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Edward R. Martin Jr.
U.S. Attorney for the District of Columbia
601 D Street NW
Washington, D.C. 20579
Via email: usadc.webmaster@usdoj.gov; edward.martin@usdoj.gov

Re: First Amendment concerns and your February 3 letter to Elon Musk

Dear U.S. Attorney Martin,

We were troubled by your February 3, 2025, letter to Elon Musk posted to X in which you promised to “pursue any and all legal action against anyone who impedes your work or threatens your people” and warned that “[a]ny threats, confrontations, or other actions in any way that impact [DOGE employees’] work may break numerous laws.”

There are legally significant differences between “threats” and “confrontations, or other actions in any way that impact [DOGE employees’] work.” The former, if they meet the definition of “true threats,” are unprotected speech under the First Amendment, whereas many words and actions in the latter category—such as criticizing DOGE or its employees, suing DOGE, petitioning government officials to rein DOGE in, and even simply reporting on DOGE and its employees—are not only lawful, but protected by the First Amendment. Similarly, while “threaten[ing] [DOGE’s] people” is not protected by the First Amendment, “imped[ing] [DOGE’s] work” covers a broader (and, depending on how defined, not necessarily unprotected) range of speech.

The government can prosecute unlawful threats; “[w]hat [it] cannot do, however, is use the power of the State to punish or suppress disfavored expression.” *Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175, 188 (2024). Further, even indirect threats by government officials chill speech and may themselves violate the First Amendment. *See id.* at 189-90 (discussing, among other indicia of unconstitutional coercion, “thinly veiled threats to institute criminal proceedings”).

Additionally, the letter’s choice to single out speakers with particular viewpoints—“Antifa and BLM rioters”—as examples of who ought to be prosecuted raises the specter of viewpoint discrimination, which is also unconstitutional. *E.g., Iancu v. Brunetti*, 588 U.S. 388, 393 (2019) (“[A] core postulate of free speech law” is that “[t]he government may not discriminate against speech based on the ideas or opinions it conveys.”).

We urge you to clarify publicly that your promise to “pursue . . . legal action” is aimed at “true threats” and other conduct unprotected by the First Amendment, and that your office will enforce the law evenhandedly without regard to anyone’s political association, ideology, or viewpoint.

Sincerely,

ACLU of the District of Columbia