ORAL ARGUMENT SCHEDULED FOR MAY 14, 2026

Nos. 25-5241, 25-5265, 25-5277, 25-5310

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PERKINS COIE LLP,

Plaintiff-Appellee,

v.

U.S. DEPARTMENT OF JUSTICE *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Columbia

BRIEF OF LEGAL ETHICS SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

Ruth Greenwood
Samuel J. Davis
ELECTION LAW CLINIC
HARVARD LAW SCHOOL
6 Everett Street, Suite 4105
Cambridge, MA 02138
(617) 496-2181
rgreenwood@law.harvard.edu
sadavis@law.harvard.edu

Elizabeth R. Cruikshank
Counsel of Record
Kelsi Brown Corkran
Mary B. McCord
Joseph W. Mead
INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION, GEORGETOWN LAW
600 New Jersey Avenue NW
Washington, DC 20001
(202) 662-9042
erc56@georgetown.edu

Counsel for Amici Curiae

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), *amici* legal ethics scholars state as follows:

A. **Parties and *Amici*.** All parties, intervenors, and *amici* appearing before the district courts and in this Court are listed in the briefs for the parties and for other *amici*.

B. **Rulings Under Review.** References to the rulings at issue appear in the Briefs for Plaintiffs-Appellees.

C. **Related Cases.** Upon *amici curiae*'s knowledge, all references to related cases appear in the Briefs for Plaintiffs-Appellees.

STATEMENT REGARDING CONSENT TO FILE AND SEPARATE BRIEFING

All parties consent to the legal ethics scholars' participation as *amici curiae*. *See* Fed. R. App. P. 29(a)(2); Cir. R. 29(b).

Pursuant to Circuit Rule 29(d), undersigned counsel for *amici curiae* certifies that a separate brief is necessary. *Amici* are distinguished legal ethics scholars dedicated to studying the ethical questions that lawyers face as they weigh their duties to clients, the courts, and society. *Amici* thus offer a unique perspective on the profound implications these consolidated appeals have for the ability of the legal profession to regulate itself and, by extension, for the administration of justice in our nation's legal system.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

IDENTITY, INTEREST, AND SOURCE OF AUTHORITY

Amici curiae are distinguished professors of legal ethics. As scholars dedicated to studying the ethical questions lawyers face when weighing their duties to clients, the courts, and society—and as teachers who introduce aspiring lawyers to the ethical rules and norms that structure the legal profession—*amici* have a substantial interest in the regulation of the profession. Individually, they have nuanced, varying perspectives regarding the thorny ethical issues lawyers regularly confront. As a group, however, they believe lawyers must be free to exercise their independent judgment in resolving these issues without coercive interference by the government.

This case has profound implications for the ability of the legal profession to regulate itself and, by extension, for the administration of justice. *Amici* write to explain the ethical quandaries posed for Plaintiffs-Appellees by the Executive Orders at issue in this consolidated appeal (collectively, "the Law Firm EOs"), as well as the issues that arise for firms that capitulate to similar orders rather than challenge them. *Amici* will explain why conditioning a firm's ability to function on its acquiescence to conditions dictated by the President is

contrary to the American legal profession's longstanding history of independence, undermines basic rule-of-law principles, and mirrors actions taken by anti-democratic political actors globally. *Amici* are authorized to file this brief under Federal Rule of Appellate Procedure 29(a) and Circuit Rule 29(b).

A full list of *amici*[1] is attached as Appendix A.

STATEMENT OF AUTHORSHIP

No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* or their counsel made a monetary contribution to this brief's preparation or submission.

INTRODUCTION

The Law Firm EOs pose a profound threat to the legal profession and the capacity of lawyers to fulfill their ethical obligations. If the orders' sanctions take effect, lawyers at targeted firms will be unable to effectively advocate for clients who interact with the federal

[1] The arguments in this brief represent the individual views of *amici*, not their academic institutions.

government. To avoid this serious threat to their livelihoods, these firms will face immense pressure to acquiesce to the government's demands by entering so-called "settlements," as numerous firms already have in response to similar EOs. But capitulating creates its own intractable ethical issues. Settlements that commit law firms to providing a set of amorphous benefits to the government, such as valuable pro bono services to causes favored by the President, jeopardize a firm's independence and integrity. A firm that can survive only by staying in the President's good graces has incentives that conflict with its lawyers' stringent fiduciary duties to remain loyal to their clients' interests, to exercise independent judgment, and to be truthful and candid in all dealings with the courts.

Individual lawyers who cannot fulfill their ethical obligations to their clients or the courts could be subject to bar disciplinary proceedings. They may also be civilly liable to clients for breach of fiduciary duty if they accept a representation burdened by a conflict of interest, and they may be perceived as violating federal anti-bribery statutes if they provide pro bono services to causes favored by the President. More broadly, allowing the President to penalize lawyers who represent clients or

causes he dislikes will erode the foundations of the American legal system. "An informed, independent judiciary presumes an informed, independent bar." *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 545 (2001). For our legal system to function, lawyers must "be unintimidated—free to think, speak, and act as members of an Independent Bar." *Konigsberg v. State Bar of Cal.*, 353 U.S. 252, 273 (1957). The Law Firm EOs directly challenge the legal profession's independence. The consequences of these EOs fall not only on the targeted law firms but on the legal profession and rule of law more generally, as the EOs will result in fewer lawyers and firms willing to take on politically controversial cases.

