com/investigations/2026/01/30/ice-warehouse-detention-dhs-immigration [https://perma.cc/FD4V-3YZ4].

1008. *See, e.g.*, *Our Strategy*, PROTECT DEMOCRACY, https://protectdemocracy.org/our-strategy/ [https://perma.cc/4DXH-5EHA].

1009. *See supra* notes 933–945; *see also Ethics Complaints*, LAWYERS DEFENDING AM. DEMOCRACY, https://ldad.org/letters-briefs [https://perma.cc/NUJ6-R9R5].

1010. *See, e.g.*, Brief of Amicus Curiae Lawyers Defending Am. Democracy in Support of Plaintiffs-Appellees, Perkins Coie LLP v. U.S. Dep't of Just., No. 25-5241 (D.C. Cir. Apr. 1, 2026); Brief of Amici Curiae Univ. Professors & Scholars in Support of Plaintiffs-Appellees and Affirmance, Perkins Coie LLP v. U.S. Dep't of Just., No. 25-5241 (D.C. Cir. Apr. 3, 2026) (filed by States United Democracy Center).

1011. Santul Nerkar, *In Suits and Ties, Lawyers Protest Trump's Attacks on the Legal System*, N.Y. TIMES (May 1, 2025), https://www.nytimes.com/2025/05/01/nyregion/national-law-day-courthouse-protests.html [https://perma.cc/73YS-RU68]. Democracy Rising Collaborative is active in public education and popular mobilization. *Mission*, WE ARE DEMOCRACY RISING, https://www.wearedemocracyrising.org [https://perma.cc/5FK5-5B4Q].

1012. Elizabeth Williamson, *Big Law Firms Bowed to Trump. A Corps of 'Little Guys' Jumped in to Fight Him.*, N.Y. TIMES (July 21, 2025), https://www.nytimes.com/2025/07/21/us/politics/trump-big-law-firms-fight.html [https://perma.cc/2N7U-UPLF] (describing work of solo practitioners and small law offices, organized through the Pro Bono Litigation Corps of Lawyers for Good Government (L4GG), which provides malpractice insurance and logistical support funded by donations, to challenge the Trump administration).

example, Democracy Defenders Fund has coordinated small-firm and solo lawyers suing the government, while Lawyers for the Rule of Law has organized a pro bono network of similar attorneys to defend people targeted by the administration.[1013] Regional groups have mobilized in response to specific crises, led by the Minnesota Habeas Project, which was created in February 2026 to train and support volunteer lawyers to file habeas petitions for detained immigrants.[1014] Former Winston & Strawn partner Abbe Lowell and other defecting lawyers have started boutique litigation firms to represent clients against the administration,[1015] while existing small and midsize firms, such as Hecker Fink,[1016] have recruited ex-government lawyers and taken on cases defending targeted immigrants,[1017] challenging immigration raids,[1018] and contesting National Guard deployment.[1019]

Big law and in-house support. While the largest and most powerful American firms have not lived up to their collective commitment to the rule of law, some individual firms and their lawyers have nonetheless found ways to express solidarity and devote resources to democratic defense. Hundreds of law firms signed amicus briefs in cases challenging executive orders against their peers—

1013. LAWYERS FOR THE RULE OF L., https://www.lawyersforruleoflaw.org [https://perma.cc/FSP8-FLC5] (stating the mission of the organization as a national nonprofit network of volunteer attorneys that provides pro bono representation to individuals unjustly targeted by government action, files ethics complaints and amicus briefs, and mobilizes lawyers publicly in defense of democratic norms).

1014. *See* Press Release, Nat'l Immigr. Project, With Thousands Detained and Expansion of ICE's Mandatory Detention Authority, Minnesota Habeas Project Provides Critical Legal Representation (Apr. 1, 2026), https://nipnlg.org/news/press-releases/thousands-detained-and-expansion-ices-mandatory-detention-authority-minnesota [https://perma.cc/WE9D-A2GZ].

1015. Daniel Barnes, *The New Law Firms Being Founded to Fight Trump*, POLITICO (May 16, 2025, at 16:19 ET), https://www.politico.com/news/2025/05/16/new-law-firms-trump-targets-00354711 [https://perma.cc/VHB3-H47X]; *see also* Tatyana Monnay, *Paul Weiss Bleeds More Partners to Spinoff Firm Dunn Isaacson*, BLOOMBERG L. (June 17, 2025, at 14:06 PT), https://news.bloomberglaw.com/business-and-practice/paul-weiss-bleeds-more-partners-to-spinoff-firm-dunn-isaacson [https://perma.cc/VF9W-H257].

1016. Abigail Adcox, *The Big Law Firms Hiring Government Lawyers*, LAW.COM (Aug. 14, 2025, at 13:43 ET), https://www.law.com/nationallawjournal/2025/08/14/the-big-law-firms-hiring-government-lawyers-/ [https://perma.cc/68PF-WH8Z].

1017. Jeremy Roebuck & Mark Berman, *Judge Drops Criminal Case Against Kilmar Abrego García, Deeming It Vindictive*, WASH. POST (May 22, 2026), https://www.washingtonpost.com/national-security/2026/05/22/judge-drops-criminal-case-against-kilmar-abrego-garca-ruling-it-vindictive [https://perma.cc/TL7Q-EGPS] (listing Sean Hecker as an attorney for Ábrego García).

1018. Vasquez Perdomo v. Noem, 790 F. Supp. 3d 850, 863 (C.D. Cal. July 11, 2025) (listing Hecker Fink as co-counsel).

1019. Brief of Law Enforcement Action Partnership et al., District of Columbia v. Trump, No. 25-cv-03005 (D.D.C. Sep. 15, 2025), Dkt. No. 19 (amicus brief filed by Hecker Fink on behalf of law enforcement organizations in case challenging deployment of National Guard troops in Washington, D.C.).

although the list of signatories did not include most of the *AmLaw 100*.[1020] Over one hundred individual partners, acting under the umbrella of Law Firm Partners United, filed an amicus brief in support of Susman Godfrey's executive order challenge in 2025.[1021] Some firms have defied enormous pressure to continue publicly representing pro bono clients against the government, while others have discreetly provided pro bono support to vulnerable clients behind the scenes.[1022] Other elite firms have taken on high-profile cases: Munger, Tolles & Olson, Williams & Connolly, and Cooley have represented law firms challenging executive orders;[1023] Susman Godfrey filed the motion to reconsider the Anti-

1020. *Amicus Briefs Filed in Perkins Coie, WilmerHale, and More Cases to Stop Unprecedented Abuse of Executive Power*, LAW FORWARD (Apr. 14, 2025), https://www.lawforward.org/amicus-brief-perkins-coie-wilmer-hale-jenner-block [https://perma.cc/P5ZC-5VSB] (stating that 507 law firms joined an amicus brief in support of Perkins Coie, 808 in support of WilmerHale and Jenner & Block, and 848 in support of Susman Godfrey). The amici list in support of the Perkins Coie summary judgment included only eight *AmLaw 100* firms and none of the top twenty-seven by revenue. Unopposed Motion of 504 Law Firms for Leave to File a Brief *Amicus Curiae* in Support of Plaintiff's Motion for Summary Judgment and for Declaratory and Permanent Injunction, Amended Appendix A, List of Amici Curiae at 1–12, Perkins Coie LLP v. U.S. Dep't of Just., No. 25-cv-00716 (D.D.C. Apr. 4, 2025), Dkt. No. 67; Jack Newsham, *Big Law's Biggest Players Are Absent From Brief Opposing Trump's Attacks on Law Firms*, BUS. INSIDER (Apr. 4, 2025, at 15:25 PT), https://www.yahoo.com/news/big-laws-biggest-players-absent-222552015.html?guccounter=1 [https://perma.cc/XXK3-9BPF]. An April 2026 brief in the consolidated appeal of the firm orders was signed by 842 law firms but only a handful of the *AmLaw 200* firms. Brief of *Amici Curiae* Law Firms in Support of Plaintiffs-Appellees and Affirmance, Appendix of Amici, Perkins Coie LLP v. U.S. Dep't of Just., No. 25-5241 (D.C. Cir. Apr. 3, 2026).

1021. Brief of *Amici Curiae* Law Firm Partners United Inc. in Support of Plaintiff's Motion for Summary Judgment, Exhibit A, Susman Godfrey LLP v. Exec. Off. of the President, No. 25-01107 (D.D.C. Apr. 25, 2025). The group filed another brief in the *ABA* case, *infra* note 1048, in its organizational capacity while individual partners remained anonymous. Brief of Amicus Curiae Law Firm Partners United Inc. in Support of Plaintiff's Opposition to the Motion to Dismiss, A.B.A. v. Exec. Office of the President, No. 25-01888 (D.D.C. Sep. 26, 2025).

1022. Daniel Barnes, *How Major Law Firms Are Responding to Trump's Attacks*, POLITICO (Mar. 19, 2025, at 05:55 ET), https://www.politico.com/news/2025/03/19/trump-major-law-firm-sanctions-questions-00236446 [https://perma.cc/3BRS-WHZM]; O'Brien & Adcox, *supra* note 1004.

