Hearing Before the House Committee on the Judiciary
"The Southern Poverty Law Center: Manufacturing Hate Part II"

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Distinguished members of the Committee, thank you for inviting me to testify today.

I am currently the Executive Director of the non-partisan Institute for Constitutional Advocacy and Protection (ICAP) and a Visiting Professor of Law at Georgetown University Law Center. In this role, I lead a team that uses strategic legal advocacy to defend constitutional rights and values while working to hold our governmental institutions to the highest standards of integrity and accountability. Through litigation, public education, and policy work, ICAP seeks to safeguard rights to free expression, assembly, and democratic participation; combat threats of political violence; fight against criminal justice system overreach; defend the rights of young people and marginalized communities; and preserve fundamental separation-of-powers principles. ICAP's work includes representing former law enforcement and national security officials across the political spectrum, as well as providing advice to current government officials from both sides of the aisle on how to protect public safety while preserving constitutional rights.

Before launching ICAP in mid-2017, I spent nearly 25 years in the Executive Branch, most of it in the Department of Justice. I was an Assistant United States Attorney in the District of Columbia from 1994 through 2014, serving under both Republican and Democratic administrations. In 2014, I moved to Department headquarters, where I served in a career capacity as the Principal Deputy Assistant Attorney General for National Security before becoming the

Acting Assistant Attorney General for National Security in 2016. I served through transition into the Trump Administration before leaving in May of 2017.

## Introduction

The power of the Department of Justice should not be used as a weapon against people and organizations disliked by the president. No one has said this better than former U.S. Supreme Court Justice and U.S. Attorney General Robert Jackson in his famous 1940 speech, "The Federal Prosecutor":

> "The prosecutor has more control over life, liberty, and reputation than any other person in America. His discretion is tremendous. . . . The prosecutor can order arrests, present cases to the grand jury in secret session, and on the basis of his one-sided presentation of the facts, can cause the citizen to be indicted and held for trial. . . . While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst."
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> "If the prosecutor is obliged to choose his cases, it follows that he can choose his defendants. Therein is the most dangerous power of the prosecutor: that he will pick people that he thinks he should get, rather than pick cases that need to be prosecuted. . . . It is in this realm-in which the prosecutor picks some person whom he dislikes or desires to embarrass, or selects some group of unpopular persons and then looks for an offense, that the greatest danger of abuse of prosecuting power lies. It is here that law enforcement becomes personal, and the real crime becomes that of being unpopular with the predominant or governing group, being attached to the wrong political views, or being personally obnoxious to or in the way of the prosecutor himself."[1]

## One-Sided Use of Fraud Prosecutions Undermines the Fair Administration of Justice

What Justice Jackson warned about has come to pass in this administration: the targeting of those "unpopular with the . . . governing group." The U.S. Department of Justice has initiated fraud investigations against political enemies such as New York Attorney General Letitia James, Federal Reserve Board member Lisa Cook, Senator Adam Schiff, and Federal Reserve Board member and former

[1] 24 J. Am. Jud. Soc'y 18 (1940), 31 J. Crim. L. 3 (1940) (address of Attorney General Robert H. Jackson at Conference of United States Attorneys, Washington, D.C., April 1, 1940).

chair Jerome Powell. While these are examples of picking a person whom the president dislikes and searching for an offense, at the same time, the president has granted clemency to billionaires and others convicted of some of the most serious fraud and white-collar cases ever prosecuted, often after receiving financial or other benefits from them or their allies.

The New York Times reported that across both of his terms, as of mid-March 2026, President Trump had granted clemency to more than 70 allies, donors, and others convicted in fraud cases.[2] He commuted the sentence of Philip Esformes, the South Florida owner of nursing and assisted living facilities who was convicted of what the FBI deemed "the largest-ever criminal health care fraud case brought against individuals." Mr. Esformes was accused of stealing an estimated $1.3 billion from Medicare and Medicaid. The commutation reportedly came after a lobbying campaign by a well-connected non-profit to which Mr. Esformes's family had made financial gifts over several years after his indictment.

The president also commuted the sentence of Lawrence Duran, the owner of a Florida mental health care company who pleaded guilty to a $205 million Medicare fraud scheme. He pardoned Devon Archer, convicted of defrauding investors of tens of millions of dollars, but whose testimony reportedly had helped fuel a congressional investigation into the Biden family. And he pardoned Trevor Milton, the founder of an electric vehicle start-up sentenced for defrauding his investors, after the president's campaign reportedly received donations from Milton and his wife of more than $1.8 million. The president also pardoned a Venezuelan-Italian banker and others, including the former governor of Puerto Rico, charged with wire fraud in a bribery scheme, after the banker's daughter reportedly made multi-million dollar donations to a super PAC devoted to the president and run by his allies.