In the four lawsuits below—brought by Perkins Coie LLP, Jenner & Block LLP, Wilmer Cutler Pickering Hale and Dorr LLP, and Susman Godfrey LLP—the district courts recognized these dangers, in each case ruling that the EOs violated the firm's First Amendment rights. *See Perkins Coie LLP v. U.S. Dep't of Just.*, 783 F. Supp. 3d 105 (D.D.C. 2025); *Jenner & Block LLP v. U.S. Dep't of Just.*, 784 F. Supp. 3d 76 (D.D.C. 2025); *Wilmer Cutler Pickering Hale & Dorr LLP v. Exec. Off. of the President*, 784 F. Supp. 3d 127 (D.D.C. 2025); *Susman Godfrey LLP*

v. Exec. Off. of the President, 789 F. Supp. 3d 15 (D.D.C. 2025). *Amici* urge the Court to affirm the district courts' decisions.

ARGUMENT

I. The Law Firm EOs Inevitably Create Irresolvable Ethical Issues for Lawyers at Targeted Firms.

Every lawyer has an "ethical obligation of zealous advocacy on behalf of a client." *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 597 (2010). Lawyers are also "subject to duties of candor, decorum, and respect for the tribunal and co-parties alike, all of which guard against the possibility that [advocates] will somehow fall short of the appropriate standards for federal litigation." *Hollingsworth v. Perry*, 570 U.S. 693, 722 (2013) (Kennedy, J., dissenting). Where "difficult issues of professional discretion" arise, they "must be resolved through the [lawyer's] exercise of sensitive professional and moral judgment guided by the basic principles" of legal ethics. Model Rules of Pro. Conduct pmbl. (Am. Bar Ass'n 2025). In exercising this judgment, lawyers strive to fulfill their dual roles in the American legal system as fierce advocates for their clients' interests and "officer[s] of the court bound by oath to support the administration of the laws." *Booth v.*

Fletcher, 101 F.2d 676, 680 n.7 (D.C. Cir. 1938) (quoting Homer S. Cummings, *The Lawyer Criminal*, 20 ABA J. 82, 83 (1934).

Executive orders that threaten or punish law firms for conduct the federal government opposes make it difficult for lawyers at those firms to satisfy their ethical duties. Given the consequences for those caught in the President's crosshairs, lawyers at targeted firms have faced, and will continue to face, serious ethical challenges under the Law Firm EOs, regardless of how each firm responds. In short, "[a] firm fearing or laboring under an order like this one feels pressure to avoid arguments and clients the administration disdains in the hope of escaping government-imposed disabilities." *Jenner & Block*, 784 F. Supp. 3d at 97. At the same time, "a firm that has acceded to the administration's demands by cutting a deal feels the same pressure to retain" the President's goodwill. *Id.* These orders put lawyers in an impossible bind: they must weigh the potential costs to their firms of displeasing the President against their duties to loyally and zealously advocate for their client's interests and to exercise independent judgment in advising clients. Only a ruling that the Law Firm EOs are unenforceable will resolve this ethical quandary.

A. Lawyers at firms that accede to the President's demands may be unable to comply with their duty of loyalty to their clients.

The duty of loyalty to one's clients is "perhaps the most basic of counsel's duties." *Strickland v. Washington*, 466 U.S. 668, 692 (1984). This duty imposes a corresponding obligation to avoid conflicts of interest. As Justice Story explained, a lawyer must "ha[ve] no engagements, which interfere, in any degree, with his exclusive devotion to the cause confided to him" and "no interest, which may betray his judgment, or endanger his fidelity." *Williams v. Reed*, 29 F. Cas. 1386, 1390 (C.C.D. Me. 1824) (No. 17,733). Since then, "[e]very state bar in the country has [adopted] an ethical rule prohibiting a lawyer from undertaking a representation that involves a conflict of interest unless the client has waived the conflict." *Mickens v. Taylor*, 535 U.S. 162, 188 n.13 (2002) (Stevens, J., dissenting). All states follow some version of the prohibition on conflicts of interest in the American Bar Association's (ABA) Model Rules of Professional Conduct: a "lawyer shall not represent a client if … there is a significant risk that the representation … will be materially limited by the lawyer's responsibilities to another client, a

former client *or a third person or by a personal interest of the lawyer*." Model Rules of Pro. Conduct r. 1.7(a)(2) (emphasis added).

Law firms and individual lawyers have powerful pecuniary, professional, and reputational interests in avoiding the consequences of the Law Firm EOs. Indeed, many of the firms that settled with the administration to avoid threatened sanctions cited those interests to justify their choices.[2] But law firms that acceded to the President's demands in an effort to evade punitive sanctions have engendered unavoidable conflicts of interest for their attorneys. If the only way for

[2] *See, e.g.*, Eric Tucker, *Law Firm Targeted by Trump Could Have Been "Destroyed," Chairman Says in Explaining Deal with Trump*, AP News (Mar. 23, 2025), https://apnews.com/article/trump-law-firm-retribution-2bd698e21528511bfa54506f0483ef5c (quoting Paul, Weiss, Rifkind, Wharton & Garrison LLP chair describing executive order as "existential crisis" that "could easily have destroyed our firm"); Gregory Svirnovskiy, *Another Big Law Firm Cuts a Deal with White House to Avoid Sanctions*, Politico (Apr. 1, 2025), https://www.politico.com/news/2025/04/01/law-firm-cuts-deal-avoid-sanctions-00265285 (quoting Willkie Farr & Gallagher LLP chair citing desire for "constructive relationship with the Trump Administration" in announcing settlement); Daniel Barnes, *Major Law Firm Strikes Preemptive Deal with White House*, Politico (Mar. 28, 2025), https://www.politico.com/news/2025/03/28/skadden-arps-trump-law-deal-028324 (Skadden, Arps, Slate, Meagher & Flom LLP "entered into the agreement the President announced today because, when faced with the alternatives, it became clear that it was the best path to protect our clients, our people and our Firm.").