1023. *See, e.g.*, Brief of Appellee Perkins Coie LLP, Perkins Coie LLP v. U.S. Dep't of Just., No. 25-5241 (D.C. Cir. Mar. 27, 2026) (filed by Williams & Connolly LLP); Brief for Appellee Jenner & Block LLP, Jenner & Block LLP v. U.S. Dep't of Just., No. 25-5265 (D.C. Cir. Mar. 27, 2026) (filed by Cooley LLP); Brief of Appellee Susman Godfrey LLP, Susman Godfrey LLP v. Exec. Off. of the President, No. 25-5310 (D.C. Cir. Mar. 27, 2026) (filed by Munger, Tolles & Olson LLP). The appellate brief for WilmerHale was filed by the law firm of Paul Clement, the conservative lawyer who served as solicitor general in the administration of President George W. Bush and filed the *Frankel* suit against UCLA for antisemitism discussed *supra* note 767. Brief for Plaintiff-Appellee, Wilmer Cutler Pickering Hale and Dorr LLP v. Exec. Off. of the President, No. 25-5277 (D.C. Cir. Mar. 27, 2026); *Hon. Paul D. Clement*, FEDERALIST SOC'Y, https://fedsoc.org/bio/paul-clement [https://perma.cc/5LGG-H98J].

Weaponization Fund settlement;[1024] and Quinn Emanuel Urquhart & Sullivan litigated Ábrego García's challenge to his deportation and Harvard's challenge to its funding freeze.[1025]

Despite dire predictions, challenging the administration has not proven bad for business. The law firms that sued over executive orders have shown financial resilience,[1026] and in some cases their defiance has led corporate clients to switch firms. One prominent example was Microsoft's decision to move a major shareholder litigation matter from capitulating firm Simpson Thacher to Jenner & Block.[1027] Also on the client side, the newly formed General Counsels United, a nonpartisan coalition of over eight hundred lawyers at major U.S. companies, has endorsed Keep Our Republic's Principles for the Independence of the Legal Profession, discussed below, and filed an appellate court amicus brief in support of Perkins Coie's executive order challenge.[1028]

State and local attorney action. Outside of the private legal sector, government lawyers in liberal states and cities have devoted resources to defending against the Trump administration—spotlighting the importance of localities as sites of legal mobilization within a multilevel system—buttressed by new NGOs designed to strengthen the capacity of nonfederal attorneys against federal attacks.[1029] State AGs have played a critical role challenging executive action

1024. Motion for Relief from Judgment or Order, or, in the Alternative, for Leave to Appear as *Amici Curiae* by Thirty-Five Former Federal Judges at 15, Trump v. IRS, 26-cv-20609 (S.D. Fla. May 27, 2026).

1025. *See* Sulaiman Abdur-Rahman, *Quinn Emanuel Lawyers Demand Safe Return of Mistakenly Deported Maryland Resident*, LAW.COM (Apr. 16, 2025, at 18:17 ET), https://www.law.com/nationallawjournal/2025/04/16/quinn-emanuel-lawyers-demand-safe-return-of-mistakenly-deported-maryland-resident-/ [https://perma.cc/LXV2-X6LQ]; Maggie Haberman & Ben Protess, *Trump Directs Sons to Fire Trump Org. Lawyer Because of Harvard Ties*, N.Y. TIMES (Apr. 24, 2025), https://www.nytimes.com/2025/04/24/us/politics/trump-organization-lawyer-burck.html [https://perma.cc/EWD5-VNA6].

1026. Revenues and profits per equity partner rose for all four targeted firms in 2025: Susman Godfrey (23.17 percent), Jenner & Block (14.86 percent), Perkins Coie (2.0 percent), and WilmerHale (0.6 percent). *See* Abigail Adcox, *From Fear to 'Footnote'? Executive Order Activity Under the Financial Microscope*, LAW.COM (Apr. 14, 2026, at 10:00 ET), https://www.law.com/americanlawyer/2026/04/14/from-fear-to-footnote-executive-order-activity-under-the-financial-microscope/ [https://perma.cc/52ES-W3J2].

1027. Noam Scheiber, *Microsoft Drops Law Firm That Made a Deal With Trump From a Case*, N.Y. TIMES (May 4, 2025), https://www.nytimes.com/2025/05/01/business/microsoft-drops-trump-compliant-law-firm.html [https://perma.cc/RP5P-J5RC].

1028. Brief of Amicus Curiae General Counsels United in Support of Plaintiffs-Appellees and Affirmance, Perkins Coie LLP v. U.S. Dep't of Just., No. 25-5241 (D.C. Cir. Apr. 3, 2026); *Frequently Asked Questions*, GEN. COUNS. UNITED, https://generalcounselsunited.org/qa-2 [https://perma.cc/8M6L-RSJX].

1029. *See, e.g.*, *About Us*, GOVERNORS ACTION ALLIANCE, https://govactalliance.org/about-us [https://perma.cc/FY3N-XMZS] (describing work supporting governors "in championing fundamental freedoms").

targeting liberal jurisdictions, exemplified by litigation against National Guard deployment detailed in Subpart III.C. In addition to that effort, the California AG has led lawsuits against the administration related to funding cuts and data privacy,[1030] while state AGs have acted collectively to make public statements in support of their colleague Letitia James and to file an amicus brief in favor of dropping her prosecution.[1031]

At the local level, city attorneys in San Francisco, Los Angeles, and other municipalities have litigated against the crackdown on sanctuary cities,[1032] authorized anti-ICE ordinances,[1033] and formed a coalition to prosecute ICE

1030. Mikhail Zinshteyn, *Tracking California's Lawsuits Against the New Trump Administration*, CAL MATTERS (Mar. 25, 2026), https://calmatters.org/politics/2025/01/california-trump-lawsuits [https://perma.cc/QV58-5E49].

1031. *Joint Statement of 22 Attorneys General Condemning Retaliatory Prosecution of New York State Attorney General Letitia James*, ATT'Y GEN. MD. ANTHONY G. BROWN (Oct. 13, 2025), https://oag.maryland.gov/News/Pages/Joint-Statement-of-22-Attorneys-General-Condemning-Retaliatory-Prosecution-of-New-York-State-Attorney-General-Letitia-James.aspx [https://perma.cc/L7NQ-DGX4]; Brief of Fifty-Eight Bipartisan Former State Attorneys General as Amici Curiae in Support of Letitia James' Motion to Dismiss, United States v. James, 810 F. Supp. 3d 752 (E.D. Va. Nov. 17, 2025) (No. 25-cr-00122), Dkt. No. 81.

1032. The Executive Order on "Protecting the American People Against Invasion," discussed in Subpart III.B, included a provision directing the AG and DHS secretary to "undertake any lawful actions to ensure that so-called 'sanctuary' jurisdictions … do not receive access to Federal funds" and "any other lawful actions, criminal or civil, that they deem warranted …." Exec. Order No. 14159, 90 Fed. Reg. 8443 (Jan. 20, 2025). Fifty local jurisdictions challenged the order and a preliminary injunction against the order is on appeal. *See* City & Cnty. of San Francisco v. Trump, 779 F. Supp. 3d 1077 (N.D. Cal. Apr. 24, 2025) (order granting preliminary injunction); City & Cnty. of San Francisco v. Trump, 782 F. Supp. 3d 830 (N.D. Cal. May 9, 2025) (order clarifying preliminary injunction); Stipulated Request and Order to Stay Case Deadlines Pending Appeal, City & Cnty. of San Francisco v. Trump, No. 25-cv-1350 (N.D. Cal. Jan. 12, 2026); *see also* Isaiah Poritz, *Dozens of Cities Win New Block on Trump's Sanctuary Defunding*, BLOOMBERG L. (Aug. 23, 2025, at 09:06 PT), https://www.bloomberglaw.com/product/blaw/bloomberglawnews/bloomberg-law-news/XFP2A6MS000000 [https://perma.cc/GFP5-88RQ]. The federal government also sued Los Angeles on the grounds that its sanctuary law is preempted, Complaint at 2–3, United States v. City of Los Angeles, No. 25-cv-05917 (C.D. Cal. June 30, 2025), a claim that was rejected by the Ninth Circuit in a similar challenge to the California Values Act, the statewide sanctuary law, in 2019. *See* United States v. California, 921 F.3d 865, 885 (9th Cir. 2019). The case against Los Angeles remains pending. Order Re: Motion to Dismiss, United States v. City of Los Angeles, 25-cv-05917 (C.D. Cal. June 20, 2026).

1033. For example, Santa Clara County passed an ordinance prohibiting federal agents from accessing county-owned property, while the City of Santa Clara enacted a similar policy governing city-owned property, which included the area surrounding the football stadium where the Super Bowl was held in February 2026. Brandon Pho, *Santa Clara County Will Create ICE-Free Zones*, S.J. SPOTLIGHT (Oct. 21, 2025), https://sanjosespotlight.com/santa-clara-county-will-create-ice-free-zones [https://perma.cc/2FMT-G5RL]; Sakura Cannestra, *Santa Clara Bans ICE From Using City Property Ahead of Super Bowl LX*, NBC BAY AREA (Feb. 5, 2026, at 15:18 PT), https://www.nbcbayarea.com/news/local/santa-clara-bans-ice-super-bowl-lx/4028070/ [https://perma.cc/9Z6Z-4EE7]. In a similar vein, California passed laws

agents for violating state law.[1034] In some cases, lawyers have pushed back against federal overreach by asserting Tenth Amendment principles of local autonomy,[1035] repurposing conservative legal doctrine developed to protect gun rights to secure the rights of immigrants.[1036]

Judicial defense. Despite the Supreme Court's disappointing record[1037]—particularly on the shadow docket, where the Court has lent legitimacy to the administration by applying ordinary rules to extraordinary cases[1038]—the U.S. court system overall has performed its checking function admirably under enormous stress.[1039] According to the Just Security Litigation Tracker, there have

requiring law enforcement agents to wear identification and not wear masks. *See* CAL. PENAL CODE § 13654 ("No Vigilantes Act"); CAL. PENAL CODE § 185.5 ("No Secret Police Act"). The district court blocked the mask ban and the Ninth Circuit blocked the identification requirement. United States v. California, 819 F. Supp. 3d 1109, 1132 (C.D. Cal. Feb. 9, 2026) (enjoining mask ban although noting that it would likely pass muster if it applied equally to federal, state, and local law enforcement); United States v. California, 173 F.4th 1060, 1063 (9th Cir. Apr. 22, 2026) (granting preliminary injunction against § 10 of the No Vigilantes Act).

