JUDICIAL OVERREACH AND CONSTITUTIONAL LIMITS ON THE FEDERAL COURTS

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, ARTIFICIAL INTELLIGENCE, AND THE INTERNET

JOINT WITH THE

SUBCOMMITTEE ON THE CONSTITUTION AND LIMITED GOVERNMENT

OF THE

COMMITTEE ON THE JUDICIARY

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An article entitled, "District Court Reform: Nationwide Injunctions," Apr. 9, 2024, *Harvard Law Review*, submitted by the Honorable Darrell Issa, Chair of the Subcommittee on Courts, Intellectual Property, Artificial Intelligence, and the Internet from the State of California, for the record

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- An article entitled, "As the U.S. tracks suspected Venezuelan gang members, a look at a group that's helping," Mar. 25, 2025, *Miami Herald*
- A copy of the Presidential Proclamation entitled, "Invocation of the Alien Enemies Act Regarding the Invasion of The United Statres by Tren De Aragua," Mar. 15, 2025, *The White House*

An article entitled, "An 'Administrative Error' Sends a Maryland Father to a Salvadoran Prison," Mar. 31, 2025, *The Atlantic*, submitted by the Honorable Mary Gay Scanlon, Ranking Member of the the Subcommittee on the Constitution and Limited Government from the State of Pennsylvania, for the record

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JUDICIAL OVERREACH AND CONSTITUTIONAL LIMITS ON THE FEDERAL COURTS

Tuesday, April 1, 2025

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND ARTIFICIAL INTELLIGENCE, AND THE INTERNET

joint with the

SUBCOMMITTEE ON THE CONSTITUTION AND LIMITED GOVERNMENT

COMMITTEE ON THE JUDICIARY

Washington, DC

The Committees met, pursuant to notice, at 10:12 a.m., in Room 2141, Rayburn House Office Building, the Hon. Darrell Issa [Chair of the Subcommittee on Courts, Intellectual, Property, Artificial Intelligence, and the Internet] presiding.

Present from Subcommittee on Courts, Intellectual Property, Artificial Intelligence, and the Internet: Representatives Issa, Jordan, Massie, Fitzgerald, Cline, Gooden, Kiley, Lee, Fry, Baumgartner, Johnson, Raskin, Lofgren, Neguse, Ross, Swalwell, and Kamlager-Dove.

Present from Subcommittee on Constitution and Limited Government: Representatives Roy, McClintock, Hageman, Hunt, Grothman, Harris, Onder, Gill, Biggs, Scanlon, Cohen, Jayapal, Balint, Goldman, Moskowitz, and Crockett.

Mr. ISSA. [Presiding.] The Subcommittee will come to order.

Without objection, the Chair is authorized to declare a recess at any time.

We welcome everyone here today for a Joint Hearing on Judicial Overreach in the Federal Courts.

Before I recognize myself, I would ask unanimous consent that Members of the Full Committee, but not of the Subcommittees, Mr. Moskowitz and Mr. Biggs, will be allowed to sit in and participate in today's hearing. Without objection, so ordered.

As a point of personal privilege, before I make my opening statement, Speaker Gingrich, I have been here now—this is my 25th year on the Hill—and the first time I have had the pleasure of having you as a witness. I will cherish that as much as I cherish the time that I once carried your bag off an airplane in San Diego and found out you were the Speaker, but you were also a regular guy.

So, with that, I will now recognize myself for an opening statement.

We are here today because a major malfunction in the Federal Judiciary has been recognized by both Republicans and Democrats: Activist District Court Judges usurping themself with their Article III power and imposing on the Nation injunctions beyond the scope of what the U.S. Congress under statute has given Federal judges.

Theses rogue judge rulings are a new resistance to the Trump Administration and the only time in which judges in robes in this number have felt it necessary to participate in the political process rather than participate in the Article III powers given to them, both by the Constitution and by statute.

President Trump was elected to assert many policies, including the deportation of criminal aliens. He did so publicly and was elected by a majority of Americans and the vast majority of the Electoral College, but he also did so in stark contrast to Executive Orders of the previous administration.

Time and time again, rogue judges have asserted, as though they were five of the nine members of the Supreme Court, their authority, when the President was doing nothing more than undoing a policy of his predecessor—one which they seemed to have no problem within the previous administration.

Let me be clear: It should never have come to this. It is within the Supreme Court's ability to rule appropriately that judges have exceeded their jurisdiction. Time and time again, the High Court has ruled on the substance of the ruling rather than on the inappropriate nature of an injunction overly broad and affecting hundreds of thousands or millions of people beyond the plaintiffs before that court.

Just last night, a judge halted the administration's plan to end temporary protective status for about 350,000 Venezuelans that Joe Biden welcomed into this country and gave temporary protective status to. "Temporary" seems not to be a word understood by the court. If President Biden could give protective status temporarily, how, in fact, could it not be the prerogative of the next President to undo that status? Nowhere in that protective status was there an act of Congress or a recognition that temporary equals permanent. This is but the latest outrage coming from lower, or at least I might say, the lowest courts.

I have said from the start that my colleagues on the other side of the aisle should support this legislation. After all, it was the Biden Administration who opposed these universal injunctions and said they were illegitimate. In fact, legislation in the last Congress authored by a Democrat is substantially similar to the one that we offer today and would have the same effect.

To quote the previous administration's Solicitor General, literally, the woman who spoke on behalf of the administration before the Court, she said,

> The government must prevail in every suit to keep its policy in force, but plaintiffs can derail a Federal program nationwide with just one lower court victory.

Those words by Elizabeth Prelogar, President Biden's own Solicitor General, were from October 2024. In other words, after almost the entire four years of the Biden Administration, they still be-

lieved, and believed until the end, that this was wrong. Yet, we will probably hear today no support on the other side of the aisle.

In fact, this is not new, but it is not old. For 180 years of our Nation, there were no such injunctions. Only beginning in 1963 did District Courts begin to, in relatively small amounts, believe that they could do these without multiple plaintiffs from multiple circuits.

From 2001–2023, the number grew to 96. An incredible 64 of those occurred during only four years—the four years of President Trump, meaning that more than half of all injunctions in this millennium, this century, were against President Trump in his first four years.

That used to seem like a lot, but during President Trump's first nine weeks in office this year, he has already faced more nationwide injunctions than President Joe Biden did in his entire four years.

The Federal Judiciary isn't interpreting the law; it is impeding the presidency. It is, in fact, not co-equal, but holding itself to be superior.

Since *Marbury* v. *Madison*, there's no question at all that the third branch says it is the last word, and we have accepted that for over 200 years. That acceptance is for the Supreme Court making the final decision, not one of over 700 district and Appellate judges.

The reality is every judge is considering himself not to be an Associate Justice, not to even be the Chief Justice, but, in fact, to be a combination of the Justice and the President of the United States.

This demands that we make a change and make it quickly. When a judge believes that he can order a full plane of criminal aliens back to U.S. soil, essentially, saying that 200 years of a statute is to be overturned by his quick order, without knowing even who was on the airplane—and finally, demanding that President Trump spend $2 billion in a single weekend—and I repeat, a weekend—and not tolerating any delay because that money was money that this judge believed should be spent, even if it was reckless and illegal.

The last one might be understandable because a judge might have misunderstood and thought that President Biden was still in the White House, or that this $2 billion was like the $188 billion that President Biden tried to forgive in student loans, and then, when thwarted by the U.S. Supreme Court, found a workaround that he believed was legitimate and gave away another $8 billion in loan forgiveness. No question at all, we had a rogue in the White House for four years.

Many today will talk about the current occupant of the White House, but, in fact, most of the rulings that are being overturned are simply undoing rogue activities of the previous administration.

The No Rogue Rulings Act does not eliminate the ability of judges to make decisions. In fact, every decision made by a judge on behalf of a plaintiff would still go forward, but it would go forward only as to the plaintiff in front of him and not a Nation as a whole, determined by one judge, neither elected nor appointed to

a position of sufficient power to speak on behalf of the entire Nation.

With that, I would recognize the Ranking Member, Mr. Johnson, for his opening statement.

Mr. JOHNSON. Thank you, Mr. Chair.

Thank you to the witnesses for your appearance today.

A special shout out to former Speaker Newt Gingrich from the great State of Georgia. Professor Gingrich, good to see you.

Of the many troubling actions the Trump Administration has taken in its first 71 days, among the most damaging of his authoritarian, dictatorial, and unprecedented use of Presidential power to instill fear, intimidate, exact revenge against, and punish those who dare to stand up to him, and hold him accountable to the laws of our Nation, a climate of fear and trepidation has descended on the Nation. The people of America are more afraid today of our democracy and for their personal safety than ever in our lifetimes.

College students have disappeared off the streets paramilitary style by plainclothes, masked-wearing individuals, and held incognito for days before they were discovered thousands of miles away in some private, for-profit ICE detention facility. Why? For exercising their free speech First Amendment rights.

Universities, bastions of free thought, have been punished for having the wrong ideology by having their Federal funding revoked.

Major law firms that dared to have brought cases against King Trump have been targeted with blatantly unconstitutional Executive Orders that, if allowed to stand, would shut those law firms down. Unfortunately, the mega law firms Paul Weiss and Skadden Arps chose to settle with the king by pledging to represent pro bono only those persons, and causes that the king approved of. Shame on them.

Then, there are other law firms that have stood up to King Trump and they have challenged his Executive Orders against them in court, and they have won. Kudos to the lawyers at Perkins Coie, Covington & Burling, and Jenner & Block, among others, for standing up for themselves and for the rule of law—and for our democracy.