a targeted firm to avoid punishing consequences is by obtaining the President's ongoing approval, firms have reason to forgo "activities" that, in the administration's view, "undermine" the "interests of the United States." *See, e.g.*, Exec. Order 14,263, *Addressing Risks From Susman Godfrey*, 90 Fed. Reg. 15615 (Apr. 9, 2025) ("Exec. Order"). But the United States is a party in all federal criminal cases and in many civil cases. In such cases, targeted firms will be torn between their need to stay in the President's good graces and their duty of loyalty to their clients. *Cf. Cinema 5, Ltd. v. Cinerama, Inc.*, 528 F.2d 1384, 1386 (2d Cir. 1976) ("[N]o man can serve two masters." (quoting Matthew 6:24)).

Acquiescing to the President's demands therefore creates a material limitation on the firm's representation of a vast array of clients in criminal cases, civil litigation, and transactional and advisory matters, risking violations of Rule 1.7(a)(2). That is likely one reason some litigants have struggled to find private pro bono counsel to challenge this administration's policies, especially in high-profile

cases involving politically charged topics like immigration.[3] Indeed, in June 2025, the ABA filed suit challenging the Trump administration's "Law Firm Intimidation Policy," alleging that the executive orders chilled law firms' willingness to litigate pro bono matters potentially adverse to the administration's policy preferences. *See* Compl. ¶ 4, *Am. Bar Ass'n v. Exec. Off. of the President*, No. 25-CV-1888 (D.D.C. June 16, 2025), ECF No. 1; *see also Am. Bar Ass'n v. Exec. Off. of the President*, --- F. Supp. 3d ---, 2026 WL 890410 (D.D.C. Mar. 31, 2026) (denying motion to dismiss).

Even cases in which a client is not directly adverse to the federal government could give rise to a conflict. The duty to avoid conflicts of

[3] *See, e.g.*, Shayna Jacobs et al., *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; Mike Spector et al., *How Trump's Crackdown on Law Firms Is Undermining Legal Defenses for the Vulnerable*, Reuters (July 31, 2025), https://www.reuters.com/investigations/trumps-war-big-law-leads-firms-retreat-pro-bono-work-underdogs-2025-07-31; Katelyn Polantz, *Trump's Crackdown on Law Firms Is Chilling the Future of Pro Bono Legal Work*, CNN (May 7, 2025), https://www.cnn.com/2025/05/07/politics/trump-law-firm-crackdown-pro-bono-work; Ryan Lucas, *Trump Attacks on Law Firms Begin to Chill Pro Bono Work on Causes He Doesn't Like*, NPR (Apr. 13, 2025), https://www.npr.org/2025/04/13/g-s1-59497/trump-law-firms-pro-bono.

interest "extends to any situation in which a [client's] counsel owes conflicting duties to that [client] and some other third person." *United States v. Soto Hernandez*, 849 F.2d 1325, 1328 (10th Cir. 1988). In matters involving large corporations or regulated industries, for example, the federal government might have an interest in the outcome of a dispute even if it is not a party. In these matters, lawyers might conduct investigations that uncover facts the government perceives as damaging or devise legal arguments that oppose or undermine positions the government has previously taken. Under threat of financial and professional ruin, however, a firm will have an incentive to downplay bad facts and soft-pedal strong arguments. In these circumstances, the firm's "divided obligations" will "interfere[] with the undivided loyalty [that] the attorney owes his client" and "detract[] from achieving the most advantageous position" for them. *Doe v. Nielsen*, 883 F.3d 716, 719 (8th Cir. 2018) (second alteration in original) (quoting *Pelham v. Griesheimer*, 440 N.E.2d 96, 100 (Ill. 1982)); *see also Nat'l Sec. Counselors v. CIA*, 811 F.3d 22, 30 (D.C. Cir. 2016) (an attorney "is legally and ethically required to be loyal to client interests, as distinct from his own").

These kinds of conflicts of interest could also interfere with a lawyer's duty to use independent judgment to advance clients' interests. *See* Model Rules of Pro. Conduct r. 1.7, cmt. 8 ("Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests."). Every lawyer "is under an ethical obligation to exercise independent professional judgment on behalf of his client; he must not allow his own interests, financial or otherwise, to influence his professional advice." *Evans v. Jeff D.*, 475 U.S. 717, 728 n.14 (1986). But if the President can punish disfavored law firms, the need to protect the firm's financial and professional viability will necessarily be part of a lawyer's calculus when advising clients whose interests may bring them into conflict with the federal government. Advice on key decisions will be colored by a lawyer's need to consider one man's preferences and whims. *Cf. Holloway v. Arkansas*, 435 U.S. 475, 490 (1978) (remarking that "the evil … is in what the advocate finds himself compelled to *refrain* from doing" (alteration in original)).

