

December 16, 2025

Suzanne Drouet, Esq.
Counsel
Office of Professional Responsibility
Department of Justice
950 Pennsylvania Avenue NW, Suite 3266
Washington DC 20530

RE: Updated OPR Complaint Concerning Professional Misconduct by OLC

Dear Ms. Drouet,

On December 9, we wrote to your office seeking an investigation into attorneys in the Office of Legal Counsel (OLC). We are now submitting the enclosed updated complaint to describe additional facts that have come to light in the days since we submitted the original complaint, to supplement our legal analysis, and to make minor corrections.

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

CC: Chair, Senate Committee on Armed Services
Ranking Member, Senate Committee on Armed Services
Chair, Senate Select Committee on Intelligence
Ranking Member, Senate Select Committee on Intelligence
Chair, Senate Committee on the Judiciary
Ranking Member, Senate Committee on the Judiciary
Chair, House Armed Services Committee
Ranking Member, House Armed Services Committee
Chair, House Permanent Select Committee on Intelligence
Ranking Member, House Permanent Select Committee on Intelligence
Chair, House Committee on the Judiciary
Ranking Member, House Committee on the Judiciary

Enclosure

December 16, 2025

Suzanne Drouet, Esq.
Counsel
Office of Professional Responsibility
Department of Justice
950 Pennsylvania Avenue NW, Suite 3266
Washington DC 20530

RE: First Updated OPR Complaint Concerning Professional Misconduct by OLC

Dear Ms. Drouet,

We write as former ethics counsels for Presidents George W. Bush, Barack Obama, and Bill Clinton. In this update to our December 9 complaint, we respectfully request the Office of Professional Responsibility (OPR) institute an immediate investigation into whether members of the Office of Legal Counsel (OLC) violated their professional legal responsibilities. We ask that you investigate whether they violated those ethics duties in preparing legal guidance that justified the unilateral use of lethal force against civilian foreign nationals, including alleged drug smugglers. In sum, the President and the Department of Defense (DoD), relying on a yet to be released memorandum from OLC, justified the use of lethal force. According to press reports, the memorandum was based on the notion that the United States is in a non-international armed conflict (NIAC) with the drug cartels and is engaged in “self-defense.”¹

Lawyers within OLC have an ethical obligation to provide thorough, objective, and candid legal advice and to avoid assisting a client, including an organizational client, from engaging in conduct that the lawyer knows is criminal. Yet experts across the political spectrum agree that no reasonable analysis could support the conclusion that the United States is in a NIAC.² Even if we were in such a conflict, experts concur that there is no reasonable basis to assert that the law would permit the use of lethal military strikes on civilian vessels on the high seas.³ For example, the Army’s former lead counsel on the law of armed conflict (LOAC) said

¹ Ellen Nakashima, et al., *U.S. troops not liable in boat strikes, classified Justice Dept. memo says*, THE WASHINGTON POST (Nov. 12, 2025),

<https://www.washingtonpost.com/national-security/2025/11/12/trump-drug-boat-venezuela-legal/>; Charlie Savage & Julian E. Barnes, *Memo Approving Boat Strikes is Said to Rely on Trump’s Claims About Cartels*, THE NEW YORK TIMES (Nov. 13, 2025), <https://www.nytimes.com/2025/11/13/us/politics/boat-strikes-doj-memo-trump.html>.

² Michael Schmitt, Tess Bridgeman, and Ryan Goodman, *Operation Southern Spear: Why the Crews, Drugs, and Boats are Not Targetable*, JUST SECURITY (Dec. 7, 2025),

<https://www.justsecurity.org/126553/operation-southern-spear-international-law/> (stating that the assertion that operations against the drug cartels is a NIAC is “unambiguously incorrect as a matter of law, a point illustrated by the near universal rejection of it among [law of armed conflict] LOAC experts”).

³ See, e.g., Marty Lederman, *Legal Flaws in the Trump Administration’s Notice to Congress on “Armed Conflict with Drug Cartels”*, JUST SECURITY (Oct. 3, 2025), <https://www.justsecurity.org/121844/trump-notice-drug-cartels/>; Marty Lederman, *The Many Ways in Which the September 2 Caribbean Strike was Unlawful ... and the Grave Line the Military Has Crossed*, JUST SECURITY (Sep. 10, 2025),

<https://www.justsecurity.org/120296/many-ways-caribbean-strike-unlawful/>; Brian Finucane, *Legal Issues Raised by a Lethal U.S. Military Attack in the Caribbean*, JUST SECURITY (Sep. 3, 2025),

that strikes on civilian vessels under that law would be an “abuse” and that “[t]his is not stretching the envelope. This is shredding it. This is tearing it apart.”⁴ But given that we are *not* in a NIAC, the President has no authority to order the extrajudicial killing of people. “Either way, it was all murder,” another leading authority and former DoD lawyer concluded.⁵

The result of OLC’s opinion—free rein for the government to murder and assassinate foreign civilians—is shocking and certainly raises the most profound legal ethics concerns—worse even than the infamous “torture memos.”⁶ As was made clear by the Administration’s December 4 strike on another ship containing alleged drug smugglers, the government will continue to rely on OLC’s memo to justify its campaign of lethal force against foreign civilians even in the face of public outcry and Congressional scrutiny.⁷ It is therefore imperative that OPR begin an investigation into OLC’s analysis now, so as to ensure that OLC’s legal advice is not used to enable the executive to exceed its constitutional and other legal bounds, and in doing so, place lives in jeopardy.

I. Background

Over the past four months the U.S. military has killed at least 95 people and destroyed at least 25 boats as part of an unprecedented campaign against alleged drug traffickers operating in the Caribbean Sea and Pacific Ocean.⁸ These attacks started on September 2, 2025, with the strike on a vessel alleged to carry members of the Tren de Aragua drug cartel.⁹ Recently, it has come to light that the initial strike killed some, but not all, passengers and crew.¹⁰ DoD then

<https://www.justsecurity.org/119982/legal-issues-military-attack-caribbean/>.

⁴ Charlie Savage & Eric Schmidt, *Trump ‘Determined’ the U.S. is Now in a War With Drug Cartels, Congress is Told*, THE NEW YORK TIMES (Oct. 2, 2025),

<https://www.nytimes.com/2025/10/02/us/politics/trump-drug-cartels-war.html> (quoting Geoffrey S. Corn, retired judge advocate general lawyer who was the Army’s senior adviser for law-of-war issues).

⁵ Charlie Savage, *The Furor Over Trump’s Boat Attacks and a Particular Follow-Up Strike, Explained*, THE NEW YORK TIMES (Dec. 4, 2025),

<https://www.nytimes.com/2025/12/04/us/politics/boat-strikes-trump-hegseth-caribbean.html> (quoting Ryan Goodman, former Special Counsel to the General Counsel of the Department of Defense).

⁶ DEPARTMENT OF JUSTICE, OFFICE OF PROFESSIONAL RESPONSIBILITY, INVESTIGATION INTO THE OFFICE OF LEGAL COUNSEL’S MEMORANDUM CONCERNING ISSUES RELATING TO THE CENTRAL INTELLIGENCE AGENCY’S USE OF “ENHANCED INTERROGATION TECHNIQUES” ON SUSPECTED TERRORISTS (July 29, 2009), available at [OPRFinalReport090729.pdf](https://www.opr.gov/OPRFinalReport090729.pdf).