1034. *See* Shaila Dewan, *Local Prosecutors Join Forces to Bring Charges Against Federal Agents*, N.Y. TIMES (Jan. 27, 2026), https://www.nytimes.com/2026/01/27/us/prosecutors-charges-against-federal-agents.html [https://perma.cc/3XCD-MG6X].

1035. *See, e.g.*, Printz v. United States, 521 U.S. 898, 935 (1997) (striking down provisions of the Brady Handgun Violence Prevention Act conscripting local law enforcement officers to help conduct background checks). The Tenth Amendment states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. CONST. amend. X.

1036. Order Granting Preliminary Injunction at 4–5, City & Cnty. of San Francisco v. Trump, No. 25-cv-01350 (N.D. Cal. Apr. 24, 2025) (stating that the executive orders directing federal agencies to freeze funds to sanctuary cities violate the Tenth Amendment); *see also* Mitch Smith, *Minnesota Claims the ICE Surge Is Illegal. A Judge Will Hear Arguments on Monday.*, N.Y. TIMES (Jan. 26, 2026), https://www.nytimes.com/2026/01/26/us/minnesota-lawsuit-ice-surge-hearing.html [https://perma.cc/65WD-PK3W] (stating that state and local officials argued that the ICE deployment violated state sovereignty under the Tenth Amendment); Ilya Somin, *In Defense of Sanctuary Cities*, CATO INST. (Feb. 19, 2026), https://www.cato.org/commentary/defense-sanctuary-cities [https://perma.cc/5SFG-EDZ9] (discussing Tenth Amendment anti-commandeering doctrine as it applies to protect sanctuary city policies).

1037. Ann E. Marimow & Abbie VanSickle, *Despite Some Losses for Trump, Supreme Court Delivers Enduring Conservative Wins*, N.Y. TIMES (July 1, 2026), https://www.nytimes.com/2026/07/01/us/politics/supreme-court-term-trump-conservatives.html [https://perma.cc/S2XU-LTFV]; *see also Supreme Court Shadow Docket Tracker—Challenges to Trump Administration Actions*, BRENNAN CTR. FOR JUST. (Aug. 31, 2026), https://www.brennancenter.org/our-work/research-reports/supreme-court-shadow-docket-tracker-challenges-trump-administration [https://perma.cc/MDZ7-SSL3].

1038. *See* William N. Eskridge Jr., *Trump 2.0 Removal Cases & the New Shadow Docket*, U. CHI. L. REV. ONLINE (Sep. 23, 2025), https://lawreview.uchicago.edu/online-archive/trump-20-removal-cases-new-shadow-docket [https://perma.cc/UFX8-S96D]; Stephen I. Vladeck, *The Court Against the Courts*, 140 HARV. L. REV. (forthcoming 2026).

1039. *See* Emma Schartz, Camille Baker, Seamus Hughes, Bernard Mokam, Jasmine C. Lee, Lazaro Gamio, Alex Lemonides, Sarah Cahalan & Mattathias Schwartz, *The Trump Administration Has*

been over nine hundred lawsuits filed against the government since January 2025, most by NGOs and small firms described above, with plaintiffs winning almost twice as many cases as the Trump administration.[1040] Significantly, these rulings have been issued by judges across the political spectrum.[1041]

Beyond this, some members of the judicial branch have issued forceful opinions calling out administration misconduct from the bench—exemplified by Judge Schiltz in Minneapolis—while others have taken public action. In spring 2025, a bipartisan group of more than 150 former judges, led by liberal former District Court Judge Nancy Gertner of Massachusetts and conservative former Fourth Circuit Judge J. Michael Luttig of Virginia, condemned AG Bondi for threats against judicial independence, which included investigations and arrests of sitting judges.[1042] In November 2025, District Court Judge Mark Wolf, a Reagan appointee, resigned in a strongly worded essay stating: "President Donald Trump is using the law for partisan purposes, targeting his adversaries while sparing his friends and donors from investigation, prosecution, and possible punishment."[1043] In January 2026, retired judges acting under the umbrella of Keep Our Republic's Article III Coalition, led by former District Court Judge Shira Scheindlin, issued a statement of Principles for the Independence of the Legal Profession, stressing the

Been Sued More Than 750 Times. Track These Cases., N.Y. TIMES (Sep. 1, 2026, at 04:03 ET), https://www.nytimes.com/interactive/2026/us/trump-administration-lawsuits.html [https://perma.cc/RNL7-LB4M]; Mattathias Schwartz, Christina Shaman, Rafaela Balster & Edward Vega, *We Tracked All the Lawsuits Against the Second Trump Administration*, N.Y. TIMES, (Feb. 16, 2026), https://www.nytimes.com/video/us/100000010672378/lawsuits-against-trump-administration.html.

1040. *Litigation Tracker: Legal Challenges to Trump Administration Actions*, JUST SEC., https://www.justsecurity.org/107087/tracker-litigation-legal-challenges-trump-administration/ [https://perma.cc/K7W9-9YWK] (listing 287 total plaintiff wins versus 152 government wins); *see also* David L. Nevins, *Trump Administration Faces Record 530 Lawsuits in 2025—Far Exceeding Biden, Obama and Bush*, FULCRUM (Nov. 19, 2025), https://thefulcrum.us/rule-of-law/supreme-court-rulings-2025 [https://perma.cc/N6PM-SM73] (noting 24 of 32 cases decided against Trump).

1041. *See* Steve Vladeck, *The "War" on Judges*, ONE FIRST (Nov. 17, 2025), https://www.stevevladeck.com/p/193-the-war-on-judges [https://perma.cc/MB6P-GPQ8] (drawing on a dataset of 204 cases in which district courts ruled on requests for preliminary relief against the Trump administration to report that 154 adverse rulings were issued by 121 different judges across 29 district courts and 10 circuits, including by 30 Republican-appointed judges who presided over 41 such cases, undermining claims that outcomes reflect a small group of ideologically motivated judges).

1042. Letter from Hon. Nancy Gertner & Hon. J. Michael Luttig et al., to Pamela Bondi, Att'y Gen. (May 6, 2025), https://societyfortheruleoflaw.org/wp-content/uploads/Bondi-Letter.pdf [https://perma.cc/46Z2-6XQN] (noting concern over the specific circumstances surrounding the April 2025 arrest of Milwaukee County Circuit Court Judge Hannah Dugan in her courthouse during an immigration raid).

1043. Mark L. Wolf, *Why I Am Resigning*, ATLANTIC (Nov. 9, 2025), https://www.theatlantic.com/ideas/2025/11/federal-judge-resignation-trump/684845 [https://perma.cc/2WNC-FX5L].

importance of resisting government coercion and protecting the free representation of clients and causes.[1044] Echoing these values, the federal judiciary's Committee on Codes of Conduct clarified in February that the existing code and advisory opinions "leave room, in at least some circumstances, for the measured defense of judicial colleagues from illegitimate forms of criticism and attacks that risk undermining judicial independence or the rule of law."[1045]

Bar leadership. Some bar association leaders, from the national to local levels, have also spoken out and acted in defense of the rule of law. Since the beginning of the second Trump administration, the nonpartisan ABA has issued a series of statements condemning the Trump administration's "wide-scale affronts to the rule of law" and urging "every attorney to join us and insist that our government, a government of the people, follow the law."[1046] The ABA Task Force for American Democracy, launched after the first Trump administration and co-chaired by Judge Luttig and former Secretary of Homeland Security Jeh Charles Johnson, focused its efforts after the 2024 election on educating the public about lawyers' rule-of-law responsibilities, issuing a bipartisan report recommending reforms to strengthen democracy.[1047] The ABA has promoted other rule-of-law actions: filing suit against the Trump administration on behalf of law firms chilled by the

1044. *See* KEEP OUR REPUBLIC, PRINCIPLES FOR THE INDEPENDENCE OF THE LEGAL PROFESSION (2026), https://keepourrepublic.org/wp-content/uploads/2026/03/Legal_Principles_updated.pdf [https://perma.cc/WA8X-SVND]; Shira A. Scheindlin & John Jones III, Opinion, *A Simple Proposal for the Legal Profession to Regain Its Dignity*, N.Y. TIMES (Jan. 19, 2026), https://www.nytimes.com/2026/01/19/opinion/lawyers-judges-democracy-ethics.html [https://perma.cc/MTP8-JLJ7]. These principles are informed by those advanced by the Council of Europe. Council of Europe Convention for the Protection of the Profession of Lawyer, *opened for signature* May 13, 2025, C.E.T.S. No. 226.

1045. U.S. Jud. Conf. Comm. on Codes of Conduct, Advisory Opinion No. 118, at 253, 254 (Feb. 12, 2026) ("Ethics Considerations Related to Public Speech and Civil Engagement by Judges, Guide to Judiciary Policy, Vol. 2: Ethics and Judicial Conduct"); Jeff Overley, *Judiciary Issues 'Rule of Law' Ethics Guidance for Judges*, LAW360 (Feb. 13, 2026, at 00:04 ET), https://www.law360.com/articles/2441480/judiary-issues-rule-of-law-guidance-for-judges [https://perma.cc/QQZ2-M3FL].