The ABA and multiple state bar associations have recognized

these inherent conflicts.[4] The D.C. Bar Ethics Committee, for example, has advised lawyers and firms contemplating agreements with the administration to examine potential conflicts of interest under D.C Rule of Professional Conduct 1.7. *See* D.C. Bar, Ethics Op. 391: Lawyers and Law Firms That Contemplate Agreeing with Governments to Conditions That May Limit or Shape Their Law Practices (2025), https://www.dcbar.org/For-Lawyers/Legal-Ethics/Ethics-Opinions-210-Present/Ethics-Opinion-391. The Committee emphasized the U.S. Department of Justice's position that a private lawyer's adverseness to any element of the federal government constitutes "a conflict with the entire executive branch, if not the entire U.S. government." *Id.* Given this broad language, the Committee expressed concern that settlement agreements would give

[4] *See* Susan DeSantis, *New York State Bar Association Condemns Executive Orders Punishing Lawyers for Representing Causes the Trump Administration Doesn't Like*, N.Y.S. Bar Ass'n (Mar. 10, 2025), https://nysba.org/new-york-state-bar-association-condemns-executive-orders-punishing-lawyers-for-representing-causes-the-trump-administration-doesnt-like; *see also* William R. Bay, *Bar Organizations Stand Together for the Rule of Law*, ABA (Mar. 31, 2025), https://www.americanbar.org/news/abanews/aba-news-archives/2025/03/bar-organizations-stand-for-rule-of-law (compiling bar organization statements critiquing the Trump administration's attacks on the rule of law).

rise to conflicts for lawyers whose clients' interests are adverse to *any* policy or program the administration supports. *See id.* The Committee further noted that such agreements could implicate Rule 1.3 (Diligence and Zeal); Rule 1.10 (Imputed Disqualification: General Rule); Rule 1.16 (Declining or Terminating Representation); Rule 5.4 (Professional Independence of a Lawyer); and Rule 5.6 (Restrictions on Right to Practice). *See id.* The German Bar Association (Deutscher Anwaltverein) went a step further, telling law firms that their deals violate German ethical rules and could threaten firm affiliates' ability to practice in Germany altogether.[5]

These risks are not merely speculative. For example, one law firm, Skadden, preemptively agreed to dedicate pro bono services totaling $100 million to Trump administration priorities in an effort to avoid sanctions similar to those imposed in the Law Firm EOs.[6]

---

[5] Deutscher Anwaltverein, *US Law Firms in Germany and the Independence of Lawyers* (May 20, 2025), https://anwaltverein.de/newsroom/pm-25-25-us-law-firms-in-germany-and-the-independence-of-lawyers ("Agreements by which lawyers dispense of their independence from the state are likely to prove illegal under the German law on the legal profession.").

[6] *See* Melissa Quinn, *Law Firm Skadden Cuts $100 Million Pro Bono Deal with Trump to Avoid Executive Order*, CBS News (Mar. 28, 2025),

Months later, Skadden advised Intel Corporation on an unprecedented deal that granted the U.S. government 9.9 percent of the company's stock.[7] Shortly thereafter, an Intel shareholder sued the company, the U.S. Department of Commerce, and the Secretary of Commerce. *See* Compl., *Paisner v. Tan*, No. 2026-0307-PAF (Del. Ch. Mar. 11, 2026). Although Skadden was not a named defendant, the lawsuit describes Skadden as "Intel's Conflicted Legal Advisor" and alleges that Intel's board failed to discuss Skadden's potential conflict of interest when approving the government's unprecedented purchase agreement. *Id.* ¶ 100.

Throughout an attorney–client relationship, lawyers help clients make innumerable choices about when, whether, and how to fight for their interests. The government's intrusion into the firm's independent professional judgment creates "a significant risk that the representation

---

https://www.cbsnews.com/news/law-firm-skadden-cuts-100-million-pro-bono-deal-trump-avoid-executive-order.

[7] Mike Leonard, *'Extortionary' Intel Deal with US Must Be Voided, Suit Says*, Bloomberg Law (Mar. 11, 2026), https://news.bloomberglaw.com/esg/extortionary-intel-stake-sale-to-us-must-be-voided-suit-says.

of one or more clients will be materially limited by … a personal interest of the lawyer." Model Rules of Pro. Conduct r. 1.7(a)(2).

B. Lawyers at firms that settle to avoid the executive order conditions may be unable to obtain informed consent from their clients to waive potential conflicts.

Lawyers at affected firms who recognize potential conflicts, but nonetheless believe that they can provide a client with competent and diligent counsel, may ask the client to give their informed consent to continue the representation. *See, e.g.*, *So v. Suchanek*, 670 F.3d 1304, 1308 (D.C. Cir. 2012). But informed consent can be given only after a lawyer has "communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." Model Rules of Pro. Conduct r. 1.0(e).

Firms that have settled with the administration cannot adequately inform their clients about potential conflicts to the extent necessary to enable their clients' informed waiver under the legal ethics rules. These agreements between firms and the administration are not enforceable contracts with definite conditions. Instead, the terms and breadth of the agreements are murky, with firms and the President giving different

accounts of what actions they obligate firms to undertake.[8] Moreover, these agreements are temporary: they do not purport to grant safe harbor from future executive orders, nor do they guarantee non-action or release any future claims against the firm. Thus, these agreements are only the beginning of what promises to be a mutable ongoing relationship between each firm and the President. Firms that have settled with the President cannot plausibly represent that they will not be required to take certain actions to maintain that relationship.

