

September 26, 2025

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Dear Acting Inspector General Blier and Acting Counsel for the Office of Professional Responsibility:

We write as former ethics counsels for Presidents George W. Bush, Barack Obama, and Bill Clinton. We urgently request an investigation into possible prosecutorial abuses and ethics violations by Lindsey Halligan, the newly-appointed interim U.S. Attorney for the Eastern District of Virginia, in connection with her having improperly brought charges against former Federal Bureau of Investigation Director James Comey.¹ While all the facts are not yet known,² if it is the case that Ms. Halligan pursued this indictment to fulfill President Donald J. Trump's longstanding personal vendetta against Mr. Comey, it will be one of the most egregious examples of vindictive and meritless prosecution that we will have ever seen.³

In the United States, a president should never order prosecutions of his enemies. That happens in Putin's Russia, and it has happened in other dictatorships, but not here. Until now. Also, prosecutors should never be fired for refusing to bring charges they conclude are unfounded, even if the president orders them to do so. Yet that appears to be just what President Trump has done here.

¹ United States v. Comey, 1:25-CR-272 (E.D.Va. (Sept. 25, 2025).

² We note that the Ranking Member Jamie Raskin of the House Judiciary Committee has opened an investigation into the "ouster" of Mr. Siebert prior to the appointment of Ms. Halligan. See: Ranking Member Raskin, Letter to Attorney General Pamela Bondi, Sept. 25, 2025, https://democrats-judiciary.house.gov/sites/evo-subsites/democrats-judiciary.house.gov/files/evo-media-document/2025-09-25_raskin-to-bondi-doj-re-siebert-edva.pdf.

³ We are aware of Nixon's misuse of the Justice Department and other federal agencies, but this is far worse. Norman Eisen and Andrew Warren, *Trump's message to Bondi is the gravest threat to democracy of his second term*, MSNBC, Sept. 24, 2025, <https://www.msnbc.com/msnbc/amp/rcna232991>.

President Trump sought to fire a prosecutor who refused to proceed against his political enemies after the same prosecutor apparently concluded criminal charges were unmerited.⁴ And President Trump then installed a “handpicked” replacement in the federal prosecutor’s office in Virginia who immediately sought an indictment of Mr. Comey—despite reports that she also was told the case is unfounded.⁵

If the Trump administration can do this, then no American is safe from political prosecution.

While we are still awaiting particulars, the false statement and obstruction charges brought against Mr. Comey appear to be based on old claims that Mr. Comey lied to Congress.⁶ In May 2017, Mr. Comey testified to the Senate Judiciary Committee that he did not authorize anyone at the Federal Bureau of Investigations (FBI) to be an anonymous source for news reports about the Trump or Clinton investigations, and in September 2020 he testified that was still true.⁷ The contrived case that Mr. Comey lied in this testimony appears to be based on a misunderstanding of FBI Deputy Director Andrew McCabe’s statements about what he and Mr. Comey discussed concerning a leak. The 2018 Department of Justice’s Inspector General report does not support the charge that Mr. Comey lied to Congress.⁸ There is also the possibility that the vague allegations in the indictment may relate to a separate incident involving disclosures made by Daniel Richman, who had been designated a DOJ special government employee.⁹ It appears to be a similarly unavailing basis for prosecution.¹⁰

Many, if not all, of these allegations against Mr. Comey were reviewed by the Department of Justice (DOJ) during the first Trump Administration.¹¹ The DOJ decided not to prosecute, probably because the evidence of his purported untruthfulness with Congress was so weak.

⁴ Dan Mangan and Kevin Breuninger, *Former FBI Director Comey expected to be indicted soon in Virginia federal court*: MSNBC, CNBC, Sept. 24, 2025, <https://www.cnn.com/2025/09/24/james-comey-fbi-indictment-trump-congress.html>.

⁵ Katherine Faulders et al., *Newly appointed US attorney will attempt to charge James Comey despite prosecutors finding no probable cause*: Sources, ABC News, Sept. 24, 2025, <https://abcnews.go.com/Politics/newly-appointed-us-attorney-attempt-charge-james-comey/story?id=125906268>.

⁶ Benjamin Wittes and Anna Bower, *The Situation: Choose Your Own Adventure*: Lindsey Halligan Edition, Lawfare, Sept. 24, 2025, <https://www.lawfaremedia.org/article/the-situation--choose-your-own-adventure--lindsey-halligan-edition>.

⁷ *Id.*

⁸ Office of the Inspector General (“DOJ OIG Report”), *A Report of Investigation of Certain Allegations Relating to Former FBI Deputy Director Andrew McCabe*, U.S. Department of Justice, Feb. 2018, at 11-13, 23-26, <https://www.oversight.gov/sites/default/files/documents/reports/2018-04/o20180413.pdf>.

⁹ Devlin Barrett et al., *Grand Jury Indicts Longtime Trump Target, Former F.B.I. Director James Comey*, The New York Times, Sept. 26, 2025, <https://www.nytimes.com/2025/09/25/us/politics/james-comey-indicted.html>.

¹⁰ Wittes and Bower, Lawfare, Sept. 24, 2025.

¹¹ DOJ OIG Report.

