

Congress of the United States
Washington, DC 20510

January 5, 2022

Sundar Pichai
CEO
Google LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043

Dear Mr. Pichai:

We write regarding Google’s ongoing attempts to strip Assistant Attorney General Jonathan Kanter of his authority to enforce antitrust law. Two months ago, Google sent a letter to the Department of Justice (DOJ) arguing for Mr. Kanter’s recusal from all matters involving Google, claiming that his extensive experience opposing Google in past antitrust matters should, paradoxically, disqualify him from representing the federal government on such matters.¹ These efforts to bully regulators and avoid accountability—which are similar to those of Facebook and Amazon earlier this year²—are untethered to federal ethics law and regulations, and we urge you to cease them immediately. Google should focus on complying with antitrust law rather than attempting to rig the system with these unseemly tactics.

On November 18, 2021, Mr. Kanter was sworn in as Assistant Attorney General for the Department of Justice’s Antitrust Division.³ His nomination followed a 20-year career as an antitrust expert,⁴ and his confirmation garnered broad-based and bipartisan support.⁵ A coalition of progressive organizations, labor unions, consumer-rights advocacy groups, and nine former heads of the Antitrust Division (representing every presidential administration from Gerald Ford

¹ Letter from Google to Assistant Attorney General for Administration Lee Lofthus, November 19, 2021, <https://drive.google.com/file/d/1Lt1hNYXhIbHYltdD0skNmeGGYdYZPD3H/view>.

² Letter from Senator Elizabeth Warren to Amazon CEO Andy Jassy and Facebook CEO Mark Zuckerberg, August 4, 2021, [https://www.warren.senate.gov/imo/media/doc/Letter%20to%20Amazon%20and%20Facebook%20re%20Petitions%20for%20Khan%20Recusal%20\(8.4.21\).pdf](https://www.warren.senate.gov/imo/media/doc/Letter%20to%20Amazon%20and%20Facebook%20re%20Petitions%20for%20Khan%20Recusal%20(8.4.21).pdf).

³ National Law Review, “US & Mexico Competition Currents December 2021,” Andrew G. Berg, Gregory J. Casas, Miguel Flores Bernés, Víctor Manuel Frías Garcés, Robert Gago, and Edoardo Gambaro, December 9, 2021, <https://www.natlawreview.com/article/us-mexico-competition-currents-december-2021>.

⁴ The White House, “President Biden Announces Jonathan Kanter for Assistant Attorney General for Antitrust,” Statement, July 20, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/20/president-biden-announces-jonathan-kanter-for-assistant-attorney-general-for-antitrust>.

⁵ New York Times, “Senate Approves Jonathan Kanter, a Big Tech Critic, as the Top U.S. Antitrust Official,” Cecilia Kang, November 16, 2021, <https://www.nytimes.com/2021/11/16/technology/senate-approves-jonathan-kanter.html>.

to Donald Trump) wrote letters on his behalf.⁶ The Senate Judiciary Committee promptly advanced his nomination via voice vote, and the full Senate confirmed Mr. Kanter by a vote of 68-29, including the support of 20 Republican Senators.⁷

But on the day after Mr. Kanter took his oath of office, Google sent a five-page letter to the Department of Justice attempting to bully Mr. Kanter into recusal from “any litigation or investigations against Google.”⁸ The letter distorts federal ethics requirements, improperly claiming that because Mr. Kanter has worked to enforce antitrust law against Google in the past, he cannot do so on behalf of the federal government now.⁹

Google is right to fear that the company may have run afoul of federal antitrust law and that more aggressive enforcement from effective regulators could affect the company’s operations and bottom line. Over the past two years, federal and state officials have filed a plethora of lawsuits against Google regarding alleged anticompetitive and exclusionary practices, such as manipulating the online advertising market,¹⁰ rigging auctions for online advertisements,¹¹ abusing its monopoly power to maintain its position in the search market,¹² and misusing its control over the Android app store.¹³

But the company’s attempts to force Mr. Kanter off current and future cases are misguided and reflect what appears to be a willful misunderstanding and misrepresentation of federal ethics mandates. Federal ethics law and regulations require that individuals recuse themselves if (1) they have a direct financial interest in a particular matter involving specific parties,¹⁴ (2) if a former employer or client he has provided services to within the previous two

⁶ U.S. Senate Committee on the Judiciary, “Nominations,”

<https://www.judiciary.senate.gov/meetings/09/29/2021/nominations>.

⁷ Congress.gov, “PN920 — Jonathan Kanter — Department of Justice,”

<https://www.congress.gov/nomination/117th-congress/920>.

⁸ Letter from Google to Assistant Attorney General for Administration Lee Lofthus, November 19, 2021,

<https://drive.google.com/file/d/1Lt1hNYXhIbHYltdD0skNmeGGYdYZPD3H/view>.