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[2] Matthew Purdy and Luke Broadwater, *Trump Vowed to Crack Down on Fraudsters, but He's Pardoned Dozens*, NY TIMES (March 19, 2026), https://www.nytimes.com/2026/03/19/us/politics/trump-fraudsters-pardons.html.

The president pardoned Changpeng Zhao, the founder of cryptocurrency exchange Binance, who had pleaded guilty to a Bank Secrecy Act violation, after Zhao spent months boosting cryptocurrencies connected to the president and his family businesses, according to the Wall Street Journal.[3] The president also pardoned three co-founders of BitMex, another crypto-currency exchange, for failing to implement a statutorily mandated anti-money laundering program. And the president pardoned Ross Ulricht, who had been sentenced to life in prison for running Silk Road, an online black market of illegal drugs and other unlawful goods and services.

Although these examples are ample to establish the one-sided dispensation of "justice" in which this administration is engaged, it has not stopped with giving special treatment to allies and supporters. The so-called "settlement" of the president's collusive lawsuit against the IRS—in which Trump, his family members, and his businesses all received from the Justice Department an effective "pardon" from criminal and civil investigations, examinations, audits, claims, and prosecutions by *any* federal department or agency on *any* subject, based on *anything* that could have been initiated as of the date of the settlement, known or unknown—is perhaps the most corrupt self-dealing fraud of all. As President Trump himself acknowledged about another of his claims against the government, "I'm supposed to work out a settlement with myself."[4] Yet once a federal district court judge sought briefing on whether there was actual adversity between the parties—a constitutional requirement for a lawsuit—the president's Justice Department, led by Trump's nominee for Attorney General, Todd Blanche, quickly settled the litigation and Trump dismissed the suit, all before the judge could determine whether there was an actual case or controversy. This matters, because without a case or controversy, there was nothing to settle. Without a case or controversy, the Judgment Fund could not be used to create a $1.776 billion slush fund to pay the so-called "victims" of weaponization, potentially to include those convicted for the violent attack on the U.S. Capitol on January 6, 2021. And without a case or controversy, the release and forbearance of all civil and criminal investigations, examinations, audits, and prosecutions against Trump, his family,

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[3] Rebecca Ballhaus, Josh Dawsey, Patricia Kowsmann, Angus Berwik, *Trump Pardons Convicted Binance Founder*, WALL ST. J. (Oct. 23, 2025), https://www.wsj.com/finance/currencies/trump-binance-changpeng-zhao-pardon-7509bd63.

[4] Donald J. Trump, *Remarks in an Exchange With Reporters Aboard Air Force One En Route to West Palm Beach, Florida* (Jan. 31, 2026), https://www.govinfo.gov/content/pkg/DCPD-202600074/pdf/DCPD-202600074.pdf.

and his businesses, was the result of a fraud on the court to obtain a benefit that the president lacks the authority to give to himself. (And even where there are settlements of actual cases or controversies, Justice Department policy is to release any claims related to the subject matter of the case, not any claim that could be brought against the opposing party, his or her family, and family businesses on any subject, including subjects wholly unrelated to the underlying investigation.)

## NSPM-7's One-Sided Targeting of Disfavored Groups Infringes Constitutional Rights

The one-sided administration of "justice" goes well beyond weaponizing fraud investigations.

### *NSPM-7's Directive to Recommend Domestic Organizations for Terrorism Designations Violates First Amendment Rights*

The president's National Security Presidential Memorandum 7 (NSPM-7)'s[5] dangerous labeling of organizations with ideologies that the president dislikes as domestic terrorist organizations risks using the federal government's potent criminal tools to infringe the constitutional rights of domestic non-profit civil rights organizations, and their funders, based on viewpoint. And although no such designation is at issue with respect to the Southern Poverty Law Center (SPLC), the First Amendment concerns raised by the targeting of SPLC for indictment are similar, consistent with what Justice Jackson warned about.

NSPM-7 calls on the Attorney General to recommend organizations for designation as "domestic terrorist organizations"—a designation that does not exist in federal law and about which the U.S. Supreme Court has warned against in *Holder v. Humanitarian Law Project*.[6] There is a reason that our statutes limit designations to *foreign* terrorist organizations. Foreign organizations do not have First Amendment rights. Penalizing a foreign terrorist organization (FTO) with the consequences of an FTO designation—namely, making it a crime to provide material support or resources to the FTO—does not raise First Amendment concerns even if the FTO engages in both terrorist activity that threatens U.S. national security *and* humanitarian pursuits. Penalizing a *domestic* organization *does* have First Amendment implications, however, which is why the Supreme

[5] National Security Presidential Memorandum/NSPM-7, *Countering Domestic Terrorism and Organized Political Violence*, THE WHITE HOUSE (Sept. 25, 2025), https://www.whitehouse.gov/presidential-actions/2025/09/countering-domestic-terrorism-and-organized-political-violence/.
[6] 561 U.S. 1 (2010).