Although Federal courts have consistently ruled against these numerous unconstitutional Executive Orders of President Trump, the mere existence of these retaliatory Executive Orders should be chilling to all of us. There has been no semblance of due process or fairness in any of these cases. Trump acts first; he deports first; he revokes funding first; he blacklists law firms first; and then, questions anyone who challenges him later.

Somehow, in spite of this, we are here today to talk about the, quote "overreach," of the Federal courts—not the overreach of the Executive Branch official who is doing the overreaching.

Our Republican colleagues want us to believe that simply because the courts are exercising their Article III power of equitable relief to temporarily halt some of Trump's most excessive Executive actions, it is a sign of rot in our judicial system; that it is somehow our courts and judges, not the President, who have gone rogue and are overreaching.

I disagree. More importantly, so do the numbers. Since day one of his second term, Trump has attempted to rework our Constitutional system of government through the Presidential fiat, issuing a record 107 Executive Orders in his first 71 days in office.

As I mentioned, many of these Executive Orders are unlawful or unconstitutional, and the President does not have the power to change the Constitution through Executive Order, even if his name is Donald Trump.

Naturally, they have been challenged in court, and of the over 150 cases filed against the Trump Administration, judges have ruled against him 46 times. Of those 46, only 17 are nationwide injunctions.

The cases are spread across District Courts throughout the country, and judges appointed by Democrat and Republican Presidents have all ruled against Donald Trump. What we are seeing playing out in courts across the country today is the judicial system working exactly as it should.

America's Federal courts have been handed case after case challenging Executive Orders standing on questionable legal footing. Yet, the proportionally small number of nationwide injunctions shows the restraint exhibited by the judges considering those cases.

I don't know what Donald Trump thought would happen when the cases made their way to the Judicial Branch, but, clearly, he has had enough with losing in court. Instead of letting the rule of law play out, Trump and his allies here in Congress now have chosen to go on the attack.

Trump and his cronies have called Federal judges "rogue" and "corrupt." It was suggested that a judge supports terrorists, and they have called judicial rulings "judicial coups."

The MAGA Republicans in Congress have called for judges to be impeached, not because they committed a high crime or misdemeanor, but simply because they ruled against Trump. The far-Right media personalities have attacked the judges' families, publicizing their personal information for millions of their riled-up followers on social media.

What I just described is nothing less than a full-scale assault on our entire judicial system, and it is putting judges, their family, and their staff's lives at risk. We don't agree on much on this Committee, but we should be able to agree that this is wrong. We should be able to agree to back away from language demonizing the Judicial Branch, no matter what political party we belong to.

Today's hearing is not just about helping Donald Trump undermine the Judicial Branch, though—well, let me say that this hearing is not just about helping Donald Trump undermine the Judicial Branch, though certainly it is about that, but Republicans on this Committee are sending a message to anyone who dares to stand up to Donald Trump: If you step out of line, they will target you next.

We cannot afford to allow what Donald Trump is doing through retaliatory Executive Orders, through targeting immigrants, through threatening lawyers, through vilifying judges, to become the normal. Our Constitution is being tested, and throughout American history it has stood up to attempts to weaken its protections.

Americans across the country are watching and they know they didn't vote for Trump to destroy our democracy. They voted for Trump because he promised to lower the cost of living, and Trump has betrayed their trust. Prices are going up and our economy is headed toward recession, as Co-President Musk threatens to take away people's Social Security, Medicaid, Medicare, SNAP benefits, and veterans' care. Trump is doing nothing to deliver on the promises to the American people.

I stand with my fellow Americans, with the Federal judges who continue to bravely do their jobs in the face of criticism.

I yield back.

Mr. ISSA. I now recognize the Chair of the Subcommittee on the Constitution and Limited Government, Mr. Roy, for his opening statement.

Mr. ROY. I want to thank the gentleman from California and my Co-Chair on this hearing. It's an important hearing. I thank him for his work on this issue, as well as his legislation addressing the matter.

I would like to welcome the guests who are joining us here today. I appreciate your time.

Obviously, particularly you, Mr. Speaker, and your great service to this country, and great to have your expertise here. We thank you.

I also want to give a shout out to Cindy Romero. I met Ms. Romero last August in Aurora, Colorado, and I appreciate what she is going to be here to testify to today and her great service.

So, with that, I would like to take a slightly different angle, as the Chair of the Subcommittee on the Constitution, than the direction that my friend from California took, because I want to emphasize the judicial overreach we have witnessed over the last two months, and nationwide injunctions more broadly, that are undermining the Constitutional structure our Founders so wisely envisioned.

The nature of the Executive Branch was a primary point of contention at the Constitutional Convention. Some delegates favored a plural Executive, thinking that this arrangement would better preserve liberty. They were wrong, and our Founders wisely resisted their calls. Instead, the Constitution lodges the Executive power in a single President of the United States.

Alexander Hamilton offered the classic defense of this arrangement in *Federalist* 70, emphasizing the vigorous and energetic Executive is necessary to defend our liberty from foreign threats.

Hamilton rightly argued that unity in the Executive was the essential ingredient in this formula. Only a single Executive could act with the "decision, activity, secrecy, and dispatch" necessary to adequately carry out the office.

On a note, I have introduced legislation in the past, called the Article I Act, to try to cabin-in the Executive Branch when it is not necessarily working directly with Congress. I am happy to work with colleagues on the other side of the aisle on these concepts when we have these lingering emergencies. In many cases, these national emergencies date back to the 1970s.

There are times for the Congress and for the Legislative Branch to assert itself, but the President's authority is at its zenith when

we are talking about his actions as Commander-in-Chief. Injunctions and temporary restraining orders halting Presidential actions nationwide threaten the key feature of our Constitutional architecture, undermining the core premise of unity in the Executive Branch—the unitary Executive, as we refer to it.

Even the most strident proponents of a plural Executive at the Constitutional Convention advocated for an Executive council of three, maybe five, members. Today, in practice, we are governed by an Executive council of 678—the nationally elected President and 677 District Court judges, each of whom retains a functional veto over Executive actions through their power to issue nationwide injunctions.

Scholars have long understood that a hostile judiciary, or even a single hostile judge, could abuse its power to issue nationwide injunctions to infringe on the lawful authority of the President of the United States. Now, that is not a partisan point. I have got numerous examples of our colleagues on the other side of the aisle who have raised these concerns.

The Biden Administration's Solicitor General Elizabeth Prelogar told the Supreme Court as recently as 2024 that, quote,

> A court of equity may grant relief only to the parties before it. The District Court violated that principle by issuing a nationwide injunction. . . .

In 2022, Solicitor General Prelogar asked the Supreme Court to address nationwide injunctions as permissible relief in *The United States* v. *Texas*, arguing that District Courts normally, quote, "should only provide relief for the benefit of the prevailing challenger."

What happened there was our Democratic colleagues started realizing that, when Republicans went to District Courts to get injunctions against their President, then, suddenly, they didn't like it so much. So, they were raising concerns.

Justice Elena Kagan spoke out against nationwide injunctions by a single District judge in 2022.

> The ability of a single judge to stop implementation of a policy across the country.

She stated,

> In the Trump years, people used to go to the Northern District of California, and in the Biden years, they go to Texas. It just can't be right that one District judge can stop a nationwide policy in its tracks and leave it stopped for the years that it takes to go through the normal process.

Former United States Rep. Mondaire Jones introduced the Injunction Reform Act in 2022. I could go through the quotes that he offered, but I won't. I can offer those for the record without objection.

Mr. ISSA. Without objection.

Mr. ROY. In a letter to William Torrence dated June 11, 1815, Thomas Jefferson explained who decides Constitutional questions. "Certainly there is not a word in the Constitution which has given judges that power, authority to decide on the constitutionality of a law, more than to the Executive or Legislative Branches"—meaning we all have an obligation and a role to do that. "Questions of property, of character and crime being ascribed to the judges, through a definite course of legal proceeding, laws involving such

questions belong of course to them"—in the judiciary. "and as they decide on them ultimately and without appeal, they of course decide, for themselves, the Constitutional validity of the law. . . ."

In other words, our Founders never intended the Federal courts to have the ability to unilaterally decide Constitutional questions, as these judges are unelected and were never given the power to legislate from the bench.

Treating the courts as the final authority on public policy—as the final authority on public policy—grants them more power than even Madison's rejected Council of Revision proposal at the Constitutional Convention.

Indeed, it happened regularly during the first Trump Administration, as we have pointed out. Now, in the second Trump Administration, it is on steroids. As of last week, District Courts had issued no fewer than 17 nationwide injunctions against administrative actions, with scores more temporary restraining orders, or TROs, as we call them, barring the President from enacting the agenda on which he was elected.

Alexander Hamilton wrote in the *Federalist* 78 that even the Supreme Court would wield, "neither force nor will" over politics, indicating he never envisioned the judiciary having the final say on every political decision or action.

Now, these injunctions and TROs have even infringed on what the Supreme Court has described as "conclusive and preclusive" Presidential powers, including core Presidential authorities to conduct foreign affairs and repel invasions.

Now, I have got numerous examples of what we have been dealing with. This is a 56-page summary that I have got, of the 158—it might be 159 now, because we are having to track them on a daily basis—lawsuits against the administration and against the President for carrying out the agenda on which he was elected. Seventeen injunctions; I think there are a great number more TROs.

The cases we are talking about, not going through all of them, nationwide TRO enjoining the Trump Administration from freezing foreign assistance funding; enforcement order requiring the administration to pay approximately $2 billion within 36 hours. It is a judge singularly acting against the President's actions.

Another one: Provisionally certifying a class and enjoining the Trump Administration from deporting members of a foreign terrorist organization.

A nationwide injunction enjoining the Trump Administration from pausing, terminating, or amending any equity-related grants or contracts: DEI.

A nationwide injunction enjoining the Trump Administration from prohibiting Federal funds from being spent to promote gender ideology.

