

# Pro Bono Publico Versus Pro Bono Presidential

*S.I. Strong\**

## ABSTRACT

*In March and April 2025, the Trump Administration issued a series of executive orders directed at various law firms that had represented clients or undertaken actions with which the President disagreed. Those executive orders imposed various sanctions capable of destroying the firms financially. The Administration also threatened numerous other law firms with similar types of executive orders.*

*Although a few law firms challenged the executive orders in court, the majority of firms targeted by the President entered into informal settlement agreements whereby the firms promised to provide between \$40 million and \$125 million worth of free “pro bono legal services” to causes supported by the President. In return, the President either revoked any sanction-containing executive orders or withheld from issuing such orders.*

*This Essay examines the propriety of these pro bono agreements from several perspectives. First, this Essay considers the voluntary nature of pro bono and examines the propriety of the executive branch coercing private lawyers to accede to particular pro bono obligations. Second, this Essay discusses the nature of pro bono activities as a means of assisting indigent individuals and considers whether presidential efforts to direct how private law firms fulfill their pro bono obligations constitute an improper privatization of the executive branch’s policy goals, particularly given presidential cuts to and curtailment of conventional public means of fulfilling those policy goals. Third, this Essay considers whether and to what extent the executive orders and settlement agreements discussed herein violate hard or soft principles of international law. The Essay concludes with brief suggestions about how to proceed.*

## TABLE OF CONTENTS

INTRODUCTION .....	2
I. PRO BONO AS A VOLUNTARY ENDEAVOR, NOT A PRESIDENTIALLY COMPELLABLE ACTIVITY .....	6
II. PRO BONO AS SERVING THE PUBLIC GOOD, NOT THE PRESIDENTIAL GOOD .....	11
III. MANDATING PRO BONO AS VIOLATING INTERNATIONAL LAW .....	17
CONCLUSION.....	19

---

\* Ph.D. (law), University of Cambridge (U.K.); D.Phil., University of Oxford (U.K.); J.D., Duke University. The author, who is qualified as an attorney in New York and Illinois and as a solicitor in England and Wales, is currently the K.H. Gyr Professor of Private International Law at Emory University School of Law. Many thanks to Philip Allen Lacovara for assistance in obtaining research materials and to Robert Bartkus, Jon Heintz, Mark Kantor, Michael Perry, Jennifer Romig, and Brad Wendel for comments on an earlier draft of this Essay. All errors are the Author’s own.

## INTRODUCTION

On March 14, 2025, the Trump Administration issued Executive Order 14,237, which claimed that law firm Paul, Weiss, Rifkind, Wharton & Garrison LLP (“Paul, Weiss”), along with other international law firms, had played an outsized role in undermining the judicial process and in the destruction of bedrock American principles. . . . [T]hey have sometimes done so on behalf of clients, pro bono, or ostensibly “for the public good”—potentially depriving those who cannot otherwise afford the benefit of top legal talent the access to justice deserved by all.<sup>1</sup>

Asserting that “[m]y Administration will no longer support taxpayer funds sponsoring such harm,” the order suspended security clearances for members of the firm, blocked access to federal employees and federal buildings (which would include access to federal judges and federal courthouses), and initiated a review of federal contracts involving Paul, Weiss.<sup>2</sup>

Within a week, Paul, Weiss settled with the Administration, citing “an unprecedented threat to our firm” that would “destroy the firm, even if we ultimately prevailed in court.”<sup>3</sup> That agreement triggered the issuance of Executive Order 14,244, which lifted the sanctions contained in Executive Order 14,237 and stated that

Paul Weiss [sic] . . . has agreed to a number of policy changes to promote equality, justice, and the principles that keep our Nation strong, including: . . . dedicating the equivalent of \$40 million in pro bono legal services during my term in office to support causes including assisting our Nation’s veterans, fairness in the justice system, and combating anti-Semitism; and other similar initiatives.<sup>4</sup>

In the weeks that followed, twenty other global law firms were threatened with punitive measures similar to those in Executive Order 14,237.<sup>5</sup> Eight of those law firms settled with the Administration before

---

<sup>1</sup> See Exec. Order. No. 14,237, 90 Fed. Reg. 13039 § 1 (Mar. 14, 2025).

<sup>2</sup> See *id.* §§ 2–3, 5.

<sup>3</sup> Letter from Brad S. Karp, Chairman, Paul, Weiss, Rifkind, Wharton & Garrison LLP, to Hon. Richard Blumenthal, Ranking Member, Senate Permanent Subcomm. on Investigations & Hon. Jamie Raskin, Ranking Member, House Comm. on the Judiciary (Apr. 14, 2025) [hereinafter Paul, Weiss Letter], <https://perma.cc/543Q-HSRW>; see also David Lat, *Brad Karp’s Email To Paul Weiss About Its Deal With The Trump Administration*, ORIGINAL JURISDICTION (Mar. 23, 2025), <https://davidlat.substack.com/p/brad-karp-firmwide-email-to-paul-weiss-about-the-trump-administration-deal> [<https://perma.cc/PXE4-DV2Z>].

<sup>4</sup> Exec. Order. No. 14,244, 90 Fed. Reg. 13685 § 1 (Mar. 21, 2025).

<sup>5</sup> See Kathryn Rubino, *Trump Sics EEOC on 20 Biglaw Firms*, ABOVE THE LAW (Mar. 17, 2025, 5:09 PM), <https://abovethelaw.com/2025/03/trump-sics-eeoc-on-20-biglaw-firms/>

executive orders were issued, reflecting a type of “anticipatory obedience”<sup>6</sup> that resulted in promises to provide nearly \$1 billion in so-called “pro bono legal services” to causes supported by the President.<sup>7</sup>

At this point, little is known about the precise nature of the promised pro bono services. The agreements do not appear to be written and the terms may not always be fully understood or agreed even as between the parties themselves.<sup>8</sup> For example, law firms that have settled with the Administration all claim that the new obligations will not change the nature of the pro bono services they provide, but Executive Order 14,244 expressly refers to “a number of policy changes” that Paul, Weiss will undertake.<sup>9</sup>

---

[<https://perma.cc/5MHS-3DJS>]; Debra Cassens Weiss, *6 Firms Resolved EEOC Probes with Pro Bono Deals, They Told State Attorneys General*, A.B.A. J. (May 13, 2025, 9:16 AM), <https://www.abajournal.com/news/article/six-law-firms-resolved-eeoc-probes-with-pro-bono-deals-they-told-state-attorneys-general> [<https://perma.cc/H2BF-MNZE>].

<sup>6</sup> “Anticipatory obedience” arises when individuals and institutions exceed or anticipate any legal restrictions in an attempt to forestall punitive action from those in power. See TIMOTHY SNYDER, *ON TYRANNY: TWENTY LESSONS FROM THE TWENTIETH CENTURY* 17–21 (2017). Commentators have expressed concern about such practices. See Courtney Bubl , *Dems Not Satisfied With BigLaw Answers on Trump Deals*, LAW360 (Apr. 22, 2025, 2:34 PM), <https://www.law360.com/pulse/articles/2328557/dems-not-satisfied-with-biglaw-answers-on-trump-deals> [<https://perma.cc/NHQ9-USZF>]; Eric Lewis, *American Law Firms are Caving Into Trump’s Bullying – But Guess Who’ll Pay the Price?*, INDEP. (Apr. 7, 2025, 12:06 PM), <https://www.independent.co.uk/voices/trump-law-firms-executive-order-bullying-b2728490.html> [<https://perma.cc/4RT8-RWY2>].

<sup>7</sup> See Sam Baker, *Law Firms Pledge Almost \$1 Billion in Free Work to Trump*, AXIOS (Apr. 12, 2025), <https://www.axios.com/2025/04/12/big-law-pro-bono-legal-work-trump> [<https://perma.cc/7TXQ-VLQE>]; Debra Cassens Weiss, *Resignations Multiply at BigLaw Firms that Made Deals with Trump*, A.B.A. J. (Apr. 16, 2025, 12:04 PM), <https://www.abajournal.com/news/article/resignations-multiply-at-biglaw-firms-that-made-deals-with-trump> [<https://perma.cc/D4HZ-H5M2>].