⁷ Konstantin Toropin, *US military conduct strike on another suspected drug boat as probe into the first strike begins*, AP NEWS (Dec. 4, 2025),

<https://apnews.com/article/trump-hegseth-pentagon-drug-boats-pacific-35a60ce3bc018e5f66c18b2d18b49c35>.

⁸ Maira Butt, *US military kills eight people in latest strikes on ‘narco terrorist’ boats in the Pacific*, THE INDEPENDENT (Dec. 16, 2025),

<https://www.independent.co.uk/news/world/americas/us-venezuela-drug-boats-strikes-b2885257.html>; Konstantin Toropin, *US military conduct strike on another suspected drug boat as probe into the first strike begins*, AP NEWS (Dec. 4, 2025),

<https://apnews.com/article/trump-hegseth-pentagon-drug-boats-pacific-35a60ce3bc018e5f66c18b2d18b49c35>; Ben Finley, et al., *A timeline of the US military’s buildup near Venezuela and attacks on alleged drug boats*, AP NEWS (Nov. 17, 2025),

<https://apnews.com/article/trump-boat-strikes-caribbean-military-venezuela-timeline-2dd9d16f4f74d9dfa4aca76d3123678d>.

⁹ Alex Horton and Ellen Nakashima, *Hegseth order on first Caribbean boat strike, officials say: Kill them all*, THE WASHINGTON POST (Nov. 28, 2025),

<https://www.washingtonpost.com/national-security/2025/11/28/hegseth-kill-them-all-survivors-boat-strike/>.

¹⁰ *Id.*

ordered a second “double tap” strike to kill two crewmembers who survived the initial strike.¹¹ At the end of the day, it was reported that the U.S. struck the boat four separate times.¹² Reporting has identified that the boat, located in international waters, appears to have originally been headed to link up to a vessel bound for Suriname, not the United States.¹³ In addition, the boat appears to have turned around and was heading back to shore prior to DoD’s initial airstrike.¹⁴

The Department’s strikes were ordered based on legal guidance provided by OLC.¹⁵ That guidance has been deemed classified and is not publicly available. Based on the reports regarding that guidance, however, it purportedly provides that drug cartels are “narcoterrorists” and that the “extrajudicial killings of people suspected of running drugs [is] lawful as a matter of Mr. Trump’s wartime powers.”¹⁶ This is consistent with the Administration’s public justification for the attacks, which posit that the United States is in a NIAC with the drug cartels and rests on the President’s assertion that drug cartels in Latin America constitute “non-state armed groups” whose “actions constitute an armed attack against the United States.”¹⁷ That determination itself appears based on the President’s designation of several drug cartels as “foreign terrorist organizations.”¹⁸ OLC’s memo also purportedly insulates DoD members from future prosecution for strikes, reportedly under an analogy that “compares military personnel participating in the

¹¹ *Id.*

¹² Filip Timotija, *Military struck drug boat in Caribbean 4 times in Sept. 2 attack, says US official*, THE HILL (Dec. 3, 2025), <https://thehill.com/policy/defense/5631738-us-military-strikes-drug-boat/>.

¹³ Stephen Groves and Lisa Mascaro, *What to know as lawmakers disclose vivid new details of US boat strikes*, AP NEWS (Dec. 5, 2025), <https://apnews.com/article/boat-strike-survivors-hegseth-congress-legal-details-ce16f4740841b2b5f2904588335a818e>.

¹⁴ Lisa Mascaro, et al., *Vessel struck by US military off Venezuela was heading back to shore, AP sources say*, AP NEWS (Sep. 11, 2025), <https://apnews.com/article/trump-military-drugs-boat-venezuela-5d28da68e3ea1b5b1b14829af8aadd7b>.

¹⁵ Ellen Nakashima, et al., *U.S. troops not liable in boat strikes, classified Justice Dept. memo says*, THE WASHINGTON POST (Nov. 12, 2025), <https://www.washingtonpost.com/national-security/2025/11/12/trump-drug-boat-venezuela-legal/>; Charlie Savage & Julian E. Barnes, *Memo Approving Boat Strikes is Said to Rely on Trump’s Claims About Cartels*, THE NEW YORK TIMES (Nov. 13, 2025), <https://www.nytimes.com/2025/11/13/us/politics/boat-strikes-doj-memo-trump.html>; Rebecca Beitsch, *DOJ argues US military personnel cannot be prosecuted for drug boat strikes*, THE HILL (Nov. 13, 2025), <https://thehill.com/homenews/5603976-doj-opinion-caribbean-strikes/>.

¹⁶ Charlie Savage & Julian E. Barnes, *Memo Approving Boat Strikes is Said to Rely on Trump’s Claims About Cartels*, THE NEW YORK TIMES (Nov. 13, 2025), <https://www.nytimes.com/2025/11/13/us/politics/boat-strikes-doj-memo-trump.html>.

¹⁷ Notice to Congress Pursuant to 50 U.S.C. § 1543a (undated), [50-usc-1543-notice-to-congress-drug-cartels.pdf](#); Remarks of John Kelley, Acting Alternate Representative to the United Nations, at a U.N. Security Council Briefing on Venezuela (Oct. 10, 2025), <https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-venezuela/>; Letter from President Donald Trump to Hon. Charles Grassley, President pro tempore of the Senate (Sep. 4, 2025), [20250904-Trump.pdf](#).

¹⁸ Designating Cartels and Other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists, Exec. Ord. 14,157, § 1, 90 FR 8439 (Jan. 20, 2025); Foreign Terrorist Organization Designations of Tren de Aragua, Mara Salvatrucha, Cartel de Sinaloa, Cartel de Jalisco Nueva Generacion, Carteles Unidos, Cartel del Noreste, Cartel del Golfo, and La Nueva Familia Michoacana, 90 Fed. Reg. 10030 (Feb. 20, 2025), <https://www.govinfo.gov/content/pkg/FR-2025-02-20/pdf/2025-02873.pdf>; Remarks of John Kelley, Acting Alternate Representative to the United Nations, at a U.N. Security Council Briefing on Venezuela (Oct. 10, 2025), <https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-venezuela/> (explaining that “The United States has designated Tren de Aragua and Cartel de Los Soles as terrorist groups”)

strikes to police officers who break the speed limit when pursuing a suspect who poses a threat to public safety.”¹⁹

Overall, the 25 known attacks against alleged drug traffickers.²⁰ include at least three in September, twelve in October, including several attacks occurring in the Pacific Ocean, six in November, and four in December.²¹ Building on the known attacks, the President has taken a number of actions suggesting further aggression. For example, he reportedly authorized the C.I.A. to engage in covert operations within Venezuela in November.²² The U.S. military has amassed a fleet of 13 warships in the Caribbean, with capacity for upwards of potentially 90 fighter jets.²³ DoD is also reportedly reconstructing a former naval base in Puerto Rico, with U.S. military members indicating that the preparations could allow for attacks on Venezuela.²⁴ In addition, the Coast Guard seized a Venezuelan oil tanker last week and a U.S. official has indicated that it is likely that the U.S. will seize more tankers soon.²⁵ Finally, President Trump recently issued a warning for planes to avoid the airspace over Venezuela and threatened land attacks on Venezuela “very soon.”²⁶

¹⁹ Charlie Savage & Julian E. Barnes, *Memo Approving Boat Strikes is Said to Rely on Trump’s Claims About Cartels*, THE NEW YORK TIMES (Nov. 13, 2025), <https://www.nytimes.com/2025/11/13/us/politics/boat-strikes-doj-memo-trump.html>.

