

DOJ Shifts Raise Ethics Questions For White Collar Defense

By **Kenneth Notter** (June 24, 2026, 2:46 PM EDT)

The U.S. Department of Justice in the second Trump administration set out to overhaul the department's procedures and priorities. And it has done exactly that.

Two of the more significant changes have involved how the department handles requests for clemency and for prosecutors to drop charges.

In the past, clemency requests went through the Office of the Pardon Attorney, which issued recommendations according to set standards. Similarly, though the process for seeking to dismiss charges varied more across Main Justice and the various U.S. attorney's offices, it typically featured the same components — discussing the case's merits, the defendant's relative or lack of culpability, and the other Principles of Federal Prosecution under the Justice Manual.

Each process has changed under the current administration. So far, nearly all clemency grants have come outside the Pardon Office through informal back channels, such as through the White House chief of staff or specific lawyers with ties to the president.[1]

And at least in certain cases, the department has allegedly considered less-traditional factors when evaluating whether to drop criminal charges. For example, on May 18, the department moved to drop criminal charges against billionaire Gautam Adani after Adani expressed a willingness to invest \$10 billion in the U.S. economy and create thousands of jobs.[2]

The department's shifting procedures and priorities raise tough questions for the white collar defense bar.

Lawyers must of course zealously represent their client's interests; but there are limits. They cannot violate existing federal laws and ethical rules, but it is not always clear how those rules apply. That uncertainty makes it critical for defense counsel to understand the relevant legal landscape and implement best practices to reduce risk and maximize the client's chances at meaningful relief.

Legal Landscape

The starting point for any representation is a lawyer's duty to zealously represent the client's interests.[3] That heavy obligation carries added weight in the criminal context, where even apart from a potential prison sentence, a criminal conviction carries lifelong collateral consequences. Lawyers owe it to clients in those circumstances to pursue every available path to relief.



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That duty is constrained primarily by the independent obligation to avoid engaging in or helping a client engage in criminal or fraudulent conduct.[4]

Seeking an official act like a pardon or a dismissal of charges implicates a web of potentially relevant federal criminal laws.

The most obvious is the federal bribery statute, Title 18 of the U.S. Code, Section 201, which makes it a crime to offer "anything of value to any public official" with intent to corruptly "influence any official act." Even without that intent, offering "anything of value to any public official" is still a crime (known as an illegal gratuity) if done "for or because of any official act performed" by that official.[5]

That language sweeps broadly. A pardon or dismissal of charges easily qualifies as an official act, and federal prosecutors and White House employees are public officials.[6] Intermediate steps such as arranging meetings with decision-makers, however, fall short of the official act threshold under the U.S. Supreme Court's 2016 decision in *McDonnell v. U.S.*[7]

The honest services fraud statute, Section 1346, also sweeps broadly. It defines a "scheme to defraud" under the federal property fraud statutes to include one to "deprive another of the intangible right of honest services" by offering or receiving bribes or kickbacks.[8] Because officials like prosecutors or White House employees owe the public a fiduciary duty, any effort to bribe or offer them kickbacks to influence their decisions would fall within Section 1346's reach.

Some fact patterns clearly cross the line from legitimate advocacy into bribery or fraud. For example, a defense lawyer cannot write a \$50,000 check to the lead prosecutor just before or after the prosecution dismisses the charges.

Few situations are that clear, however.

Take the situation the Supreme Court confronted in *Newton v. Rumery* in 1987.[9] That case involved a release-dismissal agreement, where prosecutors dismissed charges against a criminal defendant in exchange for the defendant promising not to file a civil suit alleging constitutional violations related to his arrest and prosecution.

The court held that release-dismissal agreements, at least in some circumstances, are enforceable and legitimate uses of prosecutorial discretion. Yet four justices disagreed and thought that type of agreement was no different than "a promise to pay a state trooper \$20 for not issuing a ticket for a traffic violation." [10] As that disagreement illustrates, the line that separates a lawyer doing their job and a potential crime is a thin and often blurry one.

Fortunately, there are a few slightly clearer rules to guide practitioners.

