

August 18, 2026

The Florida Bar
Attn: ACAP
651 E. Jefferson Street
Tallahassee, FL 32399-2300
ACAPIntake@floridabar.org

Re: Ethics Complaint Against James Hamilton Percival II (Bar #1016188)

Democracy Defenders Fund, Lawyers Defending American Democracy, and the undersigned 128 former federal and state judges respectfully request that The Florida Bar investigate James Percival, current general counsel to the Department of Homeland Security (DHS), and a member of The Florida Bar pursuant to the Florida Rules of Discipline Rule 3-5. On July 23, 2026, Mr. Percival published a list entitled the “Worst of the Worst, District Judge Edition” on his official social media account. This list contains several statements impugning the integrity of four sitting judges based on false or mischaracterized descriptions of cases involving the Department of Homeland Security in violation of Mr. Percival’s obligations under Rule 4-8.2(a) of the Florida Rules of Professional Conduct.¹

These statements, and similar statements Mr. Percival has made about other sitting judges, not only constitute serious professional misconduct, but they threaten the rule of law and increase the risk of violence against judges. As U.S. District Judge Beth Bloom of the Southern District of Florida said in response to Mr. Percival’s post, “[f]or the first time, we have a senior U.S. government official, a general counsel for the DHS, a member of The Florida Bar that has published a public ‘target list’ of the ‘worst of the worst’ judges.” Judge Bloom added, “[c]riticism of the justice system is healthy. But this is not criticism. This goes beyond criticism. This is an attack, a distortion of the work of our judges.” U.S. District Judge Esther Salas, whose son was killed in 2020 at her home by an individual who was upset with her actions in court, similarly warned that Mr. Percival’s actions were “dangerous” and noted that “DHS’s counsel is, in essence, putting a bullseye on [these judges].”²

According to the United States Marshals Service, there have been over 402 threats made against individual Federal judges in fiscal year 2026 alone.³ In total, 299 out of approximately 2,500 judges, or nearly 12% of all active judges, received a threat during that period.⁴ Threats against judges have greatly increased over the last decade, driven mostly by political disagreement.⁵ As Supreme Court Justice Amy Coney Barrett testified just last month “[t]he threat level is really

¹ As the Comments to Rule 4-8.2 state “To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.” This complaint is filed in the spirit of the Comment.

² Jennifer Bendery, *Senior Trump Official Using Government Account To Smear Sitting Federal Judges*, HuffPost (Jul. 29, 2026), https://www.huffpost.com/entry/james-percival-dhs-counsel-threatens-federal-judges-esther-salas-beth-bloom_n_6a6a44b6e4b098352c306ba7.

³ U.S. Marshals Service, *Protective Investigations - Threat Statistics*, (last updated Aug. 3, 2026), <https://www.usmarshals.gov/what-we-do/judicial-security/protective-investigations-threat-statistics>.

⁴ *Id.*

⁵ Joseph Tanfani, et al., *Threats to US federal judges double since 2021, driven by politics*, Reuters (Feb. 13, 2024), <https://www.reuters.com/world/us/threats-us-federal-judges-double-since-2021-driven-by-politics-2024-02-13/>.

high” and that she had been subject to a swatting incident earlier this year. Supreme Court Justice Elena Kagan similarly testified that criticism of a court’s opinions is appropriate, “but intimidation is a different thing entirely.”⁶

DHS has attempted to paint Mr. Percival’s “Worst of the Worst” as simply normal criticism. A DHS spokesperson told Bloomberg Law, for example, that:

Percival’s social media thread “is nothing more than a factual review of judicial decisions and their real-world consequences ... If accurately describing a judge’s rulings is controversial, the issue isn’t the reporting, it’s the rulings themselves. The record speaks for itself. Facts aren’t attacks.”⁷

Similarly, Mr. Percival stated “[l]egitimate fact based critiques of judges and their rulings is fair game in a free society.”⁸ In addition to being a mischaracterization of Mr. Percival’s statements, as discussed below, this attempted defense sidesteps the fact that these attacks are incongruous with his ethical obligations. As an attorney licensed to practice in Florida, his actions must conform to his obligations under the Rules of Professional Conduct (Rules). Pursuant to Rule 4-8.2(a), “[a] lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge.” This rule recognizes that while “attorneys play an important role in exposing valid problems within the judicial system, statements impugning the integrity of a judge, when made with reckless disregard as to their truth or falsity, erode public confidence in the judicial system without assisting to publicize problems that legitimately deserve attention.”⁹

Mr. Percival’s statements go far beyond normal criticism. They are unfounded *ad hominem* attacks that directly impugn the integrity of four sitting judges. Not only do these statements attack the foundation and legitimacy of the judiciary as a whole, but they could incite violent threats. That is not an abstract concern: after District Judge John McConnell ruled against the Trump administration last year, he was attacked on social media by Laura Loomer and Elon Musk.¹⁰ Following those social media posts, he received at least six credible death threats and threats were made against his daughter.¹¹

Attorneys licensed to practice in the State of Florida, and around the country,¹² are precluded from making disrespectful and unfounded attacks on judges. In fact, as former Florida Supreme

⁶ Amy Howe, *Justices Kagan and Barrett testify before Congress*, SCOTUSblog (Jul. 14, 2026), <https://www.scotusblog.com/2026/07/justices-kagan-and-barrett-testify-before-congress/>.

⁷ Suzanne Monyak, *DHS Lawyer Calls Out Judges by Name as Judicial Threats Rise (2)*, Bloomberg Law, (Jul. 23, 2026) <https://news.bloomberglaw.com/us-law-week/top-dhs-lawyer-blasts-worst-judges-as-judicial-threats-climb>.

⁸ James Percival (@DHSGenCounsel), X (Jul. 28 2026, 12:01 PM), <https://x.com/DHSGenCounsel/status/2082134258257183201?s=20>.

⁹ *Bank of Am., N.A. v. Atkin*, 305 So. 3d 305, 307 (Fla. Dist. Ct. App. 2018) (citing *The Florida Bar v. Ray*, 797 So.2d 556, 558-59 (Fla. 2001)).

¹⁰ Travis Gettys, *Sinister deliveries and death threats hound judge each time he rules against Trump: report*, RawStory (Aug. 5, 2026), <https://www.rawstory.com/donald-trump-judge-threats/>.

¹¹ *Id.*

¹² See American Bar Association, CPR Policy Implementation Committee, *Variations of the ABA Model Rules of Professional Conduct, Rule 8.2: Judicial and Legal Officials* (Dec. 12, 2018) (listing jurisdictions with similar rules

Court Justice Thornal stated nearly 75 years ago, the very opposite is true: “if the Bench and Bar of . . . were being assaulted from all angles, with or without justification, it would be the duty of the lawyer above all others to exercise every measure of care and caution to avoid creating any justification for the suspicions.”¹³ Mr. Percival’s statements fail to live up to this core responsibility as an officer of the court and as a member of the bar and appear to violate Rule 4-8.2(a). As a result, it is imperative that The Florida Bar open an investigation into Mr. Percival and take appropriate disciplinary action as soon as possible.

I. Jurisdiction of The Florida Bar

Mr. Percival is a member of The Florida Bar. Pursuant to Rules 3-1.2, 3-4.1, and 4-8.5, Mr. Percival is subject to the Florida Rules of Professional Conduct and to the jurisdiction and disciplinary authority of the Supreme Court of Florida. Under Rule 4-8.5, he “is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere.”

Complainants are aware that The Florida Bar has declined to investigate other sitting Federal officials that were deemed “constitutional officers.” The Rules provide, however, that “Bar counsel must investigate the allegations contained in any written complaint that is signed under oath as provided in this rule” and that “Bar counsel may dismiss disciplinary cases *if* bar counsel determines, *after complete investigation*, that the facts show the respondent did not violate the Rules Regulating The Florida Bar.”¹⁴ Thus, unless Bar Counsel determines that there is no violation, the plain text of these rules provides that The Florida Bar is required to investigate this complaint.¹⁵ As described below, there is no basis to dismiss this complaint based on Mr. Percival’s current employment with the federal government.

a. *The Florida Bar has no Basis to Decline Investigation Based on Mr. Percival’s Status as General Counsel of DHS*

The Florida Bar has previously advised that they will not investigate “constitutional officers” under disciplinary Rule 3-7.16(d). That rule, set out below, provides no basis to defer or deny the obligation of The Florida Bar to investigate the allegations in this complaint. Rule 3-7.16(d) provides that:

to Rule 4-8.2),

https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpe_8_2.pdf.