²⁰ Ben Finley, et al., *A timeline of the US military’s buildup near Venezuela and attacks on alleged drug boats*, AP NEWS (Nov. 17, 2025), <https://apnews.com/article/trump-boat-strikes-caribbean-military-venezuela-timeline-2dd9d16f4f74d9dfa4aca76d3123678d>; Anusha Mathur, *Here’s how many strikes on alleged drug vessels the U.S. has announced*, NPR (Dec. 5, 2025), <https://www.npr.org/2025/11/12/nx-s1-5604895/trump-venezuela-drug-boat-strikes>.

²¹ Maira Butt, *US military kills eight people in latest strikes on ‘narco terrorist’ boats in the Pacific*, THE INDEPENDENT (Dec. 16, 2025), <https://www.independent.co.uk/news/world/americas/us-venezuela-drug-boats-strikes-b2885257.htm>; Ben Finley, et al., *A timeline of the US military’s buildup near Venezuela and attacks on alleged drug boats*, AP NEWS (Nov. 17, 2025), <https://apnews.com/article/trump-boat-strikes-caribbean-military-venezuela-timeline-2dd9d16f4f74d9dfa4aca76d3123678d>.

²² Tyler Pager, Julian E. Barnes, and Eric Schmitt, *Trump Said to Authorize C.I.A. Plans for Covert Action in Venezuela*, THE NEW YORK TIMES (Nov. 18, 2025), <https://www.nytimes.com/2025/11/18/us/politics/trump-covert-action-venezuela.html>.

²³ James C. Reynolds, *Warships, submarines and Tomahawk missiles: How the US is preparing for a possible war with Venezuela*, THE INDEPENDENT (Dec. 11, 2025), <https://www.independent.co.uk/news/world/americas/us-venezuela-war-military-trump-b2882412.html>.

²⁴ *Id.*

²⁵ Edward Wong and Julian E. Barnes, *Venezuela’s Oil is a Focus of Trump’s Campaign Against Maduro*, THE NEW YORK TIMES (Dec. 16, 2025), <https://www.nytimes.com/2025/12/16/us/politics/trump-maduro-venezuela-oil-tanker.html>; Eric Bazail-Eimil and James Bikales, *US seizes Cuba-bound Venezuelan oil tanker, ramping up pressure on Maduro*, POLITICO (Dec. 10, 2025), https://www.politico.com/news/2025/12/10/us-seizes-venezuelan-oil-tanker-00685289?utm_source=chatgpt.com.

²⁶ Phillip M. Bailey, *‘Closed in its entirety.’ Trump tells airlines to avoid Venezuela*, USA TODAY (Nov. 29, 2025), <https://www.usatoday.com/story/news/politics/2025/11/29/trump-venezuela-airspace/87525104007/>; Jeff Mason & Ismail Shakil, *Trump says US will soon take action against Venezuelan drug traffickers on land*, REUTERS (Nov. 27, 2025), <https://www.reuters.com/world/americas/trump-says-us-will-very-soon-begin-stopping-suspected-venezuelan-drug-2025-11-27/>; Zac Anderson, *Trump Says Land Strikes in Venezuela will ‘start very soon’*, USA TODAY (Nov. 28, 2025), <https://www.usatoday.com/story/news/politics/2025/11/28/donald-trump-military-land-sea-boats-venezuela-strikes/87510475007/>.

II. OLC Attorney Responsibilities

a. Rules of Professional Conduct

Pursuant to 28 U.S.C. § 530B, lawyers with the Department of Justice, including OLC, are “subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State.” Department regulations explain that “Section 530B imposes on Department attorneys the same rules of professional responsibility that apply to non–Department attorneys.”²⁷ Attorneys within OLC have a special responsibility to provide fair and balanced legal analysis, given that their opinions are relied on heavily by the President, Department heads, and agency officials. OLC’s own best practices memo reflects this responsibility, stating that “OLC must always give candid, independent, and principled advice—even when that advice is inconsistent with the aims of policymakers.”²⁸

The American Bar Association Model Rules of Professional Conduct (MRPC), which are the basis for most states’ rules of professional conduct concerning attorneys,²⁹ describe the affirmative responsibilities for practicing attorneys. Attorneys are subject to the applicable rules of their own state, but most states follow the MRPC to a large extent. Among the obligations the MRPC places on attorneys are the following:

MRPC Rule 1.1 (“Competence”), provides that:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

MRPC Rule 1.2(d) (“Scope of Representation”), provides that:

A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

MRPC Rule 2.1 (“Advisor”), provides that:

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.

²⁷ 28 C.F.R. § 77.1(c).

²⁸ David J. Barron, Acting Assistant Attorney General, *Memorandum RE: Best Practices for OLC Legal Advice and Written Opinions* (July 16, 2010), <https://www.justice.gov/olc/page/file/1511836/dl?inline>.

²⁹ American Bar Association, *Alphabetical List of Jurisdictions Adopting Model Rules* (Last visited Dec. 8, 2025), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules/.

Pursuant to MRPC Rule 1.1, OLC attorneys must provide competent and thorough representation of the United States. As the commentary to MRPC Rule 1.1, states “[c]ompetent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners.”³⁰ OLC Attorneys are also required to “exercise independent professional judgment and render candid advice” pursuant to MRPC 2.1. The ABA Committee on Ethics and Professional Responsibility explained in 1985 that “[i]n the role of advisor, the lawyer should counsel the client as to whether the position is likely to be sustained by a court if challenged”; it further stated that competent representation requires advising the client on “fully as to whether there is or was substantial authority for the position taken.”³¹ MRPC Rule 1.2(d) provides that attorneys may not “assist a client . . . in conduct that the lawyer knows is criminal.” The commentary to the rule explains that “[t]here is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.”³²

OLC’s *Best Practice Guidance* reinforces these responsibilities by requiring that OLC attorneys “provide advice based on its best understanding of what the law requires—not simply an advocate’s defense of the contemplated action or position proposed by an agency of the Administration.”³³ As the guidance explains, OLC attorneys must provide an “honest appraisal of applicable law, even if that appraisal will constrain the Administration’s . . . pursuit of desired practices or policy outcomes.”³⁴

b. Office of Professional Responsibility Jurisdiction

OPR has jurisdiction to “[r]eceive, review, investigate and refer for appropriate action allegations of misconduct involving Department attorneys that relate to the exercise of their authority to . . . provide legal advice” and to “when appropriate, make recommendations for disciplinary and other corrective action.”³⁵ OPR’s authority extends to any allegation involving “attorney misconduct,” including violations of applicable legal ethics rules.³⁶ Finally, OPR can make recommendations on changes to policies and procedures that are necessary and appropriate.³⁷

OPR has jurisdiction over OLC and has previously issued reports identifying OLC misconduct in providing guidance that is inconsistent with the professional standards that apply

³⁰ American Bar Association, Model Rules of Professional Responsibility Rule 1.1 Competence - Comment (2025), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/comment_on_rule_1_1/.

³¹ American Bar Association, Committee on Ethics and Professional Responsibility, Formal Op. 85-352 (1985).

