April 6, 2026

The Honorable Todd Blanche, Acting Attorney General
c/o Robert Hinchman, Senior Counsel, Office of Legal Policy
U.S. Department of Justice
Notice of Proposed Rulemaking
Docket No. OAG-199

Re: *Review of State Bar Complaints and Allegations Against Department of Justice Attorneys*

Dear Acting Attorney General Blanche:

We are attorneys who previously worked for the U.S. Department of Justice in both political and career positions. We served in a wide range of Department components. And we served Administrations of both parties. We write to express our concerns about the proposed rule set forth in *Review of State Bar Complaints and Allegations Against Department of Justice Attorneys*, 91 Fed. Reg. 10780 (proposed Mar. 5, 2026) (to be codified at 28 C.F.R. pt. 77).

In brief, we acknowledge that the Attorney General may adopt procedures to ensure that Department attorneys comply with the highest ethical standards. And we note that the Department has long worked with state bars to ensure that those standards are followed. But the premises of the proposed rule—that the Attorney General has the authority to displace state bars in the discipline of Department attorneys, and that such displacement may be necessary because of an "unprecedented" effort by state bars to weaponize their power to investigate Department attorneys, *id.* at 10782—are both legally wrong and factually unsupported.

As a legal matter, the proposed rule is inconsistent with the McDade Amendment, which makes clear that Department attorneys "shall be subject to State laws and rules . . . to the same extent and in the same manner as other attorneys in that State." 28 U.S.C. § 530B(a). As a factual matter, throughout our careers at the Department, we were subject to the possibility of discipline by state bars. And although there have been some past examples of state bars attempting to discipline Department attorneys for arguably political reasons, such incidents have been rare. Any increase in state bar disciplinary proceedings against Department attorneys in the past year likely reflects the unprecedented number of allegations of violations of the rules of professional conduct by Department attorneys, which have come at the same time that the Department has systemically dismantled the internal checks it had created over the previous 50 years to prevent against such abuses. The rule should not be finalized.

As the proposed rule recognizes, the Department has "long been committed to upholding the highest standards of ethics among its attorneys." 91 Fed. Reg. at 10781. We were part of that tradition. Indeed, we took our ethical obligations especially seriously because we were representing the United States of America. In his famous address to the Second Annual Conference of United States Attorneys, then-Attorney General Robert H. Jackson spoke of the awesome power vested in federal prosecutors, and their concomitant duty to carry out their mission in the "spirit of fair play and decency." Robert H. Jackson, Attorney General, U.S. Dep't of Just., "The Federal Prosecutor": Address at the Second Annual Conference of United States Attorneys, Apr. 1, 1940, at 3, https://perma.cc/9EKD-4WNM. Although the Attorney General's remarks were about prosecutors, and although not all of us were prosecutors, his words capture the gravity of our responsibilities as representatives of a sovereign. Many of us had "more

control over life, liberty, and reputation than any other person in America." *Id.* at 1. We could "order arrests, present cases to the grand jury in a secret session," cause persons to be "indicted and held for trial," and make recommendations regarding sentencing and parole. *Id.* We could seek multi-billion-dollar penalties for violating U.S. laws, or injunctions against individuals, corporations, and even other sovereigns, including states. And we were responsible for helping to formulate and defending U.S. programs and policies that could have significant impacts on the lives and wellbeing of U.S. citizens. With that power came an equally grave responsibility: to temper our "zeal with human kindness"; to seek "truth and not victims"; to serve "the law and not factional purposes"; and to approach our task "with humility." *Id.* at 7. The public placed a great trust in us. We carried out our daily tasks with an understanding that we had to continue to earn that trust.

Being bound by enforceable ethical standards was critical to that effort. If attorneys cannot be disciplined for failing to comply with their professional obligations, there is little check on the actions and positions they take. This would naturally erode the trust that the public has in the Department's attorneys, and could create the impression that they are pursuing partisan or personal goals rather than the impartial administration of justice.