1046. Bay, *supra* note 666; *see also* Michelle A. Behnke, *Statement From ABA President Michelle A. Behnke Re: Judicial Independence Safeguards Our Democracy*, A.B.A. (Nov. 17, 2025), https://www.americanbar.org/news/abanews/aba-news-archives/2025/11/statement-from-aba-president-re-judicial-independence [https://perma.cc/4G3W-VRE2]; Bonnie Eslinger, *ABA Says Trump Attacks on Justices Cross 'Dangerous Line'*, LAW360 (Feb. 23, 2026, at 21:18 ET), https://www.law360.com/articles/2445001/aba-says-trump-attacks-on-justices-cross-dangerous-line- [https://perma.cc/M2SZ-C938].

1047. A.B.A. TASK FORCE FOR AM. DEMOCRACY, 2025 REPORT OF THE ABA TASK FORCE FOR AMERICAN DEMOCRACY (2025), https://www.americanbar.org/groups/public_interest/election_law/american-democracy/our-work/2025-report [https://perma.cc/MN5W-TCQM].

threat of executive sanctions,[1048] urging state bars to continue to enforce ethical rules against federal lawyers despite the DOJ's proposed rule to limit bar oversight,[1049] sponsoring conferences featuring rule-of-law discussions,[1050] and organizing letters with local bar associations criticizing law firm targeting.[1051]

Some mandatory state bars, like California, have followed this lead, issuing statements criticizing law firm targeting orders for creating "a chilling effect."[1052] The voluntary New York City Bar Association has taken forceful public positions: publishing a report on the administration's abuse of presidential power, calling out actions including the indictment of New York AG James,[1053] and issuing the

1048. *See* Complaint at 1–9, A.B.A. v. Exec. Off. of the President, No. 25-01888 (D.D.C. June 16, 2025) (suing to block the administration's Law Firm Intimidation Policy on the grounds that it coerces law firms' choice of cases in violation of the First Amendment); Memorandum Opinion and Order at 1, *A.B.A.*, No. 25-01888 (D.D.C. Mar. 31, 2026) (denying government's motion to dismiss). The case has spawned conflict over dueling subpoenas to Trump lawyer Boris Epshteyn and fourteen law firms, seeking communications regarding the law firm targeting orders. Amanda O'Brien, *ABA Calls DOJ Law Firm Subpoenas 'Absurd' in Latest Filing*, LAW.COM (July 23, 2026, at 15:07 ET), https://www.law.com/americanlawyer/2026/07/23/aba-calls-doj-law-firm-subpoenas-absurd-in-latest-filing/ [https://perma.cc/8YMW-VRNE]; *see also* Jack Karp, *DOJ Looks to Block ABA's Trump Adviser Subpoenas*, LAW360 (July 6, 2026, at 16:17 ET), https://www.law360.com/articles/2497406/doj-looks-to-block-aba-s-trump-adviser-subpoenas [https://perma.cc/G6DS-AWX7] (noting that the DOJ has sought to block testimony from Epshteyn).

1049. A.B.A., Crim. Just. Section, Report to the House of Delegates, Resolution (on file with Author) (urging "state, territorial, the District of Columbia, and tribal lawyer disciplinary authorities to enforce applicable rules of professional conduct and to investigate and adjudicate complaints against attorneys employed by the federal government objectively and according to the same standards and the same procedures applicable to other lawyers in that jurisdiction regardless of their political affiliations or the identity of their employer and without regard for any proposed federal policy or Department of Justice regulation purporting to limit, preempt, or circumvent such investigative and disciplinary authority").

1050. *See Plenary 1: Lawyer Regulation and Accountability Mechanisms: Protecting the Rule of Law*, A.B.A. (May 28, 2026), https://events.americanbar.org/event/2842032e-ed46-411f-b5d5-2f7ce6568420/agenda?environment=P2 [https://perma.cc/T4Q4-G24C]; Ben Penn, *Trump Lawyer Rebuked at ABA for Saying DOJ in a 'Better Place'*, BLOOMBERG L. (Mar. 13, 2026, at 17:50 PT), https://news.bloomberglaw.com/us-law-week/trump-lawyer-rebuked-at-aba-for-saying-doj-in-a-better-place [https://perma.cc/37QP-WS5R].

1051. Tatyana Monnay, *Trump's Legal Industry Attacks Slammed by Local Bars, Deans*, BLOOMBERG L. (Mar. 26, 2025, at 13:01 PT), https://news.bloomberglaw.com/business-and-practice/bar-associations-slam-trump-actions-against-lawyers-judiciary [https://perma.cc/3FLQ-S9QK].

1052. *Statement on Recent Executive Actions Threatening the Availability of Legal Counsel and the Rule of Law*, CAL. STATE BAR (May 10, 2025), https://www.calbar.ca.gov/news/Statement-Recent-Executive-Actions-Threatening-Availability-Legal-Counsel-and-Rule-Law [https://perma.cc/B2DH-9CVG].

1053. RULE OF L. TASK FORCE, N.Y.C. BAR ASS'N, THE ABUSE OF PRESIDENTIAL POWER AND BREACH OF PUBLIC TRUST (2025), https://www.nycbar.org/wp-content/uploads/2025/12/20221532_AbuseOfPresidentialPower-1.pdf [https://perma.cc/R5SP-W7DX]; *Statement on the Indictment of New York Attorney General Letitia James*, N.Y.C. BAR ASS'N (Oct. 10, 2025), https://www.nycbar.org/

formal opinion (discussed in Subpart V.B) stating that it is professional misconduct for DOJ lawyers to execute or defend unlawful actions.[1054] These and other bars also joined the ABA in strongly objecting to the DOJ's proposed rule to limit bar oversight of DOJ lawyers.[1055]

Law school initiatives. Although law schools' response to the administration has been episodic and insufficiently solidaristic, there have been notable examples of collective action. During the first year of the Trump administration, the Association of American Law Schools—the national representative body of the U.S. legal academy—issued a letter condemning federal actions against universities, the legal profession, and the judiciary as striking "at the core of ordered liberty and . . . the rule of law" and established a "Lawyer Support Project" to defend attorneys targeted by the government; its clinical section issued a statement against attacks on the independence of clinical faculty; and its annual meeting featured plenary sessions on the rule of law.[1056] At the level of decanal

press-releases/statement-on-the-indictment-of-new-york-attorney-general-letitia-james [https://perma.cc/Y8F4-7SF7].

1054. Comm. on Pro. Ethics, N.Y.C. Bar Ass'n, Formal Op. 2025-1, *supra* note 894, at 1 ("No obligation to a client—including one that happens to be a governmental entity—justifies a lawyer in violating the Rules.").

1055. *See* Sawicki, *supra* note 655; *see also* Letter from Michelle A. Behnke, President, A.B.A., to U.S. Dept. of Justice, Re: Department of Justice Office of the Attorney General Notice of Proposed Rulemaking—Review of State Bar Complaints and Allegations Against Department of Justice Attorneys; Docket No. OAG199; AG Order No. 6653-2026-A; RIN 1105-AB82, 91 Fed. Reg. 10780 (March 5, 2026) (Apr. 6, 2026) (on file with Author); Comment of Hamilton P. Fox III, Disciplinary Couns., D.C. Ct. of Appeals, Re: Department of Justice Proposed Rule: Review of State Bar Complaints and Allegations Against Department of Justice Attorneys, 91 Fed. Reg. 10780 (proposed Mar. 5, 2026) (Docket No. OAG199) (Apr. 6, 2026) (on file with Author).

1056. Letter from Ass'n of Am. L. Schs. (AALS), Standing Together in Support of Higher Education and the Legal Profession (Mar. 25, 2025), https://www.aals.org/wp-content/uploads/sites/12/2025/03/AALS-Letter-on-Threats-to-Law-and-Legal-Education-.pdf [https://perma.cc/2ZR6-4T8X] (outlining steps for law schools and the profession, including supporting judicial independence, expanding programming on separation of powers, exploring mission-aligned collaborations, and speaking out against intimidation); *Lawyer Support Project*, ASS'N OF AM. L. SCHS., https://www.aals.org/lawyer-support/ [https://perma.cc/7PMB-XE35] (establishing a network of law professors to "offer expert support to attorneys who face professional sanction pursuant to" the Preventing Abuses memo); *Joint Statement From CLEA and AALS Clinical Section on Congressional Attack on Academic Freedom*, CLINICAL LEGAL EDUC. ASS'N (Apr. 2, 2025), https://www.cleaweb.org/news-blog/joint-statement-from-clea-and-aals-clinical-section-on-congressional-attack-on-academic-freedom [https://perma.cc/3R6S-2XAG] (condemning the House Committee on Education and the Workforce's March 27, 2025 request for extensive internal records from Northwestern Pritzker School of Law's Bluhm Legal Clinic, including policies, procedures, funding sources, and budget as targeting Clinical Professor Sheila Bedi and her clinic's representation decisions); Barbra Elenbaas, *Memorable Moments From the 2026 Annual Meeting*, AALS LENS (Jan. 16, 2026), https://lens.aals.org/article/memorable-moments-from-the-2026-annual-meeting/ [https://perma.cc/X9ZR-WZYT].

leadership, in March 2025, Dean William M. Treanor of the Georgetown University Law Center repudiated interim U.S. Attorney Ed Martin's threat not to hire Georgetown students unless the school rescinded DEI policies, asserting that "the constitutional violation behind this threat is clear."[1057] That same month, Berkeley Law Dean Erwin Chemerinsky organized a letter "condemning any government efforts to punish lawyers or their firms based on the identity of their clients or for their zealous lawful and ethical advocacy," although he was able to recruit only seventy-nine other deans to sign it in their personal capacity—and none from the top ten schools.[1058]

Other actions have been uneven and dependent on individual rather than institutional effort. In spring 2025, some (but not all) members of faculties at Harvard, NYU, UCLA, Yale, and other schools released letters to students condemning the administration's rule-of-law attacks,[1059] while University of Minnesota faculty members issued a statement in February 2026 condemning the immigration raids and violence in Minneapolis.[1060] Faculty efforts have produced rule-of-law clinics and programs at several schools, including Fordham, NYU,

1057. Letter from William M. Treanor, Dean & Exec. Vice President, Georgetown Univ. L. Ctr., to Edward R. Martin, Interim U.S. Att'y (Mar. 6, 2025), https://www.washingtonpost.com/documents/06480bde-06ed-419f-841e-762c8198b508.pdf [https://perma.cc/B9KE-479S].