³² American Bar Association, Model Rules of Professional Conduct Rule 1.2 Scope of Representation And Allocation of Authority Between Client And Lawyer - Comment (2025), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_2_scope_of_representation_allocation_of_authority_between_client_lawyer/comment_on_rule_1_2/.

³³ David J. Barron, Acting Assistant Attorney General, *Memorandum RE: Best Practices for OLC Legal Advice and Written Opinions* (July 16, 2010), <https://www.justice.gov/olc/page/file/1511836/dl?inline>.

³⁴ *Id.*

³⁵ 28 C.F.R. § 0.39a(a)(1), (3).

³⁶ 28 C.F.R. § 0.39a(a)(1).

³⁷ 28 C.F.R. § 0.39a(a)(8).

to Department attorneys.³⁸ For example, OPR determined that former Assistant Attorney General Jay Bybee, and Deputy Assistant Attorney General John Yoo, violated their professional responsibility by providing legal guidance to the Central Intelligence Agency (CIA) that authorized the use of torture and purported to shield CIA employees from future prosecution. OPR made that determination on the basis that the guidance failed to meet the thoroughness, objectivity, and candor expected of Department attorneys.³⁹

III. Request for Investigation

From published reports, OLC's classified memo appears to be a crucial element in the Administration's purported legal justification for their prolonged campaign of airstrikes against foreign civilians in the Caribbean Sea and Pacific Ocean. But nearly all legal experts agree that there is no legal basis to conclude that the U.S. is in a NIAC with the drug cartels. And even if we were in a NIAC, there is no legal basis to conclude that drug smugglers are targetable under the LOAC. Either way, the boat strikes amounted to, as one expert put it, "extrajudicial killings, in violation of international law."⁴⁰ Nor can the President claim that he has domestic authority to initiate these strikes; even under the widest conception of the President's authority there is no legal basis to order military strikes against civilians.

These facts call into question whether OLC's guidance actually intended to help the Administration avoid compliance with its constitutional, statutory, and international obligations while protecting DoD officials from being accountable for those infractions. These are illegitimate ends for the provision of legal advice, and thus investigation is warranted into whether OLC attorneys violated their professional responsibilities by issuing the memo. In particular, it is important to determine whether OLC attorneys (1) failed to provide independent, objective, thorough, and candid legal advice or (2) assisted DoD and the President in engaging in illegal and criminal conduct.

a. The OLC Opinion Wrongly Asserts that the United States is in a NIAC and is Acting in Self-defense

A NIAC occurs when there "are protracted armed confrontations occurring between governmental armed forces and ... one or more armed groups, or between such groups."⁴¹ From published reports, it appears that the Administration is heavily relying on the proposition, reportedly set out in the OLC memo, that the U.S. is in a NIAC, and therefore that the unilateral strikes on alleged drug smugglers near Venezuela are permitted under international law.⁴²

³⁸ DEPARTMENT OF JUSTICE, OFFICE OF PROFESSIONAL RESPONSIBILITY, INVESTIGATION INTO THE OFFICE OF LEGAL COUNSEL'S MEMORANDUM CONCERNING ISSUES RELATING TO THE CENTRAL INTELLIGENCE AGENCY'S USE OF "ENHANCED INTERROGATION TECHNIQUES" ON SUSPECTED TERRORISTS (July 29, 2009), available at [OPRFinalReport090729.pdf](#).

³⁹ *Id.*

⁴⁰ Lucy Gilder, *What Experts Say About Second US Strike on Venezuela Boat*, BBC (Dec. 4, 2025), <https://www.bbc.com/news/articles/c3v15zkxpe0q>, (quoting Jessica Peake, director of the International and Comparative Law Program at UCLA).

⁴¹ Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, art. 3, 12 August 1949, Commentary 494-495.

⁴² Notice to Congress Pursuant to 50 U.S.C. § 1543a (undated), [50-usc-1543-notice-to-congress-drug-cartels.pdf](#); Remarks of John Kelley, Acting Alternate Representative to the United Nations, at a U.N. Security Council Briefing on Venezuela (Oct. 10, 2025), <https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-venezuela/>;

However, there is no basis for OLC’s lawyers to advise that the U.S. is in a NIAC. Authorities on the law of war, including Tess Bridgeman, Micheal Schmitt, and Ryan Goodman, have cogently explained that the government’s assertions that the U.S. is in a NIAC with Venezuelan drug smugglers is not credible or consistent with the rules of armed conflict:

NIACs are armed conflicts between a State and an organized armed group. There are two requirements for the existence of a NIAC. First, the non-state group must be both armed and organized. While cartels are typically well-organized, they are not *per se* “armed” in the sense of the law of armed conflict. “Armed” denotes engaging in violence against the State in an organized fashion; that the group may possess weapons used for other criminal activity does not suffice. A second requirement is that the armed violence between the State and the group must be protracted and intense; sporadic violence, including death, is not intense enough. Even if the intensity criterion could be satisfied at some point by virtue of the U.S. strikes continuing (this remains a contested area of law), the fact that the U.S. strikes are not directed at an organized armed group precludes characterization as a NIAC.⁴³

As John Bellinger, former State Department and National Security Council legal adviser for President George W. Bush, stated “[c]laiming that the U.S. is engaged in a ‘non-international armed conflict’ with Venezuelan drug traffickers, based on the facts provided so far, is an inapt legal analogy that makes a mockery of accepted international law terms, and perhaps that is what the Trump Administration intends.”⁴⁴ Moreover, the President’s designation of Venezuelan drug cartels as Foreign Terrorist Organizations (FTO) is not sufficient basis to use force against those entities.⁴⁵ As several experts have previously explained, “an FTO designation does *not* require or create a ‘war’ or ‘armed conflict’ between the designee and the United States (or any state).”⁴⁶

See, e.g., Statement of Press Secretary Karoline Leavitt, Press Briefing at the White House (Dec. 1, 2025) (00:22:59- 00:23:50),

<https://rollcall.com/factbase/trump/transcript/donald-trump-press-conference-briefing-karoline-leavitt-december-1-2025/> (explaining that the strikes were done in accordance with the law of armed conflict and discussing that members of Congress have been provided with the “classified DOJ Office of Legal Counsel opinion”).

⁴³ Tess Bridgeman, Michael Schmitt, and Ryan Goodman, *Expert Q&A on the U.S. Boat Strikes*, JUST SECURITY (Dec. 3, 2025), <https://www.justsecurity.org/126156/expert-qa-on-the-u-s-boat-strikes/>; Michael Schmitt, Ryan Goodman, and Tess Bridgeman, *Unlawful Orders and Killing Shipwrecked Boat Survivors: An Expert Background*, JUST SECURITY (Dec. 1, 2025), <https://www.justsecurity.org/125948/illegal-orders-shipwrecked-boat-strike-survivors/>; Michael Schmitt, *Striking Drug Cartels Under the Jus Ad Bellum and Law of Armed Conflict*, JUST SECURITY (Sep. 10, 2025), <https://www.justsecurity.org/120235/drug-cartels-jus-ad-bellum-loac/>.

⁴⁴ Noah Robertson, et. al., *U.S. in ‘armed conflict’ with drug cartels, Trump tells Congress*, THE WASHINGTON POST (Oct. 2, 2025), <https://www.washingtonpost.com/national-security/2025/10/02/trump-drug-cartel-war-venezuela-congress/>.