<sup>8</sup> See Bubl , *supra* note 6; Matt Shuham, *Trump and a Powerhouse Law Firm Are Telling Different Stories About Their Shocking Agreement*, HUFFPOST (Mar. 21, 2025, 2:10 PM), [https://www.huffpost.com/entry/paul-weiss-agreement-white-house-differences\\_n\\_67dda2cae4b00872325325f5](https://www.huffpost.com/entry/paul-weiss-agreement-white-house-differences_n_67dda2cae4b00872325325f5) [<https://perma.cc/W2QJ-BYLD>] (noting several differences, including that the Paul, Weiss memo to associates read “these initiatives” while the Administration’s version read “the Administration’s initiatives” and added “the Justice System” to the list of approved pro bono activities).

<sup>9</sup> Compare Exec. Order. No. 14,244, 90 Fed. Reg. 13685 (Mar. 21, 2025) with Paul, Weiss Letter, *supra* note 3; see also Letter from W. Neil Eggleston, Partner, Kirkland & Ellis LLP, to Hon. Richard Blumenthal, Ranking Member, Senate Permanent Subcomm. on Investigations & Hon. Jamie Raskin, Ranking Member, House Comm. on the Judiciary (Apr. 14, 2025) [hereinafter Kirkland & Ellis Letter], <https://perma.cc/2GSR-KUFE> (concerning Kirkland & Ellis settlement); Letter from Hon. Richard Blumenthal, Ranking Member, Senate Permanent Subcomm. on Investigations & Hon. Jamie Raskin, Ranking Member, House Comm. on the Judiciary, to Alden Millard, Chair of the Exec. Comm., Simpson Thacher & Bartlett LLP (Apr. 18, 2025) [hereinafter Simpson Thacher Letter], <https://perma.cc/XAD6-X3QE>; Letter from Andrew Schapiro, Partner, Quinn Emanuel Urquhart & Sullivan, LLP, to Hon. Richard Blumenthal, Ranking Member, Senate Permanent Subcomm. on Investigations & Hon. Jamie Raskin, Ranking Member, House Comm. on the Judiciary (Apr. 14, 2025)

Observers also believe that the Administration will actively monitor or control the firms' pro bono activities to ensure compliance with the President's agenda.<sup>10</sup>

Concerns also arise regarding the type of tasks that could fall within the \$1 billion of free legal services. For example, an executive order issued on April 28, 2025, suggested that the law firms' pro bono hours could be used to defend law enforcement officers from civil or criminal actions.<sup>11</sup> The President has also stated that the promised pro bono hours could be used to assist the U.S. government with the negotiation of international trade deals or help coal companies with leasing arrangements.<sup>12</sup> Taken together, these statements suggest a president who is using executive orders to threaten or actually impose punitive measures capable of coercing private law firms to act as his own personal lawyers to promote administration policies.<sup>13</sup>

---

[hereinafter Milbank Letter], <https://perma.cc/V97N-GR9C> (representing Milbank LLP); Letter from K. Lee Blalack II, Partner, O'Melveny & Myers LLP, to Hon. Richard Blumenthal, Ranking Member, Senate Permanent Subcomm. on Investigations & Hon. Jamie Raskin, Ranking Member, House Comm. on the Judiciary (Apr. 14, 2025) [hereinafter Willkie Farr Letter], <https://perma.cc/9K54-F9NU> (representing Willkie Farr & Gallagher LLP).

<sup>10</sup> See Bubl , *supra* note 6; Open Letter from Sheila Heen, Deputy Dir., Harvard Negot. Project, to Firms Under Pressure from the Trump Administration (Apr. 14, 2025), <https://leiterlawschool.typepad.com/files/negotiation-strategy-notes-for-law-firms-heen-april-12-2025.pdf> [<https://perma.cc/EE5P-EA64>] (suggesting that any effort by targeted law firms to provide pro bono legal services to individuals or institutions that the President does not approve of will be swiftly curtailed, even if those individuals and institutions fall within the categories listed).

<sup>11</sup> See Exec. Order No. 14,288, 90 Fed. Reg. 18765   2 (Apr. 28, 2025). At least one law firm has indicated it will be assisting government lawyers in defending prosecutions as a way to fulfill its pro bono obligations. See Justin Henry, *Cadwalader Looks to Fight Criminal Appeals to Meet Trump Pledge*, BLOOMBERG L. (May 21, 2025, 5:30 AM), <https://news.bloomberglaw.com/business-and-practice/cadwalader-looks-to-fight-criminal-appeals-to-meet-trump-pledge> [<https://perma.cc/C9TJ-BANH>]. The firm has also indicated that it would be amenable to extending the period for fulfilling the pro bono obligations from four years (the time of the Trump Administration) to twenty years. See *id.*

<sup>12</sup> See Bubl , *supra* note 6.

<sup>13</sup> See *Jenner & Block LLP v. U.S. Dep't of Just.*, No. 25-916, 2025 WL 1482021, at \*4 (D.D.C. May 23, 2025) (“[I]n public statements, the President has floated the prospect of deploying the firms to work on the administration’s own projects, rather than traditional pro bono causes . . . .”); *id.* at \*23 (noting settlement agreements and executive orders “strongarm firms into redirecting their uncompensated services to work the President prefers—or even perhaps to work for the President himself”); *Perkins Coie LLP v. U.S. Dep't of Just.*, No. 25-716, 2025 WL 1276857, at \*31 (D.D.C. May 2, 2025) (“What is clear is that the Trump White House has publicly touted the negotiated deals reached with various law firms, and equally clear is that those deal-making firms have been spared, or had revoked, an Executive Order targeting them.”); Scott Cummings, *There’s a Darker Reason Trump Is Going After Those Law Firms*, N.Y. TIMES (May 15, 2025), <https://www.nytimes.com/2025/05/15/opinion/trump-law-firms-attacks.html> [<https://perma.cc/F5V8-DLUK>]. Consistent with this conclusion, the Administration is also reshaping the Department of Justice—previously considered an independent, apolitical entity—to suit the President’s personal agenda. See

Not every law firm has capitulated to the President's demands. Consistent with the advice of experts who have cautioned against negotiating with this Administration,<sup>14</sup> four of the targeted law firms—Susman Godfrey, Wilmer Cutler Pickering Hale and Dorr, Jenner & Block, and Perkins Coie—have filed lawsuits challenging executive orders that imposed restrictions on them similar to those in Executive Order 14,237.<sup>15</sup>

Those lawsuits raise important constitutional and due process concerns that will be decided by the courts in due course.<sup>16</sup> However, the presidential imposition of pro bono obligations on private law firms raises other concerns of merit. This Essay considers three such issues.

Part I considers the voluntary nature of pro bono and examines the propriety of the executive branch coercing private lawyers to accede to particular pro bono obligations. Part II discusses the nature of pro bono activities as a means of assisting indigent individuals and considers whether presidential efforts to direct how private law firms fulfill their pro bono obligations constitute an improper privatization of the executive branch's policy goals, particularly given presidential cuts to and curtailment of conventional public means of fulfilling those policy goals. Part III considers whether and to what extent the executive orders discussed herein violate hard or soft principles of international law, particularly the United Nations Basic Principles on the Role of Lawyers, which expressly considers coercion of

---

Alanna Durkin Richer, *White House Abruptly Fires Career Justice Department Prosecutors in Latest Norm-Shattering Move*, AP NEWS (Mar. 31, 2025, 6:16 PM), <https://apnews.com/article/prosecutor-firings-justice-department-white-house-25226702173e7b0aa86633d6c471c37e> [https://perma.cc/7JW2-M87N].

<sup>14</sup> See Open Letter from Sheila Heen, *supra* note 10; see also Devlin Barrett, *With New Decree, Trump Seeks to Cow the Legal Profession*, N.Y. TIMES (Mar. 22, 2025), <https://www.nytimes.com/2025/03/22/us/politics/trump-memo-lawyers.html> [https://perma.cc/2VPN-XXR3].

<sup>15</sup> See Exec. Order No. 14,263, 90 Fed. Reg. 15615 (Apr. 9, 2025) (Susman Godfrey); Exec. Order No. 14,240, 90 Fed. Reg. 14549 (Mar. 27, 2025) (WilmerHale); Exec. Order No. 14,246, 90 Fed. Reg. 13997 (Mar. 25, 2025) (Jenner & Block); Exec. Order No. 14,230, 90 Fed. Reg. 11781 (Mar. 6, 2025) (Perkins Coie); Sara Merken & Mike Scarcella, *Law Firms' Deals With Trump Roil Their Staff; Deepen Industry Rifts*, REUTERS (Apr. 15, 2025, 4:35 AM), <https://www.reuters.com/legal/government/law-firms-deals-with-trump-roil-their-staff-deepen-industry-rifts-2025-04-14/> [https://perma.cc/8RFQ-CLNL].

