

February 4, 2025

United States Senate
Washington, DC 20510

RE: Nomination of Edward R. Martin, Jr. for U.S. Attorney for the District of Columbia

Dear Senators:

The undersigned civil society organizations write to express our strong concerns about the announced nomination of Edward R. Martin, Jr. to be the United States Attorney for the District of Columbia. Given Martin's already tainted record as the interim U.S. Attorney and what it signals for his proposed tenure as the permanent U.S. Attorney, we urge you to fulfill your duty under the U.S. Constitution's Advice and Consent Clause by rejecting his nomination.

Martin has been serving as the interim U.S. Attorney for the nation's capital since January 20, 2025.¹ In the mere weeks since then, Martin has made clear that he has no intention of carrying out his duties impartially. Just this week, he tweeted from the official X account of the Office of the U.S. Attorney for D.C. that "As President Trumps' [sic] lawyers, we are proud to fight to protect his leadership as our President and we are vigilant in standing against entities like the [Associated Press] that refuse to put America first."²

Federal prosecutors, of course, are not the president's lawyers—they are the United States' lawyers whose oath of office is to support and defend the U.S. Constitution, not any particular president—nor is it their role to "stand against" news outlets the president dislikes. Martin's statements should alarm all senators, especially those who opposed what they argued were prosecutions marred by improper political motivations and attacks on constitutional rights by the previous administration.

Martin has already exploited his public office to seemingly threaten criminal investigations and prosecutions against Americans for exercising their First Amendment rights. His actions and statements reflect a willful disregard for the U.S. Constitution, the U.S. Department of Justice's own policies regarding prosecutorial charging decisions per Attorney General Pam Bondi's Memorandum issued on February 5, 2025,³ and the binding rules of professional conduct for licensed attorneys. As a broader matter, Martin's statements are fundamentally at odds with one of our most cherished civil liberties as Americans—the right to criticize and protest our government's leadership and decision-making.

Specifically, Martin tweeted a letter he wrote to Elon Musk—the world's richest man running the Department of Government Efficiency (DOGE)—stating that Martin would use the Office of

¹ U.S. Dep't of Justice, *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>.

² U.S. Attorney DC (@USAO_DC), X (Feb. 24, 2025), https://x.com/USAO_DC/status/1894119675786621225.

³ U.S. Attorney General Pam Bondi, U.S. Dep't of Justice, *Memorandum For All Department Employees re: General Policy Regarding Charging, Plea Negotiations, and Sentencing* (Feb. 5, 2025) ("prosecutors must consider a variety of factors, including whether there is probable cause to believe that a federal crime has been committed."), <https://www.justice.gov/ag/media/1388541/dl>.

the U.S. Attorney to pursue “all legal action against anyone who impedes [Musk’s] work or threatens [Musk’s] people.”⁴ Martin’s letter came on the heels of Musk alleging on X, the social media platform owned by Musk, that making a post which merely names engineers working for DOGE is “a crime.”⁵ The post itself followed an article in WIRED in which journalists named the young DOGE employees at issue⁶ in a report questioning whether they had the experience and qualifications necessary to wield the power being vested in them by Musk and the Trump administration. Martin’s letter also stated that he will “protect DOGE and other workers no matter what,” citing past protests in Washington, D.C., which he refers to as riots.

Amid public backlash to his statements and alarm from civil liberties advocates,⁷ Martin doubled down on his threats by tweeting another letter to Musk that claimed those who “even acted simply unethically”—as opposed to having engaged in unlawful conduct that actually violates criminal statutes—would be investigated by the Office of the U.S. Attorney.⁸ In this letter, Martin also thanks Musk for making criminal referrals to his office and states that he “will begin an inquiry.” He wrote in the letter’s address line that it was delivered only via X and tweeted that point again to underscore his use of Musk’s preferred platform to offer his services to Musk.⁹

As any experienced attorney serving as a prosecutor should know, 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.¹⁰ It is also not a crime to harshly criticize government employees and officials, even if transparency and criticism “impede” their work.¹¹ Musk himself has publicly posted the names of government employees with whom he disagrees on X,¹² as well as used his massive public platform to harshly criticize and insult government officials.¹³ Moreover, while certain true threats are unprotected and may be criminally punished, they are limited to “serious expression[s]”

⁴ Ed Martin (@EagleEdMartin), X (Feb. 3, 2025), <https://x.com/EagleEdMartin/status/1886456136032817488>.

⁵ Elon Musk (@ElonMusk), X (Feb. 3, 2025), <https://x.com/elonmusk/status/1886318915707375664>.