1058. Letter from Deans of L. Schs. (Mar. 26, 2025), https://www.jurist.org/news/wp-content/uploads/sites/4/2025/03/03.26.25_Deans-Letter-Final.pdf [https://perma.cc/ZPB4-CBUK] (stating further that "government should not punish lawyers and law firms for the clients they represent"); Erwin Chemerinsky, *Trump Is Targeting Law Firms and Academia. Why Don't They Speak Up?*, WASH. POST (Apr. 3, 2025), https://www.washingtonpost.com/opinions/2025/04/03/law-schools-firms-trump-protest/ [https://perma.cc/S5VX-3GBZ]. There are 198 ABA-accredited law schools in the United States. *Council-Approved Law Schools*, A.B.A., https://www.americanbar.org/groups/legal_education/accreditation/approved-law-schools/ [https://perma.cc/XGC6-9YU3]. A group of eighty-eight mostly retired deans issued a letter in support of the Keep Our Republic Principles for the Independence of the Legal Profession in June 2026. Christine Charnosky, *Law Deans Stand Up for Protecting the Rule of Law in the Legal Profession*, LAW.COM (June 8, 2026, at 15:09 ET), https://www.law.com/2026/06/08/law-deans-stand-up-for-protecting-the-rule-of-law-in-the-legal-profession [https://perma.cc/GU7B-2SAK].

1059. Letter from Harvard L. Sch. Fac. to Students (Mar. 29, 2025), https://s3.documentcloud.org/documents/25873394/hls-faculty-letter-to-students.pdf [https://perma.cc/5ZGF-JSAX]; Letter from NYU L. Fac. to the NYU Sch. of L. Cmty. (Apr. 17, 2025), https://abovethelaw.com/wp-content/uploads/sites/4/2025/04/NYU-LAW-FACULTY-LETTER_041725.pdf [https://perma.cc/9NFW-TW7M]; Letter from UCLA L. Fac. to UCLA L. Students (Mar. 31, 2025), https://sites.google.com/view/letter-ucla-law-students [https://perma.cc/6FNA-HLTQ]; Letter from Yale L. Sch. Fac. to the Yale L. Sch. Cmty. (Apr. 4, 2025).

1060. Letter from Univ. of Minn. L. Sch. Fac. to the Minn. L. Cmty. (Jan. 25, 2026), https://docs.google.com/document/d/1bJISvTnh2PZPLM5YlxRBtLWvhVkBmotbVaD3AhycPt0/edit?tab=t.0 [https://perma.cc/EGL6-2Z3X].

Stanford, and Yale;[1061] amicus briefs in targeting cases;[1062] a rule-of-law listserv at Georgetown; and law and authoritarianism courses and working groups at schools including Harvard, Stanford, and UCLA.[1063] Some immigration clinics have been involved in major cases against the administration, such as the *Vasquez Perdomo v. Noem* case challenging racial profiling during raids in Los Angeles.[1064] In addition, law school faculty have created information trackers that provide valuable data on administration legal actions and lawyers, most notably the Just Security Litigation Tracker and the Government Lawyers Oversight Watchdog (GLOW) database,[1065] while producing rule-of-law podcasts and Substack pages.[1066]

In part because of the paucity of institution-wide action, some law students have taken matters into their own hands. Their efforts have included pressuring administrators not to permit government employers (particularly ICE) on campus, mobilizing for academic freedom, suing the EEOC over law firm targeting, and crowdsourcing information to empower students to make informed decisions about working at firms that have entered agreements with the administration or walked back their pro bono and DEI programs.[1067]

1061. *See Fordham Rule of Law Clinic*, FORDHAM L. SCH., https://ir.lawnet.fordham.edu/rule_of_law_clinic/ [https://perma.cc/T23D-CPR4]; *NYU Rule of Law Lab*, NYU L. SCH., https://www.law.nyu.edu/rule-law-lab [https://perma.cc/7CBL-6AVT]; *Stanford Rule of Law Program*, STAN. L. SCH., https://law.stanford.edu/rule-of-law-program/ [https://perma.cc/CSY6-LLCG]; *Peter Gruber Rule of Law Clinic*, YALE L. SCH., https://law.yale.edu/studying-law-yale/clinical-and-experiential-learning/our-clinics/peter-gruber-rule-law-clinic [https://perma.cc/NE8E-AY46]; *see also Mission & Vision*, NYU LAW DEMOCRACY PROJECT, https://democracyproject.org/about/mission-vision [https://perma.cc/E8Q8-SR4K] (creating place for "productive engagement with law and democracy issues" across "a broad range of views").

1062. *See, e.g.*, Brief of *Amici Curiae* 363 Law Professors in Support of Plaintiff's Motion for Summary Judgment and for Declaratory and Permanent Injunctive Relief, Perkins Coie LLP v. U.S. Dep't of Just., No. 25-cv-00716 (D.D.C. Apr. 2, 2025).

1063. *See, e.g.*, *Law and Authoritarianism*, HARVARD L. SCH. (Spring 2026), https://hls.harvard.edu/courses/law-and-authoritarianism/ [https://perma.cc/AJ8T-J45R]; *Law and Authoritarianism*, STANFORD L. SCH. (Spring 2025), https://law.stanford.edu/courses/resisting-contemporary-authoritarianism/ [https://perma.cc/QN4Z-Y6KP]; *Lawyering During Times of Authoritarianism Reading Group*, UCLA SCH. OF L. (2025–2026).

1064. Vasquez Perdomo v. Noem, 790 F. Supp. 3d 850, 863 (C.D. Cal. July 11, 2025) (listing UC Irvine Law Clinic as counsel).

1065. *Litigation Tracker: Legal Challenges to Trump Administration Actions*, *supra* note 1040; GOV'T LAWYERS OVERSIGHT WATCHDOG, https://glowlaw.org [https://perma.cc/S4GH-P49X].

1066. *See* Renee Knake Jefferson, LEGAL ETHICS ROUNDUP, https://legalethics.substack.com/; Brad Wendel, LEGAL ETHICS STUFF, https://bradwendel.substack.com/; *Lawyering Without Law*, KNIGHT FIRST AMEND. INST., COLUM. U., https://knightcolumbia.org/content/lawyering-without-law.

1067. Sofia Thomas, *Students Petition GU Law Center to Remove ICE From Career Fair*, HOYA (Jan. 20, 2026), https://thehoya.com/news/students-petition-gu-law-center-to-remove-ice-from-career

These disparate strands of collective action across the profession must be woven together into a tapestry of solidarity. Effectively countering the playbook requires lawyers in bar associations, law schools, courts, corporations, government offices, NGOs, law firms, and solo practices to speak with a singular and clear voice to condemn the administration's attack on the legal system and refuse cooperation across the board. Standing up for professional ethics in the face of attack is necessary, as Timothy Snyder suggests, for lawyers to "gain confidence and indeed a certain kind of power."[1068]

To exercise this power, lawyers should commit to withholding their most valuable asset—labor—from firms, clients, organizations, and other institutions that fail to stand up to government pressure and should reward those that commit to defending democracy. Autocrats can pick off individual firms, schools, and lawyers through one-on-one negotiations.[1069] But if the profession stands together against a divide-and-conquer strategy, the administration cannot put the entire legal sector out of business. In the short term, perhaps law firm partners and law school professors will make less money and some will lose jobs.[1070] But the alternative is a profession in which the only clients a lawyer can represent or subjects a faculty can teach are those the president likes—and that is not the profession American lawyers swore an oath to serve.

F. Make the Rule of Law Real

The final lesson for reverse engineers is to make the rule of law matter to the wider public—to convert it from an abstract idea to a credo worth fighting for. This is a challenge for two reasons. First, the "rule of law" is a vague and contested

-fair/ [https://perma.cc/8FBN-XJT3]; Antoinette Grajeda, *University of Arkansas Students Protest Reversal of Law School Dean's Job Offer*, ARK. ADVOC. (Jan. 21, 2026, at 09:02 CT), https://arkansasadvocate.com/2026/01/20/university-of-arkansas-students-protest-reversal-of-law-school-deans-job-offer [https://perma.cc/FR96-3GWU]; Press Release, Democracy Forward, Law Students Sue to Oppose Trump Administration's Ongoing Assault on the Legal Profession (Apr. 15, 2025), https://democracyforward.org/news/press-releases/law-students-sue-to-oppose-trump-administrations-ongoing-assault-on-legal-profession/ [https://perma.cc/EE3T-MTTA]; Legal Industry Responses to Fascist Attacks Tracker (Public): Firms, https://docs.google.com/spreadsheets/u/0/d/1J_bcoMqt46L05As7GN4ZqH4j6XKeI-Dm4ytJPRFtrwo/htmlview#gid=287708862 [https://perma.cc/Y4DY-9QZX].

1068. SNYDER, *supra* note 445, at 40–41.

1069. *See* Edith Olmsted, *Trump Celebrates as Another Law Firm Bends the Knee*, NEW REPUBLIC (Mar. 28, 2025, at 17:10 ET), https://newrepublic.com/post/193349/donald-trump-celebrates-law-firm-bends-knee [https://perma.cc/XR4X-MVWY].