<sup>16</sup> See Letter from Hon. Richard Blumenthal, Ranking Member, Senate Permanent Subcomm. on Investigations & Hon. Jamie Raskin, Ranking Member, House Comm. on the Judiciary, to Khalid Garousha, Glob. Senior Partner, Allen Overy Shearman Sterling LLP & Adam Hakki, Co-Chair of the Exec. Comm., Allen Overy Shearman Sterling LLP (Apr. 18, 2025) [hereinafter A&O Shearman Letter], <https://perma.cc/FQM9-39HJ>; Monica Schreiber, *Support For Law Firms Targeted By President's Executive Orders Builds, With New Amicus Briefs*, STANFORD LAW. (Apr. 10, 2025), <https://law.stanford.edu/stanford-lawyer/articles/support-for-law-firms-targeted-by-presidents-executive-orders-builds-with-new-amicus-brief/> [https://perma.cc/DKW4-6J6T] (noting lawsuits allege violations of the First, Fifth, and Sixth Amendments of the Constitution).

lawyers by state actors.<sup>17</sup> This Essay concludes by tying together the various strands of discussion and providing various thoughts regarding future actions and responses.

### I. PRO BONO AS A VOLUNTARY ENDEAVOR, NOT A PRESIDENTIALLY COMPELLABLE ACTIVITY

In the United States, legal services that are provided “pro bono publico” have traditionally been conceptualized as voluntary in nature, both with respect to the amount of time given and the type of activity undertaken.<sup>18</sup> According to the American Bar Association (ABA) Model Code of Judicial Behavior, judges are allowed to “encourage lawyers to provide pro bono publico legal services” but may not require or coerce such activities.<sup>19</sup> At most, courts may generate lists of pro bono opportunities for lawyers to consider, with some jurisdictions expressly prohibiting judges from naming specific organizations to benefit from a lawyer’s pro bono services.<sup>20</sup>

In some ways, pro bono legal services can be conceptualized as charitable acts. Unsurprisingly, the Model Code of Judicial Conduct also prohibits judges from ordering or coercing lawyers to contribute to particular

<sup>17</sup> See *Basic Principles on the Role of Lawyers*, U.N. Doc. A/CONF.144/28/Rev.1, at 118 (1990) [hereinafter *Basic Principles*], <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers> [<https://perma.cc/GTF9-T4W8>] (adopted by the 8th U.N. Congress on the Prevention of Crime and Treatment of Offenders).

<sup>18</sup> See RONALD D. ROTUNDA & JOHN S. DZIENKOWSKI, *LEGAL ETHICS – THE LAWYER’S DESKBOOK ON PROFESSIONAL RESPONSIBILITY* § 6.1-2(a)–(b) (Dec. 2024) (noting a few minor exceptions, such as the 50-hour pro bono requirement for admission to the New York bar); see also *infra* Part II (discussing the content of pro bono activities). The New York legislature is considering whether to preclude any work done “pursuant to an agreement with the federal government” from these required hours. Mike Vilensky, *NY Bill Aims to Exclude Trump Work From Bar Pro Bono Hours*, BLOOMBERG L. (May 16, 2025), <https://news.bloomberglaw.com/new-york-brief/ny-law-aims-to-block-trump-pro-bono-work-from-bar-requirements> [<https://perma.cc/2MCR-44MW>]; S. 7860, 2025–2026 Reg. Sess. (N.Y. 2025).

<sup>19</sup> MODEL CODE OF JUD. CONDUCT r. 3.7 (AM. BAR ASS’N 2020); see also ABA Standing Comm. on Ethics & Pro. Resp., Formal Opinion 470, at 1–4, 7–9 (2015) [hereinafter *Formal Opinion 470*], [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/ethics-opinions/aba-formal-opinion-470.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-470.pdf) [<https://perma.cc/8LLD-TUJ6>] (Judicial Encouragement of Pro Bono Service); ROTUNDA & DZIENKOWSKI, *supra* note 18, § 10.3-3.7(c); David L. Hudson Jr., *Pro Bono Writes: Ethics Panel Backs Judges’ Letters Asking Lawyers to Consider Community Service*, 101 A.B.A. J. 22 (2015). Although courts may require attorneys to assist indigent clients in particular cases, significant questions exist as to whether the attorneys are required to do so without compensation. See ROTUNDA & DZIENKOWSKI, *supra* note 18, § 6.2-2.

<sup>20</sup> Compare MODEL CODE OF JUD. CONDUCT r. 3.7 (AM. BAR ASS’N 2020) with *Recent Judicial Ethics Advisory Opinions*, 27 JUD. CONDUCT REP., no. 3, Fall 2005, at 2 (citing a 2005 Kentucky opinion on judicial conduct discussing judicial recommendations of pro bono organizations).

charities.<sup>21</sup> Coercion is not defined in the Model Code of Judicial Conduct, but the ABA Standing Committee on Ethics and Professional Responsibility noted in Formal Opinion 470 that “to coerce generally means to make or to get someone to perform some action by using force or threats.”<sup>22</sup> As a result, judges should “avoid actions that risk that ‘the person solicited would feel obligated to respond favorably.’”<sup>23</sup>

Determinations about what constitutes judicial coercion are reviewed via a “totality of the facts” analysis, using a reasonable person standard.<sup>24</sup> In Formal Opinion 470, the Standing Committee concluded that it was not improper for a state supreme court judge to sign a letter that had been printed on the judge’s stationery and sent out by the unified state bar association to all lawyers licensed in the state encouraging those lawyers to provide pro bono legal services to persons in need.<sup>25</sup> The letter did not name individual organizations that could benefit from pro bono services but instead indicated that interested persons should contact the state bar association to learn about specific volunteer opportunities.<sup>26</sup>

Because the letter was not directed to any one person and instead reflected general encouragement rather than specific direction, the Standing Committee found the letter to be noncoercive.<sup>27</sup> The facts in Formal Opinion 470 differ significantly from those involving Paul, Weiss and other law firms, where the President is directing specific law firms to undertake specific types of pro bono activities in order to avoid potentially firm-ending sanctions.<sup>28</sup>

Presidents are not judges and are therefore not subject to the Model Code of Judicial Behavior. However, the Model Code could become relevant if the Administration ever sought to enforce particular executive orders or settlement agreements regarding the provision of pro bono services.<sup>29</sup>

---

<sup>21</sup> See ROTUNDA & DZIENKOWSKI, *supra* note 18, § 10.3-3.7(d). Indeed, judges may not engage in any behavior, including but not limited to coercive behavior, that would give the appearance of abusing the prestige of the office. See MODEL CODE OF JUD. CONDUCT r. 3.7 cmt. 5 (AM. BAR ASS’N 2020).

<sup>22</sup> Formal Opinion 470, *supra* note 19, at 7.

<sup>23</sup> *Id.* (quoting MODEL CODE OF JUD. CONDUCT r. 3.1 cmt. 4).

<sup>24</sup> Formal Opinion 470, *supra* note 19, at 7; MODEL CODE OF JUD. CONDUCT r. 3.1(d) (AM. BAR ASS’N 2020).

<sup>25</sup> See Formal Opinion 470, *supra* note 19, at 10.

<sup>26</sup> See *id.* at 9.

<sup>27</sup> See *id.* at 9–10.

<sup>28</sup> See Paul, Weiss Letter, *supra* note 3, at 2 (“[W]e immediately understood that the effects of the executive order would destroy the firm, even if we ultimately prevailed in court.”).

<sup>29</sup> See Open Letter from Sheila Heen, *supra* note 10, at 2. The unwritten and contested status of the settlement agreements makes enforcement both problematic and likely. See Perkins Coie LLP v. U.S. Dep’t of Just., No. 25-716, 2025 WL 1276857, at \*2 n.3, 31 (“[T]he

Although the easiest way for judges to refuse enforcement of the pro bono obligations might be pursuant to rules prohibiting the enforcement of contracts for personal services<sup>30</sup> or of settlements that have been coerced, using definitions of coercion or duress found outside the Model Code of Judicial Behavior,<sup>31</sup> judges could also refuse to enforce the pro bono obligations because the Model Code of Judicial Behavior prohibits judges from compelling lawyers to engage in pro bono activities.<sup>32</sup> This argument is strengthened by the fact that judges must adhere to ethical rules regulating judicial conduct at all times.<sup>33</sup> Indeed, as a matter of public policy, judges are required to consider actions that may affect the actual or perceived fairness or legitimacy of the justice system.<sup>34</sup>

Proponents of the President's actions may claim that separation of powers concerns preclude the application of judicial standards to the behavior of the executive branch. However, separation of powers concerns

---

publicized deal terms appear only to forestall, rather than eliminate, the threat of being targeted in an Executive Order.”); *see also supra* notes 8–9 and accompanying text. One way the President might attempt to enforce his understanding of the pro bono obligations would be to issue an executive order and then seek to have that order enforced.