¹³ *State ex rel. Fla. Bar v. Calhoon*, 102 So. 2d 604, 608 (Fla. 1958).

¹⁴ Rule 3-7.3(b), (d) (emphasis added).

¹⁵ In *May v. The Florida Bar*, The Florida Bar argued that it did not have a responsibility to investigate petitioner Jon May’s complaint against then-Attorney General Pamela Bondi in response to his petition for a writ of mandamus. The Florida Bar’s Response to Petition for Writ of Mandamus, *May v. Fla. Bar*, No. SC2025-1020 (Fla. Aug. 13, 2025), <https://acis-api.flcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/0fff4d5e-f891-4e97-b7b1-906c750fdc9d/docketentrydocuments/9b935b60-fd88-43e5-826d-245e51f73e5c>. The Supreme Court of Florida held that petitioner May was not entitled to mandamus on the basis that he had not shown a “clear legal right” to have The Florida Bar review the complaint. *May v. Fla. Bar*, No. SC2025-1020, 2025 WL 2902935 (Fla. Oct. 13, 2025), *reh’g denied*, No. SC2025-1020, 2025 WL 3760627 (Fla. Dec. 30, 2025). The Court did not hold, however, that The Florida Bar was not required to investigate the complaint, only that the petitioner had not shown that *he* had a clear right to induce that investigation.

Inquiries raised or complaints presented by or to The Florida Bar about the conduct of a constitutional officer who is required to be a member in good standing of The Florida Bar must be commenced within 6 years after the constitutional officer vacates office.

The rule is in a section titled “Limitation on Time to Open Investigation” and is one of several other rules that establish a statute of limitations in which complaints may be timely made or opened.¹⁶ The plain text of the constitutional officers limitation (1) only provides a cap on actions that are commenced after six years following the date the officer leaves their position, it is silent on actions taken while the individual is in office; and (2) only applies to a “constitutional officer who is required to be a member in good standing of The Florida Bar.” As the Supreme Court of Florida explained at the time it adopted the amendment:

New subdivision (d) of rule 3-7.16 requires that inquiries or complaints about the conduct of a constitutional officer who is required to be a member in good standing of The Florida Bar be commenced within six years after the individual leaves office. The new subdivision clarifies the length of time the Bar has to bring disciplinary action against a former judge or other constitutional officer who while in office must be a member in good standing of The Florida Bar and makes clear that a limitation similar to the six-year time limit contained in subdivision (a) would not commence until a constitutional officer vacates office.¹⁷

Noticeably absent from the Court’s description of the new rule: Any reference to a tolling, stay, or limitation on the Bar investigating complaints against constitutional officers. Rather, the rule provides nothing more, nor anything less than what its plain text says: the Bar has up to six years to bring a complaint against a constitutional officer after that person leaves office.

Given that clear text of Rule 3-7.16(d) *does not* provide authority to dismiss a claim against a sitting constitutional officer, it is unsurprising that The Florida Bar found that complainants were questioning the Bar’s policy. The result was that The Florida Bar petitioned the Supreme Court of Florida in 2022 to amend Rule 3-7.16(d) to expressly prohibit the Bar’s review of complaints against constitutional officers in 2022.

The Supreme Court of Florida explicitly declined to adopt the amendment.¹⁸ Although the court did not describe its reasoning, it is helpful to look at the comment of The Florida Bar Public Interest Law Section (PILS) urging the Supreme Court of Florida to decline to make the change. That comment noted that “Rule 3-7.16(d) in no way . . . precludes the filing of a complaint or the initiation of an investigation while an officer is in office” and explained that “the rule is not at all

¹⁶ Rule 3-7.16.

¹⁷ *Amends. to the Rules Regulating The Fla. Bar*, 763 So. 2d 1002, 1005 (Fla. 2000).

¹⁸ See, Opinion, *In Re: Amendments to Rules Regulating The Florida Bar-Chapters 3 & 14* (Sep. 7, 2023), [Opinion_SC2022-1293.pdf](#); Petition, *The Florida Bar, In Re: Amendments to Rules Regulating The Florida Bar-Chapters 3 & 14* (Oct. 25, 2022), <https://acis-api.flcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/ad6398fb-726f-4fbf-9479-f670321f7f4d/docketentrydocuments/f9c8a03a-6431-4ac2-aeba-82317c0e9382>.

unclear. It currently allows the Bar to discipline these officers.”¹⁹ PILS also pointed out, among other things, that the rule would violate state separation of powers issues, lead to disparate treatment, and undermine the judiciaries’ role in protecting the legal profession. PILS explained that “[t]he response to the question should not be seeking the adoption of language that justifies the Bar’s policy but changing the policy to further the best interests of the public and the lawyers of this state.” In rejecting The Florida Bar’s petition, that appears to be the message the Supreme Court of Florida was sending.

Notwithstanding the supreme court's declination to follow The Florida Bar’s attempt to exempt constitutional officers from the scope of Rule 3-7.16(d), The Florida Bar voted recently to amend Rule 3-7.16(d) in an attempt to preclude investigation into federal “constitutional officers.” To date, this petition has not been docketed or acted upon by the Supreme Court of Florida.

Nor is judicial precedent supportive of the Bar’s prior position. The two cases that have imposed restrictions on The Florida Bar’s ability to investigate constitutional officers have been limited to sitting judges and stand for the narrow holding that The Florida Bar cannot pursue disciplinary action against a sitting judge until after they have vacated their office.²⁰ As PILS pointed out in their comment, those cases do not stand for the proposition that the Bar cannot investigate claims against any constitutional officer other than sitting judges.

Even if the Supreme Court of Florida had adopted The Florida Bar’s recommendation (which it did not) it would have clearly only applied to *Florida’s* constitutional officers. As PILS noted in their comment:

From conversations PILS members have had with Bar officials, it appears that the Bar has been interpreting the term “constitutional officer” in the current rule as impacting only those who hold elected offices established by the constitution without the need for action by any other entity, which (given that elected judges are dealt with by case law) would seem to limit the impact of the current proposal to the attorney general, state attorneys, and public defenders.

That interpretation is consistent with how the term “constitutional officers” is used elsewhere in the Florida Statutes. For example, the Florida ethics law requires that constitutional officers receive ongoing ethics training. As defined in that section, the law is limited to Florida’s constitutional officers.²¹ This is also reflected in the reasoning provided by The Florida Bar when it adopted the recommendation to amend Rule 3-7.16(d) to clarify that the Bar would not take action on complaints against constitutional officers when they are in office. As the Bar

¹⁹ Comments of the Florida Bar Public Interest Law Section, *In Re: Amendments to Rules Regulating The Florida Bar—Chapters 3 & 14* (Dec. 28, 2022), <https://acis-api.flcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/ad6398fb-726f-4fbf-9479-f670321f7f4d/docketentrydocuments/f33034c1-69d3-423d-bf11-4a6d2a9a4298>.

²⁰ *The Florida Bar v. McCain*, 330 So. 2d 712 (Fla. 1976); *In re Investigation of Circuit Judge of Eleventh Judicial Circuit*, 93 So. 2d 601 (Fla. 1957).

²¹ See Fla. Stat. Ann. § 112.3142 (2025) (defining “constitutional officers” for purposes of ethics training to include “the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, state attorneys, public defenders, sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of the circuit court, county commissioners, district school board members, and superintendents of schools.”)

explained, “the governor has the authority to remove constitutional officers.”²² Florida’s governor does not, of course, have the authority to remove any federal employee, much less an officer appointed under the U.S. Constitution. As a result, there is simply no basis to find that The Florida Bar is prohibited from investigating Mr. Percival under the Florida Bar’s policy regarding “constitutional officers”—a policy that was never adopted by the Supreme Court and which was in fact repudiated by the Supreme Court of Florida less than three years ago.

Notwithstanding, even if Rule 3-7.16(d) did prevent investigations into *federal* constitutional officers it would only do so to the extent to which the person was a “constitutional officer *who is required to be a member in good standing of The Florida Bar*.” Mr. Percival is not required to be a member of The Florida Bar to be the general counsel for the Department of Homeland Security. Mr. Percival’s predecessor Jonathan Meyer was not admitted to practice in the State of Florida; he was admitted in the District of Columbia and New York.²³ Thus, even if he was a “constitutional officer” he is not one who is required to be a member of The Florida Bar. In fact, if he wanted to do so, Mr. Percival could change his membership status to “inactive” and it would have no immediate effect on his appointment to be the general counsel of DHS.