⁶ Vittoria Elliott, *The Young, Inexperienced Engineers Aiding Elon Musk’s Government Takeover*, WIRED (Feb. 2, 2025), <https://www.wired.com/story/elon-musk-government-young-engineers/>.

⁷ *Groups Demand U.S. Attorney for D.C. Respect First Amendment*, Demand Progress Education Fund (Feb. 5, 2025), <https://demandprogresseducationfund.org/groups-demand-u-s-attorney-for-d-c-respect-first-amendment>. The ACLU noted in another letter to Martin that his letter’s superfluous references to “Antifa and BLM rioters,” further indicated an intent by Martin to use his office as a pulpit to threaten those with viewpoints Musk and the Trump administration disfavor. *See* https://www.acludc.org/sites/default/files/20250204_acludc_ltr_to_martin65.pdf.

⁸ Ed Martin (@EagleEdMartin), X (Feb. 7, 2025), <https://x.com/EagleEdMartin/status/1887901087983689761>.

⁹ *Id.*

¹⁰ *See, e.g., Bartnicki v. Vopper*, 532 U.S. 514 (2001); *Florida Star v. B.J.F.*, 491 U.S. 524 (1989).

¹¹ *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 vehemence, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”)

¹² 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>.

¹³ *See, e.g., Elon Musk (@ElonMusk), X*, https://x.com/search?q=from%3Aelonmusk%20Biden%20until%3A2025-01-20&src=typed_query&f=live.

conveying that a speaker means to ‘commit an act of unlawful violence.’”¹⁴ Hyperbolic speech, even using threatening language, is entitled to full First Amendment protection.¹⁵

The First Amendment protects Americans’ right to peaceably assemble as well, especially to protest government actions,¹⁶ and severely constrains the government’s ability to limit protests in public forums, such as the public streets of Washington, D.C.¹⁷ The government also cannot ban or restrict future protests based on unlawful conduct alleged to have occurred at past protests.¹⁸ Given that the nation’s capital is where American patriots from all walks of life famously gather together to march, picket, and speak out, the notion that Martin is either unaware of these First Amendment basics or eager to violate them should give you deep misgivings about confirming him permanently for the role.

Martin’s threats to prosecute First Amendment speech and activity further conflict with the U.S. Department of Justice’s own rules. As explained in Attorney General Pam Bondi’s Memorandum issued on February 5, 2025, which cites the Justice Manual § 9-27.220, “prosecutors must consider a variety of factors, including whether there is probable cause to believe that a federal crime has been committed.”¹⁹ The Attorney General’s Memorandum, citing the Justice Manual § 9-27.260(1), also states that “in determining whether to commence or recommend prosecution or take other action against a person, a prosecutor ‘may not be influenced’—in any respect—by the person’s ‘political association, activities, or beliefs.’”²⁰

Additionally, Martin’s conduct clashes with the Rules of Professional Conduct for licensed attorneys in the District of Columbia²¹ and Missouri,²² where Martin is or has been licensed to

¹⁴ *Counterman v. Colorado*, 600 U.S. 66, 74 (2023) (quoting *Virginia v. Black*, 538 U.S. 343, 359 (2003)).

¹⁵ *Id.*

¹⁶ *United States v. Grace*, 461 U.S. 171, 176 (1983).

¹⁷ *Id.* at 177.

¹⁸ *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-fruitition>; *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>.

¹⁹ U.S. Attorney General Pam Bondi, U.S. Dep’t of Justice, *Memorandum For All Department Employees re: General Policy Regarding Charging, Plea Negotiations, and Sentencing* (Feb. 5, 2025), <https://www.justice.gov/ag/media/1388541/dl>.

²⁰ *Id.*

²¹ Court filings in *United States v. Joseph Lino Padilla*, Case No. 1:21-cr-00214 (JDB), indicate that Martin is a member of the D.C. Bar (No. 481866). *See, e.g.*, Edward R. Martin, Jr., 481886, Appearance of Counsel, *U.S. v. Padilla*, No. 1:21-cr-00214 (JDB) (D.C.C. Nov. 10, 2021), <https://storage.courtlistener.com/recap/gov.uscourts.dcd.228873/gov.uscourts.dcd.228873.47.0.pdf>.