<sup>30</sup> *See* Kimberly D. Krawiec & Nathan B. Oman, *The Case for Specific Performance of Personal Service Contracts*, 110 IOWA L. REV. 751, 752 (2025); *see also* Letter from Dave Min, Member of Cong., et al., to Brad S. Karp, Managing Partner, Paul, Weiss, Rifkind, Wharton & Garrison LLP 1 (Apr. 24, 2025) [hereinafter Min Letter], <https://min.house.gov/sites/evo-subsites/min.house.gov/files/evo-media-document/04.24.25-letters-to-law-firms-on-trump-administration-agreements-all.pdf> [https://perma.cc/SDF2-WHHU] (enclosing ten identical letters to different law firms, including Skadden, Arps, Slate, Meagher & Flom LLP; Willkie Farr & Gallagher LLP; Milbank LLP; Allen Overy Shearman Sterling LLP; Kirkland & Ellis LLP; Latham & Watkins LLP; Simpson Thacher & Bartlett LLP; and Cadwalader, Wickersham & Taft LLP, in addition to Paul, Weiss, and requesting a response by May 8, 2025).

<sup>31</sup> *See* Kothe v. Smith, 771 F.2d 667, 669 (2d Cir. 1985) (noting “pressure tactics to coerce settlement are not permissible”); Nancy A. Welsh, *Making Deals in Court-Connected Mediation: What’s Justice Got to Do With It?*, 79 WASH. U. L.Q. 787, 830 (2001).

<sup>32</sup> *See* MODEL CODE OF JUD. CONDUCT r. 1.3 (AM. BAR ASS’N 2020).

<sup>33</sup> *See id.* r. 1.1.

<sup>34</sup> *See* Demmuth v. Wis. Jud. Conf., 480 N.W.2d 502, 508 (Wis. 1992) (discussing “the public policy of maintaining a fair judicial system and public confidence in that system”) (internal citations omitted); U.N. Secretary-General, *Independence of Judges and Lawyers*, U.N. Doc. A/71/348\* ¶ 32 (Aug. 22, 2016) [hereinafter Report From Special Rapporteur Pinto] (noting the need for lawyers to “be careful not to compromise their professional standards to please their clients, the court or third parties”); Brandon Kain & Douglas T. Yoshida, *The Doctrine of Public Policy in Canadian Contract Law*, in ANNUAL REVIEW OF CIVIL LITIGATION 1, 15, 20 (Todd L. Archibald & Randall Scott Echlin eds., 2007) (distinguishing between the contract doctrines of statutory illegality, common law illegality, and public policy and discussing public policy injuries to the Canadian justice system); Allan D. Sobel, *President’s Report: Reflections on the Retreat*, 89 JUDICATURE 245, 245 (Mar.–Apr. 2006) (noting efforts of judges and others to “further[] public policies to enhance the fairness and accuracy of the nation’s judicial system”).

can also be used to demonstrate the impropriety of using an executive order to impose pro bono obligations on private law firms.<sup>35</sup>

The executive orders and settlements under discussion here do not indicate why the President believed he was capable of directing the pro bono efforts of various law firms or of regulating private attorneys in the first place.<sup>36</sup> One possibility is that he believed this was an area where the executive shared power with another branch of government, perhaps because the Attorney General is part of the executive branch.<sup>37</sup> Of course, the Attorney General is not a general who oversees the legal profession as a whole.<sup>38</sup> Even if that were the case, “[i]n areas of shared power, one branch may not exercise power in a manner that will unduly burden or substantially interfere with another branch’s essential role and powers.”<sup>39</sup> In particular, the executive branch is prohibited from undertaking actions against lawyers that purport to be disciplinary in nature.<sup>40</sup>

Although the issue is seldom considered explicitly by courts or commentators, lawyers are best characterized as part of the judicial rather

---

<sup>35</sup> See M. Elizabeth Magill, *The Real Separation in Separation of Powers Law*, 86 VA. L. REV. 1127, 1130 (2000) (“[S]eparation of powers is a way to prevent a single institution of government from accumulating excessive political power; the way to achieve that objective is to disperse the three governmental powers . . . among different institutions and to equip each department with select powers to protect itself and to police the other departments.”).

<sup>36</sup> Some insights may be gleaned from government submissions in the constitutional actions brought by four law firms, but those analyses do not closely track the issues under discussion in this Essay. See, e.g., Def. Mem. In Support of Motion to Dismiss and for Expedited Judgment, *Perkins Coie LLP v. U.S. Dep’t of Just.*, No. 25-716, 2025 WL 1276857 (D.D.C. Apr. 2, 2025), ECF No. 43.

<sup>37</sup> 28 U.S.C. §§ 501, 503 (describing duties, powers, and limitations of the U.S. Attorney General within the executive branch). Expert declarations by law professors specializing in professional ethics also shed light on this issue. See Declaration of Prof. Bruce A. Green at 3, *Perkins Coie LLP v. U.S. Dep’t of Just.*, No. 25-716, 2025 WL 1276857 (D.D.C. Mar. 10, 2025), ECF 2-3, (noting the responsibility for regulatory lawyer behavior lies primarily with the judiciary).

<sup>38</sup> The President has frequently referred to “his generals,” whom he believes are under his direct instruction. See Jeffrey Goldberg, *Trump: “I Need the Kind of Generals Hitler Had”*, ATLANTIC (Oct. 22, 2024), <https://www.theatlantic.com/politics/archive/2024/10/trump-military-generals-hitler/680327/> [<https://perma.cc/D9KA-C3QZ>].

<sup>39</sup> *Demmith*, 480 N.W.2d at 508 (writing in the context of the Wisconsin constitution); see also *Loving v. United States*, 517 U.S. 748, 757 (1996) (“Even when a branch does not arrogate power to itself, moreover, the separation-of-powers doctrine requires that a branch not impair another in the performance of its constitutional duties.”).

<sup>40</sup> See, e.g., *Randall v. Brigham*, 74 U.S. (7 Wall.) 523, 535 (1869) (“Both the admission and the removal of attorneys are judicial acts.”); see also Report of the Special Rapporteur on the Independence of Judges and Lawyers, Diego García-Sayán, U.N. Doc. A/HRC/50/36 ¶ 117 (Apr. 22, 2022) [hereinafter Report of Rapporteur García-Sayán]; U.N. Secretary-General, *Independence of Judges and Lawyers*, U.N. Doc. A/75/172 ¶¶ 24, 31 (July 17, 2020) [hereinafter Note Regarding Special Rapporteur Report].

than executive branch.<sup>41</sup> For example, lawyers are frequently referred to as officers of the court,<sup>42</sup> with U.S. Supreme Court Chief Justice Burger noting that “[t]he concept of a lawyer as an officer of the court” makes them “part of the official mechanism of justice in the sense of other court officers, including the judge, albeit with different duties.”<sup>43</sup> Furthermore, courts are the only body capable of calling attorneys to the bar,<sup>44</sup> with judges being required to report any misconduct by lawyers to the appropriate disciplinary body.<sup>45</sup>

The executive branch does not share in any of these functions and—until these executive orders were issued—was assumed to have no power over private attorneys. Indeed, concerns about the independence of private law firms are at the heart of the constitutional claims brought by Susman

---

<sup>41</sup> See Report From Special Rapporteur, *supra* note 34, ¶ 15; U.N. Secretary-General, *Independence of Judges and Lawyers*, ¶ 12, U.N. Doc. A/64/181 (July 28, 2009) [hereinafter Note on Independence of Judges and Lawyers] (“Lawyers are not expected to be impartial in the manner of judges yet they must be as free as judges from external pressures and interference.”); David McGowan, *Law Firm Executive Orders and the Courts* 1–2 (San Diego Legal Studies Paper No. 25-026, 2025), <https://ssrn.com/abstract=5236281> [<https://perma.cc/MEA7-PC3G>]. Indeed, the House Committee on the Judiciary is directly involved in investigating the propriety of the executive orders and settlement agreements at issue in this Essay. See Letter from Hon. Richard Blumenthal, Ranking Member, Senate Permanent Subcomm. on Investigations & Hon. Jamie Raskin, Ranking Member, House Comm. on the Judiciary, to Patrick T. Quinn, Managing Partner, Cadwalader, Wickersham & Taft LLP (Apr. 18, 2025) [hereinafter Cadwalader Letter], <https://perma.cc/N2C8-YAW9>; A&O Shearman Letter, *supra* note 16; Letter from Hon. Richard Blumenthal, Ranking Member, Senate Permanent Subcomm. on Investigations & Hon. Jamie Raskin, Ranking Member, House Comm. on the Judiciary, to Richard M. Trobman, Chair & Managing Partner, Latham & Watkins LLP (Apr. 18, 2025) [hereinafter Latham Letter], <https://perma.cc/2WPX-KS6E>; Letter from Hon. Richard Blumenthal, Ranking Member, Senate Permanent Subcomm. on Investigations & Hon. Jamie Raskin, Ranking Member, House Comm. on the Judiciary to Jon A. Ballis, Chairman, Kirkland & Ellis LLP (Apr. 18, 2025) [hereinafter Kirkland & Ellis Letter II], <https://perma.cc/HR2X-AGNF>; see also *supra* note 9 (compiling letters concerning settlements on pro bono).