A nationwide TRO enjoining the Trump Administration from prohibiting biological men from being housed in women's prisons.

Two injunctions regarding the administration implementing an Executive Order considering transgender individuals in the military and birthright citizenship.

Issue after issue after issue that the administration is trying to act on, according to the campaign on which he ran.

In particular, has earned the scrutiny it has received. Just two weeks ago, Judge Boasberg of the District Court of the District of Columbia ordered the administration to stop the deportation of members of Tren de Aragua, a violent Venezuelan gang that has terrorized cities and towns across the country.

At this table in this room, we heard testimony from Alexis Nungaray whose daughter Jocelyn was murdered by TDA in the suburbs of Houston. Right here, we heard her powerful testimony about what that gang has done to this country.

We are going to hear from Ms. Romero today about what that gang did to her community in Aurora, Colorado.

Here we have a single District judge who is asserting jurisdiction from the District of Columbia to tell the President of the United States that he cannot deport members of the violent TDA gang out of this country to keep our streets safe. That is not what is supposed to occur.

Today's hearing, where we will learn from Constitutional scholars and real Americans about what is wrong with the current system, is a good start. We should carefully study whether Congress should push back against judicial overreach using its Constitutional power to structure and fund the courts.

Our Constitution did not create a plural Executive or Judicial tyranny. Today we are far too close to both.

With that, I yield back.

Mr. ISSA. The gentleman yields back.

We now recognize the Subcommittee Ranking Member for her opening statement, Ms. Scanlon.

Ms. SCANLON. Thank you.

Like the Chair of the Subcommittee on the Constitution, as Ranking Member, I, too, would like to address the Constitutional concerns raised by this hearing.

Our Republican colleagues have called this hearing today for one reason: Because this White House, this President, continues to lose over and over again in court, as people and groups from across the political spectrum challenge the barrage of unconstitutional and illegal Executive actions taken by this White House in just the first few weeks of this term.

Because it doesn't matter if the judges were appointed by Bush, Biden, Obama, Reagan, or by Trump himself; when the President attempts illegal or unconstitutional actions, United States judges, guided by the letter of the law, must rule against him.

It is a confirmation of the total subservience of today's Republican Party to this President that their response to multiple judicial rulings of Executive overreach is a hearing entitled, "Judicial Overreach and Constitutional Limits on Federal Courts"—when we should be holding a hearing on Presidential power grabs and Constitutional limits on Executive power.

This is civics 101. The Constitution provides in Article I that Congress writes the laws; in Article II, the President administers the laws, and in Article III, the courts interpret the laws.

Our Republican colleagues are concerned about the unprecedented number of successful lawsuits challenging this President's Executive overreach, but it is not the actions of the courts in interpreting our Constitution and laws that are unprecedented. It is the

scope and breadth of this President's Executive Orders that is unprecedented.

It is this President's attempt to go it alone; to usurp the power of Congress and we the people; to rewrite the laws of this country and the Constitution, and to reserve unto himself, rather than the judiciary, the right to interpret the laws and our Constitution.

The sheer volume of unconstitutional and illegal actions taken by this President in just the first few weeks of his term has led some to wonder if the President fundamentally misunderstands the nature and terms of his Article II powers. Specifically, when Article II, Section 3, says that the President shall take care to faithfully execute the laws passed by Congress, does this President think that the word "Execute" means that he is supposed to kill laws rather than carry them out?

Unfortunately, the underlying rationale for much of this action is a radical theory set forth in Project 2025 and elsewhere. It is one that would vest Federal power in a unitary Executive, sidelining two of the three co-equal branches of our government—Congress and the Judiciary.

We are here because Republicans who control the House and Senate have, thus far, chosen to abandon their Constitutional duty to constrain an out-of-control Executive Branch. If they don't see anything wrong with it, their constituents do, and more of our colleagues would know that if they actually showed up at town halls in their districts.

Our Constitution is built on the rule of law; that no one is above the law, and our legal system is built on the idea of judicial independence. In the past two months, we have seen our judicial system working as the Founders intended, and as the Supreme Court ruled in the *Madison* v. *Marbury* over 200 years ago, it is the job of our Judiciary to declare laws and Executive actions unconstitutional if they are in conflict with the Constitution.

The Federal judges who have ruled against President Trump's unlawful power grabs are simply interpreting the Constitution and the laws passed by Congress to protect the rights of the American people. To suggest otherwise is to substitute a theory of Executive primacy that is completely at odds with our Constitutional history and separation of powers.

Mr. Chair, I wish that we could dismiss today's hearing as just political theory or theater, but the stakes are too high for the American people and their rights hang in the balance.

While this administration has begun by attacking people it vilifies, including immigrants, students, or working people, no one should kid themselves; it is clear the rights of every American are at stake.

When the White House and some of our colleagues claim the right to deny due process to immigrants who they claim have broken a law, that is a sham. Because if you don't support the rights of immigrants to due process, then you don't support anyone's right to due process. Because without due process, the government can do whatever it wants to anyone, including citizens, and they aren't able to defend themselves. What is to stop ICE from saying that Mr. Roy or Mr. Jordan is a member of a violent gang and shipping them out of the country?

Attacks on our courts, whether in the form of Executive Orders; punishing law firms and lawyers that dare to stand up for the rule of law; or hearings like this, attempting to constrain the courts, or tweets urging impeachment or violence against judges, are part of a broader attack on the rule of law.

Our Republican colleagues have shown that they are not concerned about civil rights and the rule of law. Their sole concern appears to be whether or not a Federal judge has ruled against this administration.

They have gone so far as to call for impeaching judges who rule against this White House, eliminating courts altogether or advocating cutting funding for the court system. The fact is, if the President wants to end his legal woes, he can simply follow the Constitution and our laws. Because if a President issues illegal Executive Orders, the courts are duty-bound to block them.

Rather than accepting that reality, our Republican colleagues would rather hand the President the keys to unchecked authoritarian power. Let's be real. Americans elect a President every four years, not a king.

Even if President Trump had won a landslide electoral victory, which he didn't, that would be beside the point. An electoral victory does not justify running roughshod over the courts and the Constitution, which every President is sworn to uphold.

Presidential power is not absolute. When President Trump empowers Elon Musk to ignore laws Congress passed or slash funding Congress appropriates, he is undermining the power of the American people who voted us into office.

If President Trump's agenda is as popular as he claims, he can work with his allies in Congress to convince the American people to support it. He has no right to simply do whatever he wants, just because House and Senate Republicans don't have the backbone to stop him.

The Democrats and Independents are standing up against President Trump's blatant power grabs. Because if he can deny the rights of some people, there's nothing stopping him from denying the rights of all people across America. That should concern everyone in this room and everyone across this Nation.

I yield back.

Mr. ISSA. The gentlelady yields back.

We now recognize the Chair of the Full Committee for his opening statement, Mr. Jordan.

Chair JORDAN. Thank you, Mr. Chair.

Who decides? That is the fundamental question. Who gets to make the call? Is it the guy whose name was on the ballot or is it some bureaucrat? Is it the guy who got 77 million votes or some District judge?

The Left always says, "Trust the bureaucrat. Trust the judge. It's the Faucis; it's the Boasbergs who get to make the call." After all, they're the experts. They're smarter than "We the People." They're smarter than all us hillbillies in flyover country who voted for President Trump. Trust them.

That's not how it works. "We the People" have the power. You know what's interesting? For all the Left's talk about democracy, they don't really trust it.

Last summer, they kicked their nominee off the ballot without a vote, without an election, and they put someone else on the ballot without a vote and without an election. So, of course, they like some judge issuing orders or injunctions that stop the head of the Executive Branch from doing what he said he was going to do when he ran for the job, and when the American people elected him.

Think about it. Here in D.C., an elected judge thinks he is better equipped to determine military readiness than the Commander-in-Chief.

Unelected judge in California thinks he gets to decide how many probationary employees work in the Executive Branch, not the guy who was elected to run the Executive Branch.

Another unelected Federal District judge here in D.C. thinks he gets to decide how long illegal gang member terrorists stay in our country, not the President, not the Commander-in-Chief.

Now, that same judge gets randomly assigned—randomly assigned—the *Hegseth* case, and he will get to determine who the Secretary of Defense can talk to and how he has to do it, not the President.

I think Americans see through this all. They know Representative Issa's legislation is exactly what is needed. They know who they elected, and they want him to make decisions that affect the Executive Branch and that affect our country.

So, I want to thank our Chairs Mr. Issa and Mr. Roy for this hearing. I want to thank Mr. Issa for his bill; Mr. Schmidt, a Member of our Committee, who we put his amendment on that bill, which I think makes it even stronger. We passed that legislation four weeks ago. It is going to be on the floor tomorrow and it is going to pass the House.

I want to thank our witnesses for being here.

Ms. Romero, what you went through, thank you for coming. Of course, Speaker Gingrich, for your half a century of service to the Constitution and the country. Thank you for joining us.

That is the question, though: Who decides? The individuals that "We the People" elect or someone else?

I yield back.

Mr. ISSA. The gentleman yields back.

We now recognize the Ranking Member of the Full Committee, the gentleman from Maryland, Mr. Raskin.

Mr. RASKIN. Thank you very much, Mr. Chair.

Thanks to our witnesses for joining us today.

So, why have 34 Federal judges from 11 different districts with a combined 474 years of service on the bench, judges appointed by Presidents Reagan, Bush, Clinton, Bush, Obama, and Trump, entered 57 different preliminary injunctions and temporary restraining orders against President Trump's and Elon Musk's Executive Orders and actions, like the ones nullifying Constitutional birthright citizenship; unilaterally dismantling congressionally created agencies; and impounding and diverting funds appropriated by Congress?