Consistent with this understanding, for decades we were subject to discipline by both federal and state authorities. At the federal level, we were subject to oversight by the Department's Office of Professional Responsibility (OPR), the Office of the Deputy Attorney General (ODAG), the Professional Misconduct Review Unit (PMRU), and the Office of the Inspector General (OIG). OPR was created in 1975, in the wake of ethical abuses and serious misconduct by senior Department officials during the Watergate scandal. *See* Off. of Pro. Resp., U.S. Dep't of Just., *Frequently Asked Questions: OPR's History, Mission, and Jurisdiction*, https://perma.cc/5GL7-HK48. OPR has jurisdiction to investigate allegations of professional misconduct against Department personnel. *See id.*; *see also* 28 C.F.R. § 0.39. If OPR makes a finding of professional misconduct, those findings are referred to the PMRU. U.S. Dep't of Just., Just. Manual § 1-4.320 (2022), https://perma.cc/57WU-HBPH. Created in 2011, the PMRU evaluates OPR's findings and, "where appropriate, issues fair, timely, and consistent disciplinary decisions for current Department attorneys." *Id.* It may also authorize OPR or OIG to make "referrals to the appropriate bar authority" in certain circumstances. *Id.* Separately, OIG is charged with "detect[ing] and deter[ring] fraud, waste, and abuse in Department programs and misconduct by Department personnel." U.S. Dep't of Just., Off. of the Inspector General, *Organization, Mission & Functions Manual*, https://perma.cc/RM9H-ZW78. It does so by investigating those matters and issuing reports to the Attorney General and Congress. *Id.*

We were also bound by state ethical standards. Since at least the late 1970s, Congress has required Department attorneys to be licensed and authorized to practice as attorneys under the laws of a state, territory, or the District of Columbia. *See* Disqualification of Prosecutor Because of Former Representation, 9 Op. O.L.C. 16 n.12 (1985); *see also* 28 U.S.C. § 530C(c)(1). And in 1998, Congress adopted the McDade Amendment. *See* Omnibus Consolidated and Emergency Supplemental Appropriates Act, 1999, Pub. L. No. 105-277, div. A, tit. VIII, § 801, 112 Stat. 2681, 2681–118 (1998) (codified at 28 U.S.C. § 530B). In relevant part, that law provides that any "attorney for the Government shall be subject to state laws and rules, and local Federal court

rules, 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." 28 U.S.C. § 530B(a).[1]

Although these dual layers of oversight occasionally create complications, in practice the Department and state bars generally have worked together well. As the proposed rule's preamble details, OPR typically acts as a liaison with state bars (and similar disciplinary authorities for territories and the District of Columbia). 91 Fed. Reg. at 10782. It "advises the relevant State bars of attorney misconduct after authorization from the PMRU; assists the State bars in obtaining evidence in the control of the Department . . . and coordinates with the State bars on matters of mutual interest to improve attorney ethical standards and conduct." *Id.* Indeed, when OPR refers a matter to a state bar, it is sometimes the first information the authorities have received about the allegations. *Id.* And even when a state bar "has received a complaint about a Department attorney's conduct before or during OPR's investigation, most State bars refrain from taking further action until OPR is able to complete the investigation so that the bar has a full account, through OPR's report of investigation, of the evidence and OPR's analysis, as well as the PMRU's conclusions, when determining whether to open their own investigation." *Id.* Moreover, "most State bars do not take additional action after referrals are made concerning current or former Department attorneys." *Id.*

This understanding of the typical interaction between state and federal oversight authorities accords with our experience. And we agree with some of the other observations set forth in the preamble. For example, we agree that nothing in the McDade Amendment (or any other source of law that we are aware of) prohibits the Attorney General from "establish[ing] an enforcement mechanism for assuring that Department attorneys comply with State ethics rules." *Id.* at 10783. Indeed, that is the role we understand OPR and the PMRU to play. And for the reasons the preamble explains, it can be an efficient allocation of resources to allow these Department components to ensure compliance with the McDade Amendment in the first instance. *Id.* at 10782.