1070. There is evidence that capitulating firms have done well. *See* Staci Zaretsky, *Paul, Weiss Is Having a Great Year, Despite Making a Deal With Trump*, ABOVE L. (Sep. 16, 2025, at 16:41 ET), https://abovethelaw.com/2025/09/paul-weiss-is-having-a-great-year-despite-making-a-deal-with-trump [https://perma.cc/R6QK-UMP4].

concept, long taken for granted yet lacking concrete salience in people's day-to-day lives. What does it mean for the rule of law to erode? How does living without the rule of law affect issues that people care about, such as affordable housing, good jobs, and health care? Without a clear message that illustrates the stakes of backsliding—what it means to have justice turn on political beliefs or connections, to lack meaningful political voice or the ability to dissent, and to have economic opportunity depend on proximity to power—it is difficult to mobilize popular support.[1071] Second, the rule of law has a notoriously mixed reputation—for good reason. It has been linked to neoliberal projects of market expansion and nation-building abroad and inequality and subordination at home.[1072]

Reverse engineering the playbook therefore must start with a frank recognition that the rule of law has not worked for many people much of the time and that an affirmative project of democratic reconstruction must put deficiencies of the rule of law—economic and political inequality, social discrimination, and lack of access to justice—at the center of diagnosis and prescription. The challenge for democratic movements in backsliding countries like the United States is to advance a dual strategy: simultaneously holding the rule of law to account for its deficits, while continuing the struggle to make it achieve its highest ideals. This strategy builds from the premise that the critical and reconstructive projects of democratic mobilization are not mutually exclusive—they are essential to each other's success. What it takes to achieve success at the level of detailed strategy is a complex and context-specific question. This final section does not provide a detailed roadmap but rather a broad set of ideas to guide professional and popular action.

Autocrats succeed by getting out ahead with legal changes that stretch opponents' resources thin, demoralizing the opposition and weakening forces of resistance.[1073] To counter this, it is essential from the outset to stop thinking that the initial onslaught will die down and institutions will return to normal or that courts will halt the damage. Delay is the enemy of democracy. In Hungary, opposition forces were caught off guard and, before they could effectively organize, key legal changes had already been put in place—enabling judicial capture and electoral gerrymandering—and became extremely difficult to

1071. Scott Warren, *A Reckoning for the Pro-Democracy Community*, STAN. SOC. INNOVATION REV. (Nov. 14, 2024), https://ssir.org/articles/entry/pro-democracy-community-reckoning [https://perma.cc/A26F-N3WA] (discussing "democracy is on the ballot" message).

1072. *See* ALEXANDER, *supra* note 22; Brian Z. Tamanaha, *The Dark Side of the Relationship Between the Rule of Law and Liberalism*, 3 N.Y.U. J.L. & LIBERTY 516 (2008).

1073. LEVITSKY & ZIBLATT, *supra* note 33, at 77–117.

dislodge.[1074] Because contemporary autocracy works to maintain the veneer of democracy, changes that strip independent institutions of their power are not always visible to the public at large, which puts a premium on action by insiders who recognize the stakes early on. Democracy defenders point to the "boiling frog" problem: at each step of autocratization, the public may not experience danger, but eventually the heat rises and when it finally becomes clear what is happening, it is too late.[1075] Comparative evidence suggests that well after autocratic power has been consolidated, much of the public remains convinced that the fundamentals of democracy have not changed.[1076]

It is therefore crucial to build from early, visible instances of resistance to create momentum for larger change. Social movement research demonstrates that momentum is an essential element of successful mobilization with a critical psychological dimension that is nurtured by amplifying stories that feed a narrative of hope.[1077] This requires identifying short-term steps toward positive change and promoting small victories. Democratic resistance falters when people think they must meet autocracy at its highest level of attack. While large-scale strategy is essential, effective resistance occurs when people understand a crucial lesson from successful movements, which is that small, even unexpected, acts can catalyze wider change. For lawyers, it is therefore important to find modest ways to make a difference: from representing individual clients, to filing bar complaints, to contributing to amicus briefs, to getting one's firm to provide pro bono support to targeted colleagues, community members, and institutions. Under conditions of democratic uncertainty, it is not possible to know in advance which of these acts will ignite larger resistance. That is why everyone has a part to play, no matter how small.

Successful resistance also requires short-term decisions to put aside left-right ideological conflict in favor of coalitions that defend democracy against a common adversary. This requires both intra- and inter-movement organizing. On the right, conservative lawyers must build on efforts, such as those led by the Society

1074. *See, e.g.*, Interview with HL.512, *supra* note 112, at 4 (describing insufficient mobilization against the government in the early stages of Hungary's autocratization).

1075. *Id.*; *see also* Ginsburg & Huq, *supra* note 195, at 18 ("Like the proverbial boiling frog, the opposition often finds that by the time it notices the threat, it is already too late to coordinate an effective response.").

1076. *See* Levitsky, Way & Ziblatt, *supra* note 984.

1077. Lesley J. Wood, *Temporal Conflict and Challenging the Policy*, 34 TIME & SOC'Y 11, 18 (2024); *see also* Tonya Mosley, *Expert on Dictators Warns: Don't Lose Hope – That's What They Want*, NPR (July 23, 2024, at 13:06 ET), https://www.npr.org/2024/07/23/nx-s1-5049021/expert-on-dictators-warns-dont-lose-hope-thats-what-they-want [https://perma.cc/P29P-Y8QC] (interviewing Anne Applebaum, who argues that the most dangerous success of modern autocrats is psychological—the cultivation of hopelessness).

for the Rule of Law, to push back on far-right extremism within their ranks and strengthen the resolve of political leaders to reject rule-of-law violations,[1078] while calling out colleagues who have continued to support executive action or remained silent.[1079] On the left, progressive groups must rein in counterproductive attacks on mainstream liberal allies and legal institutions while building solidarity with conservative colleagues in joint rule-of-law defense. This does not mean submerging substantive critiques of America's democratic deficits or disagreements about how to make America live up to its unfulfilled promises. But it does require, for the time being, submerging debates over policy to make strategic alliances to defeat a common adversary posing an existential threat to the viability of having those debates at all.

In times of autocratic pressure, on top of traditional litigation, one of the most important functions that lawyers can perform is to educate the public on how the government's moves—cracking down on dissent, deporting people without due process, withdrawing funds from universities—are both individually illegal and part of a broader plan to hollow out democratic institutions from within. To communicate this message, lawyers must use all available platforms to keep up pressure through popular education and public shaming. Lawyers play a special role in breaking down complicated autocratic legal maneuvers and connecting them to the broader playbook so that laypeople can understand the motives and

1078. After the 2020 election, conservative lawyers established the Society for the Rule of Law, which criticized Trump lawyers and the Federalist Society for not speaking out forcefully against the 2020 attacks. *See* George Conway, J. Michael Luttig & Barbara Comstock, Opinion, *The Trump Threat Is Growing. Lawyers Must Rise to Meet This Moment*, N.Y. Times (Nov. 21, 2023), https://www.nytimes.com/2023/11/21/opinion/trump-lawyers-constitution-democracy.html [https://perma.cc/GZ54-5REQ]. For background on the Society and discussion of conflicts within the conservative legal movement over Trump, see Andrew Feinberg, *Conservative Lawyers to Launch Society for Rule of Law to Counter MAGA Movement*, INDEPENDENT (Nov. 6, 2023, at 22:20 ET), https://www.the-independent.com/news/world/americas/us-politics/maga-counter-society-rule-of-law-b2442349.html [https://perma.cc/W8WV-GDX7]; and Gregg Nunziata, *The Age of American Caesarism*, ATLANTIC (Apr. 27, 2026); see also Damon Root, *Trump's Attack on the Federalist Society Is a Bad Omen for Originalism*, REASON (June 2, 2025, at 15:12 ET), https://reason.com/2025/06/02/trumps-attack-on-the-federalist-society-is-a-bad-omen-for-originalism [https://perma.cc/T3X9-E7FM].

1079. Peter Wehner, *The Unconstitutional Conservatives*, ATLANTIC (May 31, 2025), https://www.theatlantic.com/ideas/archive/2025/05/trump-unconstitutional-conservative-republican/682987 [https://perma.cc/XD5W-X87W]. In an example of continued support, three former AGs filed an amicus brief defending Jeffrey Clark against discipline, arguing that the D.C. Court of Appeals lacks authority to discipline attorneys for "deliberative executive branch communications." Amicus Curiae Brief of Former United States Attorneys General in Support of Respondent Jeffrey B. Clark, Esquire's Response to Show Cause Order at 4, *In re* Clark, Bd. Dkt. No. 22-BD-039, Disciplinary Dkt. No. 2021-D193 (D.C. Bd. Pro. Resp. Aug. 1, 2024) (D.C. Sep. 25, 2025) (on behalf of former AGs William Barr, Jeff Sessions, and Michael Mukasey).

strategies behind it. This educational function can be performed by all lawyers in different spaces depending on access, networks, and expertise. Those who can should speak out publicly despite fear of retribution. Those who do not have public access or face unique vulnerabilities can nonetheless work in their communities to help people understand specific ways in which the government abuses law to attack democracy. Lawyers with different skill sets can illuminate legal violations related to their area of expertise, be it immigration, administrative law, trade, or others.