The retaliatory nature of an indictment is evident from the 8-year crusade by President Trump against Mr. Comey over the FBI's investigation of Russian interference in the 2016 election.¹² This led to President Trump's firing of Mr. Comey in 2017, and then Trump's calls for his prosecution even before the September 2020 testimony came to be part of the indictment.¹³

President Trump has been putting direct pressure on prosecutors to go after his opponents, including the recent attempts to fire the prior interim U.S. Attorney for the Eastern District of Virginia, Erik Siebert, related to not bringing prosecutions of President Trump's political opponents such as the Attorney General of New York Letitia James.¹⁴ Although President Trump insists he fired Mr. Siebert,¹⁵ reporting indicates that Mr. Siebert resigned.¹⁶

President Trump replaced him with Ms. Halligan, one of his former personal attorneys who has no prosecutorial experience.¹⁷ As the new interim U.S. Attorney, she sought an indictment of Mr. Comey on false statements and obstruction charges just before the statute of limitations for bringing them expires.¹⁸

Indeed, according to some reports, career prosecutors sent the new U.S. Attorney a detailed memo recommending against bringing charges against Mr. Comey, and that the investigation failed to establish probable cause to believe Mr. Comey committed a crime.¹⁹ Under Virginia Rules of Professional Conduct, a prosecutor is barred from filing or maintaining a charge that the prosecutor knows is not supported by probable cause.²⁰

Probable cause is the minimum standard that an indictment must meet and the Justice Department's own Principles of Federal Prosecution bar prosecutions where there is a failure to meet this minimal requirement.²¹ Furthermore, the Principles provide that the prosecutor "should commence or recommend federal prosecution if he/she believes that the person's conduct constitutes a federal offense, and that the admissible evidence will probably be sufficient to

¹² Michael S. Schmidt and Maggie Haberman, *Trump Wanted to Order Justice Dept. to Prosecute Comey and Clinton*, The New York Times, Nov. 20, 20218, <https://www.nytimes.com/2018/11/20/us/politics/president-trump-justice-department.html>; Devlin Barrett et al., The New York Times, Sept. 26, 2025.

¹³ *Id.*

¹⁴ Faulders et al., ABC News, Sept. 24, 2025; Mangan et al., CNBC, Sept. 24, 2025.

¹⁵ Donald J. Trump, Truth Social, Sept. 20, 2025, 12:14 am., <https://truthsocial.com/@realDonaldTrump/115234681538876098>.

¹⁶ Filip Timotija, *Trump refutes claim US attorney in Virginia resigned: 'He didn't quit, I fired him!'*, The Hill, Sept. 20, 2025, <https://thehill.com/homenews/administration/5513655-donald-trump-erik-siebert-resignation-claims/>.

¹⁷ Faulders et al., ABC News, Sept. 24, 2025.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Virginia Rules of Professional Conduct (Virginia Bar Rules), Rule 3.8. It appears that under choice of law principles the ethics rules of the jurisdiction of the proceeding apply. Model Rules of Professional Conduct Rule 8.3; Virginia Bar Rules, Rule 8.3.

²¹ U.S. Department of Justice, United States Justice Manual, 9-27.200 (Mar. 2024).

obtain and sustain a conviction.”²² Also “no prosecution should be initiated against any person unless the attorney for the government believes that the admissible evidence is sufficient to obtain and sustain a guilty verdict by an unbiased trier of fact.”²³ In the Comey case, Justice Department lawyers who previously reviewed the evidence apparently thought it was very unlikely they would obtain a conviction and may have believed that the probable cause requirement was not met either.²⁴

Equally important, the DOJ Principles provide that in determining whether to commence or recommend prosecution or take other action against a person, the prosecutor may not be influenced by “[t]he person’s...political association, activities, or beliefs” or “[t]he possible effect of the decision on the attorney’s own professional or personal circumstances.”²⁵ Also, federal prosecutors “may never make a decision regarding an investigation or prosecution...[to] advantage or disadvantage to any candidate or political party.”²⁶

The Comey matter is rife with procedural improprieties that are prejudicial to Mr. Comey’s right to a fair trial regardless of the substance of any charge. It is not proper to comment on what’s going on in a grand jury,²⁷ it’s not proper to impugn an uncharged person, and it’s certainly not appropriate for a president to say that a subject is “guilty as hell,” as President Trump just did of Mr. Comey,²⁸ and then for the president to seek to fire a prosecutor who refuses to prosecute him and substitute a replacement who will.

Indeed, a criminal case against Mr. Comey could be a nightmare for any prosecutor on both vindictive and selective prosecution grounds and on the merits. The discovery that the judge will likely order here alone will be enormously compromising in a variety of ways. If federal prosecutors do not want to go down this road, they should spend their time, and the taxpayers’ money, prosecuting real criminals, not the President’s political enemies.

No American should have to go through the experience of being prosecuted under these circumstances, and the rest of us should not have to live in fear that it may also happen to us. We do not live in a dictatorship, at least not yet.

²² *Id.* at 9-27.220.

²³ *Id.*, 9-27.220, Comment.

²⁴ Mangan and Breuninger, CNBC, Sept. 24, 2025.

²⁵ U.S. Department of Justice, United States Justice Manual, 9-27.260 (Mar. 2024)

²⁶ *Id.*

²⁷ Donald J. Trump, Truth Social, Sept. 25, 2025, 7:24 pm., <https://truthsocial.com/@realDonaldTrump/posts/115267513846352215>.

²⁸ Donald J. Trump, Truth Social, Sept. 20, 2025, 6:44 pm., <https://truthsocial.com/@realDonaldTrump/posts/115239044548033727>.

On this basis, we respectfully request that your offices immediately undertake investigations into Ms. Halligan's prosecution of Mr. Comey.

Sincerely,

/s/

Norman L. Eisen

Former Special Counsel to President Barack Obama

/s/

Richard W. Painter

Former Associate Counsel to President George W. Bush

/s/

Virginia Canter

Former Associate Counsel to President Barack Obama and President Bill Clinton