Court made clear, in upholding the application of the FTO material support statute, that it was not suggesting "that Congress could extend the same prohibition on material support . . . to domestic organizations."[7] Domestic organizations, unlike foreign organizations, have their own First Amendment rights, as do their members. And while bad actors who may be members of a domestic organization can and should be prosecuted for violent acts that violate federal or state law when the evidence supports such charges, the designation of a domestic organization as a terrorist organization would infringe upon its rights to associate and advocate for political causes. Congress has rightly *not* enacted a regime for designating domestic terrorist organizations for this very reason. The potential for the government to misuse such a tool to discriminate against viewpoints with which it disagrees is too great in a country in which the First Amendment rights of its people are fundamental to the Framers' design.

The mere label as a domestic terrorist organization, even if it has no legal significance under federal law, carries serious harms for designated organizations and their funders. But NSPM-7 is not limited to seeking recommendations for DTO designations.

*NSPM-7'S Mandate to Use All Tools Against Disfavored Groups Discriminates Based on Viewpoint*

NSPM-7 makes clear that its mandate is for the federal government—including the Department of Justice—to use every tool in its toolbox to focus on groups with ideologies this administration perceives as "anti-Americanism, anti-capitalism, and anti-Christianity," "extremism on migration, race, and gender; and hostility towards those who hold traditional American views on family, religion, and morality." NSPM-7 states that "the groups and entities that perpetuate this extremism have created a movement that embraces and elevates violence to achieve policy outcomes" and relies for support on incidents such as the murders of Charlie Kirk and a health care executive, assassination attempts against the president and Justice Brett Kavanaugh, and "riots" in protest of ICE activity. Though murders and threats of violence against individuals are reprehensible and illegal, the examples do not justify the stark lack of parity in NSPM-7's treatment of supposedly dangerous ideologies. There is no mention in NSPM-7 of the apparently politically motivated murders of Minnesota Democratic legislator Melissa Hortman and her husband; or the mass shootings committed in Buffalo,

[7] *Id.* at 39.

New York; El Paso, Texas; and Pittsburgh, Pennsylvania by white supremacists who justified violence based on the Great Replacement theory. The one-sided memorandum not only lacks legitimacy, it dangerously raises the stakes for organizations that hold views the administration perceives as hostile to it. In other words, it has the strong potential to lead to the discriminatory targeting of organizations based on viewpoint.

On December 4, 2025, then-Attorney General Pam Bondi issued a memorandum to all Department of Justice law enforcement and grant-making components on the implementation of NSPM-7.[8] Using the "domestic terrorist organization" label, the memorandum, like NSPM-7, ordered the targeting of those "with extreme views in favor of mass migration and open borders, adherence to radical gender ideology, anti-Americanism, anti-capitalism, or anti-Christianity," and "hostility towards traditional views on family, religion, and morality." It directed Department prosecutors to prosecute "the most serious, readily provable offenses" against organizations and funders falling within NSPM-7's directive, and reminded prosecutors of the many federal criminal provisions that might be pursued, including wire fraud, bank fraud, and fraud against the IRS. It also called on federal law enforcement agencies to review their files for "Antifa and Antifa-related intelligence and information" so that they might "take additional steps in these closed investigations."

Within months, the SPLC, which has for decades spoken out against racial violence, litigated to protect civil rights and dismantle hate groups, and worked cooperatively with law enforcement, was charged with wire fraud, bank fraud, and conspiracy to commit money laundering. Commenting on the charges, the president called SPLC "one of the greatest political scams in American History."[9] I am not here to comment on the substance of the charges against SPLC, which is being ably defended in court. But the targeting of SPLC harkens the very danger Justice Jackson warned about: that the prosecutor "picks some person whom he dislikes or desires to embarrass, or selects some group of unpopular persons and

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[8] Office of the Attorney General, U.S. DEP'T. OF JUSTICE, Memorandum for All Federal Prosecutors, Law Enforcement Agencies, Department of Justice Grant-Making Components, *Implementing National Security Presidential Memorandum-7: Countering Domestic Terrorism and Organized Political Violence* (Dec. 4, 2025), https://docs.house.gov/meetings/JU/JU00/20260211/118951/HHRG-119-JU00-20260211-SD032.pdf.

[9] Associated Press, *Southern Poverty Law Center Says Its Informant Program Was Not Kept Secret From Law Enforcement*, COURTHOUSE NEWS SERVICE (April 28, 2026), https://courthousenews.com/southern-poverty-law-center-says-its-informant-program-was-not-kept-secret-from-law-enforcement/.

then looks for an offense. . . . It is here that law enforcement becomes personal, and the real crime becomes that of being unpopular with the predominant or governing group, being attached to the wrong political views, or being personally obnoxious to or in the way of the prosecutor himself." Or in this case, being personally obnoxious to the president.

To those who would defend this one-sided approach, I ask how you would you feel to be on the wrong side of a future administration if this precedent is not universally condemned?

Thank you again for inviting me to testify today.