

February 4, 2025

Edward R. Martin, Jr.
U.S. Attorney for the District of Columbia
Patrick Henry Building
601 D Street NW
Washington, D.C. 20530

Transmitted via email

Re: Threats to prosecute critics of DOGE

Dear Interim U.S. Attorney for D.C. Edward R. Martin, Jr.:

We write to raise serious concerns about your recent public statements threatening to prosecute those who “target” or “impede” Elon Musk’s Department of Government Efficiency (DOGE) within the Executive Office of the President. We request that you publicly commit to abide by the First Amendment, which your office is sworn to uphold and Musk himself claims to champion, in any DOGE-related investigations or prosecutions you may pursue.

On Monday, you tweeted a letter to Musk asking him to use the Office of the U.S. Attorney for the District of Columbia to protect DOGE staff and their work and directing him to refer “any questionable conduct or details that [Musk] find[s] or notice[s]” to your office.¹ In the letter, you assert that “actions in any way that impact [DOGE’s] work may break numerous laws,” and that you commit to the pursuit of “all legal action against anyone who impedes [Musk’s] work or threatens [Musk’s] people.” You also state that you will “protect DOGE and other workers no matter what,” citing past protests in Washington, D.C., which you refer to as riots.

As you know, DOGE, or the United States DOGE Service as it is formally known, is a government entity established within the Executive Office of the President; by executive order, DOGE is supposed to access only “unclassified agency records.”² The day before your letter, WIRED reported about and named six young engineers working for DOGE — Akash Bobba, Edward Coristine, Luke Farritor, Gautier Cole Killian, Gavin Klinger, and Ethan Shaotran. The experience and qualifications of public employees is of significant public interest.

Following this news report, a user on X — the social media platform owned by Mr. Musk — made a post also naming those employees,³ and Musk responded with the comment: “You have committed a crime.”⁴

¹ Ed Martin (@EagleEdMartin), X (Feb. 3, 2025), <https://x.com/EagleEdMartin/status/1886456136032817488>.

² Exec. Order No. 14158, 90 Fed. Reg. 8441 (Jan. 20, 2025), <https://www.federalregister.gov/documents/2025/01/29/2025-02005/establishing-and-implementing-the-presidents-department-of-government-efficiency>.

³ Mike Masnick, *Musk Shows Us What Actual Government Censorship On Social Media Looks Like*, TechDirt (Feb. 3, 2025), <https://www.techdirt.com/2025/02/03/musk-shows-us-what-actual-government-censorship-on-social-media-looks-like/>.

⁴ Elon Musk (@ElonMusk), X (Feb. 3, 2025), <https://x.com/elonmusk/status/1886318915707375664>.

X has since suspended the account of the user who posted the names.

As an experienced attorney holding such an important public position, you must be aware that it is not a crime for anyone — whether WIRED journalists, X posters, or otherwise — to identify individuals openly conducting government work that is of the utmost public concern. The Supreme Court has repeatedly held that the First Amendment protects the right to publish newsworthy information that the publisher lawfully obtains, including names far more sensitive than those of government personnel.⁵ Musk himself has publicly touted DOGE’s engineers while citing “media reports” regarding them.⁶

Nor is it a crime to harshly criticize government employees and officials, even if transparency and criticism “impede” their work.⁷ Moreover, while certain true threats are unprotected and may be criminally punished, they are limited to “‘serious expression[s]’ conveying that a speaker means to ‘commit an act of unlawful violence.’”⁸ Hyperbolic speech, even using threatening language, is entitled to full First Amendment protection.⁹

You must also surely be aware that the First Amendment protects Americans’ right to peaceably assemble, especially to protest government actions.¹⁰ The First Amendment severely constrains the government’s ability to limit protests in public forums, such as the public streets of Washington, D.C.¹¹ The government also cannot ban or restrict future protests based on unlawful conduct alleged to have occurred at past protests.¹²

Threatening to prosecute First Amendment speech and activity is not only at odds with the U.S. Constitution, it is also entirely inconsistent with Musk’s own stated principles and the right of the American people to know what the government is up to. Musk describes himself as a free speech absolutist and has proposed a massive declassification of government records, opining that all government records should be public by default.¹³ Just three months ago, Musk publicly posted the names of

⁵ See, e.g., *Bartnicki v. Vopper*, 532 U.S. 514 (2001); *Florida Star v. B.J.F.*, 491 U.S. 524 (1989).

⁶ Elon Musk (@ElonMusk), X (Feb. 3, 2025), <https://x.com/elonmusk/status/1886458513771377099>.

⁷ See *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964) (explaining America’s “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”)

⁸ *Counterman v. Colorado*, 600 U.S. 66, 74 (2023) (quoting *Virginia v. Black*, 538 U.S. 343, 359 (2003)).

⁹ *Id.*

¹⁰ *United States v. Grace*, 461 U.S. 171, 176 (1983).

¹¹ *Id.* at 177.