Well, the Majority says it is because these are radical judges. They lead off, as our good Chair Issa did, with Judge Jeb Boasberg, the Chief Judge of the District Court of the District of Columbia,

who enjoined the mass roundup and deportation of immigrants to an infamous El Salvadorian prison in peacetime without any due process at all, allegedly under the Alien Enemies Act of 1798, a statute explicitly limited to wartime and military invasion.

Some of our colleagues have been railing against Judge Boasberg for ordering the planes to be turned around. They say those planes were filled with terrorists, I think my good friend from Texas said.

Well, here is one person of many who wasn't a terrorist on that flight or a gangbanger. His name is Kilmer Garcia. He is a Marylander married to a U.S. citizen who has a five-year-old son with autism. He went to pick up his son, but he was picked up first by ICE, and then, he was shackled and put on that airplane and shipped off to the torturers of El Salvador without ever having the benefit of those two most beautiful words in the English language: Due process.

He never saw a judge. Nobody ever told him what he was being charged for. Nobody ever told him that there were any charges against him. He was sent to a mega-prison run by the self-proclaimed dictator of El Salvador.

Yesterday, do you know what happened, Mr. Chair? The Trump Administration admitted that it had made a mistake. He was not actually a gangbanger. He was not a criminal. It was all a mistake. If there had been due process, maybe that would have been determined, but there wasn't. They put him on that plane, and he is in El Salvador.

Well, all's well that ends well, right? No. The administration says there's nothing they can do about it now because he is no longer in U.S. custody. This guy lives in my State, married to a U.S. citizen, with citizen children. He's stuck with the dictator of El Salvador.

Well, Judge Boasberg, some of our colleagues want to impeach him. Look, some of our colleagues, they have got "Wanted" signs in the Cannon House Office Building with the names and faces of judges on them. They want to impeach them now. They want to impeach Judge Boasberg.

Some of my colleagues should be alerted to this fact: Judge Boasberg was first named to the bench by President Bush. He was Justice Kavanaugh's roommate at Yale. Known in legal quarters as a very conservative judge. They want to impeach him because he stood up for the rule of law.

Now, Democrats say all these Executive Orders and actions are being struck down not because these are radical Left, rogue judges, but because the judges, regardless of who appointed them, are doing their jobs.

If the number of decisions striking down Trump illegalities are unprecedented today, it is only because the sheer number of illegal acts committed in the first 100 days is unprecedented. America has never seen anything like it before in our entire history.

Trump and Musk have been systematically violating the Constitution and breaking the law to trample the rights of the people and steal our data, fire excellent Federal workers en masse, and dismantle congressionally created government agencies and programs—from the VA and Medicaid to NOAA, NIH, and Social Se-

curity, which Elon Musk called, quote, "the biggest Ponzi scheme of all time."

When brave Americans go to court to defend themselves against the President of the United States and the richest man in the world, these judges from the across the political spectrum are showing up to work and they're showing America why we have an independent judiciary.

Yes, I have got to tell my friend Chair Jordan that, even if you campaign on doing something unconstitutional, like naming people kings and queens or stealing other people's money, no, that doesn't make it Constitutional, even if you campaigned on it. The vast majority of the things here, I never heard of them campaigning on. In any event, it is irrelevant to the job of the courts.

Anyone who has read any of the decisions knows that what we are witnessing today is a matchless Constitutional crime spree by a rogue President and his DOGE enforcer, a government contractor who has pocketed $38 billion from the taxpayers, multiples more than he has ever even claimed to have saved us. We know how DOGE makes typos converting millions into billions.

Read the decisions. Look at these cases finding that Trump violated Congress' spending power and usurped our lawmaking power under Article I. Read the cases finding that Trump violated the First Amendment free speech rights; the Fifth Amendment due process rights; and the Sixth Amendment counsel rights of the people.

Even by discriminating by name against law firms and lawyers, actually banning specific firms and lawyers from Federal buildings and courthouses, Federal contracts, and Federal employment—all simply because they dared to represent their clients, and Trump hates them.

Now, out of this mountain of cases, which I can surmise our colleagues have not read, let's zero-in on Trump's Executive Order contradicting the very first sentence of the 14th Amendment, which says that any person "born or naturalized in the United States, and subject to the jurisdiction thereof," is a citizen of the United States.

Trump got struck down by a Reagan judge, a Biden judge, an Obama judge, and a Bush judge. The Reagan judge said, quote,

> I've been on the bench for four decades. I can't remember another case where the question presented is as clear as this one. This is a blatantly unconstitutional order.

"Blatantly," this is from a Reagan judge.

Now, my colleagues seem to think that an Executive Order is greater than a law or the Constitution itself. An Executive Order cannot trump a Federal statute, much less the Constitution. An Executive Order is just an order to the Executive bureaucracy to follow a policy unless and until it is countermanded by law, by the courts.

Many of our colleagues are following Trump and Musk and calling for impeachment right now. There have been only 15 Federal judges impeached in all American history—always for serious professional misconduct, like taking bribes, stealing from the court, or habitual drunkenness—not even occasional drunkenness—habitual drunkenness on the bench. Congress has never defined a doctrinal

and interpretative disagreement as a high crime and misdemeanor, much less when the judge's reasoning was airtight correct.

The spreading movement to impeach and attack judges is so alarming that Chief Justice Roberts issued a rare statement last week. He said,

> For more than two centuries, it has been establishment that impeachment is not an appropriate response to disagreement concerning a judicial decision.

The proper response, of course, is to appeal the decision.

To be fair, Chair Issa expressed his strong disapproval of these "Wanted" posters yesterday in the Rules Committee.

Now, for some Members, talk of impeaching these so-called rogue judges is just fun and games, but the vicious assaults, the vicious rhetorical assault on the judiciary has turned into something more sinister in certain quarters—actual violent threats, bomb threats, and direct intimidation.

Judge Boasberg, the Bush appointee, must endure scandalous online attacks and insults by President Trump and Elon Musk and their followers. Even worse, the campaign of vilification has spread to Judge Boasberg's family, including outrageous attacks on his daughter who had her photo and her place of work posted on social media by Elon Musk to his 290 million followers.

These threats follow an actual bomb threat made to the sister of Supreme Court Justice Amy Coney Barrett, and there are numerous other threats taking place today. Of course, we have seen threats, actual violence, and murders take place in the past.

I call on my colleagues right now to call off the campaign to impeach Federal judges for doing their jobs. I call on them to demand that the Trump Administration comply with all judicial orders while appealing whichever ones they want to appeal, and to demand the return of people unlawfully taken to El Salvador on that so-called plane full of gangbangers.

I especially call on them today to denounce all violent threats, doxing, online vilification, and threats against our judges. This is the Judiciary Committee of the U.S. House of Representatives, and we should act like it.

I yield back, Mr. Chair.

Mr. ISSA. I thank the gentleman.

I ask unanimous consent that the official statement by ICE officials agreeing that there was not 100 percent accuracy in Mr. Garcia's arrest; that, in fact, he was a prominent member of MS–13, a different recognized terrorist group.

Without objection, so ordered.

Without objection, all other opening statements will be included in the record.

Mr. ISSA. I would now like to introduce our distinguished panel, beginning with the Hon. Newt Gingrich.

Speaker Gingrich is the former colleague here in the House and served from 1979–1999, including four years as the Speaker of the House. Speaker Gingrich was instrumental in formulating Contract with America and returning Republicans to a House majority after 40 years of Democrat control.

Since leaving the Congress, he has remained incredibly active and, in fact, in both policy, politics, and government, he has led,

having authored several dozen books and teaching military officers and other national security professionals at the National Defense University.

Welcome, Mr. Speaker.

Mr. Paul Larkin. Mr. Larkin is the John, Barbara, and Victoria Rumpel Senior Legal Research Fellow at the Edwin Meese III Center for Legal and Judicial Studies at *The Heritage Foundation*.

Before joining *Heritage*, Mr. Larkin served in various positions in the Department of Justice and at the EPA and as Senate staff. He has spent a number of years in private practice and is most prepared for today's hearing.

Welcome.

Ms. Cindy Romero. Ms. Romero is a resident of Aurora, Colorado, who saw firsthand the effects of soft-on-crime and open-border immigration policy. She was a resident of an apartment complex targeted by Tren de Aragua, and eventually was forced to move after her neighbors were reportedly victimized and her car was struck by gunfire.

Last, Professor Kate Shaw. Ms. Shaw is a Professor of Law at the University of Pennsylvania, Carey Law School. Professor Shaw's research focuses on Executive power and the Supreme Court, along with other issues.

I want to welcome all our witnesses and ask that you please rise to take the pledge, to be sworn in.

Do you solemnly swear or affirm, under penalty of perjury, that the testimony you are about to give will be the truth and correct to the best of your knowledge, information, and belief, so help you God?

[All witnesses respond in the affirmative.]

Please be seated.

Let the record show that all witnesses answered in the affirmative.

We will begin with Mr. Larkin.

I would only ask—you have all seen this on C–SPAN—but to the greatest extent possible, please wrap up by the end of five minutes. You will have the indicator on your desk. Your entire statements will be included in the record, as will additional information, which I can't speak for everybody, but I know the Speaker will revise and extend with considerable dedication.

Mr. Larkin? I think check to make sure you are on and pull it a little closer perhaps.

STATEMENT OF PAUL J. LARKIN

Mr. LARKIN. Is that better?

Mr. ISSA. Much.

Mr. LARKIN. The practice of issuing nationwide injunctions outside the confines of a certified nationwide class action is mistaken as a matter of law and unwise as a matter of policy.