Finally, although Mr. Percival is appointed to a position requiring Senate confirmation; the role of general counsel is substantially different from that of an elected official or the head of an agency. Mr. Percival’s authorities are limited in scope to providing legal advice. Mr. Percival is not even in the immediate order of succession for the role of Secretary of DHS, which would be filled first by the Deputy Secretary and then by the Under Secretary for Management.²⁴ The duties of a general counsel and chief legal officer of an agency do not even necessarily require Senate confirmation absent a statutory mandate to do so. The general counsel at many agencies, including agencies like the Securities and Exchange Commission and the Commodity Futures Trading Commission, are simply appointed by their agency heads.

b. Investigation of Mr. Percival Does not Implicate Supremacy Clause Considerations

The Florida Bar has also suggested in a previous matter that its deferral policy is aimed at avoiding “encroach[ing] on the authority of the federal government.”²⁵ That argument is wholly misplaced.

First, the Supremacy Clause of the Constitution provides that the “Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land.”²⁶ As the Supreme Court recently explained, under the Supremacy Clause, when “a

²² Florida Bar Board of Governors, Regular Minutes, (July 23, 2021) at 10, available at <https://www.media.floridabar.org/uploads/2021/10/Regular-Minutes-July-23-2021-meeting-Revised.pdf>.

²³ Jonathan Meyer, Attorney Profile & Contact, Sheppard (last visited Aug. 4, 2026), <https://www.sheppard.com/people/jonathan-meyer>.

²⁴ 6 U.S.C. § 113(g)(1).

²⁵ See Letter from Francisco J. Dignon-Greer to Jon May, *RE: Pamela Jo Bondi; RFA No. 25-13781* (Jun. 6, 2025), set out in Petition for Writ of Mandamus, *May v. The Florida Bar*, SC2025-1020, Appx. B (Jul. 15, 2025) (“The Florida Bar does not investigate or prosecute sitting officers appointed under the U.S. Constitution while they are in office. Such proceedings by The Florida Bar, as an arm of the Florida Supreme Court, could encroach on the authority of the federal government concerning these officials and the exercise of their duties”)

²⁶ U.S. Const. Art. VI, Cl. 2.

regulated party cannot comply with both federal and state directives, the Supremacy Clause tells us the state law must yield.”²⁷ But, as the Supreme Court just emphasized earlier this year, “[t]here is no federal pre-emption *in vacuo*, without a constitutional text or a federal statute to assert it.”²⁸

Disciplining a government official for making statements that impugn the integrity of a sitting judge based on statements known to be false or with reckless disregard to their truth in violation of Rule 4-8.2(a) would not run afoul of any Constitutional clause or Congressional statute. The general counsel’s sole statutory authority is to serve as the “chief legal officer.” Nothing within that general statutory mandate permits the general counsel to make statements that would violate Rule 4-8.2(a). Quite the contrary: the general counsel’s role as chief legal officer is to provide “proper legal” support to DHS.²⁹

Moreover, the general counsel as an officer of the United States is prohibited from engaging in “criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.”³⁰ Statements that would involve dishonesty or disgraceful conduct, such as those that would violate Rule 4-8.2(a), plainly do not fall within the duties assigned to a general counsel. The Florida Bar’s investigation and discipline of the general counsel for violating the Rules would not violate the Supremacy Clause, rather, it would reinforce federal regulations aimed at protecting the integrity of the service.

Finally, although Mr. Percival is not covered by the McDade Amendment,³¹ which is only directly applicable to attorneys at the Department of Justice, the statute supports the view that Congress wanted all government attorneys to abide by the ethics laws of the states. The McDade Amendment was passed in the face of direct opposition by the Department of Justice to the application of disciplinary actions against DOJ officials and an attempt to remove those officials from coverage of state ethics laws that they felt encroached on the powers of the Department. Congress’s answer was definitive: DOJ attorneys were to be subject to state ethics rules “to the same extent and in the same manner as other attorneys in that state.”³² The implication being that all other attorneys, including other state licensed attorneys working for the federal government, were already clearly covered by the state ethics laws. In the face of Congress’ choice regarding DOJ attorneys, it is hard to countenance how Congress would have preferred the direct opposite result for other federal attorneys.

²⁷ *Martin v. United States*, 605 U. S. 395, 409 (2025).

²⁸ *Hencely v. Fluor Corp.*, 146 S. Ct. 1086, 1094 (2026) (citing *Puerto Rico Dept. of Consumer Affairs v. ISLA Petroleum Corp.*, 485 U. S. 495, 503 (1988)).

²⁹ Department of Homeland Security, Management Direction MD 0400: General Counsel Organization, Part IV(B)(1) (2003), https://www.dhs.gov/sites/default/files/publications/mgmt/litigation-and-judicial-activities/mgmt-dir_md-0400-general-counsel-organization.pdf (emphasis added).

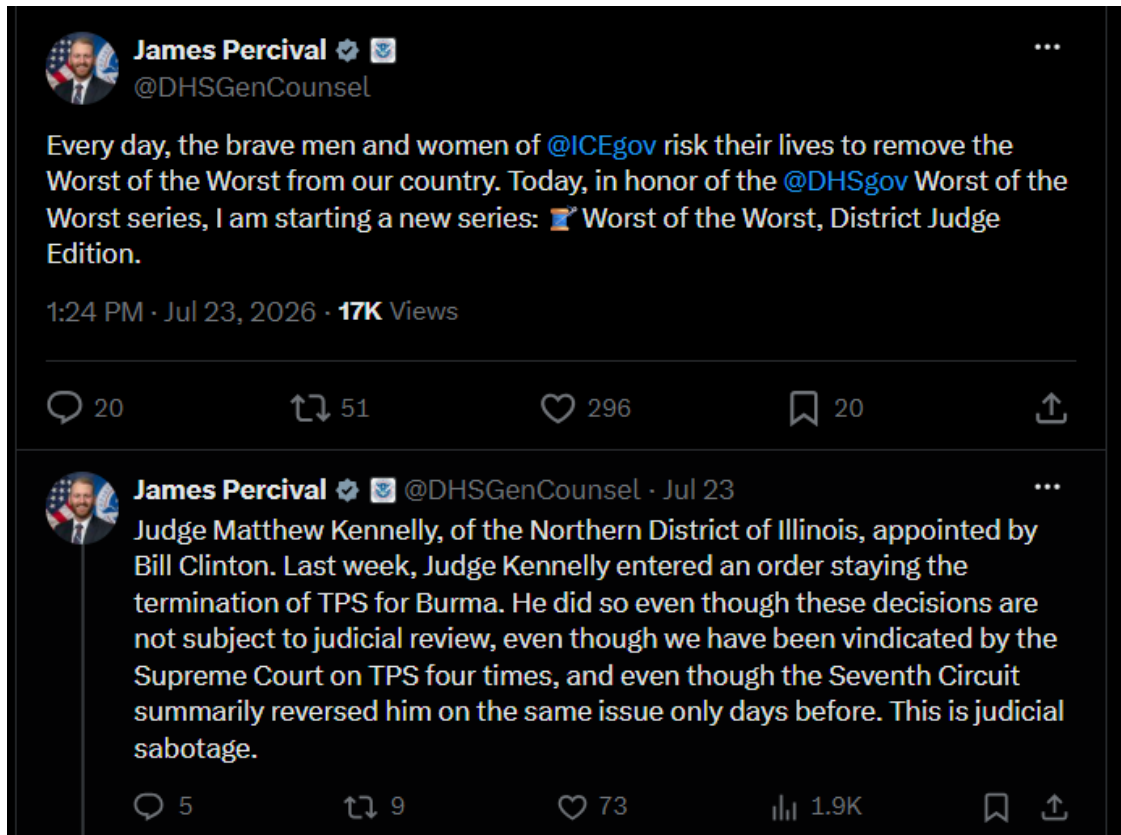
³⁰ 5 C.F.R. § 735.203.

³¹ 28 U.S.C. § 530B.