⁹ *Id.*

¹⁰ Attorney General of Texas, “AG Paxton Leads Multistate Coalition in Lawsuit Against Google for Anticompetitive Practices and Deceptive Misrepresentations,” Press Release, December 16, 2020,

<https://www.texasattorneygeneral.gov/news/releases/ag-paxton-leads-multistate-coalition-lawsuit-against-google-anticompetitive-practices-and-deceptive>; Letter from Senator Elizabeth Warren to the Commodity Futures Trading Commission, June 30, 2021,

[https://www.warren.senate.gov/imo/media/doc/Letter%20to%20CFTC%20re%20Google%20Project%20Bernanke%20\(Warren\).pdf](https://www.warren.senate.gov/imo/media/doc/Letter%20to%20CFTC%20re%20Google%20Project%20Bernanke%20(Warren).pdf).

¹¹ Attorney General of Texas, “AG Paxton Leads Multistate Coalition in Lawsuit Against Google for Anticompetitive Practices and Deceptive Misrepresentations,” Press Release, December 16, 2020,

<https://www.texasattorneygeneral.gov/news/releases/ag-paxton-leads-multistate-coalition-lawsuit-against-google-anticompetitive-practices-and-deceptive>; Letter from Senator Elizabeth Warren to the Department of Justice, September 1, 2021,

<https://www.warren.senate.gov/imo/media/doc/2021.08.30%20Letter%20re%20Jedi%20Blue%20.pdf>.

¹² U.S. Department of Justice, “Justice Department Sues Monopolist Google for Violating Antitrust Laws,” Press Release, October 20, 2020, <https://www.justice.gov/opa/pr/justice-department-sues-monopolist-google-violating-antitrust-laws>.

¹³ Politico, “36 States, D.C. Sue Google for Alleged Antitrust Violations in its Android App Store,” Leah Nylen, July 7, 2021, <https://www.politico.com/news/2021/07/07/36-states-dc-sue-google-for-alleged-antitrust-violations-in-its-android-app-store-498622>.

¹⁴ 18 U.S.C. § 208.

years is a party or represents a party in a particular matter,¹⁵ or (3) if “a reasonable person with knowledge of the relevant facts [would] question his impartiality.”¹⁶ None of these standards require Mr. Kanter’s recusal in matters related to Google. First, there is no evidence whatsoever that Mr. Kanter’s work involving Google at the DOJ would affect his “financial interest.”¹⁷ Second, Mr. Kanter has never represented either Google or the United States, the two parties that would be involved in any “particular matter” involving action by the federal government against the company.¹⁸ Third, although Google as a corporation with a clear financial interest in weak antitrust enforcement appears to be willing to question Mr. Kanter’s impartiality, there is no basis for a reasonable person to do so given that Mr. Kanter’s prior work has *aligned* with the federal government’s interest in robust enforcement of antitrust law.¹⁹ Google’s logic would neuter federal enforcement activity; for example, a civil-rights litigator at the Department of Justice would be required to recuse herself from cases against states notorious for voter-suppression efforts if the litigator had previously opposed those same suppression tactics.²⁰ This interpretation turns federal ethics laws—designed to prevent government officials from working *against* the government interest for private gain²¹—upside down.

Mr. Kanter is eminently qualified to lead the Department of Justice’s Antitrust Division, and it is unfair and inappropriate of your company to question his impartiality. If Google is serious about ending conflicts of interest in Washington, it can demonstrate its sincerity by supporting legislation, like the *Anti-Corruption and Public Integrity Act*,²² to strengthen federal ethics requirements. Otherwise, your efforts to sideline key federal regulators—like similar actions by Facebook and Amazon—simply serve as further evidence that you will go to all lengths to ward off necessary scrutiny of your immense market power. We urge you to cease these actions and allow federal officials to do their jobs and enforce federal antitrust law.

Thank you for your attention to this important matter.

Sincerely,

¹⁵ The White House, “Executive Order on Ethics Commitments by Executive Branch Personnel,” Section 1, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-ethics-commitments-by-executive-branch-personnel>.

¹⁶ 5 C.F.R § 2635.502(a).

¹⁷ Common Dreams, “The Utterly Baseless Case for Recusal of Biden Antitrust Nominee, Jonathan Kanter,” Ben Clements, September 29, 2021, <https://www.commondreams.org/views/2021/09/29/utterly-baseless-case-recusal-biden-antitrust-nominee-jonathan-kanter>.

¹⁸ *Id.*

¹⁹ New York Times, “A Star Corporate Lawyer Now Set to Take On Corporate America,” Steve Lohr and Cecilia Kang, October 6, 2021, <https://www.nytimes.com/2021/10/06/technology/biden-jonathan-kanter-big-tech.html>; National Law Journal, “Google, Backed by Hogan Lovells, Asks DOJ to Investigate Kanter Recusal,” Andrew Goudswaard, November 22, 2021, <https://www.law.com/nationallawjournal/2021/11/22/google-backed-by-hogan-lovells-asks-doj-to-investigate-kanter-recusal>.

²⁰ Common Dreams, “The Utterly Baseless Case for Recusal of Biden Antitrust Nominee, Jonathan Kanter,” Ben Clements, September 29, 2021, <https://www.commondreams.org/views/2021/09/29/utterly-baseless-case-recusal-biden-antitrust-nominee-jonathan-kanter>.

²¹ 5 C.F.R. § 2635.101(a) & (b).

²² Anti-Corruption and Public Integrity Act, S. 5070, <https://www.congress.gov/bill/116th-congress/senate-bill/5070>.



Elizabeth Warren
United States Senator



Pramila Jayapal
Member of Congress