Where the preamble goes too far is in its insistence that the Attorney General "retains the discretion to *displace* State bar enforcement and to create an entirely Federal enforcement mechanism, or to *displace* State bar enforcement in part when it is inconsistent with the Federal Government's determinations regarding the regulation of Federal attorneys." *Id.* at 10784 (emphasis added). That understanding of the Attorney General's power cannot be reconciled with the plain language of the McDade Amendment. As noted, that law provides that any attorney for the federal government "*shall be subject to State laws and rules*, and local Federal court rules, 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*." 28 U.S.C. § 530B(a) (emphasis added). Were the Attorney General to completely displace state bar disciplinary authorities—thereby preventing such authorities from seeking to impose consequences on Department attorneys for professional misconduct—it would eviscerate the requirements that Department attorneys be "subject to" state laws and rules "to the same extent and in the same manner" as any other attorney. *See id*. Department attorneys would no longer be on an equal footing with other attorneys practicing in the state. Instead, they would be effectively immunized from discipline from state authorities.

[1] This comment uses the term "Department attorneys" to refer to those attorneys employed by the Department who are subject to the McDade Amendment. *See* 28 U.S.C. § 530B(c).

To be sure, we recognize that the system created by Congress can, on occasion, create difficulties. Frivolous bar complaints are sometimes filed against Department attorneys. Indeed, some of us were the subject of such complaints. And it arguably has been the case that, in isolated instances in the past, state bars have initiated investigations based on political considerations rather than a good faith application of their ethical rules. But nothing in our experience suggests that state bars have engaged in the sort of widespread "weaponiz[ation of] the bar complaint and investigation process," 91 Fed. Reg. at 10782, that the proposed rule suggests.

At the same time, the actions of this Administration highlight the danger of creating a system that completely prevents state bars from disciplining Department attorneys. Public reporting demonstrates that Department attorneys have engaged in a wide range of conduct that—if proven—would plainly violate basic ethical duties. For example, last year, a Department attorney sought and obtained criminal indictments against New York Attorney General Letitia James and former FBI director James Comey in the United States District Court for the Eastern District of Virginia. *See* Indictment, *United States v. Comey*, No. 1:25-cr-272, 2025 WL 2737592 (E.D. Va. Sept. 25, 2025); Indictment, *United States v. James*, No. 2:25-cr-122, 2025 WL 2888576 (E.D. Va. Oct. 9, 2025). As former Department attorneys explained in an amicus brief filed in support of Mr. Comey's motion to dismiss the indictment, the indictment "appears to have been the product not of the neutral judgment of an impartial prosecutor, but rather an expression of retributive animus by the President, acting through an interim United States Attorney whom he personally selected to bring charges against his perceived political foes." Brief of Former Senior Officials of the Department of Justice as *Amici Curiae* in Support of Defendant's Motion to Dismiss Indictment for Vindictive Prosecution at 2, *United States v. Comey*, No. 1:25-cr-272, 2025 WL 3636501 (E.D. Va. Oct. 27, 2025). If proven, these allegations would demonstrate a violation of Virginia Rule of Professional Conduct Rule 3.8(a), which provides that an attorney who "engage[s] in a prosecutorial function" shall "not file or maintain a charge that the prosecutor knows is not supported by probable cause." There have been several other instances of investigations or prosecutions that, according to publicly available accounts, appear to have been motivated by political considerations. *See* Peter Charalambous et al., *Since Trump's Return to Office, Here's a List of Those Targeted by His Administration*, ABCNews, Feb. 11, 2026, https://perma.cc/9E4X-Y6T9.

Similarly, there has been widespread reporting that Department attorneys have made material misrepresentations to courts. For example, on March 15, 2025, five Venezuelan men facing removal under the Alien Enemies Act of 1798 (AEA) filed a class action and sought a temporary restraining order to prevent their removal in the United States District Court for the District of Columbia. *J.G.G. v. Trump*, 772 F. Supp. 3d 18, 23–24 (D.D.C. 2025). That same morning, a federal judge temporarily enjoined the government from removing the five named plaintiffs and set a hearing for later in the day. *Id.* at 27–28. At that hearing, the judge asked several questions relating to whether planes with the named plaintiffs or potential class members would be departing, and if so, when. *Id.* According to a whistleblower, a senior Department attorney "willfully misled the court" in his responses. Letter from Dana L. Gold, Government Accountability Project, et al., to Michael E. Horowitz, Inspector General, U.S. Dep't of Just., June 24, 2025, at 9–13, https://perma.cc/VV28-7PTC ("Whistleblower Letter"). If proven, these allegations would violate District of Columbia Rule of Professional Conduct 3.3(a)(1), which provides that a lawyer "shall not knowingly [m]ake a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the