Let's start with the law, and in there, let's also start with the Constitution. The Legislative power is granted to Congress. What is the primary product of that Legislative power? It is what the Constitution defines as "a law." The term "law" also shows up in Article III, but it shows up in Article III under the phrase "arising under the Constitution, the laws, or treaties."

It is not the courts that are responsible for creating the law. It's the courts who are responsible for interpreting it as it applies. They can only do so in the context of a case or controversy—two structural limitations on what the courts can do. In other words, for the courts to be able to say what the law is, they have to get on the playing field, and to do that, you have to have a case or controversy.

Now, why does that matter? Well, the Constitution does speak to this. As I've said, only the Congress can create a law. Anytime a court enters a judgment that is tantamount to being a law, the judge has gone too far. In the case of nationwide injunctions, a judgment in favor of nonparties goes too far.

You also have no statute in the Judicial Code, no provision in the Constitution, and no settled history at common law that allows a judge to enter these sorts of orders. That's important because everything has to fit into one of those three.

Why? The Supreme Court has interpreted Article III in light of how it was understood in 1789. So, those are the three primary bases that you have to look to: The text of the Constitution, statutes, and English common-law history.

In fact, there are two Supreme Court cases that directly undermine the legitimacy of nationwide injunctions outside of certified class actions.

First, *Williams* v. *Zbaraz*. In that case, the Court said there is no case or controversy between two parties that are in a case over an issue that has not been put into dispute by one or the other of them. It logically follows that there is no issue in dispute between someone who is a party and someone who is a stranger to the entire litigation.

Similarly, at the back end of the process is the case of *United States* v. *Mendoza*, where the Supreme Court held that the Federal Government is not subject to the "win or go home" rule that you see in the NCAA post-season tournament. The government isn't stuck with whatever loss it has the first time it litigates a case to a final judgment and loses.

The doctrines of the law of issue preclusion or collateral estoppel, the new and old terms, do not apply to the Federal Government. Why? The Supreme Court, in the unanimous decision of *Mendoza* said they do not. Why? Because there are a variety of good policy reasons why it shouldn't.

With that, then, let me turn to the policy reasons that show this practice is unwise. There are several. OK?

First, mandatory injunctions prevent the percolation of issues in the lower court that the U.S. Supreme Court in *Mendoza* said is necessary for that court to be able best to resolve whatever legal dispute there is. It allows the court to be sure that all the issues, all the subissues, all the arguments pro and con, and all the benefits and costs of whatever rule, are fully aired.

Second, it encourages judge-shopping. All you have to do is find one favorable judge and you can stop an entire administration in its track. As you know, it has happened to every administration over the course of this 21st century—from the George W. Bush administration to the present. Each party has been subject to this practice.

Third, it can result in conflicting nationwide judgments. You can wind up with injunctions going one way and the other way because a court in Maine and a court in Alaska can come out the opposite way in a case.

Finally, they are going to weaken the doctrine of stare decisis. Because as the Supreme Court comes to realize, if it has to decide issues at a preliminary stage of the case without the guidance of the lower courts, they're going to have to overrule some of their decisions.

Let me end where I began. This practice is mistaken as a matter of law and unwise as a matter of policy.

Thank you.

[The prepared statement of Mr. Larkin follows:]

WRITTEN STATEMENT OF PAUL J. LARKIN
JOHN, BARBARA & VICTORIA RUMPEL SENIOR LEGAL
RESEARCH FELLOW, THE HERITAGE FOUNDATION

HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, ARTIFICIAL INTELLIGENCE, AND THE INTERNET AND
SUBCOMMITTEE ON THE CONSTITUTION AND LIMITED GOVERNMENT
HEARING ON NATIONWIDE INJUNCTIONS
APRIL 1, 2025

WRITTEN STATEMENT OF PAUL J. LARKIN
JOHN, BARBARA & VICTORIA RUMPEL SENIOR LEGAL RESEARCH FELLOW,
THE HERITAGE FOUNDATION*

Mr. Chairman, Mr. Ranking Member, and members of the committee:

My name is Paul J. Larkin. I am the John, Barbara, and Victoria Rumpel Senior Legal Research Fellow at The Heritage Foundation. Thank you for the opportunity to submit this testimony on the legitimacy and wisdom of so-called "nationwide injunctions": viz., orders that award relief, not only to the parties in a lawsuit, but also to strangers to the litigation.[1] The practice of entering such injunctions in cases not certified as class actions has bedeviled each of the five presidential administrations in this century.[2] That practice also is mistaken as a matter of law and unwise as a matter of policy.[3]

I. NATIONWIDE INJUNCTIONS ARE MISTAKEN AS A MATTER OF LAW

Most of the Constitution's text addresses the creation, selection, empowerment, and regulation of the Article I and II branches. Those provisions grant exclusive lawmaking authority to politically elected officials: members of Congress and the President. Articles I and II create the House of Representatives, the Senate, and the

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[1] That term is misleading. A prevailing party can rely on a final judgment anywhere. *See, e.g.*, Steele v. Bulova Watch Co., 344 U.S. 280, 289 (1952); Leman v. Krentler-Arnold Hinge Last Co., 284 U.S. 448, 452 (1932). The current tranche of nationwide injunctions seeks to benefit nonparties to litigation against the federal government.

[2] U.S. Department of Justice figures reveal that there were six nationwide injunctions during the George W. Bush Administration, 12 during the Obama Administration, 64 during the first Trump Administration, and 14 during the Biden Administration. *Developments in the Law: Court Reform*, Ch. 4—Nationwide Injunctions, 137 HARV. L. REV. 1701, 1705 Tbl. 1 (2024). Numerous additional ones have been entered in the second Trump Administration. Paul J. Larkin & GianCarlo Canaparo, *The Unitary Executive Meets the Unitary Judiciary: The Use of Nationwide Injunctions by U.S. District Courts*, HERITAGE FOUND., Legal Memorandum No. 375, at 3, 18 n.26 (2025) [hereafter Larkin & Canaparo, *Unitary Judiciary*] (collecting examples).

[3] I have published two articles on this issue. Larkin & Canaparo, *Unitary Judiciary*, *supra* note 2; Paul J. Larkin & GianCarlo Canaparo, *One Ring to Rule Them All: Individual Judgments, Nationwide Injunctions, and Universal Handcuffs*, 96 NOTRE DAME L. REV. REFLECTION 55 (2020) [hereafter Larkin & Canaparo, *One Ring*]. I will draw upon those articles in my statement here. For your convenience, I have attached them as an appendix to this statement

President; they identify and limit who may hold such offices; and they define the powers that each one may exercise, with the most important one being the creation and implementation of the "Law" of the United States.

Article I vests "[a]ll legislative Powers herein granted" in Congress, which textually distinguishes what Congress can produce from the type of orders or judgments that courts may enter, and Article II vests in the President the "executive Power," which includes the responsibility to "take Care that the Laws be faithfully executed." The Framers spent far less time at the Convention of 1787 on the Article III branch, but they did define and limit the power that the federal courts may exercise: *viz.*, the "judicial Power." That is the authority to adjudicate pursuant to "Trial[s]" certain specified types of "Cases" and "Controversies" in "Law and Equity, arising under" the Constitution, the acts of Congress, and treaties.[4] Nowhere in Article III is there a hint that the "judicial Power" vested in the federal courts over "Cases" and "Controversies" is identical to the "legislative Power" vested in Congress or that federal courts may enter a judgment that is comparable to the "Law" that only the political branches may create. The reason is that the Framers were aware of the difference between the legislative and adjudicatory processes, the Framers assigned different powers to the different branches to avoid any one of them from becoming an autocrat, and the Constitution's terms must be read in light of the Framers' knowledge and purpose.[5]

Read as a whole,[6] those provisions show that the Framers distinguished between (1) a "Law" passed by Congress and signed by the President, and (2) a judgment or order entered by an English common law court or one of today's federal courts. The former are legislative products that govern the nation by representatives chosen by the electorate for limited terms to decide policy issues on a nationwide basis. By contrast, the latter merely represent the adjudication by an unelected judge of a dispute between two parties in one lawsuit that "aris[es] under" the laws passed by Congress. A "Law" may include a directive to society to act or refrain from acting in a certain manner in accordance with its text, which applies to everyone.[7] By contrast, an injunction is a coercive remedy used to enforce a court's judgment by commanding a losing party in a lawsuit to act or refrain from acting in a certain way. Judgments that closely resemble "Law[s]"—the infamous *Miranda* warnings are a paradigmatic example[8]—exceed the authority of the courts, whose remedial power is limited to entry of a judgment resolving a specific case rather than the promulgation of rules for the overall governance of society. As Professor Samuel Bray has put it, "Article III gives the federal courts the 'judicial Power,' which is a power to

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[4] U.S. CONST. arts. I, II, III; Larkin & Canaparo, *supra* note 2, at 4-5.

[5] *See, e.g.*, Grupo Mexicano de Desarrollo, S.A. v. All. Bond Fund, Inc., 527 U.S. 308, 318 (1999) (stating that the Judiciary Act of 1789 gave federal courts the "authority to administer in equity suits the principles of the system of judicial remedies which had been devised and was being administered by the English Court of Chancery at the time of the separation of the two countries.") (quoting Atlas Life Ins. Co. v. W.I.S., Inc., 306 U.S. 563, 568 (1939)).

[6] *See* Akhil Reed Amar, *Intratextualism*, 112 HARV. L. REV. 747 (1999) (arguing that the Constitution should be read holistically).

[7] United States v. Lee, 106 U.S. 196, 220 (1882) ("No man in this country is so high that he is above the law.").