While lawyers have a vital role to play in democratic resistance—and should be in the vanguard—they cannot do it alone. Effective mobilization requires building alliances with nonlawyers positioned to influence the perception of ruling party legitimacy. This includes corporate and civil society leaders, along with grassroots organizers and everyday people who demand change but may not have resources or security to speak out alone. Alliance building further requires recognizing comparative advantages and creating a division of labor by identifying when lawyers should step back and cede tasks that they do not do well. Lawyers' command of technical legal standards and violations may not always translate into clear public communication on the concrete importance of the rule of law—communication that should be led by community groups and media experts able to craft and disseminate effective messaging.[1080]

Finally, because lawyers are at the forefront of backsliding, law schools must take a leadership role in responding to immediate threats and, over the longer term, building a legal culture of respectful, fact-based disagreement within a shared commitment to rule-of-law values. This requires acting in concert to speak out strongly against overt rule-of-law violations while teaching democratic responsibility by example. Although many law schools coming out of COVID and Black Lives Matter protests created institutional neutrality policies that proscribe political statements,[1081] these policies do not prohibit stands on issues directly affecting educational mission, which include government efforts to suppress

1080. *See, e.g.*, *"Recht – Spielregeln des Alltags": Eine Pop-Up-Ausstellung der Stiftung Forum Recht in Chemnitz* [*"Law—Rules of Everyday Life": A Pop-Up Exhibition by the Forum Recht Foundation in Chemnitz*], STIFTUNG FORUM RECHT, https://stiftung-forum-recht.de/kalender/recht-spielregeln-des-alltags-eine-pop-up-ausstellung-der-stiftung-forum-recht-in-chemnitz [https://perma.cc/9V44-XF2F].

1081. *Adoptions of an Official Position of Institutional Neutrality*, FOUND. FOR INDIVIDUAL RTS. & EXPRESSION, https://www.fire.org/research-learn/adoptions-official-position-institutional-neutrality [https://perma.cc/4JM7-SHS5].

lawyer speech and the right of vulnerable clients to legal counsel.[1082] Law schools therefore cannot hide behind neutrality to justify silence. For schools that operate within wider universities and political environments hostile to speaking out—and where doing so might produce adverse consequences, such as the appointment of loyalists committed to facilitating institutional capture—educational leaders must work behind the scenes to limit damage while finding ways to lend support to colleagues better positioned to act.

Looking forward, law schools must reckon more deeply with how failures in professional training contribute to violations of the rule of law and must consider more seriously how to prevent the profession's ethical ideals from being deployed as vehicles for democratic backsliding. There is wide agreement that legal education focuses too much on training students to be zealous advocates for clients without sufficient investigation of the limits of that principle—of what it means to be part of a larger profession with a democratic role.[1083] Law students generally do not come to law school to make money; rather, they view legal careers as a calling with a public purpose.[1084] Yet the current system does very little to teach about what that means in concrete terms. The curriculum in lawyers' ethics, which should be the space for rigorous discussion of democratic responsibility, prioritizes rote learning of technical rules rather than deep reflection on professional norms and how they buttress legal institutions that stand as bulwarks against backsliding.

While better ethics training cannot stop lawyers motivated to do democratic harm, law schools can do better to lead students through dangerous times. Silence sends a false message that it is possible to carry on with business as usual, highlighting the hypocrisy of claims to train future professional leaders by law schools whose leaders lack the courage of their convictions. The absence of significant curricular change, national teach-ins, sustained faculty mobilization, and other coordinated efforts that make resistance to democratic backsliding the centerpiece of legal education risks lasting damage to law schools' mission and

1082. *See* Brian Soucek, *Why Universities Can't Be Neutral*, WALL ST. J. (Jan. 2, 2026, at 09:00 ET), https://www.wsj.com/us-news/education/why-universities-cant-be-neutral-8148870e [https://perma.cc/77WP-XUEP] (noting carve-outs for statements regarding issues that threaten educational mission, though arguing that such carve-outs invite further debate over the meaning of mission); *see also* Amy Kapczynski, *The Institutional Neutrality Trap*, LPE PROJECT (Jan. 13, 2025), https://lpeproject.org/blog/the-institutional-neutrality-trap/ [https://perma.cc/B3Y4-CXZ5] (arguing that "the push for neutrality is a key piece of a broader conservative campaign to suppress speech on campus that conservatives don't like").

1083. *See* Cummings, *supra* note 13, at 614–15.

1084. GALLUP & ASS'N OF AM. L. SCHS., BEFORE THE JD: UNDERGRADUATE VIEWS ON LAW SCHOOL 17 (2018), https://multisite.aals.org/wp-content/uploads/sites/12/2023/08/AALS_BeforetheJD_Final_Report_083118.pdf [https://perma.cc/QE2H-5S5E].

legitimacy—and disserves the next generation of lawyers who must be prepared to meet the profound challenges ahead.

CONCLUSION: A PROJECT 2025 FOR DEMOCRACY

Democratic change happens when small cracks widen into larger chasms, propelled by the idea that change is possible, which takes hold and builds in waves that beat against the walls of power. This idea must grow from the people. But it also must be nurtured by lawyers who understand how law is deployed against the rule of law and can provide tools to inform struggle. Doing so requires learning what has caused the demise of other once-healthy democracies to prevent America from becoming autocracy's latest—and most consequential—victim.

This is why it is crucial to raise awareness of what is at stake by being explicit about what is happening in America, which has already undergone a constitutional revolution,[1085] moving into the danger zone in which family, friends, and neighbors are being targeted, detained, and deported without access to lawyers or legal process.[1086] As evident in efforts to expel longtime residents and short-term visitors[1087]—and in the arrests and detentions of judges, lawmakers, lawyers, and other citizens[1088]—this could happen to anyone expressing a dissenting view. Foreign students fear coming to America out of concerns for safety, and U.S. citizens have been advised on how to protect their phones from

1085. Scheppele, *supra* note 74 (pointing toward this goal in the first months of the administration).

1086. Christina Morales, *Judge Says Immigrant Detainees Near Minneapolis Must Have Proper Access to Lawyers*, N.Y. TIMES (Feb. 12, 2026), https://www.nytimes.com/2026/02/12/us/minnesota-immigration-detainees-lawyers.html [https://perma.cc/236Z-7WG3].

1087. *See, e.g.*, Zolan Kanno-Youngs, Tyler Pager & Hamed Aleaziz, *As Trump Broadens Crackdown, Focus Expands to Legal Immigrants and Tourists*, N.Y. TIMES (Mar. 21, 2025), https://www.nytimes.com/2025/03/21/us/politics/trump-immigration-visa-crackdown.html [https://perma.cc/PAA8-JR5B].

1088. Johana Bhuiyan, *Pro-Palestinian Protester's Lawyer Stopped and Searched at US Border: 'They Were Going to Take My Device'*, GUARDIAN (Apr. 12, 2025, at 08:00 ET), https://www.theguardian.com/us-news/2025/apr/12/amir-makled-phone-search-border-immigration [https://perma.cc/Z8NH-6NY2]; Jonathan Lloyd & Mekahlo Medina, *Labor Union Leader David Huerta Pleads Not Guilty in LA Immigration Protest Arrest*, NBC L.A. (Nov. 25, 2025, at 19:49 PT), https://www.nbclosangeles.com/news/local/california-labor-leader-david-huerta-immigration-protest-arrest/3808905 [https://perma.cc/C5HM-ZY2U]; Emily Ngo, *Elected Officials Arrested as Anti-ICE Protests Escalate at 26 Federal Plaza*, POLITICO (Sep. 18, 2025, at 19:35 ET), https://www.politico.com/news/2025/09/18/ice-nyc-protest-00572418 [https://perma.cc/W7B3-ZXZA]; Todd Richmond, *Federal Judge Says Trial for Wisconsin Judge Accused of Helping Immigrant Will Go on Next Month*, BOS. HERALD (Nov. 26, 2025, at 13:07 ET), https://www.bostonherald.com/2025/11/26/immigration-judge-arrested-trial [https://perma.cc/J4CU-LBAS].

search when returning from trips to avoid being harassed or detained.[1089] Citizens and noncitizens have been killed while exercising their rights to speech and assembly.[1090]

Of course, for many people on the margins in America, none of this is new. America's history and current reality have long belied the dream of equal justice for all. In short: America has never been America for people who have suffered its discrimination, inequality, and violence.[1091] Yet this is precisely why it is crucial for those who aspire to make America's promise real to maintain struggle, to share stories and perspectives, to debate disagreements with respect and good faith, and to find ways to work together toward a common goal: defeating autocracy.

This Article has sought to advance this goal by analyzing the role of lawyers in executing the autocratic legal playbook in America as a springboard for professional resistance. Doing so has shown how effective countermobilization requires lawyers to maximally deploy their stock-in-trade—litigation in court against large-scale abuse—while also wrenching the gears through small acts—like immigrant defense and bar complaints—that raise the costs of executive action. Crucially, pushing back against federal power builds on intertwined popular struggle and legal action at the state and local levels. Minneapolis serves as a model for how people across the political spectrum take to the streets to demand the humanity of community members while lawyers go to court to assert legal rights that hold government to account. Although there should be no illusion that lawyers can stop backsliding on their own, they have an essential role to play in standing up for professional independence and inculcating respect for the rule of law.

1089. Rachel Riedl & Stephen Yale-Loehr, *Our Foreign Students Are Terrified, and They're Right to Be*, N.Y. TIMES (Apr. 19, 2025), https://www.nytimes.com/2025/04/19/opinion/international-students-ice-deportations-universities.html [https://perma.cc/T569-76YD]; Esha Bhandari, Nathan Freed Wessler & Noa Yachot, *Can Border Agents Search Your Electronic Devices? It's Complicated.*, ACLU (Mar. 21, 2025), https://www.aclu.org/news/privacy-technology/can-border-agents-search-your-electronic [https://perma.cc/6C5V-3UGG].