lawyer." Nor was this an isolated incident: in the first year of this Administration, district court judges have chastised Department attorneys for submitting declarations that were "highly misleading, if not intentionally false," *Nat'l Treasury Emps. Union v. Vought*, 774 F. Supp. 3d 1, 57 (D.D.C. 2025); and determined that Department attorneys submitted false information that a court relied upon "twice, to the detriment of a party at risk of serious and irreparable harm," *D.V.D. v. U.S. Dep't of Homeland Sec.*, 784 F. Supp. 3d 401, 406 (D. Mass. 2025); *see also* Ryan Goodman et al., *The "Presumption of Regularity" in Trump Administration Litigation (4th ed.)*, Just Security, Mar. 19, 2026, https://perma.cc/K5TW-PM57 ("Presumption of Regularity") (collecting additional reports of misleading or untrue statements made by Department attorneys to courts).

There have also been public reports of Department attorneys defying court orders. For example, with respect to the AEA matter detailed above, two whistleblowers have alleged that the Administration intentionally did not comply with the judge's order preventing the removal of various individuals, and that Department attorneys were instrumental in ensuring that the court's order would not be followed. Whistleblower Letter at 7, 13–15; Devlin Barrett, *Unnoticed Whistle-Blower Document Alarms Justice Department Veterans*, N.Y. Times, July 31, 2025, https://tinyurl.com/3s7nwpvr. If proven, these allegations would violate D.C. Rule of Professional Conduct 8.4(d), which provides that it is misconduct for attorneys to "[e]ngage in conduct that seriously interferes with the administration of justice." There are several other publicly reported matters in which Department attorneys have apparently either defied court orders or improperly defended agencies attempting to do so. *See* Presumption of Regularity (collecting additional allegations of Department attorneys defying court orders).

These are just a few of the actions taken by Department attorneys during this Administration that—again, if proven—would constitute professional misconduct. And they come at a time when the Department has dismantled the entities charged with ensuring that Department attorneys comply with their ethical obligations. In March 2025, Department leadership fired the head of OPR. Perry Stein et al., *Several Top Career Officials Ousted at Justice Department*, Wash. Post, Mar. 7, 2025, https://perma.cc/LB4N-MFKS. As of this writing, it has not named a replacement. Department leadership also fired the Director of the Department's Ethics Office, which is responsible for administering Department-wide ethics programs and policies, in July 2025. Scott MacFarlane & Melissa Quinn*, Bondi Ousts Top Ethics Official at the Justice Department*, CBSNews, July 15, 2025, https://perma.cc/3G23-467B. And it forced out the Department's highest-ranking career official, whom Administrations of "both political parties had relied on to make ethics determinations and review disciplinary recommendations for attorney misconduct." Christine Berger & Joe Gaeta, *The Department of Justice's Broken Accountability System*, Brennan Center for Justice, Oct. 20, 2025, https://perma.cc/P5HH-UC6S.

The Administration has also sought to "hollow out [inspector general] offices" across the government by restricting new hires, limiting funding, and "using the threat of further such action to gain leverage over or deter the offices." Jack Goldsmith, *Inspectors General in Trump 2.0*, Executive Functions, Mar. 25, 2026, https://perma.cc/4V32-B9UJ. There is evidence suggesting that those efforts have reduced OIG's effectiveness: OIG reportedly decided not to pursue an investigation of allegedly politicized firings of FBI employees at least in part because of "limited resources," *id.*; and lost a "crucial account from a whistle-blower detailing

wrongdoing by political appointees for more than two months," Barrett, *Unnoticed Whistle-Blower Document Alarms Justice Department Veterans*, N.Y. Times.