<sup>42</sup> See, e.g., Eugene R. Gaetke, *Lawyers as Officers of the Court*, 42 VAND. L. REV. 39, 45, 48, 74, 83–84 (1989); Blewett Lee, *The Constitutional Power of the Courts over Admission to the Bar*, 13 HARV. L. REV. 233, 240 (1899) (“Since attorneys are officers and members of the courts, the Legislature cannot deprive the courts of discretion as to whom they shall admit.”).

<sup>43</sup> *In re Griffiths*, 413 U.S. 717, 731 (1973) (Burger, C.J., dissenting); see also Deborah M. Hussey Freeland, *What Is a Lawyer? A Reconstruction of the Lawyer as an Officer of the Court*, 31 ST. LOUIS U. PUB. L. REV. 425, 433–36 (2012).

<sup>44</sup> See Freeland, *supra* note 43, at 441 (“Thus, a person can only materialize as a lawyer if a court appoints her to the bar as a functionary in the administration of law or justice.”); Lee, *supra* note 42, at 240.

<sup>45</sup> See MODEL RULES OF JUD. CONDUCT r. 2.15 (AM. BAR ASS’N 2020).

Godfrey, Wilmer Cutler Pickering Hale and Dorr, Jenner & Block, and Perkins Coie in response to the executive orders directed at them.<sup>46</sup>

Individual states—most notably New York—have also taken note of these settlement agreements. In May 2025, a bill was introduced to the New York State Senate proposing that free legal work “performed pursuant to an agreement with the federal government” be exempted from the fifty hours of pro bono services that candidates must complete before admission to the New York bar.<sup>47</sup> According to the bill’s sponsor, Assemblyman Micah Lasher, the statute “aims to send a clear message that bending the knee is never the right answer when dealing with fascists, and that we need New York’s lawyers to be champions, always, for the rule of law.”<sup>48</sup>

Soft law also supports the proposition that the executive branch has no power over private lawyers. For example, the United Nations Basic Principles on the Role of Lawyers recognize that “[c]odes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation,” suggesting that the executive branch has no role to play in establishing pro bono obligations.<sup>49</sup> Similarly, the Special Rapporteur on the Independence of Judges and Lawyers has explicitly noted that lawyers must be “guaranteed independence from State authorities” and should “be free from any external pressure and interference.”<sup>50</sup> The only legal systems that permit political interference with the work of private lawyers are autocracies operating in contravention to the rule of law.<sup>51</sup>

## II. PRO BONO AS SERVING THE PUBLIC GOOD, NOT THE PRESIDENTIAL GOOD

Another way of assessing the propriety of these pro bono obligations is to consider the essential nature of pro bono services. According to Executive

---

<sup>46</sup> See, e.g., Daniel Barnes, *Judge Strikes Down Trump Executive Order Punishing Prominent Law Firm*, POLITICO (May 2, 2025, 8:05 PM), <https://www.politico.com/news/2025/05/02/trump-law-firms-executive-00324973> [<https://perma.cc/F5Q2-KF4N>]; see also *Am. Bar Ass’n v. Exec. Off. of the President*, No. 25-CV-01888 (D.D.C. June 16, 2025).

<sup>47</sup> See Vilensky, *supra* note 18; S. 7860, 2025–2026 Reg. Sess. (N.Y. 2025).

<sup>48</sup> Vilensky, *supra* note 18; see also S. 7860, 2025–2026 Reg. Sess. (N.Y. 2025) (“The purpose of this bill is to ensure that New York state does not recognize pro bono work resulting from the Trump Administration’s unlawful extortion of private law firms and attack on the practice of law.”).

<sup>49</sup> See Basic Principles, *supra* note 17, art. 26; Note on Independence of Judges and Lawyers, *supra* note 41, ¶¶ 53, 55.

<sup>50</sup> Report From Special Rapporteur, *supra* note 34, ¶¶ 31–32; see also *Perkins Coie LLP v. U.S. Dep’t of Just.*, No. 25-716, 2025 WL 1276857, at \*1 (D.D.C. May 2, 2025).

<sup>51</sup> See Margaret L. Satterthwaite, Katarina Sydow & Ben Polk, *Unchecking Power and Capturing Courts: How Autocratization Erodes Independent Judicial Systems*, 76 RUTGERS U. L. REV. 1147, 1167, 1170–73, 1177–79 (2024); see also discussion *infra* Conclusion.

Order 14,237, pro bono services need to be offered to anyone “who cannot otherwise afford the benefit of top legal talent.”<sup>52</sup> In this, the President is of course wrong. Recipients of pro bono services are not entitled to “top legal talent” but only to competent legal talent.<sup>53</sup>

Executive Order 14,244 subsequently characterizes pro bono services very specifically as relating to “causes including assisting our Nation’s veterans, fairness in the justice system, and combating anti-Semitism; and other similar initiatives.”<sup>54</sup> While this statement is relatively vague, the President has subsequently issued an executive order indicating that pro bono hours can be used to defend law enforcement officers in civil or criminal actions.<sup>55</sup> The President has also suggested that targeted law firms can complete their pro bono obligations by helping the federal government negotiate international trade deals and assist coal companies with leasing arrangements.<sup>56</sup>

Because the conception of pro bono can vary by state, it is useful to tie this discussion to the law of a particular jurisdiction to ensure a sufficiently specific analysis.<sup>57</sup> Under a conflict of laws analysis, New York would appear to have the closest connection to these Executive Orders because most of the law firms involved in the resulting pro bono settlement agreements are headquartered in New York.<sup>58</sup> The next best alternative would likely be Washington, D.C., which is where the President and the federal government are located. However, the definition of pro bono activities applicable to D.C. lawyers does not vary significantly from the definition applicable to New York lawyers, so the analysis herein will focus on New York standards.<sup>59</sup>

---

<sup>52</sup> Exec. Order No. 14,237, 90 Fed. Reg. 13039 § 1 (Mar. 14, 2025).

<sup>53</sup> See MODEL RULES OF PRO. CONDUCT r. 1.1 (AM. BAR ASS’N 2020).

<sup>54</sup> Exec. Order No. 14,244, 90 Fed. Reg. 13685 § 1 (Mar. 21, 2025).

<sup>55</sup> See Exec. Order No. 14,288, 90 Fed. Reg. 18765 § 2 (Apr. 28, 2025).

<sup>56</sup> Bubl , *supra* note 6.

<sup>57</sup> There may also be differences in how lawyers conceptualize pro bono in practice as opposed to the definition contained in relevant ethical rules. Of course, the language of the rules would prevail in any contested proceeding.

<sup>58</sup> See Baker, *supra* note 7 (listing law firms that have agreed to provide pro bono services); *New York’s Top Law Firms*, CHAMBERS & PARTNERS, <https://www.chambers-associate.com/law-firms/new-yorks-top-law-firms> [<https://perma.cc/KFG6-8RY3>] (ranking highly the settling firms in the New York legal market). Every state has drafted its rules of professional responsibility slightly differently. The ABA Model Rules of Professional Conduct do emphasize service to persons of limited means, albeit not as clearly as the New York Rules of Professional Conduct. See MODEL RULES OF PRO. CONDUCT r. 6.1 (AM. BAR ASS’N 2019).