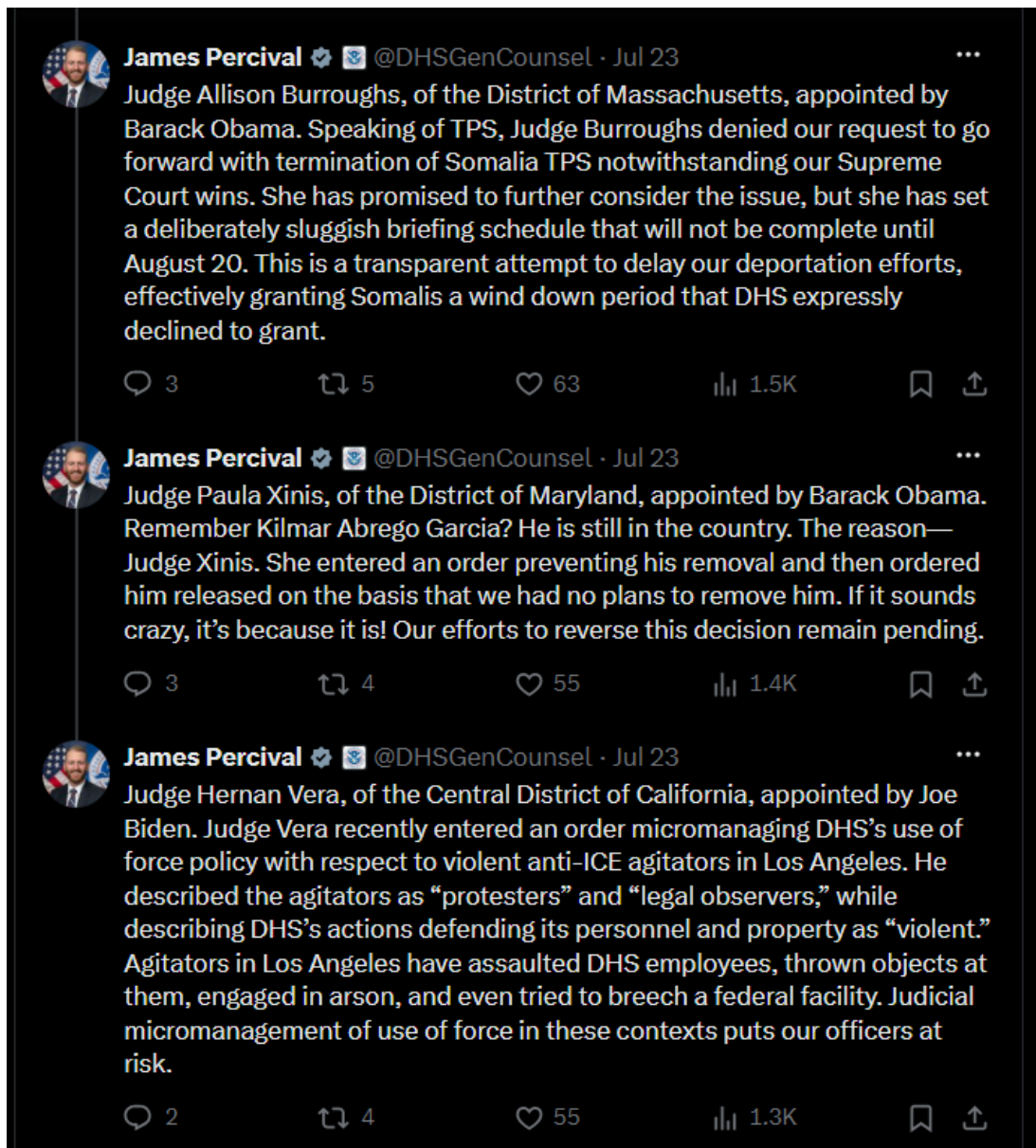
³² *Id.*

II. Background

On July 23, 2026, DHS General Counsel Percival posted the following thread post³³ on his official X social media page:



³³ James Percival (@DHSGenCounsel), X (Jul. 23, 2026, 1:24 PM), <https://x.com/DHSGenCounsel/status/2080282962155778105>.



In separate posts published after the original July 23 post, Mr. Percival continued to attack other judges, stating: "[a]nother rogue district judge just postponed the termination of [temporary protected status ('TPS')] for South Sudan. This is open defiance of the Supreme Court, plain and simple"³⁴ and that the judge was "[a]n early front runner for next week's edition of Worst of the Worst, District Judges."³⁵ In another post he said, "[t]hese district judges are engaged in mutiny

³⁴ James Percival (@DHSGenCounsel), X (Jul. 24, 2026, 9:50 AM), <https://x.com/DHSGenCounsel/status/2080651769009295808>.

³⁵ James Percival, (@DHSGenCounsel), X (Jul. 24, 2026, 9:57 AM), <https://x.com/DHSGenCounsel/status/2080653610908573847?s=20>.

against the Supreme Court.”³⁶ In a *Fox News* interview, Mr. Percival defended his statements saying that “this is not an attempt by me to blast the entire judiciary. It's just the opposite. If I were a member of the judiciary, I would want people to know this is a handful of district judges who are causing the same problems over and over and over again and calling the credibility of the entire branch of government into question when many of these judges are following the law and doing their jobs.”³⁷ Yet in the same interview he said “[w]e just think it's very helpful for people to understand what we're facing in the courts, how out of control they are” and that “a lot of that is because of the judicial sabotage that we are facing in district courts.”³⁸ In a video posted on July 30, Mr. Percival stated that “what these judges are doing is engaging in naked politics and then they're shrouding it in the thin veneer of legalese.”³⁹ On August 5, 2026, Mr. Percival responded to concerns about his statements in a *Washington Post* article concerning Judge McConnell, who has been the subject of several threats.⁴⁰ His response:

The Judicial Activism Industrial Complex is very upset that I am making truthful observations about their legal rulings. For those who don't understand how DC works, articles like this aren't just written. Rather, someone has them written. I must have hit a nerve.⁴¹

This is not the first time that Mr. Percival has criticized a sitting judge. In May 2026, Mr. Percival published a piece in *The Federalist*⁴² attacking Rhode Island Judge Melissa DuBose for “judicial misconduct”—which he called “neither surprising nor uncommon”—because she demanded that DHS take down a press release entitled “Activist Biden Judge Releases Violent Criminal Illegal Alien Wanted for Murder.”⁴³ Judge DuBose had ordered the release of Mr. Gomez from ICE detention after determining that he was being unlawfully detained. Unbeknownst to her, ICE officials had instructed the Department of Justice attorney representing DHS to withhold information concerning a pending homicide warrant out for Mr. Gomez in the Dominican Republic. After Mr. Gomez was released, DHS posted the aforementioned press release on its website. After becoming aware of the press release, Judge DuBose filed an order demanding that DHS show cause as to why it had failed to provide information to her regarding Mr. Gomez's dangerousness or criminal history.⁴⁴ The Department of Justice attorney

³⁶ James Percival (@DHSGenCounsel), X (Jul. 24, 2026, 3:34 PM), <https://x.com/DHSGenCounsel/status/2080738489335742966>.

³⁷ Charles Crietz, *'Worst of the Worst' judges are sabotaging Trump's immigration agenda, top DHS official says*, Fox News (Jul. 30, 2026), <https://www.foxnews.com/politics/worst-worst-judges-sabotaging-trumps-immigration-agenda-top-dhs-official-says>.

³⁸ *Id.*

³⁹ Homeland Security (@DHSgov), X (Jul. 30, 2026, 3:38 PM), <https://x.com/DHSgov/status/2082913645806137379>.

⁴⁰ James Percival (@DHSGenCounsel), X (Aug. 5, 2026, 3:15 PM), <https://x.com/DHSGenCounsel/status/2085082276199641322>.

⁴¹ Homeland Security (@DHSGenCounsel), X (Aug. 5, 2026, 3:15 PM), <https://x.com/DHSGenCounsel/status/2085082276199641322?s=20>.

⁴² James Percival, *Because She Ignored the Law, An Activist Judge Freed an Alleged Murderer*, The Federalist (May 12, 2026), <https://thefederalist.com/2026/05/12/because-she-ignored-the-law-an-activist-judge-freed-an-alleged-murderer/>.

⁴³ Press Release, U.S. Department of Homeland Security (Apr. 30, 2026), <https://www.dhs.gov/news/2026/04/30/activist-biden-judge-releases-violent-criminal-illegal-alien-wanted-murder>.

⁴⁴ Order, *Gomez v. Nessinger*, 1:26-cv-00245 (May 5, 2026) (ECF 6).

representing DHS wrote in his response to the show cause order that ICE had told him that he “was not permitted to disclose that information and [he] understood that a legitimate law enforcement reason prevented disclosure. Judge DuBose, therefore, lacked that information about the petitioner’s criminal background when she granted the petition” releasing the individual.⁴⁵ Notwithstanding, Mr. Percival wrote in *The Federalist*:

While Chief Justice John Roberts opined [recently]. . . that judges are not political, Judge Melissa DuBose is a glaring counterexample. What followed was an incredible case of judicial misconduct involving a nakedly political public affairs campaign and efforts to intimidate federal employees so they would stop criticizing a co-equal branch of government.