⁴⁵ *Id.*; Brian Finucane, *Asserting a License to Kill: Why the Caribbean Strike is a Dangerous Departure from the ‘War on Terror’*, JUST SECURITY (Sep. 15, 2025), <https://www.justsecurity.org/120568/caribbean-strike-departure-war-on-terror/>.

⁴⁶ Tess Bridgeman, Rebecca Ingber and Scott Roehm, *What are “Wartime Authorities” and When Can the President Use Them? An Expert Q&A*, JUST SECURITY (June 2, 2025), <https://www.justsecurity.org/113973/wartime-authorities-when-can-president-use/#post-113973-yy9mj56iedvm>; Mark Nevitt, *Using Labels, Not Law, to Justify Lethal Force: Inside the Venezuelan Boat Strike*, JUST SECURITY (Sep. 5, 2025), <https://www.justsecurity.org/119985/labels-ustify-lethal-force-venezuelan-boat-strike/>.

In addition, the United States' contention⁴⁷ that the importation of drugs into America by drug cartels is an armed attack triggering the right to self-defense is inconsistent with settled international law. A nation can only claim that it is acting in self-defense if there is an actual or imminent armed attack.⁴⁸ Drug smuggling does not rise to the level of an armed attack or illegal use of force against the United States. In addition, drug cartels operating vessels in international waters do not pose the “instant, overwhelming [need], leaving no choice of means, and no moment of deliberation” generally necessary to show that self-defense is warranted even if there were an armed attack.⁴⁹

To the first point, international law provides that a core predicate for self-defense is that there must be an “armed attack.”⁵⁰ The U.S. has historically held that “the inherent right of self-defense potentially applies against any illegal use of force.”⁵¹ Regardless of whether the narrow or broad view is accepted, as expert Michael Schmitt recently noted:

[While] drug trafficking undeniably leads to illness and death . . . the causal chain between drug production/shipment/sale and those consequences is attenuated enough to preclude qualification of drug trafficking as a use of force, especially one at the armed attack threshold. After all, the drugs must be distributed and sold, often by individuals or groups that are not members of the drug cartel, and users acting unlawfully have to purchase them.⁵²

To the second point, the distribution of drugs could not be considered an “imminent” harm even if it were an illegal use of force (which it is not), as is required for any action taken in

⁴⁷ Notice to Congress Pursuant to 50 U.S.C. § 1543a (undated), [50-usc-1543-notice-to-congress-drug-cartels.pdf](#) (stating that drug cartel actions rise to the level of an “armed attack” on the U.S.); Remarks of John Kelley, Acting Alternate Representative to the United Nations, at a U.N. Security Council Briefing on Venezuela (Oct. 10, 2025), <https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-venezuela/> (same); Letter from President Donald Trump to Hon. Charles Grassley, President pro tempore of the Senate (Sep. 4, 2025), [20250904-Trump.pdf](#) (stating that U.S. is acting in self-defense).

⁴⁸ See, e.g., U.N. Charter Art. 51. The Trump Administration has invoked Article 51 of the U.N. Charter on at least one occasion to justify the strikes. See Remarks of John Kelley, Acting Alternate Representative to the United Nations, at a U.N. Security Council Briefing on Venezuela (Oct. 10, 2025), <https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-venezuela>. Notwithstanding, legal experts collectively agree that “the United States has no claim to use force in self-defense against any of these [targeted drug cartels]” under Article 51. See, e.g., Tess Bridgeman, Michael Schmitt, and Ryan Goodman, *Expert Q&A on Operation Southern Spear and Seizure of Sanctioned Vessels*, JUST SECURITY (Dec. 13, 2025), <https://www.justsecurity.org/126156/faq-boat-strikes-southern-spear/>.

⁴⁹ Webster, Daniel. 'Letter to Henry Stephen Fox', in *The Papers of Daniel Webster: Diplomatic Papers, vol. 1. 1841-1843* at 62 (K.E. Shewmaker (ed.), 1983); Daniel Maurer, *Hypothetical Legal Review of Narcotrafficking Strikes*, JUST SECURITY (Nov. 18, 2025), <https://www.justsecurity.org/124939/hypothetical-legal-review-narcotrafficking-strikes/>.

⁵⁰ See, e.g., Military and Paramilitary Activities in and Against Nicaragua (Nicar. V. U.S.) Judgment, 1986 I.C.J. 14, para. 194 (June 27), [070-19860627-JUD-01-00-EN.pdf](#); Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, para. 38, 41 (July 8), [095-19960708-ADV-01-00-EN.pdf](#); Michael Schmitt, *Striking Drug Cartels Under the Jus Ad Bellum and Law of Armed Conflict*, JUST SECURITY (Sep. 10, 2025), <https://www.justsecurity.org/120235/drug-cartels-jus-ad-bellum-loac/>.

⁵¹ Department of Defense, War of Law Manual § 1.11.5.2 (2023).

⁵² Michael Schmitt, *Striking Drug Cartels Under the Jus Ad Bellum and Law of Armed Conflict*, JUST SECURITY (Sep. 10, 2025), <https://www.justsecurity.org/120235/drug-cartels-jus-ad-bellum-loac/>.

self-defense.⁵³ The distance between the closest points of Venezuela and the United States is hundreds of miles apart. The time required to traverse the ocean provides the United States with enough time to take non-lethal law enforcement actions, such as Coast guard interdiction. In fact, the Acting Commandant of the U.S. Coast Guard, K.E. Lunday, recently sent a letter to Senator Rand Paul highlighting that the Coast Guard successfully interdicted 212 suspected drug-smuggling vessels in-between September 1, 2024, and October 7, 2025, none of which required lethal force.⁵⁴ Certainly drugs are a scourge to our country. But customs and border law enforcement and the Coast Guard are the internationally recognized tools to interdict drug smugglers. If the United States can interdict drug boats, as it has done successfully in the past without need to resort to lethal force, there can be no claim that the United States is in actual or imminent danger of armed attack that would suggest that the United States is acting in self-defense.⁵⁵

In sum, the U.S. is not in a NIAC with Venezuelan, or any other, drug cartels and cannot claim that it is acting in self-defense of a purported imminent or actual armed attack. On that basis, the law of armed conflict does not apply to the U.S. strikes on Venezuelan boats.

b. *Even if the US were in a NIAC, Drug Smugglers are Civilians Who are Not Targetable Under the LOAC*

Because the air strikes do not involve a NIAC, the law of armed conflict does not apply. Even assuming for argument's sake that the law of armed conflict did apply, however, the strikes would still violate international law.⁵⁶ As Bridgeman, Schmitt, and Goodman write, "neither the people aboard the boats nor the boats themselves would be lawful targets *even if there were* an armed conflict."⁵⁷ That is because under the law of armed conflict, only dissident armed forces, organized armed groups, and those individuals directly participating in hostilities are considered legitimate targets.⁵⁸ The drug cartels are not dissident armed forces.⁵⁹ Nor are they organized armed groups, as "none of the groups targeted by the United States has an armed wing, the mission of which is to conduct hostilities against the United States, whatever the reason for doing

⁵³ See, e.g., Webster, Daniel. 'Letter to Henry Stephen Fox', in *The Papers of Daniel Webster: Diplomatic Papers*, vol. 1. 1841-1843 at 62 (K.E. Shewmaker (ed.), 1983); Daniel Maurer, *Hypothetical Legal Review of Narcotrafficking Strikes*, JUST SECURITY (Nov. 18, 2025),

<https://www.justsecurity.org/124939/hypothetical-legal-review-narcotrafficking-strikes/>.