Even if clients consent to representation in full recognition of this uncertainty, it is impossible for firms to accurately forecast what

---

[8] *Compare* Debra Cassens Weiss, *Paul Weiss Leader Cites Potential 'Existential Crisis' as 1 Reason for Trump Deal; Critics Include 141 Firm Alumni*, ABA J. (Mar. 24, 2025), https://www.abajournal.com/news/article/paul-weiss-leader-cites-potential-existential-crisis-as-one-reason-for-trump-deal-critics-include-141-firm-alumni ("[Paul Weiss managing partner Brad] Karp sent a copy of the agreement to firm employees that differs from [President] Trump's description…. Karp also said under the agreement, 'the administration is not dictating what matters we take on, approving our matters or anything like that.'"), *with* Roy Strom, *Trump Says He'll Enlist Big Law Dealmakers for Coal, Tariffs*, Bloomberg Law (Apr. 8, 2025), https://news.bloomberglaw.com/business-and-practice/trump-says-hell-enlist-big-law-dealmakers-for-coal-tariffs (quoting President Trump stating that he was going to "use" firms that entered into agreements with him to work with miners on leasing and other issues and to help with tariff negotiations).

actions might trigger further reprisals. The Law Firm EOs target firms that, in the President's discretionary judgment, have engaged in "conduct undermining critical American interests and priorities." *See, e.g.*, Exec. Order § 1. These orders leave open the possibility of further sanctions based on any action that the President declares to contravene any as-yet-undefined national interest, meaning practically every matter across a firm's litigation, transactional, and regulatory practices could be deemed dangerous. The Law Firm EOs thus require law firms to "predict which causes and which attorneys the President personally dislikes and then steer clear of those causes and attorneys." *Wilmer*, 784 F. Supp. 3d at 166. Under these circumstances, there is no way for lawyers to apprise their clients of the reasonably foreseeable risks to their attorney–client relationship; as long as the Law Firm EOs are enforceable, the ethical conflicts they create will likely be non-waivable under Rule 1.7(b)(1).

Again, Skadden's circumstances illustrate that concerns about potential conflicts and informed consent are grounded in reality. Skadden is currently under investigation by Senators Richard Blumenthal and Adam Schiff and Representative Jamie Raskin, who

have questioned whether Skadden's clients received adequate disclosures of conflicts in light of the firm's pro bono deals with the Trump administration.[9] The lawmakers have repeatedly requested, but have not yet received, details on the nature of Skadden's reported work for the U.S. Department of Commerce. There is significant uncertainty about the nature of the commitments firms like Skadden have made to the federal government—including, it would appear, among the firms and government actors that entered into these settlements. This uncertainty undermines the possibility of obtaining an informed conflict waiver.

C. Firms that accede to the President's demands imperil their lawyers' ability to adhere to their duty of candor.

Lawyers have an ethical duty of candor, requiring them to speak truthfully to courts, correct statements they know to be false, and disclose relevant legal authority. Model Rules of Pro. Conduct r. 3.3. The duty of

[9] *See* Press Release, Adam Schiff, U.S. Senator, *NEWS: Schiff, Blumenthal, Raskin Demand Answers from Capitulating Big Law Firms Doing Trump's Bidding* (Sep. 24, 2025), https://www.schiff.senate.gov/news/press-releases/news-schiff-blumenthal-raskin-demand-answers-from-capitulating-big-law-firms-doing-trumps-bidding.

candor does not require "an impartial exposition of the law," but it does require avoiding and correcting known falsehoods in order "to avoid … undermin[ing] the integrity of the adjudicative process." *Id*. cmt. 2. Rule 11 of the Federal Rules of Civil Procedure "embrac[es] a continuing duty of candor," meaning that lawyers may face judicial sanctions for violating this duty. *Ridder v. City of Springfield*, 109 F.3d 288, 293 (6th Cir. 1997).

Lawyers at firms that have entered into agreements with the President will face pressures that may inhibit their ability to adhere to their duty of candor. If correcting a false statement or disclosing a legal authority will be detrimental to the federal government's nebulously defined interests, lawyers will be placed in an ethical catch-22: duty-bound to speak honestly and fully to the court under threat of sanctions, on the one hand, and facing severe consequences that may imperil their firm, on the other.

II. Firms that Settle with the President to Avoid Being Targeted Could Be Perceived As Violating Federal Anti-Bribery Laws.

One goal of the Law Firm EOs is to leverage the threat of crippling punishments to induce law firms to dedicate millions of dollars' worth of free legal services to the White House's favored causes. Although firms

that enter into such agreements may lack the evil purpose required by the federal bribery statute, their agreements could nevertheless be perceived as "corruptly giv[ing], offer[ing], or promis[ing] anything of value to any public official … with intent to influence any official act." 18 U.S.C. § 201(b)(1)(A). Notwithstanding that the current Department of Justice is unlikely to investigate firms that enter into deals crafted by the President, the fact that firms are being pressured—arguably extorted—to engage in behavior that could be perceived as violating federal bribery law illustrates the magnitude of the ethical problems these orders create.