<sup>59</sup> The Washington, D.C. Rules of Professional Conduct similarly emphasize providing services to poor individuals. See RULES OF PRO. CONDUCT r. 6.1 (D.C. BAR ASS’N 2025) (“A lawyer should participate in serving those persons, or groups of persons, who are unable to

According to the New York Rules of Professional Conduct, lawyers should strive “to provide pro bono legal services to benefit poor persons.”<sup>60</sup> Poor persons are defined as those “who qualify for participation in programs funded by the Legal Services Corporation” and those whose financial status is near that level and cannot afford legal services.<sup>61</sup>

New York has decided to focus on the poor because the poor’s legal problems “often involve areas of basic need” and various studies have shown “[t]he vast unmet legal needs of the poor in New York.”<sup>62</sup> As a result, voluntary pro bono legal services in New York are exclusively defined as:

- (1) professional services rendered in civil matters, and in those criminal matters for which the government is not obliged to provide funds for legal representation, to persons who are financially unable to compensate counsel;
- (2) activities related to improving the administration of justice by simplifying the legal process for, or increasing the availability and quality of legal services to, poor persons; and
- (3) professional services to charitable, religious, civic and educational organizations in matters designed predominantly to address the needs of poor persons.<sup>63</sup>

These standards bear little resemblance to the pro bono obligations contained in Executive Order 14,244.<sup>64</sup> Whereas New York’s rule 6.1 focuses on the needs of poor people,<sup>65</sup> Executive Order 14,244 focuses on “causes including assisting our Nation’s veterans, fairness in the justice system, and combating anti-Semitism; and other similar initiatives.”<sup>66</sup> Executive Order 14,237 could ostensibly be read to address the needs of indigent individuals with its reference to “those who cannot otherwise afford the benefit of top legal talent the access to justice deserved by all,”<sup>67</sup> but that order was expressly revoked by Executive Order 14,244.<sup>68</sup> Furthermore,

---

pay all or a portion of reasonable attorney’s fees or who are otherwise unable to obtain counsel.”).

<sup>60</sup> RULES OF PRO. CONDUCT r. 6.1 (N.Y. BAR ASS’N 2022); ROY D. SIMON JR., SIMON’S NEW YORK RULES OF PROFESSIONAL CONDUCT ANNOTATED, Rule 6.1 (2024).

<sup>61</sup> RULES OF PRO. CONDUCT r. 6.1 cmt. 3 (N.Y. BAR ASS’N 2022).

<sup>62</sup> *Id.* r. 6.1 cmt. 1.

<sup>63</sup> *Id.* r. 6.1(b).

<sup>64</sup> *See* Exec. Order. No. 14,244, 90 Fed. Reg. 13685 § 1 (Mar. 21, 2025); Bubl , *supra* note 6.

<sup>65</sup> *See supra* notes 60–63 and accompanying text.

<sup>66</sup> Exec. Order No. 14,244, 90 Fed. Reg. 13685 § 1 (Mar. 21, 2025).

<sup>67</sup> Exec. Order No. 14,237, 90 Fed. Reg. 13039 § 1 (Mar. 14, 2025).

<sup>68</sup> *See* Exec. Order No. 14,244, 90 Fed. Reg. 13685 § 2 (Mar. 21, 2025).

there are many middle- and even high-income individuals and institutions that cannot afford to hire lawyers working at large international law firms.<sup>69</sup>

Another problem is that no visible connection exists between poverty and the pro bono obligations enunciated in Executive Order 14,244 and alluded to in subsequent Presidential statements unless one considers the effects of the current Administration's policies.<sup>70</sup> For example, the greatest threat to veterans' wellbeing comes from the Administration's cuts to the Veterans Administration system of health care and benefits.<sup>71</sup> Similarly, poverty among Jewish individuals will likely increase as a result of anti-Semitic violence and discrimination, which is not only on the rise<sup>72</sup> but which is likely to continue, given the Administration's decision to order the Civil Rights Division of the Department of Justice—the primary means of combating all forms of discrimination, including anti-Semitism—to cease pursuing existing lawsuits or initiating new ones.<sup>73</sup>

Taken together, these elements suggests that the current Administration may be coercing private law firms to provide free legal advice not only to causes that promote the President's policy aims but also to replace work that has, up until now, been undertaken by public entities. This conclusion is supported by Executive Order 14,288, which suggests that pro bono hours should be used to defend law enforcement officers from civil and criminal actions,<sup>74</sup> and by Presidential statements that lawyers in targeted firms could fulfill their promised pro bono obligations by negotiating international trade agreements—both tasks that government lawyers typically undertake.<sup>75</sup> This

---

<sup>69</sup> See Staci Zaretsky, *The BigLaw Firms With the Highest Hourly Rates (2024)*, ABOVE THE LAW (Nov. 24, 2024, 1:07 PM), <https://abovethelaw.com/2024/11/the-biglaw-firms-with-the-highest-hourly-rates-2024/> [https://perma.cc/XQ2J-KYH9] (noting some partners at global law firms, including some of the law firms targeted by the President, charge more than \$2,000 per hour).

<sup>70</sup> See Exec. Order No. 14,244, 90 Fed. Reg. 13685 (Mar. 21, 2025); Bubl , *supra* note 6.

<sup>71</sup> See Stephen Groves, *Veterans Becoming Face of Trump's Government Cuts and Democrats' Resistance*, PBS NEWS HOUR (Mar. 24, 2025, 1:05 PM), <https://www.pbs.org/newshour/politics/veterans-becoming-face-of-trumps-government-cuts-and-democrats-resistance> [https://perma.cc/4BKT-RFNW].

<sup>72</sup> See JANE EISNER, *JEWISH POVERTY IN THE MEDIA* (2019), <https://cdn.fedweb.org/fed-42/2892/paper-3-jewishpovertyinthemedia.pdf> [https://perma.cc/TJ7P-DMXS].

<sup>73</sup> See Civil Rights Division, Department of Justice, <https://www.justice.gov/crt>; Sarah N. Lynch, *US Justice Department Freezes Its Civil Rights Litigation*, REUTERS (Jan. 22, 2025, 8:27 PM), <https://www.reuters.com/world/us/us-justice-dept-asks-civil-rights-division-halt-biden-era-litigation-washington-2025-01-22/> [https://perma.cc/TF84-J6X8]. Future hires in the Civil Rights Division appear poised to follow the President's bidding rather than focus on existing cases of discrimination. See Richer, *supra* note 13.

<sup>74</sup> See Exec. Order No. 14,288, 90 Fed. Reg. 18765 (Apr. 28, 2025).

<sup>75</sup> See Bubl , *supra* note 6. In the past, the United States has been the most vociferous objector to the ability of private lawyers to be involved with intergovernmental trade

privatization of public functions is highly problematic, particularly since these are not among the duties that a president may delegate to private individuals.<sup>76</sup>

At this point, it is difficult to know who is actually benefitting from the nearly \$1 billion of promised free legal services. So far, the only known entity to seek the assistance of law firms targeted by the Administration is the Oversight Project.<sup>77</sup> This organization is part of the Heritage Foundation, a conservative advocacy group with more than \$100 million in annual revenue.<sup>78</sup> Although the annual revenue of the Oversight Project itself was not publicly available at the time of writing, the amount of its request—\$10 million—was.<sup>79</sup> Because the Oversight Project focuses on transparency in government, it is neither a “poor person” nor an organization meant to assist poor persons.<sup>80</sup> As a result, any legal services provided to it do not qualify as “voluntary pro bono” under the New York Rules of Professional Conduct.<sup>81</sup> It also appears that individual veterans have sought the assistance from law firms that have agreed to provide these types of pro bono legal services.<sup>82</sup> However, at least some of these requests relate to matters outside the firm’s practice areas, raising questions about whether the firms are even competent to provide advice on those issues.<sup>83</sup>

The above analysis suggests that the pro bono obligations embedded in various executive orders and settlement agreements between the Administration and private law firms are not meant to promote the public

---

negotiations. See Peter D. Erenhaft, *The Role of Lawyers in the World Trade Organization*, 34 VAND. J. TRANSNAT’L L. 963, 973–74 (2001).

<sup>76</sup> See 3 U.S.C. § 301 (2025).

<sup>77</sup> See Debra Cassens Weiss, *Group Formed by Heritage Foundation Asks BigLaw Firms to Provide Pro Bono Help*, A.B.A. J. (Apr. 3, 2025), <https://www.abajournal.com/news/article/group-formed-by-the-heritage-foundation-asks-biglaw-firms-to-provide-pro-bono-help> [https://perma.cc/65M5-VHK2].

<sup>78</sup> See *id.*; see also *Heritage Foundation, PRO PUBLICA*, <https://projects.propublica.org/nonprofits/organizations/237327730> [https://perma.cc/99NT-4LY8]; *The Oversight Project, INFLUENCE WATCH*, <https://www.influencewatch.org/non-profit/the-oversight-project/> [https://perma.cc/5MTV-VVDG].