* * *

Given the radical activists President Biden installed across the country, this case of judicial misconduct is neither surprising nor uncommon. Unfortunately, DHS faces this kind of behavior almost every day. What is surprising is that more people are not mortified by the conduct of judges like Judge DuBose. Judge DuBose’s conduct is something we expect to see from UCLA students; we don’t expect to see it from a federal judge. I hope more people in positions of influence will take seriously the epidemic of judicial misconduct in this country.⁴⁶

Judge DuBose referred the government’s attorney, Assistant United States Attorney Kevin Bolan, for a determination of disciplinary action on May 5, 2026.⁴⁷ Although no action was taken, the District Court of Rhode Island described in an accompanying statement that DHS engaged in a “troubling sequence” of events that “raised the question whether ICE deliberately manipulated the case briefing on the Gomez petition to set up Judge DuBose to release Mr. Gomez so that it could make a false attack against her.”⁴⁸ The court’s statements further provides “The Court remains deeply concerned about the conduct by ICE officials that led to this incident and about the false statement issued by ICE reporting on the Gomez ruling, which remains online despite the government’s knowledge that it is false.”⁴⁹ The press release is still on the DHS website.

III. Discussion

Rule 4.8.2(a), *Impugning Qualifications and Integrity of Judges or Other Officers* provides that

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or

⁴⁵ Response to Order to Show Cause, *Gomez v. Nessinger*, 1:26-cv-00245 (May 1, 2026).

⁴⁶ Percival, *supra* nt. 42.

⁴⁷ Order, *Gomez v. Nessinger*, 1:26-cv-00245 (May 5, 2026) (ECF 11).

⁴⁸ U.S. District Court of Rhode Island, Statement of the Court with Regard to its Attorney Discipline Inquiry (Jun. 16, 2026), <https://www.rid.uscourts.gov/sites/rid/files/FINAL%20Statement%20of%20Court%20-%20Attorney%20Disciplinary%20Matter%20-%20Bolann.pdf>.

⁴⁹ *Id.*

integrity of a judge, mediator, arbitrator, adjudicatory officer, public legal officer, juror or member of the venire, or candidate for election or appointment to judicial or legal office.

The Supreme Court of Florida has explained that Rule 4-8.2(a) is “designed to preserve public confidence in the fairness and impartiality of our system of justice,” since “members of the Bar are viewed by the public as having unique insights into the judicial system.”⁵⁰ When an attorney makes untrue or reckless allegations against a judge's integrity “[s]uch accusations represent more than a personal attack upon that particular judge, but casts slur and insult upon the judiciary as a whole.”⁵¹ For that reason, just last month, the Supreme Court of Florida reaffirmed that the judiciary has a “compelling” interest in “restrictions on attorney speech that recklessly impugns the qualifications or integrity of sitting judges.”⁵²

A violation of Rule 4-8.2(a) requires a showing that (1) the attorney in question has made statements that “impugn the qualifications or integrity”⁵³ of a listed person, including a sitting judge (2) those statements were known to be “false” or made “with reckless disregard as to its truth or falsity.” The supreme court has explained that in addressing the second element of the statute, the court utilizes an objective standard as to “whether the attorney had an objectively reasonable factual basis for making the statements.”⁵⁴ Once there is “evidence establishing that a lawyer made statements concerning the qualifications or integrity of a judge, the burden shifts to the respondent to provide an objectively reasonable factual basis for making the statements.”⁵⁵

A. General Counsel Percival's July 23 Post Impugned the Integrity of the Judges

Mr. Percival's July 23 post had the effect of impugning the integrity of the four sitting judges. A DHS spokesperson justified the post as “nothing more than a factual review of judicial decisions and their real-world consequences.”⁵⁶ However, the posts, taken individually and in context,

⁵⁰ *Fla. Bar v. Ray*, 797 So. 2d 556, 558-59 (Fla. 2001).

⁵¹ *Cerf v. State*, 458 So. 2d 1071, 1074 (Fla. 1984).

⁵² *Fla. Bar v. Crowley*, No. SC2020-0529, 2026 WL 1982981, at *4 (Fla. July 9, 2026); *see also Fla. Bar v. Girley*, 417 So. 3d 230, 237-38 (Fla. 2025), *reh'g denied*, No. SC2022-0859, 2025 WL 2609869 (Fla. Sept. 10, 2025), and *cert. denied*, 146 S. Ct. 1672, 224 L. Ed. 2d 9 (2026) (upholding suspension of attorney who made disparaging remarks against a judge).

⁵³ “Integrity is defined as an uncompromising adherence to a code of moral, artistic, or other values; avoidance of deception; the quality or state of being undivided.” *Mississippi Bar v. Lumumba*, 912 So. 2d 871, 884 (Miss. 2005), *reinstatement granted sub nom. In re Lumumba*, 962 So. 2d 536 (Miss. 2007) (citing Webster's Third New International Dictionary 1174 (1986)).

⁵⁴ *The Fla. Bar v. Ray*, 797 So. 2d 556, 558-59 (Fla. 2001); *Yeville v. Spiegel*, 373 So. 3d 1238, 1240 (Fla. Dist. Ct. App. 2023) (“When determining whether the rule was violated, the question is not whether the statement is false, but whether [the attorney] had an objectively reasonable factual basis for making the statement”); *see also In re Cobb*, 445 Mass. 452, 469 (2005) (“A majority of State courts that have considered the question have concluded that the standard is whether the attorney had an objectively reasonable basis for making the statements”); *Idaho State Bar v. Topp*, 129 Idaho 414 (1996), *cert. denied*, 520 U.S. 1155 (1997); *Matter of Terry*, 271 Ind. 499 (1979), *cert. denied sub nom. Terry v. Indiana Supreme Court Disciplinary Comm'n*, 444 U.S. 1077 (1980).

⁵⁵ *Fla. Bar v. Jacobs*, 370 So. 3d 876, 883-884 (Fla. 2023); *Fla. Bar v. Patterson*, 257 So. 3d 56, 62 (Fla. 2018) (“The burden is on the lawyer who made the statement to produce a factual basis to support the statement”).

⁵⁶ Monyak, *supra* nt. 7.

amount to *ad hominem* attacks on the integrity of the Judges themselves. In doing so, they “personalize the judge’s conduct” and focus on their actions and integrity.⁵⁷

Mr. Percival explains that he is listing the “Worst of the Worst” of “District Judges.” This is “the same label DHS uses for [another] series naming dangerous criminal immigrants that the agency has deported . . . language built to justify removing people accused of violent crimes.”⁵⁸ Each of the following posts goes on to individually denigrate the actions of the judges. Each post lists a judge by their name, district, and the name of the President who appointed them,⁵⁹ and then characterizes their actions in a way that attacks their decision-making or suggests an ulterior motive for their actions. For example, Mr. Percival states that Judge Kennelly engaged in “judicial sabotage.” He alleged that Judge Burroughs set a “deliberately sluggish briefing schedule” as a “transparent attempt to delay . . . deportation efforts” of the administration. He claimed that Judge Xinis’ actions in entering an order preventing the removal of Kilmar Ábrego García were “crazy.” Finally, Mr. Percival asserted that Judge Vera was engaged in “judicial micromanagement” and was putting DHS officers at “risk.” These statements were made in the context of Mr. Percival’s clear comparison between the “brave men and women of @ICEgov” who “risk their lives to remove the Worst of the Worst from our country” and these named judges, who he has labeled the “Worst of the Worst.” Moreover, Mr. Percival stated that these judges were engaged in “naked politics” and engaged in a “mutiny” and called another judge a “rogue district court judge.”

Taken together, Mr. Percival’s statements are not a staid, respectful critique of the rulings of these cases, but an attack on the judges’ integrity. While Mr. Percival may be frustrated that judges have ruled against DHS, there is only so far he can go. “A lawyer resorting to insults . . . is perhaps genuinely expressing his or her frustration at not being able to persuade the court. . . [but] disparaging comments . . . cannot be justified as a means to identify problems in the legal system because insults usually garner resistance to an idea rather than a sympathetic consideration.”⁶⁰ To that end, “*ad hominem* attacks on the judiciary are indefensible. They undermine the integrity of the profession, erode respect for the judicial process, and are

⁵⁷ *Matter of Westfall*, 808 S.W.2d 829, 832 (Mo. 1991), *cert. denied* 502 U.S. 1009 (1991) (“This Court first addresses respondent’s protestations that his statements were merely expressions concerning the soundness of the court of appeals’ decision, not statements of actual and provable facts about the judge’s integrity. His contentions are not well taken. . . The statements personalize the judge’s conduct and specifically refer to him, his motivation, and his integrity as it relates to his participation in the appellate judicial process”).