1090. Jon Schuppe & Erik Ortiz, *Trump's DHS Immigration Enforcement Officers Have Shot 14 People From September 2025 to February 2026. Here's What to Know.*, NBC NEWS (Mar. 4, 2026, at 14:48 PT), https://www.nbcnews.com/news/us-news/ice-shootings-list-border-patrol-trump-immigration-operations-rcna254202 [https://perma.cc/74N6-XDKR] (noting killing of Mexican immigrant Silverio Villegas González in Illinois, as well as killings of citizens Renee Good and Alex Pretti in Minneapolis); *see also* Kurt Streeter, *How Alex Pretti's Death Became a National Tipping Point*, N.Y. TIMES (Feb. 1, 2026), https://www.nytimes.com/2026/02/01/us/alex-pretti-minneapolis.html [https://perma.cc/EP9Z-MXE2].

1091. Langston Hughes, *Let America Be America Again*, *in* THE COLLECTED POEMS OF LANGSTON HUGHES 191 (Arnold Rampersad & David Roessel eds., 1994) (orig. pub. 1938) ("America never was America to me.").

Although the Trump administration's first year brought a volume of change previously unimaginable, there is still time for a "U-turn" that reverses decline and repairs damage to institutions, trust, and norms.[1092] This requires electoral mobilization in the face of potential interference:[1093] drawing inspiration from the fact that, if the Hungarian opposition can win after a decade and a half of autocracy,[1094] opposition movements can win elsewhere too. Yet, as the Hungarian case also underscores, time is of the essence. Once power solidifies within autocratic regimes, the window for action narrows, as leaders curtail opportunities for meaningful countermeasures by capturing institutions and weakening levers of resistance. The lesson from the comparative record is that a wait-and-see approach is self-defeating and that attempts at appeasement facilitate autocratic consolidation.

The lessons this Article has offered for America also point to the need for action outside its borders. The United States has become a leading importer and exporter of autocratic legalism. The Trump administration's overtures outside the United States signal efforts to grow cross-border networks of far-right leaders throughout Europe, Latin America, and elsewhere around the globe.[1095] Although wars, corruption, and economic instability have strained alliances,[1096] the rise of right-wing populist and other illiberal leaders in countries like Argentina, El

1092. Norman Eisen & Fred Dews, *Inside the Next Democracy Playbook: Strategies for Global Democratic U-Turns*, BROOKINGS INST. (Dec. 1, 2025), https://www.brookings.edu/articles/inside-the-next-democracy-playbook-strategies-for-global-democratic-u-turns/ [https://perma.cc/BKS5-YB4D].

1093. *See* Karen Yourish, Nick Corasaniti & Charlie Smart, *The Many Ways Trump Is Trying to Tip the Scales for the Midterms*, N.Y. TIMES (July 2, 2026), https://www.nytimes.com/interactive/2026/07/02/us/politics/trump-midterm-election-strategies.html [https://perma.cc/MKX4-BWZZ].

1094. *See* Scheppele, *How Viktor Orbán Loses*, *supra* note 86.

1095. *See* Stephen Collinson, *How Trump Is Trying to MAGAfy the World*, CNN (Dec. 29, 2025, at 00:00 ET), https://edition.cnn.com/2025/12/30/politics/trump-venezuela-netanyahu-israel-argentina-analysis [https://perma.cc/HC7V-E98J]; Jim Tankersley, Emma Bubola, Andrew Higgins & Aurelien Breeden, *Trump Is Leading a Global Surge to the Right*, N.Y. TIMES (Jan. 23, 2025), https://www.nytimes.com/2025/01/23/world/europe/trump-europe-right-immigration-ukraine.html [https://perma.cc/X9E9-A5YJ]; Célia Belin, *MAGA Goes Global: Trump's Plan for Europe*, EUR. COUNCIL ON FOREIGN RELS. (May 7, 2025), https://ecfr.eu/publication/maga-goes-global-trumps-plan-for-europe/ [https://perma.cc/AZ8C-VQ65]; *see also* Avraham Spraragen, *Netanyahu's Global Far-Right Alliances*, J ST. POL'Y CTR. (Mar. 13, 2025), https://jstreet.org/wp-content/uploads/2025/03/Avraham-Spraragen-Netanyahus-Global-Far-Right-Alliances.pdf [https://perma.cc/56NL-AF6V] (describing Israeli Prime Minister Benjamin Netanyahu's alliances with far-right leaders).

1096. *See, e.g.*, Jeanna Smialek, Koba Ryckewaert & Catherine Porter, *How Trump Became a Liability for Europe's Far Right*, N.Y. TIMES (Jan. 27, 2026), https://www.nytimes.com/2026/01/27/world/europe/trump-liability-europe-far-right-populists.html [https://perma.cc/6S2M-DGMT]; Jason Horowitz, *Trump and Meloni Split Amid Growing Dispute Over Pope and Iran*, N.Y. TIMES (Apr. 15, 2026), https://www.nytimes.com/2026/04/15/world/europe/trump-meloni-italy-iran-pope.html [https://perma.cc/TME8-7YR9].

Salvador, Georgia, Indonesia, and Slovakia,[1097] alongside surging far-right parties in economic powerhouses like France and Germany,[1098] suggests that the current wave of democratic attacks will not end with Trumpism.

However, just as the playbook can be shared among autocrats, so too can lessons for reverse engineering be shared across borders among democratic opposition movements. For this reason, it is essential for American lawyers to transcend their traditional exceptionalism and build mutual alliances with colleagues around the world based on an ethos of genuine exchange that acknowledges Americans have more to learn than to teach about strengthening democracy. Such exchange requires coalition-building with bars and professional groups around the globe, building on burgeoning international collaborations to promote solidarity,[1099] protect independence,[1100] share expertise,[1101] and defend targeted lawyers.[1102]

In democracies under pressure outside the United States, where autocracy is not yet codified and resistance without retribution is still possible, it is crucial to proactively close loopholes that might be exploited should illiberal leaders and

1097. *See* NORD, ALTMAN, FERNANDES, GOD & LINDBERG, V-DEM INST., *supra* note 53, at 22–23, 25–26 (2026).

1098. *See* David Luhnow, Bertrand Benoit & Noemie Bisserbe, *Populist Right-Wing Parties Lead Polls in Europe's Biggest Economies*, WALL ST. J. (Aug. 30, 2025, at 11:00 ET), https://www.wsj.com/world/europe/right-wing-europe-dd4f1156 [https://perma.cc/SU49-AXFP]; RICHARD YOUNGS ET AL., EUROPEAN DEMOCRACY SUPPORT ANNUAL REVIEW 2025, at 5 (2026), https://assets.carnegieendowment.org/files/Youngs%20et%20al_European%20Democracy%20Support%20Annual%20Review%20EDH25.pdf [https://perma.cc/9VMP-FDPF].

1099. *See, e.g.*, Brief for European Bar Associations as *Amici Curiae* in Support of Plaintiffs-Appellees and Affirmance, Perkins Coie LLP v. U.S. Dep't of Just., No. 25-5241 (D.C. Cir. Apr. 1, 2026).

1100. *See, e.g.*, Position Paper No. 26/2025, at 6, 8 ("US Law Firms in Germany and the Independence of Lawyers"), DAV (German Bar Ass'n) (May 2025), https://anwaltverein.de/files/anwaltverein.de/downloads/newsroom/stellungnahmen/2025/2025-05-german-bar-association-posistion-paper-us-law-firms-in-germany.pdf [https://perma.cc/XQ6H-MQCT] (stating that U.S. law firms operating in Germany through legally independent companies with a license are subject to German professional law and suggesting that "it appears possible and perhaps even probable" that firms that struck deals with the administration "have violated the duty of independence"); *see also* James Jackson, *German Bar Association Warns Firms That Trump Deals Violate Legal Code*, LAW.COM (June 6, 2025, at 16:14 ET), https://www.law.com/2025/06/06/german-bar-association-warns-firms-that-trump-deals-violate-legal-code [https://perma.cc/E2HX-S7NR].

1101. *See, e.g.*, The Legal Professions in Times of Rule of Law and Democratic Backsliding, International Association of Legal Ethics, German Bar Association, June 25–26, 2026, https://iaole2026.jura.uni-koeln.de/sites/hans_soldan_stiftungsjuniorprofessur/user_upload/IAOLE_2026_Programme_Brochure.pdf [https://perma.cc/AH77-U8E4].

1102. The International Day of the Endangered Lawyers, an annual initiative started to raise awareness about lawyer targeting around the world, dedicated its 2026 report to attacks on lawyers in the United States. *Foundation Day of the Endangered Lawyer*, DAY ENDANGERED LAWYER (Jan. 24, 2026), https://dayoftheendangeredlawyer.eu [https://perma.cc/V7Z9-VR25].

their savvy lawyers come to power with playbook in hand. This is easier said than done and there is no one solution because of national variation. But lawyers across borders must work together to advance a *Project 2025 for Democracy*: a deep dive into domestic legal systems to assess rule-of-law vulnerabilities, particularly around the role of government lawyers and protections for bar independence, to preemptively address the potential for professional capture America is now experiencing—learning from American mistakes.

History teaches that democracies die when people lose hope that change is possible. This is, in the end, the ultimate objective of autocrats: to normalize the abnormal and convince people that attacks on the rule of law are legal changes necessary to deliver what the people demand. Democracies survive when the people do not succumb to this illusion. This requires that pro-democracy leaders effectively make the case that electoral mandates for policy change are not blank checks to rewrite rules in favor of executive power. It requires lawyers to defend the idea that law means something more than what the executive claims it to be: that it is by the people and for the people. And it requires everyone to study, learn from, and uplift stories of resistance by courageous lawyers and everyday people, in court and in the street, who are writing chapters of a new legal playbook—one that provides a roadmap to save democracy in perilous times.