In sum, both our collective experience and recent events demonstrate the wisdom of Congress's decision to make Department attorneys subject to discipline by state bars while still allowing the Department to impose discipline through its own internal systems. Where the Department has systemically weakened the internal checks on possible misconduct by its own attorneys, state bars are among the few entities that can ensure that Department attorneys are maintaining the "highest standards of ethics among its attorneys." 91 Fed. Reg. at 10781.

We acknowledge that, while the rationale for the proposed rule—that the Attorney General has the "discretion to displace State bar enforcement," *id.* at 10784—is both sweeping and inconsistent with the McDade Amendment, the text of the proposed rule itself is more modest. It provides only that before state bars take "any investigative steps that seek information or otherwise require participation from" a current or former Department attorney that relates to their duties for the Department, "the Attorney General shall have the right to review the allegations in the first instance." *Id.* at 10787. The Attorney General or her designee must "notify the appropriate bar disciplinary authorities whether she intends to exercise her right to review the allegations and, if she does, she or her designee shall request that the bar disciplinary authorities suspend any parallel investigations or disciplinary proceedings until the completion of the review." *Id.*

In most cases, this sequencing may make sense—at least where state bars agree that the Department's internal process should run its course before they decide whether to pursue their own investigations. As noted, this sort of coordination between the Department and state bars has been historically common. But the proposed rule then contains a threat: If the state bar refuses the request, the "Department shall take appropriate action to enforce this regulation or to prevent the bar disciplinary authorities from interfering with the Attorney General's review of the allegations." *Id.* The McDade Amendment does not allow the Attorney General to take "appropriate action" that would prevent state bars from conducting their own investigations while the Department is conducting its review. State bars might decide that, as a matter of policy and resource allocation, it makes sense to wait until the Department finishes its review. But they may also decide that their own responsibility to ensure that lawyers practicing in the jurisdiction maintain "high standards of the practice of law"—including the "high ideals of integrity, learning, competence in public service, and high ethical standards," *E.g.*, District of Columbia Bar, Bylaws, § 2.02(d) (as amended Jan. 27, 2026)—requires them to forge ahead, without waiting for the conclusion of the Department's internal process. Indeed, the principal concern about the proposed rule is that it has no time limit. As a result, the Attorney General could delay completion of a review indefinitely, thereby effectively precluding state bars from conducting any review. In that context, allowing the Attorney General to take "appropriate action" to forestall the state bar investigation process would render the McDade Amendment's requirement that Department attorneys be "subject to" state laws and rules "to the same extent and in the same manner" as any other attorney, 28 U.S.C. § 530B(a), a dead letter.

In practice, the proposed rule would also be bad for Department attorneys. In outlining how disciplinary proceedings will operate, the preamble states that, if OPR learns that a state bar complaint has been filed against a current or former Department attorney and the Department decides to review the complaint, it will "direct Department personnel not to provide any non-public information to any parallel investigations or disciplinary proceedings until the completion

of OPR's review." 91 Fed. Reg. at 10784. That assertion of power over Department attorneys could put them in an impossible bind: as two former Department attorneys have written, "without the ability to defend oneself, the Department attorney could lose the license required to practice law." Jennifer Ricketts & Rupa Bhattacharyya, *DOJ's Proposed Rule Threatens to Stop State Bar Associations from Investigating DOJ Lawyers*, Justice Connection, Mar. 25, 2026, https://perma.cc/35H3-C6RW.

We end where we began: with Attorney General Jackson. As he noted, the powers vested in the Department have been "granted by people who really wanted the right thing done," but "also wanted the best in our American traditions preserved." The Federal Prosecutor at 1. The impartial administration and enforcement of the laws of the United States is core to the American experiment—to the understanding that, as John Adams said, we are a nation of "Laws, and not of Men." John Adams, Thoughts on Government (1776). And the American people can only trust that the Department is in fact adhering to that principal if it knows that its attorneys are adhering to the highest ethical standards. The proposed rule would greatly undermine that trust. It should not be finalized.

Respectfully submitted,[2]

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[2] We submit this comment in our personal capacity, and have listed our prior positions at the Department only for identification purposes. While many of us held multiple positions at the Department, we have only listed our most senior positions.

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