⁵⁸ Joe Patrice, *DHS General Counsel Names Four Federal Judges 'Worst Of The Worst' As Threats Against Judiciary Hit 564*, Above the Law (Jul. 28, 2026), <https://abovethelaw.com/2026/07/dhs-general-counsel-names-four-federal-judges-worst-of-the-worst-as-threats-against-judiciary-hit-564/>.

⁵⁹ No appointees of Republican presidents were listed, notwithstanding that judges appointed under both Democratic and Republican administrations have ruled against the Department of Homeland Security over 10,000 times during President Trump’s second term. Kyle Cheney, *10,000 rulings: The courts’ overwhelming rebuke of Trump’s ICE policies*, Politico (May 13, 2026), <https://www.politico.com/news/2026/05/13/10k-rulings-ice-mandatory-detention-trump-analysis-00914195>. The implication, particularly given Mr. Percival’s *Federalist* article, is that these judges may have been politically biased.

⁶⁰ *Bank of Am., N.A. v. Atkin*, 305 So. 3d 305, 307 (Fla. Dist. Ct. App. 2018); *see also The Fla. Bar v. Weinberger*, 397 So. 2d 661, 662 (Fla. 1981) (upholding disciplinary action against attorney who made public statements denigrating two judges); *cf. Shortes v. Hill*, 860 So. 2d 1, 3 (Fla. Dist. Ct. App. 2003) (finding that attorney’s statement that a judge’s ruling was “cockeyed and absurd” and showed a “most startling absence of legal knowledge and irrational decision” fell “far below the standard” set forth in Rule 4-8.2(a) and therefore referred the attorney to the Bar);

themselves sanctionable. . . advocacy does not license abuse, and disagreement with a ruling does not excuse reckless allegations impugning the integrity or the impartiality of the Court.”⁶¹

B. General Counsel Percival’s Statements Disregarded the Truth and Mischaracterized Important Elements of the Cases

The second requirement to show a violation of Rule 4-8.2(a) is that the attorney must have made an impugning statement knowing it to be “false or with reckless disregard as to its truth.” The Supreme Court of Florida has determined that an attorney meets this standard if they did not have “an objectively reasonable factual basis for making the statements.”⁶²

Mr. Percival comments that the judges were the “Worst of the Worst,” issued “crazy” opinions, engaged in “judicial sabotage,” were “micromanaging” the department, had gone “rogue,” and were engaged in “naked politics,” all lack a sound basis in fact. These statements cannot be treated as simply Mr. Percival’s opinion; rather, Mr. Percival’s statements were related to the Judges’ actions in the underlying cases.⁶³ As described below, each of the judges issued orders in the underlying cases that were thoughtful, considered, and were “in accordance with legal precedent.”⁶⁴ Mr. Percival’s statements, on the other hand, appear to have ignored or mischaracterized important aspects of the orders in a way that has “no objectively reasonable factual basis” in violation of Rule 4-8.2(a).⁶⁵ As the highest courts of at least two other states have explained, “one cannot create an ‘artificial dichotomy’ between opinion and fact by couching an assertion of fact as an opinion” and that “[m]erely cloaking an assertion of fact as an opinion does not give that assertion constitutional protection” that brings it outside of the scope of their version of Rule 4-8.2(a).⁶⁶

Regardless of whether these cases were rightly or wrongly decided, Mr. Percival was not at liberty to attack the judges’ integrity; yet, taken together, his statements paint a broad and detrimental view of these judges and their actions, one that does not appear in any way supported by the facts.

⁶¹ *Glob. Glass Techs., Inc. v. Rsch. Frontiers, Inc.*, No. 8:20-CV-2517-MSS-AEP, 2025 WL 2902944, at *2 (M.D. Fla. Sept. 23, 2025).

⁶² *The Fla. Bar v. Ray*, 797 So. 2d 556, 558–59 (Fla. 2001).

⁶³ *Id.* at 558 (rejecting argument by respondent that impugning statements in a letter were not covered by Rule 4-8.2(a) because they were his “opinion and that he had a subjectively reasonable basis in fact for making the statements”); *see also Re Santino*, 257 So. 3d 25, 29 (Fla. 2018) (finding judge to have violated Rule 4-8.2(a) and the Judicial Canons by making misleading statements about another candidate for judicial office which implied the other candidate was not partial and was predisposed to criminals).

⁶⁴ *Fla. Bar v. Girley*, 417 So. 3d 230, 237–38 (Fla. 2025), *reh’g denied*, No. SC2022-0859, 2025 WL 2609869 (Fla. Sept. 10, 2025), and *cert. denied*, 146 S. Ct. 1672, 224 L. Ed. 2d 9 (2026).

⁶⁵ *Id.*

⁶⁶ *In re Petition for Disciplinary Action Against Nathan*, 671 N.W.2d 578, 584 (Minn. 2003); *In re Westfall*, 808 S.W.2d 829, 832–33 (Mo.1991) (citing *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18–19, 110 S.Ct. 2695, 111 L.Ed.2d 1 (1990), for the proposition that one cannot create an “artificial dichotomy” between opinion and fact by couching an assertion of fact as an opinion); *see also In re Disciplinary Proc. Against Riordan*, 2012 WI 125, ¶ 32, 345 Wis. 2d 42, 55, 824 N.W.2d 441, 448 (2012) (stating that attorney’s “subjective belief that his statements about Judge Dwyer and the guardianship proceeding were appropriate and necessary based upon his religious beliefs and spiritual experiences does not relieve him of the obligation to demonstrate a factual basis for his comments to the court”);

i. *Statements Regarding Judge Kennelly*

In his July 23 post, General Counsel Percival stated that Judge Kennelly entered an order staying the termination of TPS for Burma (arising from the case *Doe v. Mullin*, 1:23-cv-15483) even though, as Mr. Percival described it “these decisions are not subject to judicial review” and that “the Seventh Circuit summarily reversed him *on the same issue* only days before.” As a result, Mr. Percival said that Judge Kennelly was engaged in “judicial sabotage.”

First, Mr. Percival’s description of the facts is misleading at best. Supreme Court precedent did not hold that the termination of TPS was *unreviewable*; rather, the Court found that the TPS statute barred *non-constitutional* claims.⁶⁷ Plaintiffs had brought several constitutional claims under the 5th Amendment of the Constitution’s due process clauses, and those claims were not deemed unreviewable by the Supreme Court’s recent ruling. And while the Supreme Court’s decision suggests that plaintiffs would be unlikely to win their equal protection arguments and therefore were not entitled to an order postponing their TPS termination during litigation, the Court’s opinion did not consider the plaintiffs’ procedural due process claims, which were included in the plaintiffs’ amended Complaint.

Second, Judge Kennelly did not issue an order of postponement, which was the order that was appealed and reversed by the Seventh Circuit. Rather, he issued a temporary administrative stay, seeking to hold the status quo while the parties could complete briefing on still existing matters subject to his jurisdiction and which were not addressed by the recent Supreme Court case.⁶⁸ The use of administrative stays is a normal case management tool, and of course even the “[Supreme] Court frequently issues an administrative stay to permit time for briefing and deliberation” and “[t]he courts of appeals use the procedure to the same end.”⁶⁹ Consistent with normal court management procedures, Judge Kennelly’s administrative stay was only for the purpose of “buy[ing] time” for him to assess the plaintiff’s motion for preliminary relief.⁷⁰

Third, and finally, there is nothing in the record to suggest that Judge Kennelly’s actions were intended to *sabotage* the defendants. The term “sabotage” means to engage in “deliberative subversion” with the intent to “hamper or hurt.”⁷¹ It also has been defined to mean “the act of intentionally preventing the success of a plan or action.”⁷² Judge Kennelly did not sabotage the defendants case or prevent them from making motions in support of their position on the appropriate outcome. Rather, he used a normal case management tool, one approved for use by even the Supreme Court, to ensure that the parties were able to brief a pending motion and to assess the impact of the Supreme Court’s ruling on the parties. There is simply no objective factual support for the perspective that Judge Kennelly engaged in “judicial sabotage.”

⁶⁷ *Mullin v. Doe*, 146 S. Ct. 2121, 2133 (2026).