Just as the President's decision to issue executive orders that penalize certain law firms is an official act, so too is the President's decision to withhold issuing executive orders targeting other law firms. *See McDonnell v. United States*, 579 U.S. 550, 574 (2016) (holding that for purposes of construing § 201, an "official act" essentially has two components: (1) "the public official must make a decision or take an action" on (2) "something specific and focused that is 'pending' or 'may by law be brought'" before a public official). A law firm's commitment to provide valuable pro bono services to the President's preferred causes,

made "with intent to influence" the decision whether to issue or withhold an executive order targeting that firm, would appear to meet the *quid pro quo* requirement of federal bribery law.

Moreover, the term "anything of value" as used in § 201 "has consistently been given a broad meaning." *United States v. Williams*, 705 F.2d 603, 623 (2d Cir. 1983). The term is not limited to transactions involving money, goods, or services given directly to a public official—it is capacious enough to include "intangible items," *United States v. Marmolejo*, 89 F.3d 1185, 1191 (5th Cir. 1996), and donations to political or lobbying efforts favored by the government official, *see United States v. Siegelman*, 640 F.3d 1159, 1170-173 (11th Cir. 2011). In the closely related context of the Foreign Corrupt Practices Act (FCPA), which uses identical "anything of value" language, 15 U.S.C. §§ 78dd–1(a), 78dd–2(a), 78dd–3(a), the U.S. government has consistently taken the position that charitable donations qualify as a "thing of value" if those donations are "dues the [donor] was required to pay for assistance from the government official." U.S. Dep't of Just. & Enforcement Div. of the SEC, *A Resource Guide to the U.S. Foreign Corrupt Practices Act* 16 (2d ed. 2020). The law firms that have offered substantial pro bono services in

support of the President's interests could be perceived as having engaged in similar conduct: they have sought to avoid sanctions by offering substantial donations to causes chosen by a government official, in this case the President.

In the present circumstances, the Department of Justice likely would decline to prosecute law firms that offer pro bono services in exchange for avoiding the consequences of an executive order, even if that offer otherwise arguably could constitute a violation of § 201.[10] Regardless of criminal liability, however, ethical rules prohibit lawyers from engaging in conduct that could violate federal anti-bribery law. *See, e.g.*, Model Rules of Pro. Conduct r. 3.5(a) ("A lawyer shall not (a) seek to influence . . . [an] official by means prohibited by law…."); r. 8.4 ("It is professional misconduct for a lawyer to: … commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as

[10] Or perhaps not: the threat of criminal prosecution is a potent form of influence the government could exert to induce firms to continue complying with the President's demands. *Cf. United States v. Adams*, 777 F. Supp. 3d 185, 233 (S.D.N.Y. 2025) (stating that the government "extract[ing] a public official's cooperation with the administration's agenda in exchange for dropping a prosecution … would be 'clearly contrary to the public interest'" because it "violate[s] norms against using prosecutorial power for political ends" (quoting *United States v. Cowan*, 524 F.2d 504, 513 (5th Cir. 1975))).

a lawyer in other respects," to "engage in conduct that is prejudicial to the administration of justice," or to "imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law."). Allowing the Law Firm EOs to take effect would put more pressure on law firms to reach agreements with the President to avoid a similar fate, and in doing so compromise themselves criminally and ethically.

III. The President's Attempt to Redefine Legal Ethical Rules Threatens the Profession's Historic Independence and the Rule of Law.

The legal profession's independence preserves not only the attorney–client relationship but also the rule of law. "[T]he vindication of individual rights, especially as against the state, requires that lawyers be able to assert and pursue client interests free of external controls, especially controls imposed by state officials." Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. Rev. 1, 10 (1988); *see also* Model Rules of Pro. Conduct pmbl. ("An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to

practice."). The government's efforts to coerce private lawyers is inconsistent with separation of powers and federalism principles and undermines the judiciary's capacity to protect fundamental constitutional rights. For this reason, "limitations on lawyers' speech must be examined with care, as such limitations threaten not only the lawyers and their clients but also the ability of a coequal branch of government to function." *Jenner & Block*, 784 F. Supp. 3d at 98.

In America's constitutional system, it is the role of the judiciary to check the executive branch when it exceeds the bounds of its authority. Judicial review is needed to ensure that the United States remains "a government of laws, not of men." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803). *See also* The Federalist No. 47 (James Madison) ("The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."); The Federalist No. 78 (Alexander Hamilton) ("[L]iberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments."). And an independent judiciary can

exist only if there is an independent bar comprising lawyers willing and able to freely and fiercely advocate for *every* party to a dispute. *See In re McConnell*, 370 U.S. 230, 236 (1962) (describing it as "essential to a fair administration of justice that lawyers be able to make honest good-faith efforts to present their clients' cases"). As one nineteenth-century judge explained,

> An independent bar, composed of learned and honorable lawyers, is as necessary to securing an equality of right among suitors, as even an independent judiciary or a jury of twelve impartial men. The law and the courts equally recognize the value and necessity of legal services.... The assistance of counsel is indispensable to the courts in ascertaining and defining the law on the subject litigated.

In re Portsmouth Sav. Fund Soc., 19 F. Cas. 1087, 1089 (E.D. Va. 1877). In America's system of laws, the judiciary "'must trust and rely on lawyers' abilities to discharge their ethical obligations' .... [O]therwise, the adversary process, the judicial system and the legal profession itself are in grave jeopardy." *Minebea Co. v. Papsti*, 374 F. Supp. 2d 231, 237 (D.D.C. 2005) (quoting *United States v. Rhynes*, 218 F.3d 310, 320 (4th Cir. 2000)).