[8] *See* Miranda v. Arizona, 384 U.S. 436 (1966).

decide cases for parties, not questions for everyone."[9] The Framers' decision to limit the federal courts to the micro-lawmaking that was the traditional work of the common-law courts—rather than the macro-lawmaking that is the responsibility of legislatures—is powerful evidence that federal courts may use an injunction to remedy only the injury suffered by the parties, not the nation. [10]

In demarking this assignment of responsibilities, the Framers were aware of and rejected alternatives that would have permitted federal courts to participate with Congress and the President in the lawmaking process.[11] For example, before 1066, the Anglo–Saxon kings relied on a council of elders, called the Witan, to determine the governing tribal customs. After William I became king, the Witan became the Curia Regis (or King's Court), which possessed legislative, executive, and judicial power. Over time, the Star Chamber, a court of general jurisdiction consisting of the king's councilors and common-law judges, emerged within the Privy Council, a group of the king's general advisors. Even after Parliament stripped the Privy Council of its adjudicative power during the English Civil War, the council still dispensed justice and reviewed colonial legislation adopted in America's 13 colonies. The House of Lords possessed judicial and legislative power by serving as the highest court in England and one branch of a bicameral Parliament. Thus, English law saw nothing improper in the same body possessing lawmaking, law-enforcing, and law-adjudicating authority. There also was a local example available to the Framers. The New York Constitution of 1777 created a Council of Revision that contained judges as members and possessed veto and revisionary power over legislation. In sum, English and colonial law saw nothing improper in vesting lawmaking, law-enforcing, and law-adjudicating responsibilities in one institution.[12]

The courts that have approved nationwide injunctions have confused the critical difference between the law of judgments and the principles of stare decisis. A case can result in a judgment only if it "aris[es] under" federal law, and that is true only if the Constitution, an act of Congress, or a treaty creates that law. A judgment

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[9] Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 HARV. L. REV. 417, 421 (2017) (footnote omitted). A trial or appellate court's resolution of a dispute often requires the judge to apply settled law to new facts, or to decide an unresolved legal issue, and the judgment entered in the case establishes the law between the partes. But that lawmaking occurs only at the micro level—that is, only for the parties to the case. That is what Justice Oliver Wendell Holmes meant by saying that "judges do and must legislate, but they can do so only interstitially; they are confined from molar to molecular motions." Southern Pac. Co. v. Jensen, 244 U.S. 205, 221 (1917) (Holmes, J., dissenting).

[10] "What that means is this: in a criminal prosecution, a federal court can enter a judgment before trial that dismisses charges improperly brought. After trial, the court can order the accused to be punished or freed, depending on the jury's verdict, and impose a punishment identified by Congress in the act creating a criminal offense. In a civil action, a court can award the same type of monetary or injunctive relief available in England at law or equity when this nation came into being. That is all. The Article III adjudicative power vested in federal courts is not a charter to substitute appointed judges for elected officials. Nationwide injunctions differ markedly from the remedies contemplated by Article III because the former exceed the party-specific reach of the judgment and partake more of legislation." Larkin & Canaparo, *supra* note 15, at 61–62 (footnotes omitted).

[11] *See* James T. Barry III, Comment, *The Council of Revision and the Limits of Judicial Power*, 56 U. CHI. L. REV. 235 (1989); Larkin & Canaparo, *Unitary Judiciary*, *supra* note 2, at 6.

[12] Barry, *supra* note 11, at 237-43; Larkin & Canaparo, *Unitary Judiciary*, *supra* note 2, at 6.

simply reflects a court's determination as to the best interpretation of federal law or the best application of that law to the facts of a particular case. Once a court enters its judgment, that judgment binds only the parties, not strangers to the litigation. What can affect third parties is the doctrine of stare decisis—*viz.*, the principle that a legal rule, once settled, should be applied in future cases.[13] In a federal system like ours, one with numerous vertical and horizontal lines of jurisdiction, the stare decisis doctrine does not apply nationwide unless the Supreme Court has resolved an issue.[14] No particular circuit court of appeals can bind another one, and no district court can bind any other court—or even its own.[15] For example, a person in Maine (which is under the U.S. Court of Appeals for the First Circuit) can argue that *the law applied* in a case litigated to a final judgment in a Hawaii district court (which is under the U.S. Court of Appeals for the Ninth Circuit) was correct and should be applied by the Maine federal courts. But that person cannot claim an entitlement to prevail based entirely on the *judgment* entered by the Hawaii federal court if he or she was not a party to the litigation resolved by that judgment. Only a victorious party named in the Hawaii judgment can do so.[16]

Nor does the Judicial Code grant federal courts the power to transform a "judgment" into a "Law," despite what some judges have decided. None of the jurisdictional statutes implementing the Article III "Case" or "Controversy" limitation authorizes courts to grant relief to third parties that is equal to what Congress may accomplish through a generally applicable "Law." Also, declaratory relief was unknown to the common law, and when Congress passed the Declaratory Judgment Act to offer courts that authority, Congress limited the recourse to only the parties in a lawsuit by providing that, "[i]n a case of actual controversy within its jurisdiction," a federal court "may declare the rights and other legal relations of any interested *party* seeking such declaration."[17] Rule 23 of the Federal Rules of Civil Procedure allows for the certification of a nationwide class,[18] but a court cannot award nationwide relief without first certifying a nationwide class.[19] Rule 65 of the Federal Rules of Civil Procedure, which governs "Injunctions and Restraining Orders," fixes necessary and sufficient criteria for entry of such relief and does not empower courts to enjoin people who are not parties to the case.[20] Beyond that lies the realm of nationwide lawmaking, which is the exclusive responsibility of Congress.

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[13] *See, e.g.*, Ramos v. Louisiana, 590 U.S. 83, 101-11 (2020) (plurality opinion); *id.* at 115-24 (Kavanaugh, J.,).

[14] *See, e.g.*, Loper Bright Enterprises v. Raimondo, 603 U.S. 369, 406 (2024) (noting that "lower courts [are] bound by even our crumbling precedents").

[15] Larkin & Canaparo, *Unitary Judiciary*, *supra* note 2, at 7.

[16] *Id.*

[17] 28 U.S.C. § 2201 (West 2025) (emphasis added).

[18] *See* Califano v. Yamasaki, 442 U.S. 682, 699-700 (1979).

[19] *See* Baxter v. Palmigiano, 425 U.S.308, 311 n.1 (1976) (ruling that a district court erred by entering classwide relief without first properly certifying a class).

[20] Rule 65 provides in part as follows:

> **(d) Contents and Scope of Every Injunction and Restraining Order.**
>
> **(1)** ***Contents.*** Every order granting an injunction and every restraining order must:
>
> **(A)** state the reasons why it issued;

Two Supreme Court decisions—*Williams v. Zbaraz*[21] and *United States v. Mendoza*[22]—also stand in the way of the current practice of issuing nationwide injunctions. The plaintiffs in *Zbaraz* challenged the constitutionality of an Illinois law that declined to fund elective abortions on the ground that the statute denied an indigent woman the right to obtain an abortion under the law created in *Roe v. Wade*.[23] The plaintiffs did not claim that the federal Hyde Amendment also infringed on their rights even though it imposed a parallel limit on federal reimbursement for elective abortions. Nevertheless, the district court believed that the two statutes were closely interrelated and held both laws unconstitutional. The Supreme Court reversed, ruling that the district court "lacked jurisdiction to consider the constitutionality of the Hyde Amendment" for two reasons: None of the plaintiffs in *Zbaraz* had challenged the constitutionality of the Hyde Amendment, and the district court could have awarded the plaintiffs complete relief by entering an order that said nothing about the validity of that law.[24] Under those circumstances, the Court reasoned, there was no "case or controversy sufficient to permit an exercise" of the Article III judicial power.[25]

Zbaraz stands for the proposition that a district court lacks jurisdiction to grant relief to a prevailing party on an issue not in dispute in that case and unnecessary to fully remedy the plaintiff's injury. It follows logically that a district court lacks jurisdiction to award relief to a nonparty as to whom there is, by definition, no "Case" or "Controversy" between that party and anyone else. If there was no controversy in *Zbaraz* between the plaintiffs and the United States, as the Supreme Court held, there also would be no controversy between anyone on the sidelines of a lawsuit and the federal government. Members of the public might vociferously object to whatever action the government might be taking toward a party to litigation, and they might even have a legitimate claim of injury that would permit them to file their own lawsuit. But unless and until they become a party to an ongoing lawsuit or file one of their own, strangers have no greater entitlement to an injunction based on the judgment of an Article III court than they would have if they bested a government representative in a law school debate.

The second case is *United States v. Mendoza*. *Mendoza* involved the issue of whether a nonparty who does file a new lawsuit may make offensive collateral

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(B) state its terms specifically; and

(C) describe in reasonable detail--and not by referring to the complaint or other document--the act or acts restrained or required.

(2) ***Persons Bound.*** The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

[21] 448 U.S. 358 (1980).

[22] 464 U.S. 154 (1984).

[23] 410 U.S. 113 (1973), *overruled by* Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022).

[24] *Zbaraz*, 448 U.S. at 367.

[25] *Id.* at 367.

estoppel use of a judgment adverse to the federal government that was entered in prior litigation.[26] In *Parklane Hosiery Co. v. Shore*,[27] the Supreme Court had approved the use of offensive collateral estoppel as a matter of federal law in litigation involving private parties, and the plaintiff in *Mendoza* sought to extend that rule to cases brought against the United States. The Supreme Court, however, unanimously rejected his argument. The federal government is not an ordinary litigant in federal cases, the Court reasoned, because it is a party to a far larger number of lawsuits than any private party would be and because many constitutional issues arise only in the context of public litigation against the federal government.[28] Moreover, making every case a "Win or go home" enterprise for the federal government would hamper the Supreme Court's own decisionmaking process, because it would prevent the development of issues in the lower courts, often in multiple circuits, before the Court would need to resolve a dispute. Allowing issues to "percolate" in the lower courts, the Court reasoned, had the cost of delaying the final resolution of an issue, but also had the overriding benefit of ensuring that every aspect of an issue, along with every argument pro and con, would be fully aired before the Court needed to step in. Those factors persuaded the Court that allowing a nonparty to bind the federal government whenever it lost a case would have serious adverse consequences for the legal system.