⁶⁸ Order, *Doe v. Mullin*, 1:25-cv-15483 (Jul. 19, 2026), <https://storage.courtlistener.com/recap/gov.uscourts.ilnd.491873/gov.uscourts.ilnd.491873.97.0.pdf>.

⁶⁹ *United States v. Texas*, 144 S. Ct. 797, 798 (2024).

⁷⁰ *Id.*

⁷¹ Merriam-Webster.com Dictionary, *Sabotage* (last visited Aug. 4, 2026), <https://www.merriam-webster.com/dictionary/sabotage>.

⁷² Cambridge English Dictionary, *Sabotage* (last visited Aug. 4, 2026), <https://dictionary.cambridge.org/us/dictionary/english/sabotage>.

ii. *Statements Regarding Judge Burroughs*

Mr. Percival's post alleged that Judge Burroughs "has set a deliberately sluggish briefing schedule that will not be complete until August 20" calling it a "transparent attempt to delay our deportation efforts." That complaint appears to be related to a temporary administrative stay the judge issued in *African Communities Together v. Noem*, 1:26-cv-11201 that was filed on July 9, 2026. That order was issued to permit the judge time to determine whether there were any counts in the complaint that were viable after the Supreme Court's decision in *Mullin v. Doe*.⁷³ The original complaint, like that in *Doe*, avers both violations of the APA and of the Constitution under the Fifth Amendment equal protection line of cases.⁷⁴

There is no indication in the record that Judge Burroughs "set a deliberately sluggish" schedule to avoid compliance with the law in a "transparent attempt to delay" the deportation efforts of DHS. Pursuant to an order of the court, on July 13 the parties were directed to address the impact of *Mullin v. Doe* with the plaintiffs brief due by July 30, defendants to respond by August 13, and for plaintiffs to respond within seven days after defendant's brief *but no later than August 20*.⁷⁵ That is hardly a "sluggish" schedule.

Furthermore, the administrative stay was issued to allow her to consider the emergency motion filed by the plaintiffs. Plaintiffs raised constitutional claims, which could be the basis for judicial review as per *Mullin v. Doe*. Far from being a "transparent attempt to delay" the deportation effort, it appears that Judge Burroughs was simply attempting to assess the impact of a new and precedential Supreme Court decision on the rights of all the parties. To do so, she issued an administrative stay to "buy[] time" to deliberate.⁷⁶ Again, that is a normal judicial management tool utilized in courts across the country including the Supreme Court.

iii. *Statements Regarding Judge Xinis*

General Counsel Percival's post further alleges that Kilmar Ábrego García, who entered the United States illegally in 2001 after fleeing El Salvador for fear of gang violence, was still in the country because of Judge Xinis. Mr. Percival claimed that Judge Xinis "entered an order preventing his removal and then ordered him released on the basis that we had no plans to remove him. If that sounds crazy, it's because it is!"

Again, Mr. Percival's statement gravely mischaracterizes the facts. The government unlawfully deported Mr. Ábrego García to El Salvador in violation of a longstanding withholding of removal preventing his removal to that country.⁷⁷ Former Department of Justice Attorney Erez

⁷³ Joint Status Report, *African Communities Together v. Noem*, 1:26 -cv-11201 at 2 (Jul. 9, 2026), <https://storage.courtlistener.com/recap/gov.uscourts.mad.297215/gov.uscourts.mad.297215.79.0.pdf>.

⁷⁴ Complaint, *African Communities Together v. Noem*, 1:26 -cv-11201 at 92-93 (Mar. 9, 2026), <https://storage.courtlistener.com/recap/gov.uscourts.mad.297215/gov.uscourts.mad.297215.1.0.pdf>.

⁷⁵ Electronic Order, *African Communities Together v. Noem*, 1:26 -cv-11201 (Jul., 13 2026) (Document #82) available <https://www.courtlistener.com/docket/72383804/african-communities-together-v-noem/>.

⁷⁶ *United States v. Texas*, 144 S. Ct. at 798.

⁷⁷ Memorandum Opinion, *Ábrego García v. Noem*, 8:25-cv-00951 at 1 (Apr. 6, 2025), https://storage.courtlistener.com/recap/gov.uscourts.mdd.578815/gov.uscourts.mdd.578815.31.0_3.pdf.

Reuveni admitted in April 2025 that Ábrego García's deportation to El Salvador was wrong and that he should not have been sent to that country.⁷⁸ He was later unlawfully fired for making that admission.⁷⁹ As a result of Mr. Ábrego García's unlawful deportation to El Salvador, Judge Xinis ordered that DHS facilitate the return of Mr. Ábrego García to the United States,⁸⁰ an order that was left in place by both the Fourth Circuit and the U.S. Supreme Court (with a remand for clarification).⁸¹ The government then failed to comply until it decided to bring him back to the United States to stand trial for unrelated trafficking crimes that were deemed presumptively vindictive and dismissed earlier this year.⁸²

Judge Xinis later approved Mr. Ábrego García's release from custody on the basis that the Government had shown "no significant likelihood of removal exists in the reasonably foreseeable future."⁸³ That finding was based on the fact that DHS had "ignored the one country that has consistently offered to accept Ábrego García as a refugee, and to which he agrees to go" while making "one empty threat after another to remove him to countries in Africa with no real chance of success."⁸⁴

Judge Xinis applied existing law to Mr. Ábrego García's case. That decision was delivered against a backdrop of ongoing attempts by the administration to attack Mr. Ábrego García, including a finding that the administration presumptively vindictively prosecuted him, while failing to take a substantial step to remove him to an appropriate country. Moreover, the order came in the face of months of failure of the Government to come up with a legitimate plan for deportation and rebuffing Mr. Ábrego García's own attempts to negotiate deportation to a country that was willing to take him in. No objective facts suggest that the decision by Judge Xinis was "crazy" or that she deserved to be called one of the "worst of the worst."

iv. *Statements Regarding Judge Vera*

Finally, Mr. Percival claimed that Judge Vera "recently entered an order micromanaging DHS's use of force policy with respect to violent anti-ICE agitators." That allegation arises from a preliminary injunction issued against DHS in September of last year in the case *Los Angeles Press Club v. Noem*, 2:25-cv-05563.

That injunction imposed limitations on DHS' use of weapons and force when individuals are not posing a "threat of imminent harm" or when force is unnecessary to stop immediate harm from

⁷⁸ *Id.* at 2.

⁷⁹ Evan Perez, *Justice Department fires immigration lawyer who argued case of mistakenly deported man*, CNN (Apr. 15, 2025), <https://www.cnn.com/2025/04/15/politics/doj-fires-immigration-lawyer-who-argued-abrego-garcia-case-source-says>.

⁸⁰ Order, *Ábrego García v. Noem*, 8:25-cv-00951 at 1 (Apr. 4, 2025), https://storage.courtlistener.com/recap/gov.uscourts.mdd.578815/gov.uscourts.mdd.578815.21.0_5.pdf.

⁸¹ *Ábrego García v. Noem*, No. 25-1345, 2025 WL 1021113, at *1 (4th Cir. Apr. 7, 2025); *Noem v. Ábrego García*, 145 S. Ct. 1017, 1018 (2025).

⁸² Memorandum Opinion, *United States v. Ábrego García*, 3:25-cr-00115 (May 22, 2026), <https://www.courthousenews.com/wp-content/uploads/2026/05/crenshaw-ruling-abreg-garcia-vindictive-prosecution-indictment-dismissed.pdf>.

⁸³ Memorandum Order, *Ábrego García v. Noem*, 8:25-cv-02780 at 8 (Feb. 17, 2026) (cleaned up), https://storage.courtlistener.com/recap/gov.uscourts.mdd.589189/gov.uscourts.mdd.589189.141.0_2.pdf.