<sup>79</sup> See Weiss, *supra* note 77.

<sup>80</sup> See RULES OF PRO. CONDUCT r. 6.1 cmt. 3 (N.Y. BAR ASS’N 2022); *The Oversight Project, HERITAGE FOUND.*, <https://www.heritage.org/oversight> [https://perma.cc/M358-3AWG].

<sup>81</sup> See RULES OF PRO. CONDUCT r. 6.1(b) (N.Y. BAR ASS’N 2022).

<sup>82</sup> See Jessica Silver-Greenberg, Matthew Goldstein, Maggie Haberman & Michael S. Schmidt, *Trump Allies Look to Benefit From Pro Bono Promises by Elite Law Firms*, N.Y. TIMES (May 25, 2025), <https://www.nytimes.com/2025/05/25/business/trump-law-firms-pro-bono.html> [https://perma.cc/2F4Z-BPVP].

<sup>83</sup> See *id.* (discussing a veteran who sought advice regarding his divorce, even though the firm in question—Skadden Arps—is a corporate law firm that does not practice family law). Questions also arise as to whether representing individuals will create problematic conflicts of interest with the firm’s core client base.

good. Instead, the obligations appear to be intended to require world-class lawyers to promote the political good of this Administration and remedy various social ills that have arisen or will soon arise as a result of presidential funding cuts.<sup>84</sup>

The analysis does not stop there. Because the legal services at issue fall outside the standard definition of pro bono, the question arises whether the free legal services constitute some type of benefit that is being impermissibly provided to the President or his Administration. This raises an issue under the Emoluments Clauses of the U.S. Constitution, which prohibit presidents from accepting any “emolument” while in office.<sup>85</sup>

Some dispute exists about the breadth of the term “emolument,” but courts have defined the term in a flexible manner to include any profit, gain, benefit, or advantage.<sup>86</sup> Regulatory benefits and advantageous policy changes fall within this definition as well.<sup>87</sup> Applying that broad definition to the situation here suggests that the provision of nearly \$1 billion in free legal services to causes and organizations proposed by the President may constitute emoluments to the extent those free legal services allow the President to (1) outsource policy analysis to private organizations like the Oversight Project and its parent entity, the Heritage Foundation,<sup>88</sup> or

---

<sup>84</sup> This penchant for cutting even the most necessary of government services can be seen in the transformation of the U.S. Digital Service—a little-known unit based within the executive branch—into the Department of Government Efficiency (DOGE), which has subsequently been used to wreak havoc, largely unchecked, across the government. See Stephen Fowler, *With a New Home for DOGE in the White House, Here's What You Need to Know*, NPR (Jan. 29, 2025), <https://www.npr.org/2025/01/29/nx-s1-5270893/doge-united-states-digital-service-elon-musk-usds-trump-white-house-eop-omb> [<https://perma.cc/HB36-ZNXW>]; Tim Reid, *Explainer: What is Musk's DOGE, the Secretive Unit Operating in the Public's Eye?*, REUTERS (Mar. 24, 2025, 6:20 AM), <https://www.reuters.com/world/us/what-is-elon-musks-doge-how-much-money-has-it-saved-us-taxpayers-2025-03-04/> [<https://perma.cc/BX2C-LKA3>].

<sup>85</sup> U.S. CONST. art. I, § 9, cl. 8; *id.* art. II, § 1, cl. 7. An argument could be made that the deals in question come close to violating provisions on bribery, although the remedy there is impeachment. See *id.* art. II, § 4.

<sup>86</sup> See *Blumenthal v. Trump*, 373 F. Supp. 3d 191, 201, 208 (D.D.C. 2019), *vacated as moot*, 949 F.3d 14 (D.C. Cir. 2020); *District of Columbia v. Trump*, 315 F. Supp. 3d 875, 878 (D. Md. 2018), *vacated as moot*, 838 Fed. App'x 789 (4th Cir. 2021) (mem.); John Mikhail, *The 2018 Seegers Lecture: Emoluments and President Trump*, 53 VAL. U. L. REV. 631, 657, 666 (2019) (discussing the broad definition of “emolument” at the founding). Indeed, the term may be so broad as to include anything of value from any kind of exchange. See *District of Columbia*, 315 F. Supp. 3d at 886, 889; see also *Perkins Coie LLP v. U.S. Dep't of Just.*, No. 25-716, 2025 WL 1276857, at \*31 (suggesting the settlement agreements contain something of value to the President) (D.D.C. May 2, 2025).

<sup>87</sup> See *Blumenthal*, 373 F. Supp. 3d at 195, 212 (discussing regulatory and beneficial policy changes made by foreign nations to the President's advantage); see also *Hoyt v. United States*, 51 U.S. (10 How.) 109, 135 (1850) (defining emoluments as “embracing every species of compensation or pecuniary profit derived from a discharge of the duties of the office.”).

<sup>88</sup> See *supra* notes 77–80 and accompanying text.

(2) replace public services (such as those relating to the Veterans Administration, the Civil Rights Division of the Department of Justice, the defense of law enforcement officers from civil or criminal lawsuits, or the negotiation of trade deals and coal leases) that have been frozen or cut by the President.<sup>89</sup>

The pro bono obligations are particularly problematic because they have clearly been offered in an attempt to curry favor with the executive branch and avoid punitive actions capable of destroying an entire law firm.<sup>90</sup> This type of quid pro quo is not only prohibited under the anticorruption functions of the Emoluments Clauses but is also barred under the Constitution's antibribery provisions.<sup>91</sup>

### III. MANDATING PRO BONO AS VIOLATING INTERNATIONAL LAW

The final issue to consider involves the propriety of these pro bono obligations as a matter of international law and policy.<sup>92</sup> Although the independence of lawyers is governed at the international level by a number of hard and soft law instruments,<sup>93</sup> the most relevant are the United Nations Basic Principles on the Role of Lawyers, which indicate that:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; . . . and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.<sup>94</sup>

---

<sup>89</sup> See Exec. Order No. 14,288, 90 Fed. Reg. 18765 § 2 (Apr. 28, 2025); Henry, *supra* note 11; Mikhail, *supra* note 86, at 666; see also *supra* notes 66–73 and accompanying text.

<sup>90</sup> See Open Letter from Sheila Heen, *supra* note 10 (“[T]his case is a prosecutor’s dream. All the evidence is in public view as firms cut deals to provide free services to the President’s pet causes in exchange for the President’s favor.”).

<sup>91</sup> See U.S. CONST., art. II, § 4; *District of Columbia*, 315 F. Supp. 3d at 895–97. The framers and others have typically been concerned with the wealthy (be they foreign or domestic) bribing public officials to undertake policy changes. See Zephyr Teachout, *The Anti-Corruption Principle*, 94 CORNELL L. REV. 341, 411 (2009). However, the fact that no one contemplated the possibility of a corrupt president coercing funding from private parties in furtherance of presidential goals does not change the conclusion that such activity is wrong.

<sup>92</sup> The international community has already voiced its concerns about these matters. See, e.g., Joint Statement on the Recent Targeting of Legal Professionals by the U.S. Government (Apr. 14, 2025), [https://www.lawsociety.ie/contentassets/91ff651c62bb4b65a316220a95f4ffa7/joint-statement-on-us-actions-against-lawyers\\_updated-140425.pdf](https://www.lawsociety.ie/contentassets/91ff651c62bb4b65a316220a95f4ffa7/joint-statement-on-us-actions-against-lawyers_updated-140425.pdf) [<https://perma.cc/PM3E-4UPQ>] (listing organizations from three different continents).

<sup>93</sup> See Report of Rapporteur García-Sayán, *supra* note 40, ¶¶ 9–33 (discussing sources); Note on Independence of Judges and Lawyers, *supra* note 41, ¶¶ 13–14 (same).

<sup>94</sup> Basic Principles, *supra* note 17, art. 16. Article 17 reads: “Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately

No U.S. court has yet construed this language, although other national courts and international bodies have.<sup>95</sup> However, U.S.-based commentators have argued that forfeiture of attorneys' fees is improper under the United Nations Basic Principles on the Role of Lawyers, suggesting that the reverse—i.e., coercion by the executive of nearly \$1 billion in free legal services from private law firms to causes supported by the President—would be equally problematic.<sup>96</sup>

This conclusion is supported by various United Nations reports recognizing that economic or financial sanctions can be used to harass or intimidate lawyers.<sup>97</sup> Other documents note that lawyers can be subjected to both physical and psychological abuse.<sup>98</sup> In this case, the actual or threatened executive orders were enough to cause a reasonable fear that the sanctions would financially destroy the firms that had been targeted, even if the firms eventually managed to overturn the orders in court.<sup>99</sup> Such actions not only constitute impermissible economic sanctions but psychological abuse.