Mendoza nicely complements *Zbaraz*. *Mendoza* ensures that no single adverse judgment can foreclose the federal government from implementing a statute or operating a program in connection with individuals not named in the judgment. *Mendoza* also avoids the unseemly forum shopping and asymmetric development of the law that a contrary rule would encourage. Keep in mind that there are hundreds of federal district court judges, and institutional litigants have every incentive to find one to rule in their favor. Congress has the power to decide whether to overrule or modify the *Mendoza* decision, because Congress can change the rules of issue or claim preclusion for the federal courts.[29] That would require Congress to legislate, to pass a "Law," which it has not yet done—and should not do now.[30]

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[26] Collateral estoppel (nowadays the term "issue preclusion" is used instead) refers to a doctrine providing that an issue resolved between the parties in one case should be deemed resolved in a later case involving the same issue. For example, if *A* sues *B* over title to property *C*, a final judgment in the case that *B*'s name is on the deed should apply in any later litigation between those parties over title to that property in subsequent litigation. *See* Larkin & Canaparo, *Unitary Judiciary*, *supra* note 2, at 11.

[27] 439 U.S.322 (1979).

[28] *Id.* at 159.

[29] "Issue preclusion" is discussed above in footnote 24. "Claim preclusion (the new name given to the old doctrine known as *res judicata*) is different. If *A* claims that he, not *B*, owns Property *C*, *A* must present in one lawsuit every reason why he is the owner—e.g., *A* bought the property from *B*, *B* gave the property to *A* as a birthday present—or forfeit the opportunity to present that rationale for his entitlement to Property *C* in subsequent litigation.

[30] A different case might be presented by a statute creating a three-judge court to resolve an issue of nationwide importance where a direct appeal from entry of a nationwide injunction would leap from over the circuit courts of appeals and go directly to the Supreme Court. Perhaps, that would pose a different case; perhaps not. As explained above, one problem with the entry of an injunction against a non-party is that, given the reasoning in the *Zbaraz* case, discussed in the text at Pages 5-6, there is no "Case" or "Controversy" between a litigant and a non-party. Regardless, only Congress could enact such a scheme.

II. NATIONWIDE INJUNCTIONS ARE UNWISE AS A MATTER OF POLICY

It is unlikely that Congress could authorize federal courts to issue nationwide injunctions outside of nationwide class actions.[31] The *Zbaraz* case indicates that a federal court cannot do so because there is no "Case" or "Controversy" between the parties to a lawsuit and individuals or organizations watching from the sidelines. But, even if Congress could empower courts to award nationwide injunctions outside of nationwide class actions, it would be a mistake for Congress to change the rule adopted in the *Mendoza* case, for the reasons spelled out in that decision and noted above. One of those reasons, however, deserves special attention.

The ability to persuade a district judge to enter a nationwide injunction without certification of a nationwide class action exposes the federal judicial system to the unavoidable criticism that it is susceptible to "judge shopping" to obtain "one ring to rule them all," as I have previously noted.[32] That problem is a serious one. "As a consequence of increased forum shopping and political gamesmanship, the increase in nationwide injunctions on highly politicized issues fuels the public's perception that the courts themselves are politicized and that federal judges are political ac-tors." [33] The corrosive effect that belief would have on the public's perception of our judicial system doubtless would only grow stronger over time. "Inserting the judiciary into quintessentially political fights, even when there is a substantial legal issue to be decided on recognizably legal grounds, plainly risks the perception that judges base decisions on political preferences, or at least are affected by those pref-erences," former Dean Ron Cass has warned.[34] Overturning the Supreme Court's ruling in *Mendoza* by statute would only drive our judicial system toward a future that no one should want to see.

CONCLUSION

The practice of entering nationwide injunctions against the federal government in any case not properly certified as a nationwide class action is both unlawful and unwise. Neither the Constitution, the Judicial Code, nor common-law principles of issue or claim preclusion authorizes a federal court to award relief to individuals who are not parties to a particular "Case" or "Controversy." In fact, the Constitution implicitly but clearly prohibits any such practice by denying the judiciary the power either to enter a judgment that is tantamount to a "Law," which only Congress may pass, or to grant nonparties injunctive relief, which would exceed the "Case" or "Controversy" limitations placed on the federal judiciary by Article III. In myopinion, the Supreme Court is certain to reach that conclusion when it decides to review such a lower court judgement, which will hopefully happen very soon.

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[31] Nationwide class actions differ from ordinary litigation because they signal to the parties, their lawyers, and the nation that there will be only one lawsuit to resolve an issue for the country. Moreover, there are standards that are set forth in Rule 23 of the Federal Rules of Civil Procedure that a plaintiff must meet before a judge can certify a class action.

[32] Larkin & Canaparo, *One Ring*, *supra* note 2.

[33] *Developments*, *supra* note 1, at 1712 (footnote omitted).

[34] Ronald A. Cass, *Nationwide Injunctions' Governance Problems: Forum-Shopping, Politicizing Courts, and Eroding Constitutional Structure*, 27 GEO. MASON L. REV. 29, 53-54 (2019) (footnote omitted); *Developments*, *supra* note 1, at 1712 ("When judges in the red state of Texas halt Obama's policies, and judges in the blue state of Hawaii enjoin Trump's, it tests the limits of the public's imagination to argue that the federal judiciary is impartial, nonpartisan, and legitimate.") (footnote and punctuation omitted).

Mr. ISSA. Thank you.
Speaker Gingrich?

STATEMENT OF THE FORMER SPEAKER NEWT GINGRICH

Speaker GINGRICH. Thank you, Chairs Issa and Roy, Ranking Members Johnson and Scanlon, and all the Members of the Subcommittees, for allowing me to testify.

There is clearly a potential Constitutional crisis involving the Judicial Branch's effort to fully override the Legislative and Executive Branches. Fifteen District judges effectively seized control of various Executive Branch duties in the first six weeks of the current presidency through nationwide injunctions. This is potentially a judicial coup d'état. It clearly violates the Constitution and more than 200 years of American history.

To set the stage for this hearing, let me mention 12 former Federal judges appointed by President John Adams: Richard Bassett, Egbert Benson, Benjamin Bourne, William Griffith, Samuel Hitchcock, Phillip Barton Kay, Jeremiah Smith, George Keith Taylor, Oliver Wolcott Jr., Williams McClung, Charles Magill, and Williams Tilghman.

President Adams appointed these Federal judges on his way out of office to hamstring the incoming President Thomas Jefferson's agenda.

President Jefferson concluded that impeaching the judges would take too much time. He and the Congress simply abolished the courts in which they served via the Judiciary Act of 1802.

This is a Constitutional balance of power. The Legislative and Executive Branches can reshape the Judiciary Branch. It is a useful reminder in considering the current situation.

Unelected lower-court judges have been steadily grabbing power for years. It was such an obvious threat that, in 2012, Vince Haley and I wrote, "Bringing the Court Back under the Constitution." It is an historic study which I am submitting for the record.

According to *Harvard Law Review*, there were 96 nationwide injunctions ordered by District Courts from 2001–2023. Two-thirds of them, 64, were issued during the President's time in office. Furthermore, 92 percent of the injunctions against President Trump were issued by judges appointed by Democratic Presidents.

Since January 20, 2025, lower courts have imposed 15 nationwide injunctions against the current Trump Administration. This is compared to six during George W. Bush's eight years, 12 during Barack Obama's eight years, and 14 during Joe Biden's four-year term.

The notion that unelected lawyers can micromanage the Executive Branch—and override a Commander-in-Chief who received 77.3 million votes—should trouble every American.

This is particularly troubling for issues of national defense and public safety. Around 500 B.C., Sun Tzu asserted in "The Art of War" that, quote, "speed is the essence of war." How can the United States have speed in national security issues if opponents can judge-shop to find someone ambitious or arrogant enough to block, repudiate, or delay the President's decisions?

There are 677 authorized District judgeships. How many think they can override duly elected Presidents?

This summary statement has four propositions:

First, the courts have often been challenged. President Jefferson wrote, quote, "judges as the ultimate arbiters of all Constitutional questions . . . would place us under the despotism of an oligarchy."

President Andrew Jackson was in constant fights with the Supreme Court. President Abraham Lincoln made the *Dred Scott* Decision expanding slavery a centerpiece of his 1858 senatorial campaign. In this first inaugural, President Lincoln warned that, if the Supreme Court held supreme rule, quote, "the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal."

Second, as the Judiciary Act of 1802 proves, the Legislative and Executive Branches can constitutionally defend their rights—and they have in the past. It is historically and constitutionally wrong to think the Legislative and Executive Branches are helpless against judiciary actions.

Third, the Supreme Court could intervene to eliminate this attack on the Executive Branch by District judges. Chief Justice Roberts could end the growing confrontation by establishing a rule that any nationwide injunction issued by a District Court against the Executive Branch would be suspended in implementation and immediately taken up by the Supreme Court. This would remedy the lengthy appeals process.

Fourth, the Congress and the President can take decisive steps toward bringing the judiciary back into a Constitutional framework.

This hearing is a good first step. There could be a series of hearings on the Constitutional and historic framework which ensures no single branch of government can acquire dictatorial powers—specifically, the judiciary in this Committee.

These hearings would educate the Members and the American people. They would create a national understanding of the need to defend the Constitution against overreaching branches of government.

I would also recommend that the Congressmen, that the Congress pass Chair Issa's No Rogue Rulings Act, which is a good signal to the courts that they have gone too far.