⁸⁴ *Id.*

occurring to another person.⁸⁵ On the other hand, “the Court’s Order [did] not prevent officers from apprehending, dispersing, or even appropriately using crowd control weapons on those who do pose a threat of imminent harm to a law enforcement officer or another person.”⁸⁶ The Judge imposed the injunction based on a finding that DHS officials “*indiscriminately* deployed force against [the plaintiffs], though they were not engaged in or even proximate to any violent or noncompliant actions.”⁸⁷ As the Judge explained, “the record includes detailed and credible declarations from nearly 50 journalists, legal observers, and protestors averring that federal law enforcement agents used rubber bullets, pepper balls, tear gas, and other crowd control weapons on them at protests from June 6 through July 10, 2025.”⁸⁸ As the court said at that time, DHS officers appeared to be “targeting journalists standing far from any protest activity, launching scorching-hot tear gas canisters directly at people, and shooting projectiles at protestors attempting to comply with dispersal orders.”⁸⁹

These limitations were not micromanaging; in fact, they largely coincide with DHS’s own use of force policy.⁹⁰ As the Court stated in its preliminary injunction decision, “Plaintiffs’ proposed injunctive relief poses little burden to defendants, who are already obligated to restrict their use of force to objectively reasonable circumstances.” On appeal, the 9th Circuit affirmed the majority of the injunction, although it remanded to the district court to “fashion a narrower” order because the injunction was overbroad because it was “not limited to providing relief only to the individual Plaintiffs, members of the Organizational Plaintiffs, or non-parties whose protection Plaintiffs have shown necessary to give relief to Plaintiffs.”⁹¹ On July 10, 2026, Judge Vera issued a narrower injunction after briefing by both parties that revised the preliminary injunction to accord with the 9th Circuit’s instructions.⁹² That injunction imposed four limited requirements, preventing the defendants from:

Dispersing Plaintiffs from public streets, sidewalks, parks, or plazas so as to prevent them from observing, recording, or reporting on DHS immigration enforcement and removal operations (or protests of those operations) when they are not physically impeding or disrupting access to federal property or operations, vandalizing property, or within a crowd posing an immediate threat to public safety, peace, or order;

⁸⁵ Order Granting Plaintiff’s Motion for Preliminary Injunction, *Los Angeles Press Club v. Noem*, 2:25-cv-05563 at 43 (Sep. 10, 2025),

https://storage.courtlistener.com/recap/gov.uscourts.cacd.975245/gov.uscourts.cacd.975245.55.0_2.pdf.

⁸⁶ *Id.* at 38.

⁸⁷ *Id.* at 39.

⁸⁸ *Id.* at 2.

⁸⁹ *Id.* at 3.

⁹⁰ Department of Homeland Security, Policy Statement 044-05 (Revision 01) (Feb. 6, 2023), https://www.dhs.gov/sites/default/files/2023-02/23_0206_sl_use-of-force-policy-update.pdf (“LEOs may use force only when no reasonably effective, safe, and feasible alternative appears to exist and may use only the level of force that is objectively reasonable in light of the facts and circumstances confronting the LEO at the time force is applied” “When feasible, prior to the application of force, a DHS LEO must attempt to identify themselves and issue a verbal warning to comply with the LEO’s instructions”).

⁹¹ *LA Press Club v. Noem*, 171 F.4th 1179, 1191 (9th Cir. 2026).

⁹² Order Granting Revised Preliminary Injunction, *Los Angeles Press Club v. Noem*, 2:25-cv-05563 (Jul. 10, 2026), <https://storage.courtlistener.com/recap/gov.uscourts.cacd.975245/gov.uscourts.cacd.975245.133.0.pdf>.

Threatening or assaulting Plaintiffs with crowd control weapons (including kinetic impact projectiles (“KIP”s), chemical irritants, and flash-bang grenades) when Plaintiffs are not posing a threat of immediate harm to a law enforcement officer or another person, physically impeding federal operations, vandalizing property, or actively resisting arrest;

Retaliating against Plaintiffs by using any crowd control weapons (including KIPs, chemical irritants, and flash-bang grenades) without giving a warning to comply with instructions, unless the threat is so serious and imminent that a warning is infeasible. Such warning, if feasible, shall give Plaintiffs reasonable opportunity to voluntarily comply before crowd control weapons are applied against them;

Firing tear gas canisters or flash-bang grenades so as to strike any Plaintiff, or firing KIPs or other crowd control weapons at the head, neck, groin, back, or other sensitive areas, unless that person poses an immediate threat of death or serious bodily injury.⁹³

Nothing in that order appears to “micromanage” the use of force writ large by the Department or to prevent them from using force when the circumstances call for it. In fact, the injunction makes clear that “[d]efendants shall not be liable for violating this injunction if a plaintiff is incidentally exposed to crowd control devices after such a device was deployed in a manner that complies with this injunction.”⁹⁴

Mr. Percival’s statement also suggests incorrectly that the injunction is putting ICE officials at risk of harm. To the contrary, the Court was very clear in its original injunction that “the Court expresses no sympathy for those private individuals who engaged in violence during this period. Indeed, this Order *does not prevent any appropriate enforcement of the law against these individuals*.”⁹⁵ His revised order was further tailored consistent with the 9th Circuit’s guidance and clearly allows for the use of force in instances where there was an actual need to do so.

C. General Counsel Percival’s Comments Had a Deleterious Effect on the Integrity of the Judiciary and Raised Concerns About Judicial Targeting

General Counsel Percival’s posts impugn the character of four sitting judges. These attacks increase the unfounded perception that the judiciary is biased and its results unfair. Comments on Mr. Percival’s posts (and reposts by others) show that it has had an adverse effect on the trust of at least a subset of those who interacted with his content. Comments include statements calling into question whether the judges were politically motivated “left-wing,” “radical,” and “activist” judges, calls on DHS to “[i]gnore the judges” and to “[d]eport then Arrest the judges if they

⁹³ *Id.* at 11-12.

⁹⁴ *Id.* at 12.

⁹⁵ Order Granting Plaintiff’s Motion for Preliminary Injunction, *Los Angeles Press Club v. Noem*, 2:25-cv-05563 at 3 (Sep. 10, 2025), https://storage.courtlistener.com/recap/gov.uscourts.cacd.975245/gov.uscourts.cacd.975245.55.0_2.pdf.

interfere,” and one post stating that “[t]hey need and deserve intimidation.”⁹⁶ Furthermore, Mr. Percival’s comments raise the risk of threats of violence against judges. Several sitting and retired judges have already raised serious concerns about the impact of Mr. Percival’s statements on sitting judges.⁹⁷ Both the American Bar Association and the International Academy of Trial Lawyers have raised concerns that Mr. Percival’s statements disparage the judges personally and “target” them for intimidation.⁹⁸ Against the increased threat environment facing judges, Mr. Percival’s statements serve only to open the door to further intimidation and attacks. This sort of enmity towards the judiciary is the exact harm that Rule 4-8.2(a) is intended to prevent. Mr. Percival’s use of his official role as general counsel to amplify these messages only furthers their impact in ways that non-federal officials simply could not.

Conclusion

General Counsel Percival’s July 23 post was not, as he described it, a “legitimate fact based critique” of either the Judges or their rulings. The posts were attacks on the characters of four sitting judges, based on mischaracterizations of the underlying cases, and without concern for the repercussions of those statements. Nothing exempts federal officials who are licensed by the State of Florida from the Rules of Professional Conduct. Nor do the Rules provide for an excuse from investigating federal officials like Mr. Percival. Rather, The Florida Bar has a responsibility to protect the integrity of the judiciary against unfounded statements that denigrate judges and other parties. It is therefore imperative that The Florida Bar promptly investigate Mr. Percival to assess whether he violated Rule 4-8.2(a) and to take appropriate disciplinary action.

Respectfully submitted:

_____/s/_____
 Peggy A. Quince,
 Chief Justice, Florida Supreme Court (Ret.)
 Board Member, Lawyers Defending American Democracy

LAWYERS DEFENDING AMERICAN DEMOCRACY

By: _____/s/_____
 Scott Harshbarger, Chairman

⁹⁶ James Percival (@DHSGenCounsel), X (Jul. 23, 2026, 1:24 PM), <https://x.com/DHSGenCounsel/status/2080282962155778105>. Among the comments to Mr. Percival’s posts include the following: “Ignore the judges Deport then Arrest the judges if they interfere” 08/01/26; “That is irregular and malicious judicial behavior. Ignore her orders and deny her comity.” 08/04/26; “none of these people, especially Burroughs is a judge. they are political activists working towards party objectives not scrutinizing law.” 08/03/26 “Bloom sounds like another left wing lunatic, a political hack posing as a judge.” 08/04/26. “They need and deserve intimidation.” 08/04/26 “The activist judges are the problem here. There is no accountability for these radicals in black robes” 07/31/26.

⁹⁷ Bendery, *supra* nt. 2.

⁹⁸ Press Release, American Bar Association (Jul. 28, 2026), <https://www.americanbar.org/news/abanews/aba-news-archives/2026/07/statement-re-personal-attacks-against-judge.s/>; Press Release, International Academy of Trial Lawyers (IATL) (Jul. 27, 2026), <https://www.iatl.net/the-academy-condemns-statements-by-department-of-homeland-security-general-counsel-that-attempt-to-intimidate-federal-judges/>.

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