Further insights on these issues can be gained from United Nations Special Rapporteur on the Independence of Judges and Lawyers, Diego García-Sayán, who coined the phrase “disguised sanctions” to describe various types of actions that interfere with judges' ability to undertake their jobs.<sup>100</sup> Disguised sanctions are not directly discussed in any international instruments but have been discussed by national and international courts.<sup>101</sup> According to García-Sayán, disguised sanctions include both subjective and objective elements.<sup>102</sup> The subjective element is reflected by an aim and

---

safeguarded by the authorities.” *Id.* art. 17. The United Nations has recognized this duty. *See* Note on Independence of Judges and Lawyers, *supra* note 41, ¶¶ 68–69 (noting an impartial and independent investigation must be made immediately upon breach of this principle).

<sup>95</sup> *See* LAW SOC'Y, UN BASIC PRINCIPLES ON THE ROLE OF LAWYERS REPORT (Feb. 17, 2022), <https://www.lawsociety.org.uk/topics/research/un-basic-principles-on-the-role-of-lawyers> [<https://perma.cc/QZ3H-NJZW>] (discussing intimidation of lawyers in the context of the independence of the legal profession).

<sup>96</sup> *See* Basic Principles, *supra* note 17, art. 16; Richard J. Wilson, *Using International Human Rights Law and Machinery in Defending Borderless Crime Cases*, 20 *FORDHAM INT'L L.J.* 1606, 1613 (1997).

<sup>97</sup> *See* Note on Independence of Judges and Lawyers, *supra* note 41, ¶ 60; Note Regarding Special Rapporteur Report, *supra* note 40, ¶¶ 53, 67.

<sup>98</sup> *See* Report of the Special Rapporteur on the Independence of Judges and Lawyers, Margaret Satterthwaite, U.N. Doc. A/HRC/53/31 (Apr. 13, 2023); Report From Special Rapporteur, *supra* note 34, ¶ 70 (discussing mental injury).

<sup>99</sup> *See* Paul, Weiss Letter, *supra* note 3 (“[W]e immediately understood that the effects of the executive order would destroy the firm, even if we ultimately prevailed in court.”). These threats are similar to threats of disbarment, which also takes away a person's livelihood. *See* Report From Special Rapporteur, *supra* note 34, ¶ 96.

<sup>100</sup> *See* Note Regarding Special Rapporteur Report, *supra* note 40, ¶¶ 53–81.

<sup>101</sup> *See id.* ¶ 54.

<sup>102</sup> *See id.* ¶ 55.

intent to “intimidate, harass or otherwise interfere with the professional activities” of the individuals in question.<sup>103</sup> The objective element exists when there is “an adverse impact on the professional life” of the individuals in question.<sup>104</sup> Disguised sanctions can apply to specific individuals, particular categories of individuals, or the profession as a whole.<sup>105</sup>

Although García-Sayán was speaking of judges, his mandate covers both judges and lawyers, and the concept of “disguised sanctions” would appear to apply to judges and lawyers in equal measure. Applying his analysis to the current situation indicates the presence of disguised sanctions. Not only do Executive Order 14,237 and similar executive orders demonstrate a clear intent to “intimidate, harass or otherwise interfere with the professional activities” of various law firms,<sup>106</sup> but the enforcement of those orders would have a clearly “adverse impact on the professional life” of those firms and the lawyers in those firms, both financially and psychologically.<sup>107</sup> Furthermore, the threat of punitive executive orders have caused other law firms to curtail their own pro bono practices, thereby expanding the adverse impacts to a wider segment of the legal community and indeed to society at large.<sup>108</sup>

#### CONCLUSION

The punitive sanctions contained in the executive orders imposed on Susman Godfrey, Wilmer Cutler Pickering Hale and Dorr, Jenner & Block, Perkins Coie, and Paul, Weiss have been universally condemned as contrary to the rule of law.<sup>109</sup> Four of these orders are currently being challenged in court on constitutional and due process grounds.<sup>110</sup> However, no lawsuit has yet been filed explicitly challenging the nearly \$1 billion in free legal services that various law firms have agreed to provide as a means of avoiding similarly punitive executive orders.<sup>111</sup>

---

<sup>103</sup> *Id.* ¶ 56.

<sup>104</sup> *Id.* ¶ 57.

<sup>105</sup> *Id.* ¶ 59.

<sup>106</sup> *Id.* ¶ 56; *see supra* note 15 (cataloging executive orders).

<sup>107</sup> Note Regarding Special Rapporteur Report, *supra* note 40, ¶ 57; *see also* A&O Shearman Letter, *supra* note 16; Paul, Weiss Letter, *supra* note 3.

<sup>108</sup> *See* Report From Special Rapporteur, *supra* note 34, ¶ 69; A&O Shearman Letter, *supra* note 16; Brief of Law Firm Partners United Inc. as Amicus Curiae Supporting Plaintiff’s Motion for Summary Judgment, *Susman Godfrey LLP v. Executive Office of the President*, No. 25-1107 (D.D.C. Apr. 25, 2025); *see also* Note Regarding Special Rapporteur Report, *supra* note 40, ¶ 59.

<sup>109</sup> *See supra* note 15 (cataloging executive orders); Joint Statement, *supra* note 92; Baker, *supra* note 7.

<sup>110</sup> *See supra* note 15 and accompanying text.

<sup>111</sup> *See* Baker, *supra* note 7. As this Essay was going to press, the American Bar Association filed a lawsuit challenging the Administration’s actions largely on First

The absence of any lawsuits concerning these pro bono obligations does not mean that the actions are legal. To the contrary, this Essay has not only described why the pro bono obligations are improper but has also identified a variety of ways to combat those obligations in court. Of course, any law firm that is nervous enough to enter into a settlement agreement with this Administration is unlikely to file a lawsuit challenging the terms of that agreement, even if those terms become increasingly onerous over time.<sup>112</sup> However, the country does not need to wait for a lawsuit to address the propriety of the pro bono obligations under discussion here.

Article 17 of the United Nations Basic Principles on the Role of Lawyers indicates that “[w]here the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.”<sup>113</sup> This language has been interpreted by the United Nations Special Rapporteur on the Independence of Judges and Lawyers as imposing “a positive obligation of States to take effective measures to ensure the security of lawyers,” such as by requiring an impartial and independent investigation to be undertaken immediately upon breach of this principle.<sup>114</sup> These statements suggest that Congress should undertake a full investigation to determine how to remedy the presidential harassment of lawyers and avoid similar issues from occurring in the future.

Some inquiries have been made by members of both the House of Representatives and the Senate.<sup>115</sup> However, at the time of writing, no unified investigation had yet been initiated. Such steps are necessary if the United States is to maintain its status as a democratic state and avoid falling into an autocracy.<sup>116</sup> Time will tell whether such actions are forthcoming.

---

Amendment grounds. *See* Am. Bar Ass’n v. Exec. Off. of the President, No. 25-CV-01888 (D.D.C. June 16, 2025).

<sup>112</sup> *See* Open Letter from Sheila Heen, *supra* note 10.

<sup>113</sup> *See* Basic Principles, *supra* note 17, art. 17; *see also* Note on Independence of Judges and Lawyers, *supra* note 41, ¶ 107.

<sup>114</sup> Note on Independence of Judges and Lawyers, *supra* note 41, ¶¶ 68–69; *see also* Report From Special Rapporteur, *supra* note 34, ¶ 70.

<sup>115</sup> *See* A&O Shearman Letter, *supra* note 16; Cadwalader Letter, *supra* note 41; Kirkland & Ellis Letter II, *supra* note 41; Latham Letter, *supra* note 41; Milbank Letter, *supra* note 9; Min Letter, *supra* note 30; Simpson Thacher Letter, *supra* note 9; *see also* Paul, Weiss Letter, *supra* note 3; Kirkland & Ellis Letter, *supra* note 9; Willkie Farr Letter, *supra* note 9.

<sup>116</sup> *See* Satterthwaite et al., *supra* note 51, at 1151 (defining instrumentalization as occurring when “political actors misuse existing legal institutions, procedures, and laws to exert undue political influence on judicial actors”); *see also id.* at 1171–73 (discussing the “instrumentalization” of justice systems).