⁵⁴ Letter from K.E. Lunday, Acting Commandant, U.S. Coast Guard, to Senator Rand H. Paul (Oct. 31, 2025), available at <https://x.com/SenRandPaul/status/1995885169832853966/photo/1>.

⁵⁵ See, e.g., Coast Guard, Press Release, *Coast Guard sets historic record with amount of cocaine seized in FY'25* (Nov. 6, 2025); Chris Panella, *Stopping drug smugglers at sea takes precision, not luck. Here's the Coast Guard's playbook.*, BUSINESS INSIDER (Nov. 27, 2025),

<https://www.businessinsider.com/inside-the-coast-guards-playbook-for-stopping-drug-smugglers-2025-11> (explaining the methodical process that the Coast Guard uses to interdict drug boats, including identifying boats, disabling their engines, and boarding them without need for lethal force).

⁵⁶ Tess Bridgeman, Michael Schmitt, and Ryan Goodman, *Expert Q&A on the U.S. Boat Strikes*, JUST SECURITY (Dec. 3, 2025), <https://www.justsecurity.org/126156/expert-qa-on-the-u-s-boat-strikes/>.

⁵⁷ Michael Schmitt, Tess Bridgeman, and Ryan Goodman, *Operation Southern Spear: Why the Crews, Drugs, and Boats are Not Targetable*, JUST SECURITY (Dec. 7, 2025), <https://www.justsecurity.org/126553/operation-southern-spear-international-law/>.

⁵⁸ *Id.*

⁵⁹ *Id.*

so.”⁶⁰ Finally, “individuals transporting drugs aboard a boat to be sold at an onward destination are not ‘directly participating in hostilities.’”⁶¹ As a result, “merely transporting drugs would not make a civilian targetable.”⁶²

As Jack Goldsmith, the former head of OLC, explained to the *New York Times*, “deliberately killing civilians who are not directly participating in hostilities — even those suspected of being criminals — would . . . violate international law.”⁶³ Under Common Article 3 of the Geneva Conventions, for example, the U.S. is prohibited from lethally targeting “[p]ersons taking no active part in the hostilities” including civilians, non-combatants, and members of armed forces who have laid down their arms.”⁶⁴ And 18 U.S.C. § 2441 provides that any person who commits a war crime—including the murder of civilians under Common Article 3—is subject to criminal prosecution.⁶⁵

c. *Regardless of Whether the US is in a NIAC or Not, the Murder of Civilians is a Violation of International and Domestic Law*

As noted above, the direct targeting of civilians is prohibited under the LOAC. Given that the U.S. is not in a NIAC, however, the LOAC are not applicable. In any event, the normal federal rules related to murder and extrajudicial killings apply. Those domestic laws place strict limits on the extrajudicial killing of civilians, including unlawful killings carried out by members of the U.S. armed forces.⁶⁶ While she was in the private sector, Attorney General Pamela Bondi and her co-counsel previously advanced this position in an *amicus curiae* brief filed in Donald

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Tess Bridgeman, Michael Schmitt, and Ryan Goodman, *Expert Q&A on the U.S. Boat Strikes*, JUST SECURITY (Dec. 3, 2025), <https://www.justsecurity.org/126156/expert-qa-on-the-u-s-boat-strikes/>.

⁶³ Charlie Savage & Robert Jimison, *Draft Bill Would Authorize Trump to Kill People He Deems Narco-Terrorists*, *The New York Times* (Sep. 19, 2025), <https://www.nytimes.com/2025/09/19/us/politics/trump-drug-cartels-war-authorization.html> (description of conversation with Goldsmith).

⁶⁴ Article 3 of the Geneva Convention prohibits any nation from murdering “[p]ersons taking no active part in [] hostilities” including civilians, non-combatants, and armed forces who have laid down their arms. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 3, Aug. 12, 1949; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea art. 3, Aug. 12, 1949; Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 3, Aug. 12, 1949; *see also Department of Defense Law of War Manual* § 5.9.1; *Commander’s Handbook on the Law of Naval Operations* § 8.2.3.

⁶⁵ A war crime for purposes of the statute includes any gross violation of Article 3 of the Geneva Convention, including “murder.” For purposes of the statute, “murder” includes:

The act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause.

⁶⁶ Michael Schmitt, Tess Bridgeman, and Ryan Goodman, *Operation Southern Spear: Why the Crews, Drugs, and Boats are Not Targetable*, JUST SECURITY (Dec. 7, 2025), <https://www.justsecurity.org/126553/operation-southern-spear-international-law/>; Marty Lederman, *The Many Ways in Which the September 2 Caribbean Strike was Unlawful ... and the Grave Line the Military Has Crossed*, JUST SECURITY (Sep. 10, 2025), <https://www.justsecurity.org/120296/many-ways-caribbean-strike-unlawful/>.

Trump v. United States, stating that “[a]ny presidential order to the military to use lethal force without legal justification would be an order calling for the commission of a grave felony crime.”⁶⁷

Marty Lederman, former OLC Deputy Associate Attorney General, recently explained, the strikes appear to violate several laws prohibiting murder and assassination.⁶⁸ Amongst those laws are:

- 18 U.S.C. § 1111: Outlaws murder, which is the “unlawful killing of a human being with malice aforethought” and thereby prohibits federal personnel from issuing or executing orders to kill without a legal basis.
- 10 U.S.C. § 918 (Uniform Code of Military Justice). Prohibits any member of the military from unlawfully killing any human being without justification or excuse, and provides for the court martial of such members.
- Executive Order 12333, § 2.11: Provides that “[n]o person employed by or acting on behalf of the United States Government shall engage in or conspire to engage in assassination.”

In addition, several experts have noted that international human rights law, including customary human rights law, prohibits the “arbitrary deprivation of life.”⁶⁹ Under applicable standards of international human rights law, including customary law, no state can deprive any person of life “arbitrarily.”⁷⁰ This obligation is well recognized by the U.S. and prevents the

⁶⁷ Brief for Three Former Senior Military Officers and Executive Branch Officials as Amici Curiae Supporting Petitioner, Trump v. United States No. 23-939 (Mar. 19, 2024), https://www.supremecourt.gov/DocketPDF/23/23-939/303384/20240319133828340_AFPI%20Amici%20Brief%203.19.24.pdf The brief further argues that “military officers are required not to carry out unlawful orders.”; *Id.*

⁶⁸ Marty Lederman, *The Many Ways in Which the September 2 Caribbean Strike was Unlawful ... and the Grave Line the Military Has Crossed*, JUST SECURITY (Sep. 10, 2025), <https://www.justsecurity.org/120296/many-ways-caribbean-strike-unlawful/>; see also Brian Finucane, *Legal Issues Raised by a Lethal U.S. Military Attack in the Caribbean*, JUST SECURITY (Sep. 3, 2025), <https://www.justsecurity.org/119982/legal-issues-military-attack-caribbean/>. The War Crimes Act, 18 U.S.C. 2441, also prohibits the murder of civilians, as noted above.