Rule 7.2 of the Model Rules of Professional Conduct prohibits lawyers from suggesting they are "a specialist in a particular field" unless they are certified as such by an accredited organization.[11] That rule may prevent advocates from marketing themselves as pardon experts, even as a cottage industry of lobbyists and advocates have come to dominate clemency requests in recent years.[12]

Similarly, Rule 8.4 prohibits lawyers from suggesting to clients that they have "an ability to influence improperly a government agency or official." [13]

For example, according to the U.S. Court of Appeals for the Federal Circuit's 2014 ruling in *In re: Reines*, it crossed the line into impropriety for a lawyer to forward a personal message from a judge discussing their close relationship to prospective clients while soliciting business.[14] A lawyer need not intend to bribe or improperly influence the government official; it is enough to merely imply the ability to do so.[15]

That prohibition would apply in the clemency context or when seeking to dismiss charges. A lawyer may not, for example, suggest to clients that she has a special relationship with a White House employee or the president and will use that relationship or some other inducement to improperly influence official decision-making.

The real question, however, is what counts as improper influence. Most definitions are unsatisfying.

A 2020 paper published in the *Georgetown Journal of Legal Ethics* by Douglas Richmond defined improper influence to include methods of influence that are outside the bounds of "legitimate advocacy" and are "in no way relevant to the merits of the client's matter." [16] But that just begs the question of what legitimate advocacy means or what is relevant to a client's matter.

After all, to the client seeking clemency or dismissal, nearly their entire life is relevant to legitimate considerations like redemption, acceptance of responsibility and threat to the community.

Takeaways for Practitioners

The difficulty in drawing clear lines puts practitioners in a tough spot. That said, here are a few things they can do.

Define the engagement clearly.

Lawyers representing clients seeking clemency or dismissal of charges should define the engagement to include only that legal representation. Clients interested in pressing overt political considerations (e.g., the electoral benefits of granting clemency) should separately retain a lobbyist or a public relations firm. Counsel should set client expectations accordingly by explaining the relevant ethical rules.

Advocate fearlessly.

Setting clear limits on the representation does not mean pulling any punches. A client's history and character are relevant. Advocates can and should forcefully argue that granting clemency or dismissing charges furthers the public interest.

Because each administration defines the public interest differently, advocates should tailor their messaging and delivery to their audience the same way they would tailor arguments to one judge versus another. Nine times out of 10, any audience-specific adjustments will be at the margins, and the core arguments and messages will be unaffected.

Document meetings.

Good notes are always important, but they are particularly important when discussing clemency or dismissing charges given the potential for misinterpretation. Preparing written talking points in advance can help guide note-taking during the meeting. Afterward, drafting a memorandum to the file regarding the meeting can help both document the meeting and focus strategic thinking going forward.

Conclusion

Balancing zealous advocacy with ethical obligations has long raised difficult line-drawing problems. That has proved particularly true of late for practitioners representing clients seeking clemency or dismissal of charges. But by following best practices, lawyers can limit risk while still forcefully advocating for their clients.

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[1] See J. Toobin, How to Get a Pardon in Trump's Washington, *The New York Times Magazine* (May 20, 2026), <https://tinyurl.com/bddbx2jy>.

[2] N. Hong et al., U.S. Set to Drop Charges Against Indian Billionaire Accused of Fraud, *The New York Times* (May 14, 2026), <https://tinyurl.com/5bujcs3k>.

[3] See ABA Model Rules of Prof'l Conduct, Preamble cmt. 2.

[4] *Id.* 1.2(d).

[5] 18 U.S.C. §201(c)(1)(A).

[6] See *id.* §201(a)(1), (3).

[7] *McDonnell v. United States*, 579 U.S. 550 (2016).

[8] See *Skilling v. United States*, 561 U.S. 358 (2010)

[9] See *Town of Newton v. Rumery*, 480 U.S. 386, 398 (1987).

[10] *Id.* at 408 (Stevens, J., dissenting).

[11] ABA Model Rules of Prof'l Conduct 7.2(c).

[12] See Toobin, *supra* n.1.

[13] ABA Model Rules of Prof'l Conduct 8.4(e).

[14] See *In re Reines*, 771 F.3d 1326 (Fed. Cir. 2014).

[15] See *State ex rel. Okla. Bar Ass'n v. Erickson*, 29 P.3d 550, 554 (Okla. 2001).

[16] D. Richmond, *Trumping Lawyers' Suggested Ability to Improperly Influence Government Agencies and Officials*, 33 *Geo. J. Legal Ethics* 139, 161-62 (2020).