¹² *Collins v. Jordan*, 110 F.3d 1363, 1372 (9th Cir. 1996). If a protest becomes violent, the constitutional response is “to arrest those who actually engage in such conduct.” *Collins*, 110 F.3d at 1372. In rare instances, the government may disperse a protest that has become overwhelmingly violent. However, both the law and the Department of Justice’s own guidelines specify that journalists may not be subject to blanket dispersal orders at protests. See *Index Newspapers LLC v. U.S. Marshall’s Serv.*, 977 F.3d 817 (9th Cir. 2020); *Investigation of the City of Minneapolis and the Minneapolis Police Department*, U.S. Dep’t of Justice Civil Rights Division and U.S. Attorney’s Office of the District of Minnesota Civil Division (June 16, 2023), <https://www.foxnews.com/politics/how-wednesdays-capitol-riot-come-to-fruition>; *Police-Media Interactions during Mass Demonstrations: Practical, Actionable Recommendations*, Police Executive Research Forum, Office of Community Oriented Policing Services (2024), <https://www.rcfp.org/wp-content/uploads/2024/10/Police-Media-Interactions-During-Mass-Demonstrations.pdf>.

¹³ Elon Musk, (@elonmusk), X (Mar. 5, 2022), <https://x.com/elonmusk/status/1499976967105433600>; Elon Musk, (@elonmusk), X (Dec. 1, 2024), <https://x.com/elonmusk/status/1863157511412682963>; Elon Musk, (@elonmusk), X (Nov. 3, 2024), <https://x.com/elonmusk/status/1853079605596340235>.

government employees with whom he disagrees on X.¹⁴ If it is Musk’s intention for the U.S. Attorney’s Office to censor the press and public from identifying and discussing those conducting DOGE’s work on his behalf, that would be incredibly hypocritical.

It is also vital that the U.S. Attorney’s Office maintain the highest ethical standards and avoid even the appearance of impropriety. Rule 3.1 of the Rules of Professional Conduct for the Washington, D.C. Bar, of which you are a member, states: “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous.”¹⁵ Under Rule 3.8, prosecutors are additionally prohibited from filing in court or maintaining a charge “that the prosecutor knows is not supported by probable cause.”¹⁶ The same rule provides that “[i]n exercising discretion to investigate or to prosecute,” prosecutors shall not “improperly favor or invidiously discriminate against any person.”¹⁷

Threatening to file frivolous charges against Americans and vaguely insinuating that wide swaths of constitutionally-protected speech and activity could invite criminal investigations and prosecutions may already violate these and other rules of professional conduct. Actually doing so almost certainly would.

Additionally, publicly offering the Office of the U.S. Attorney’s services to Musk in the context of his asserting that protected expression is a criminal act is unbecoming of your public office and your duties as a public servant. Your oath is to the U.S. Constitution – including the First Amendment – not to President Donald Trump, Musk, or DOGE’s desire to operate in secrecy and without criticism.

We request that you immediately (a) identify the specific “targeting” of DOGE staff your letter to Musk was referring to and what specific laws you contend it violated, (b) publicly commit to not investigate or prosecute journalists or others for reporting on or publishing names of government workers and their work activities, and (c) acknowledge that criticism of DOGE staffers by name and peaceful protests of DOGE’s work are protected by the First Amendment.

Sincerely,

Access Now
Advocacy for Principled Action in Government
Amazon Watch
American Governance Institute
American Oversight
American Society of Journalists and Authors
Association of Health Care Journalists
Center for Digital Democracy

¹⁴ Hadas Gold & Rene Marsh, *Elon Musk publicized the names of government employees he wants to cut. It’s terrifying federal workers*, CNN (Nov. 27, 2024), <https://www.cnn.com/2024/11/27/business/elon-musk-government-employees-targets/index.html>.

¹⁵ D.C. R. of Prof. Conduct 3.1.

¹⁶ D.C. R. of Prof. Conduct 3.8(b).

¹⁷ D.C. R. of Prof. Conduct 3.8(a).

Common Cause
Courage Foundation
Defending Rights & Dissent
Demand Progress Education Fund
Democracy Matters
First Amendment Coalition
First Amendment Foundation
Foundation for Individual Rights and Expression (FIRE)
Freedom of the Press Foundation
Government Information Watch
GovTrack.us
Greenpeace USA
Muslims for Just Futures
Partnership for Civil Justice Fund
PEN America
Project On Government Oversight
Radio Television Digital News Association
Reporters Without Borders (RSF)
Revolving Door Project
RootsAction.org
Social Security Works
Society of Environmental Journalists
Society of Professional Journalists
The Authors Guild
The Freedom BLOC
Whistleblower & Source Protection Program (WHISPeR) at ExposeFacts
Woodhull Freedom Foundation

CC: All House, All Senate

Senate Majority Leader John Thune
Speaker of the House Mike Johnson
House Majority Leader Steve Scalise
Senate Minority Leader Chuck Schumer
House Minority Leader Hakeem Jeffries
Senate Judiciary Committee Chair Chuck Grassley
Senate Judiciary Committee Ranking Member Dick Durbin
House Judiciary Committee Chair Jim Jordan
House Judiciary Committee Ranking Member Jamie Raskin