⁶⁹ Tess Bridgeman, Michael Schmitt, and Ryan Goodman, *Expert Q&A on the U.S. Boat Strikes*, JUST SECURITY (Dec. 3, 2025), <https://www.justsecurity.org/126156/expert-qa-on-the-u-s-boat-strikes/>; Ryan Goodman, *Human Rights Law and U.S. Military Operations in Foreign Countries: The Prohibition on Arbitrary Deprivation of Life*, JUST SECURITY (Feb. 19, 2019), <https://www.justsecurity.org/62630/international-human-rights-law-u-s-military-operations-foreign-countries-prohibition-arbitrary-deprivation-life/>; International Committee of the Red Cross, International Humanitarian Law Database, Volume II, Chapter 32, Section C, Rule 89, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule89>; International Covenant on Civil and Political Rights, part 3, art. 6, Dec. 16 1966.

⁷⁰ See, e.g., International Covenant on Civil and Political Rights, part 3, art. 6, Dec. 16 1966; Ryan Goodman, *Human Rights Law and U.S. Military Operations in Foreign Countries: The Prohibition on Arbitrary Deprivation of Life*, JUST SECURITY (Feb. 19, 2019), <https://www.justsecurity.org/62630/international-human-rights-law-u-s-military-operations-foreign-countries-prohibition-arbitrary-deprivation-life/>.

murder or killing of civilians.⁷¹ As Schmitt, Bridgeman, and Goodman explained in a recent *Just Security* article:

[T]he applicable law is simple. Because there is no armed conflict, international human rights law governs the U.S. operations. The law does not allow for the use of deadly force except in situations where it is employed to safeguard life. Moreover, as counterdrug operations, there is no legal basis for using deadly force during them except in situations of defense of self or others. On the contrary, there are international agreements governing how such operations must be conducted, as well as clear guidance to U.S. forces on the use of force during them. These strikes conducted to date are clear violations of U.S. obligations under international human rights law (and may also amount to crimes, including murder, by some of those involved under the domestic law of States having jurisdiction over the offenses).⁷²

d. The President Lacks Article II Authority to Direct Deadly Strikes on Civilians

The President has also claimed unilateral authority under his Article II role as Commander-in-Chief to direct strikes against members of drug cartels.⁷³ OLC's memo reportedly supports this view.⁷⁴ That conclusion is, however, inconsistent with the President's limited constitutional role to initiate hostilities,⁷⁵ the War Powers Act,⁷⁶ and OLC's own prior opinions.⁷⁷ Even taking the broadest view of the President's domestic authority to undertake military

⁷¹ See, e.g., U.S. Army Operational Law Handbook, 98-99 (2024), https://tile.loc.gov/storage-services/service/ll/llmpl/2024_Operational_Law_Handbook/2024_Operational_Law_Handbook.pdf.

⁷² Michael Schmitt, Tess Bridgeman, and Ryan Goodman, *Operation Southern Spear: Why the Crews, Drugs, and Boats are Not Targetable*, JUST SECURITY (Dec. 7, 2025), <https://www.justsecurity.org/126553/operation-southern-spear-international-law/>.

⁷³ Letter from President Donald Trump to Hon. Charles Grassley, President pro tempore of the Senate (Sep. 4, 2025), [20250904-Trump.pdf](https://www.whitehouse.gov/wp-content/uploads/2025/09/04-Trump.pdf).

⁷⁴ Ellen Nakashima, et al., *U.S. troops not liable in boat strikes, classified Justice Dept. memo says*, THE WASHINGTON POST (Nov. 12, 2025), <https://www.washingtonpost.com/national-security/2025/11/12/trump-drug-boat-venezuela-legal/>.

⁷⁵ U.S. Const. Art. 1, § 8 (providing Congress, not the President, with the power to declare war and raise and regulate the armed forces); *Talbot v. Seeman*, 5 U.S. (1 Cranch) 1 (1801) (“The whole powers of war [are] by the constitution of the United States . . . vested in congress”); *Campbell v. Clinton*, 203 F.3d 19, 39 (D.C. Cir. 2000) (quoting *Berk v. Laird*, 429 F.2d 302, 305 (2d Cir.1970) (“History makes clear that the congressional power ‘to declare War’ conferred by Article I, section 8, of the Constitution was intended as an explicit restriction upon the power of the Executive to initiate war on his own prerogative which was enjoyed by the British sovereign”).

⁷⁶ 50 U.S.C. §§ 1541-1548.

⁷⁷ See, e.g., *April 2018 Airstrikes Against Syrian Chemical-Weapons Facilities*, 42 Op. O.L.C. 39 (2018); *Authority to Order Targeted Airstrikes Against the Islamic State of Iraq and the Levant*, 38 Op. O.L.C. 1 (2014); *Authority to Use Military Force in Libya*, 35 Op. O.L.C. 1 (Apr. 1, 2011); *Authority of the President Under Domestic and International Law to Use Military Force Against Iraq*, 26 Op. O.L.C. 143, 152 (2002). These opinions suggest that the President has broad authority to engage in military actions under Article II of the Constitution, short of a “war in the constitutional sense.” See, e.g., *April 2018 Airstrikes Against Syrian Chemical-Weapons Facilities*, 42 Op. O.L.C. 39 (2018). Notwithstanding, there are sharp constraints under even OLC's guidance, including that any operation must be in the national interest and must be circumscribed, of a short duration, and not have a high-likelihood of escalation. *Id.* Thus, as John Yoo, former Deputy Assistant Attorney General, recently stated “a broad, amorphous military campaign against the illegal drug trade . . . would violate American law and the Constitution.” John Yoo, *What's wrong with a military campaign against the drug trade*, THE WASHINGTON POST (Sep. 23, 2025), <https://www.washingtonpost.com/opinions/2025/09/23/trump-boat-strikes-drug-cartels-venezuela/>.

operations as set out in prior OLC opinions, there is no precedent for the President’s use of lethal force against civilians.⁷⁸ None of OLC’s prior opinions come close to suggesting that the President can order lethal force against civilians.⁷⁹ That is not surprising, given that domestic laws broadly prohibit the murder and assassination of civilians, as Marty Lederman recently pointed out.⁸⁰ OLC’s memo would be the first time the office would appear to have concluded that the President has the authority to unilaterally kill foreign civilians.⁸¹ As Senator Jack Reed, ranking member of the Senate Armed Services Committee rightfully noted, the end result of reliance on OLC’s guidance is that the “President has decided he can wage secret wars against anyone he calls an enemy.”⁸² Any legal assessment that would provide the President with such unlimited authority is inherently in contradiction with the Constitution and laws of the country.

e. OLC’s Memo Authorizing Venezuelan Boat Strikes is Fundamentally Flawed in Violation of MRPC Rule 1.1 and 1.2. and Appears Intended to Assist DoD in Carrying out the Illegal Murder of Foreign Citizens.

There are serious questions as to whether OLC attorneys met their responsibility to act independently, objectively, and competently under MRPC Rules 1.1, 2.1, and OLC’s *Best Practices Guidance*. As reported, OLC’s analysis regarding the legality of the Administration’s boat strikes is fundamentally flawed. The U.S. is not in a NIAC. And even if we were, the killing of civilians would still be a violation of both international and domestic law. These flaws call into question whether OLC’s opinion was prepared independently, objectively and competently.