²² Martin has practiced law in Missouri. *See, e.g.*, U.S. Dep’t of Justice, *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>. The Missouri Bar Official Directory of Lawyers includes a profile for “Edward Robert Martin” with Bar No. 50282, available at https://mobar.org/site/content/For-the-Public/Lawyer_Directory_Detail.aspx?ID=933b599e-8540-4f95-947a-bd86a1a87865.

practice law. These Rules prohibit licensed attorneys from, *inter alia*, engaging in conduct that seriously interferes with the administration of justice²³; engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation²⁴; making extrajudicial comments which serve to heighten condemnation of the accused²⁵; prosecuting a criminal charge that the prosecutor knows is not supported by probable cause²⁶; and asserting a legal issue unless there is a non-frivolous basis in law and fact.²⁷ In addition, the American Bar Association’s Criminal Justice Standards for the Prosecution Function—which provide best practices for the professional conduct of prosecutors—states that “A prosecutor should not use . . . improper considerations, such as partisan or political or personal considerations, in exercising prosecutorial discretion.”²⁸

Martin’s threats to pursue frivolous prosecutions raise serious concerns that he is abusing his public office for illegitimate purposes, possibly including the harassment or intimidation of Americans he dislikes for partisan, political, or personal reasons.²⁹ Indeed, emerging news reports indicate that on Tuesday, February 18, the top prosecutor overseeing criminal cases in the Office of the U.S. Attorney for the District of Columbia abruptly resigned rather than obey what she contends is an improper demand from her superiors appointed by the Trump Administration to pursue a criminal probe that she stated was “not supported by evidence.”³⁰

The Senate must hold nominees for U.S. Attorney positions to the highest ethical and legal standards of the profession, especially considering the enormous coercive powers they wield over people’s lives and liberties. Quoting *Berger v. United States*, 295 U.S. 78, 88 (1935), the Office of the U.S. Attorney for the District of Columbia itself explains its importance as the principal prosecutor for all criminal offenses in that jurisdiction and as the principal litigator for the United States in the nation’s capital³¹:

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor -- indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones.

²³ D.C. R. of Prof. Conduct 3.1 and M.O. R. of Prof. Conduct 4-8.4.

²⁴ *Id.*

²⁵ D.C. R. of Prof. Conduct 3.8(f) and M.O. R. of Prof. Conduct 4-8.6(a).

²⁶ D.C. R. of Prof. Conduct 3.8(b) and M.O. R. of Prof. Conduct 4-3.8.

²⁷ D.C. R. of Prof. Conduct 3.1 and M.O. R. of Prof. Conduct 4-3.1.

²⁸ Amer. Bar Assoc., Criminal Justice Standards for the Prosecution Function, 3-1.6 (4th ed. 2017), https://www.americanbar.org/groups/criminal_justice/resources/standards/prosecution-function/.

²⁹ M.O. R. of Prof. Conduct 4 states that “A lawyer should use the law’s procedures only for legitimate purposes and not to harass or intimidate others.”

³⁰ Katelyn Polantz et al., *Senior DOJ prosecutor quit after being told to investigate Biden climate spending*, CNN (Feb. 18, 2025), <https://www.cnn.com/2025/02/18/politics/justice-department-dc-criminal-division/index.html>; Sarah N. Lynch, *Senior US prosecutor resigns, citing demand to probe Biden-era contract*, Reuters (Feb. 18, 2025), <https://www.reuters.com/world/us/senior-us-prosecutor-resigns-citing-demands-open-probe-into-biden-era-contract-2025-02-18/>.

³¹ Office of the U.S. Attorney for the District of Columbia, U.S. Dep’t of Justice, *About Us* (accessed Feb. 11, 2025), <https://www.justice.gov/usao-dc/about-us>.

It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

In his brief tenure as the interim U.S. Attorney for the District of Columbia, Martin has already shown flagrant disdain for this obligation to “govern impartially” in the pursuit of justice for all. We believe it is disqualifying, and for the sake of the integrity of the U.S. Attorney’s office and public trust in the prosecutions that the office does pursue, we urge you to reject Martin’s nomination to serve permanently as the U.S. Attorney for the District of Columbia.

Sincerely,

Accountable.US
Advocacy for Principled Action in Government
Alliance for Justice
American Family Voices
American Oversight
American Society of Journalists & Authors
Courage Foundation
Defending Rights & Dissent
Demand Progress Action
Democracy Matters
Direct Action Everywhere
Endangered Species Coalition
Fight for the Future
Freedom of the Press Foundation
Government Information Watch
Indivisible
Indivisible Marin
Lawyers for Good Government
League of Conservation Voters
National Lawyers Guild
National Security Counselors
People For the American Way
People Power United
Project On Government Oversight
Radio Television Digital News Association
The Freedom BLOC
Whistleblower & Source Protection Program (WHISPeR) at ExposeFacts