The importance of an independent legal profession "has been

recognized in this country since its founding era." *Perkins Coie*, 783 F. Supp. 3d at 119. Famously, in 1770 John Adams was a prominent colonial lawyer when one of the British soldiers accused of murdering colonists during the Boston Massacre asked Adams to represent him: As Adams wrote, "He wishes for Council, and can get none."[11] Adams "had no hesitation in answering that Council ought to be the very last thing that an accused person should want in a free Country" and believed that "the Bar ought … to be independent and impartial at all Times And in every Circumstance."[12] Risking his reputation and his legal practice, Adams therefore made the "singularly unpopular decision" to represent all the soldiers involved, *Perkins Coie*, 783 F. Supp. 3d at 119. As Adams explained: "I … devoted myself to endless labour and Anxiety if not to infamy and death, and that for nothing, except, what indeed was and ought to be all in all, a sense of duty."[13] For Adams, that duty was not merely to his clients; representing them

---

[11] 3 John Adams, *The Adams Papers, Diary and Autobiography of John Adams*, pt. 2, at 293 (L.H. Butterfield ed., Harvard Univ. Press 1961) *reprinted in* Nat'l Archives: Founders Online, https://founders.archives.gov/documents/Adams/01-03-02-0016-0016 [hereinafter *Adams Diary and Autobiography*].

[12] *Id.*

[13] 3 *Adams Diary and Autobiography*, *supra* note 11, at 294.

was "one of the best Pieces of Service I ever rendered my Country."[14] In other words, Adams understood a profound truth of the American legal system: it is a service to the Nation itself when lawyers represent politically unpopular clients and are willing to advance arguments disfavored by those in power.

Many attorneys throughout American history have followed Adams' example, notably lawyers fighting segregation in the South in the 1940s and 1950s. Binding Supreme Court precedent ratified the discriminatory practices pervasive throughout the South,[15] and segregation was enforced not only by state action but by an extensive network of violent white supremacists. But these lawyers put their own lives, and the lives of their families, on the line to fight against the entrenched legal regime.[16] On at least one occasion, Thurgood Marshall was almost lynched for securing acquittals for Black

---

[14] 2 *Adams Diary and Autobiography*, *supra* note 11, at 79, https://founders.archives.gov/documents/Adams/01-02-02-0003-0002-0002.

[15] *Plessy v. Ferguson*, 163 U.S. 537 (1896).

[16] Leonard S. Rubinowitz, *The Courage of Civil Rights Lawyers: Fred Gray and His Colleagues*, 67 Case Western L. Rev. 1227, 1254 (2017).

clients.[17] Arthur Shores had his home bombed several times,[18] and "[r]acists fired so many bullets through the Shores's front windows that Arthur Shores had a contractor on retainer to repair them."[19] These attorneys refused to be intimidated, facing down danger and ultimately prevailing. From his seat on the Supreme Court, then-Justice Marshall recognized that an attorney must "observe his responsibilities to the legal system, as well as to his client" for "our adversary system … to function according to design." *Geders v. United States*, 425 U.S. 80, 93 (1976) (Marshall, J., concurring).

For these reasons, the Supreme Court has rejected efforts by Congress, the Executive branch, and the states to curtail attorney independence. In the aftermath of *Brown v. Board of Education*, for example, numerous states attempted to impede the NAACP's efforts to use litigation to dismantle Jim Crow—and the Supreme Court resoundingly struck down those efforts. *See, e.g.*, *NAACP v. Alabama*, 357 U.S. 449, 466 (1958); *see also NAACP v. Button*, 371 U.S. 415, 444

---

[17] See Gilbert King, *Devil in the Grove: Thurgood Marshall, the Groveland Boys, and the Dawn of a New America* 15-19 (2012).
[18] Constance Baker Motley, *Equal Justice Under Law: An Autobiography* 123 (1998).
[19] Rubinowitz, *supra* note 16, at 1254.

(1963). Similarly, in *Velazquez*, the Court struck down a federal provision "prohibit[ing] legal representation funded by recipients of LSC moneys if the representation involves an effort to amend or otherwise challenge existing welfare law." 531 U.S. at 536-37. The Court explained that "the restriction imposed by the statute threatens severe impairment of the judicial function" because it would "sift[] out cases presenting constitutional challenges in order to insulate the Government's laws from judicial inquiry." *Id.* at 546. The law would "distort[] the legal system by altering the traditional role of the attorneys" and, ultimately, "prohibit[] speech and expression upon which courts must depend for the proper exercise of the judicial power." *Id.* at 544-45.

What the Supreme Court prevented Congress from doing by statute in *Velazquez*, the President is now attempting to achieve by executive fiat. This effort is having its intended effect. Former members of the Biden administration have said they have had trouble finding lawyers willing to represent them.[20] One former official lined up pro

[20] *See* Michael Birnbaum, *Law Firms Refuse to Represent Trump Opponents in the Wake of His Attacks*, Wash. Post (Mar. 25, 2025), https://www.washingtonpost.com/politics/2025/03/25/trump-law-firms.

bono counsel from a major law firm, but after the White House issued the executive order challenged in this case, the firm said it had discovered a conflict of interest and dropped him as a client.[21] Then, five other firms said they had conflicts, although one partner told him privately that he was dropped "because the leadership didn't want to take the risk."[22] Nonprofit advocacy groups have experienced a similar chill.[23] If lawyers are cowed from representing people and causes disliked by the President, the cases they would bring to challenge executive overreach and vindicate individual rights may not be filed, and the courts will have no opportunity to review even blatantly unlawful executive actions.