Moreover, the flaws in reasoning are so obvious that there is a serious concern that the opinion was actually a “pretext to open the door to extraordinary use of force authority,” – as Geoffrey Corn, an expert on the law of armed conflict at Texas Tech University Law School, recently opined.⁸³ Given the President’s clear intention to use force against drug cartels, there is a risk that OLC did not assess the status of the law, but rather “recommend[ed] the means by which a crime or fraud might be committed with impunity” in violation of MRPC Rule 1.2(d). This type of intentional “golden shield”⁸⁴ would clearly violate MRPC Rule 1.2(d).

⁷⁸ Marty Lederman, *The Many Ways in Which the September 2 Caribbean Strike was Unlawful ... and the Grave Line the Military Has Crossed*, JUST SECURITY (Sep. 10, 2025), <https://www.justsecurity.org/120296/many-ways-caribbean-strike-unlawful/>.

⁷⁹ *Id.*

⁸⁰ 18 U.S.C. § 1111; 10 U.S.C. § 918; Exec. Ord. 12,333, § 2.11; Marty Lederman, *The Many Ways in Which the September 2 Caribbean Strike was Unlawful ... and the Grave Line the Military Has Crossed*, JUST SECURITY (Sep. 10, 2025), <https://www.justsecurity.org/120296/many-ways-caribbean-strike-unlawful/>.

⁸¹ Marty Lederman, *The Many Ways in Which the September 2 Caribbean Strike was Unlawful ... and the Grave Line the Military Has Crossed*, JUST SECURITY (Sep. 10, 2025), <https://www.justsecurity.org/120296/many-ways-caribbean-strike-unlawful/>.

⁸² Natasha Bertrand, *Trump Admin tells Congress the US is in ‘armed conflict’ with drug cartels*, CNN (Oct. 2, 2025), <https://www.cnn.com/2025/10/02/politics/trump-admin-us-armed-conflict-cartels>

⁸³ Noah Robertson, et. al., *U.S. in ‘armed conflict’ with drug cartels, Trump tells Congress*, THE WASHINGTON POST (Oct. 2, 2025), <https://www.washingtonpost.com/national-security/2025/10/02/trump-drug-cartel-war-venezuela-congress/>.

⁸⁴ Jack Goldsmith, *The Venezuela Boat Strikes and the Justice Department’s Golden Shield*, Executive Functions (Oct. 27, 2025), <https://www.execfunctions.org/p/the-venezuela-boat-strikes-and-the>. Note that OLC has no legal authority to provide “legal cover” to Department officials who violate the law. 2 WHARTON’S CRIMINAL LAW § 20:5 (Advice of Counsel) (16th ed.) (“It is no defense that the accused acted upon the advice of counsel in committing the act charged”); *Williamson v. U.S.*, 207 U.S. 425, 28 S. Ct. 163, 52 L. Ed. 278 (1908). As a practical matter, however,

This is not an academic question. To date 95 people have died. The President has recently proclaimed, “I think we’re just gonna kill people that are bringing drugs into our country. We’re going to kill them. They’re going to be, like, dead.”⁸⁵ The President also appears to be using these attacks as a way to bootstrap another “unjustified, unauthorized war.”⁸⁶ OLC attorneys are required by the applicable rules of professional responsibility to act as a check against illegal policy ambitions of the Administration. Yet it appears that OLC attorneys may have instead allowed their office to become a rubber stamp on the President’s illegal strikes. It is therefore imperative that you assess whether OLC’s actions were a legitimate exercise of interpretive authority or an attempt to assist DoD and the President as they engage in extrajudicial killings and murder while insulating them from future repercussions in violation of the MRPC.

IV. Conclusion

Over the past three months, DoD has conducted some 25 known strikes on civilians resulting in 95 extrajudicial killings. DoD’s activities are predicated on guidance provided by OLC, guidance that purportedly suggests that drug smugglers located in international waters are an organized armed group engaged in an NIAC with the United States and that drug smuggling is the equivalent of an imminent threat of armed attack on the U.S.. Such an assertion is wholly inconsistent with international and domestic law. Reporting suggests that OLC’s opinion also seeks to shield Department officials from legal liability for the extrajudicial killing and murder of civilians.

To the extent to which the reports are accurate, OLC’s opinion does not appear to be an objective assessment of international and domestic law applicable to the situation, *including past OLC guidance*, as is required by MRPC Rules 1.1 and 2.1. Rather, the view that the military can engage in military attacks against Venezuelan drug cartels appears to be a motivated rationalization of a pattern of criminal conduct—the extrajudicial killing of foreign civilians—in violation of MRPC Rule 1.2(d). It is imperative that OPR begin an investigation now to determine whether OLC attorneys have violated their ethics obligations, and their responsibility to the American public, and to prevent further reliance on OLC’s incorrect legal assertions. Moreover, it is imperative that your office publicly release your findings to permit the public and members of Congress to effectively hold OLC attorneys and others responsible for their role in these operations.⁸⁷

Finally, we are also deeply concerned that, as with the infamous torture memos OLC supplied to DoD and to the intelligence community after the 9-11 terrorist attacks, OLC’s written

OLC’s advice often goes unchallenged and has the effect of serving at times as “an advance pardon” or a “get-out-of-jail free card[.]” JACK GOLDSMITH, *THE TERROR PRESIDENCY: LAW AND JUDGEMENT INSIDE THE BUSH ADMINISTRATION* 149-150 (2007).

⁸⁵ Darah Gregorian, *Trump Indicates he won’t seek congressional approval for targeting drug traffickers*, NBC NEWS (Oct. 25, 2025), <https://www.nbcnews.com/politics/national-security/trump-directs-pete-hegseth-inform-congress-targeting-drug-traffickers-rcna239461>.

⁸⁶ Jennifer Rubin, *The second strike isn’t the only problem*, THE CONTRARIAN (Dec. 8, 2025), <https://contrarian.substack.com/p/the-second-strike-isnt-the-only-problem>.

⁸⁷ *Id.*

advice in this instance has been withheld from the public and classified, impeding public scrutiny of OLC's legal reasoning and the validity of its factual assumptions. As Professor Oona Hathaway, a leading expert on international law, has pointed out, overclassification has too often undermined the purpose that it is supposed to serve: national security.⁸⁸ The Department of Justice should declassify the memos in their entirety or at least the vast majority of the text of these memos which contains OLC's legal reasoning or its factual assumptions underlying that reasoning. In addition, videos of the boat strikes—including the infamous September 2 “double tap”—should, like the OLC memo, be unclassified and promptly made publicly available. Classification could at most be justified only for information which needs to be protected, such as information that could identify confidential sources for factual information OLC has relied upon in giving its advice. As a result, we respectfully request that you consider whether OLC has applied appropriate classification standards or has classified the opinion as a means of hiding the legal basis for the Caribbean and Pacific Ocean boat strikes.

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

CC: Chair, Senate Committee on Armed Services
Ranking Member, Senate Committee on Armed Services
Chair, Senate Select Committee on Intelligence
Ranking Member, Senate Select Committee on Intelligence
Chair, Senate Committee on the Judiciary
Ranking Member, Senate Committee on the Judiciary
Chair, House Armed Services Committee
Ranking Member, House Armed Services Committee
Chair, House Permanent Select Committee on Intelligence
Ranking Member, House Permanent Select Committee on Intelligence
Chair, House Committee on the Judiciary
Ranking Member, House Committee on the Judiciary

⁸⁸ Oona A. Hathaway, *Secrecy's End*, 106 Minn. L. Rev. 691 (2021).