The check that an independent bar poses to executive abuses is a key reason illiberal governments around the world have attacked independent bars. Lawyers in Germany during Hitler's consolidation of power through the 1930s were punished "because of who they

---

[21] *Id.*
[22] *Id.*
[23] *See* Rachel Leingang & Dharna Noor, *Fear Spreads As Trump Targets Lawyers and Non-Profits in 'Authoritarian' Takedown*, The Guardian (Apr. 10, 2025), https://www.theguardian.com/us-news/2025/apr/10/trump-administration-authoritarian.

represented or how they conducted the representation."[24] And authoritarian governments, including in Belarus, Turkey, and Iran, have taken steps to obliterate the independence of their respective bars as part of recent power grabs.[25] Indeed, "disposing of lawyers is a step in the direction of a totalitarian form of government." *Walters v. Radiation Survivors*, 473 U.S. 305, 371 n.24 (1985) (Stevens, J., dissenting).

The Law Firm EOs have a corrosive effect on these basic rule-of-law principles, "seek[ing] to chill legal representation the administration doesn't like, thereby insulating the Executive Branch

---

[24] Cynthia Fountaine, *Complicity in the Perversion of Justice: The Role of Lawyers in Eroding the Rule of Law in the Third Reich*, 10 St. Mary's J. on Legal Malpractice & Ethics 198, 201, 226 n.113 (2020).

[25] *See* Brief of *Amici Curiae* Bar Associations in Support of Plaintiff's Motion for Summary Judgment and for Declaratory and Permanent Injunctive Relief, at 19-25, *Perkins Coie*, No. 25-CV-0716 (D.D.C. April 7, 2025); *see also, e.g.*, *Belarus: Analysis of Arbitrary Disbarments of Liudmila Kazak, Konstantin Mikhel, Maxim Konon, and Mikhail Kirilyuk*, ABA (May 19, 2021), https://www.americanbar.org/groups/human_rights/reports/belarus-arbitrary-disbarment; *Opposing Turkish Government Attacks on Lawyers*, N.Y.C. Bar (July 16, 2020), https://www.nycbar.org/blogs/opposing-turkish-government-attacks-on-lawyers; *Iran Intensifies Crackdown on Human Rights Lawyers Amid Growing Repression*, Ctr. for Hum. Rights in Iran (Jan. 13, 2025), https://iranhumanrights.org/2025/01/iran-intensifies-crackdown-on-human-rights-lawyers-amid-growing-repression.

from the judicial check fundamental to the separation of powers." *Jenner & Block*, 784 F. Supp. 3d at 88. This is no surprise: as America's own history demonstrates, the rule of law depends upon an independent judiciary, which in turn requires an independent bar.

CONCLUSION

The Law Firm EOs are a serious threat to the legal profession. However law firms respond, these orders interfere with their lawyers' ability to fulfill their ethical obligations and, in turn, threaten to undermine the adversarial system of justice and the judiciary's check on unlawful executive actions. Accordingly, *amici* respectfully request that this Court affirm the decisions below.

Dated: April 3, 2026

Respectfully submitted,

/s/ Elizabeth R. Cruikshank
Elizabeth R. Cruikshank
Counsel of Record
Kelsi Brown Corkran
Mary B. McCord
Joseph W. Mead
INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION, GEORGETOWN LAW
600 New Jersey Avenue NW
Washington, DC 20001
erc56@georgetown.edu
(202) 662-9042

/s/ Samuel J. Davis
Ruth Greenwood
Samuel J. Davis
ELECTION LAW CLINIC
HARVARD LAW SCHOOL
6 Everett Street, Suite 4105
Cambridge, MA 02138
sadavis@law.harvard.edu
(617) 496-2181

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

I certify that this document complies with Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 6,495 words, exclusive of the portions of the brief that are exempted by Circuit Rule 32(e)(1) and Federal Rule of Appellate Procedure 32(f).

I certify that this document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point roman-style Century Schoolbook font.

/s/ *Elizabeth R. Cruikshank*
Elizabeth R. Cruikshank

CERTIFICATE OF SERVICE

I certify that on April 3, 2026, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: April 3, 2026

/s/ *Elizabeth R. Cruikshank*
Elizabeth R. Cruikshank

APPENDIX A – LIST OF *AMICI*

- George M. Cohen, Brokaw Professor of Corporate Law at the University of Virginia School of Law.
- Susan P. Koniak, Professor of Law, Emerita, Boston University School of Law.
- Jonah E. Perlin, Associate Professor of Law, Legal Practice and Senior Fellow of the Center on Ethics and the Legal Profession at Georgetown University Law Center.
- Nancy B. Rapoport, UNLV Distinguished Professor & Garman Turner Gordon Professor of Law at William S. Boyd School of Law, University of Nevada, Las Vegas.
- Mitt Regan, McDevitt Professor of Jurisprudence and Director of the Center on Ethics and the Legal Profession, Georgetown University Law Center.
- Jeffrey Stempel, Doris S. and Theodore B. Lee Professor of Law at William S. Boyd School of Law, University of Nevada, Las Vegas.
- W. Bradley Wendel, Edwin H. Woodruff Professor of Law at Cornell Law School.