Thank you and I look forward to your questions.

[The prepared statement of the Former Speaker Gingrich follows:]

House Judiciary Committee Testimony
Speaker Newt Gingrich

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[1] https://harvardlawreview.org/print/vol-137/district-court-reform-nationwide-injunctions/

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These hearings would educate the members and the American people. They would create a national understanding of the need to defend the Constitution against overreaching branches of government.

I would also recommend the Congress pass Chairman Issa's No Rogue Rulings Act, which is a good signal to the Courts that they have gone too far.

Thank you and I look forward to your questions.

Mr. ISSA. Thank you. Ms. Romero.

STATEMENT OF CINDY ROMERO

Ms. ROMERO. My name is Cindy Romero. I am a wife, a mother of five, a grandmother of three, a part-time worker and student, and a former resident of Aurora, Colorado. I am one of the many victims across the Nation of the violent transnational gang, Tren de Aragua, and a former lifelong Democrat.

My husband and I resided at the Edge of Lowry apartment for four years and while the first few years were a pleasant experience, we soon began observing changes in our once quiet neighborhood. In the Spring and Summer 2024, we noticed shuttles dropping off large numbers of illegal immigrants onto the property. Throughout the year, we watched in horror as a few apartments full of migrant families quickly evolved into large groups of gun-toting, military-aged males threatening the remaining leaseholders into abandoning their properties, then kicking in the doors to the many vacated units to make room for other gang members.

Open air drug use, drug dealers, and seemingly underage prostitutes filled the common areas of the buildings. Large parties in the parking lots lasted well into the morning. Stolen and abandoned vehicles blocked residents and cars. Property damage was evident. Random shootouts soon began to be expected on our block every night. These criminals brought in unlicensed electricians to run electricity to abandoned apartments and locksmiths to change the locks on the outside of the buildings to deny access to the owners, emergency services, and even the lease holders of the building.

Despite several calls for help to the Aurora Police Department, they often provided conflicting excuses for not responding. For example, one officer told me that he wanted to respond, but was instructed not to. Where they were often responding to other rampant crimes across the city or had to respond to any crime in my neighborhood was no less than three or four officers in an armored vehicle. One officer suggested I go to the media because he felt sorry for me. He unintentionally saved my life.

Although we were low income and barely paying our bills, we realized the need to invest in home protection and we purchased three additional handguns and six cameras in the event that we had to defend ourselves. During June and July, the gang members slowly began to torture us through intimidation, loud arguments, physical conflicts outside our door every night, vandalizing, taking over vacant apartments on our floor, and after several confrontations with the gang members, several calls, and submitting video evidence to the Aurora Police Department with no results, we gave up trying to stop them from squatting on the property.

We spent the next few weeks looking for another rental and we were unable to locate another low-income property rental that didn't have the same exact issues that we were facing every day. We reached out to local mainstream media, several NGO's in our community, begging for help, only to be turned away because we were just ordinary taxpayers. There were no government programs to grant citizens temporary protected status from imported gangs in our own country.

On August 18th at 11:21 p.m., 10 minutes after my now viral video was recorded, a young man who I called my friend was mortally wounded outside my apartment during a firestorm of bullets causing thousands of dollars in damages to cars and surrounding properties by six gunmen later identified as Tren de Aragua. Thanks to the heroism of one local Aurora City Councilwoman, named Danielle Jurinsky, and some of her friends, including John Fabbricatore, they have been sounding the alarm over TdA for months while being called a liar and ignored by their Governor. I was finally able to escape these horrible conditions due to their help.

In the media frenzy following the video release, many TdA members have now been identified and arrested all over the country. Danielle Jurinsky has never received an apology or acknowledgment for exposing the threat.

When I heard that Mr. Trump had taken an interest in Aurora and our struggles with Tren de Aragua, I was relieved. I was hopeful that a change was getting ready to happen and it was on the way, that it was impending. As President, he did not disappoint me. I feel safer knowing that our country becomes more secure daily. I continue to think that the lives of my family and many others in my community were put at risk by the Biden Administration's failed sanctuary policies at the Southern border. Sanctuary status puts citizens at risk, and we must stop pushing ideology over commonsense. Thank you.

[The prepared statement of Ms. Romero follows:]

Testimony of Cindy Romero

My name is Cindy Romero; I am a wife, a mother of five, a grandmother of three, a part-time worker and student, and a former resident of Aurora, Colorado. I am one of the many victims across the nation of the violent transnational terrorist organization Tren de Aragua and a former lifelong Democrat.

My husband and I resided at The Edge of Lowry Apartments for four years. While the first few years were a pleasant experience, we soon began observing changes in our once-quiet neighborhood. In the spring and summer of 2024, we noticed shuttles dropping off large numbers of illegal immigrants onto the property. Throughout the year, we watched in horror as a few apartments full of migrant families quickly evolved into large groups of gun-toting military-aged males threatening the remaining leaseholders into abandoning their properties, then kicking in the doors to the many vacated units to make room for other gang members.

Open-air drug use, drug dealers, and seemingly underage prostitutes filled the common areas of the buildings. Loud parties in the parking lots lasted well into the morning; stolen and abandoned vehicles blocked residents' cars, property damage was evident, and random shoot-outs soon began to be expected on our block every night. These criminals brought in unlicensed electricians to run electricity to abandoned apartments and locksmiths to change locks outside the buildings to deny access to the owners, emergency services, and even the leaseholders left in the building.

Despite several calls for help to the Aurora Police Department, they often provided conflicting excuses for not responding. For example, one officer told me that he wanted to respond but was instructed not to, or they were often responding to other rampant crimes across the city or had to respond to any crime in my neighborhood with no less than 3 or 4 officers and an armored vehicle. One officer even suggested I go to the media because he felt sorry for me; he likely unintentionally saved my life. Although we were low-income and barely paying our bills, we realized the need to invest in home protection, and we purchased three additional handguns and 6 cameras in case we had to defend ourselves.

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Unable to locate another low-income property rental that didn't have the same issues we were facing every day, we reached out to local mainstream media and several NGOs in our community, begging for help, only to be turned away because we were taxpayers. There are no government programs to grant citizens temporary protected status from imported gangs in our own country.

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acknowledgment for exposing the threat.
When I heard that Mr. Trump had taken an interest in Aurora and our struggles with TDA, I was relieved and hopeful that a change was coming. As President, he did not disappoint me, and I feel safer knowing that our country becomes more secure daily. I continue to think that the lives of my family and many others in my community were put at risk by the Biden administration's failed sanctuary policies at the southern border. Sanctuary status puts citizens at risk

Mr. ISSA. Thank you, would you show the video before we move on, please.

[Video played.]

Mr. ISSA. Thank you. Professor Shaw.

STATEMENT OF KATE SHAW

Ms. SHAW. Chair Issa, Ranking Member Johnson, Chair Roy, Ranking Member Scanlon, Chair Jordan, Ranking Member Raskin, and the distinguished Members of the Subcommittees, thank you for the invitation to testify today. My name is Kate Shaw. I am a Professor of Law at the University of Pennsylvania, Carey Law School.

I understand that the purpose of today's hearing is to discuss recent judicial rulings against the Trump Administration and to evaluate some of the responses to those rulings being considered by this body, in particular, resolutions of impeachment against Federal judges, and a bill that would limit the power of District Courts to issue nationwide injunctions.

Let me say at the outset that in my view, the premise of this hearing that courts have overreached or transcended the limits of their authority and that this overreach calls for some response is badly mistaken. It is true as has already been noted this morning that the Trump Administration has been on the losing streak in the Federal courts. A recent analysis by Professor Steve Vladeck found that of the 151 cases brought against the Trump Administration since January 20th, 46 have resulted in some sort of preliminary relief. That relief has been ordered by judges across the country and by judges appointed by Presidents of both parties.

This broad consensus makes clear that despite the claims of some critics, these rulings do not grow out of substantive disagreement with President Trump's policy choices. The lawsuits have been brought and have overwhelmingly succeeded because many of the challenged actions have been taken without regard for and often with outright contempt for both statutes and the Constitution. By that, I mean both the constitutionally required process for lawmaking and the rights the Constitution commands the government to respect.

First, as to process. Article 1's lawmaking provisions are pretty straight forward. Laws must be passed by both houses of Congress and signed by the President or repassed over a veto. Laws governing funding, that is appropriations, are laws like any other. As for Article 2, it has long been settled that when the President acts, it needs to be pursuant to some authority Congress has granted or within one of the narrow areas in which Article 2 gives the President the authority to act without Congressional authorization. That is the heart of Justice Jackson's concurring opinion in Youngstown, still the most influential judicial account of Presidential power.

What all that means is that if President Trump wished to reshape or even eliminate many Federal agencies or dramatically reduce government expenditures on foreign aid or eliminate job protections for Federal workers or roll back Federal privacy protections, working with his many allies on Congress, including those on this Committee, was the constitutionally permissible way to do that. Instead, he has ignored the laws passed by Congress and the

Constitutional rules that give Congress primacy in lawmaking. Beyond those largely procedural failures, many of the administration's initiatives have flouted core Constitutional principles, the freedom of speech and expression, due process, equal justice, and equal protection under law.

President Trump has used the power of government to exact retribution against individuals and entities who have engaged in constitutionally protected activities and he has brought the full weight of the State down on vulnerable groups the Constitution protects. In short, this administration has been marked by a breath-taking degree of Presidential unilateralism that is flatly inconsistent with the Constitution and with numerous statutes passed by Congress. That is true in general terms, and it is true as to specific actions. That is why President Trump has fared so badly in court.

To be sure, some of these rulings will be, some already have been, reversed on appeal. Reasonable minds can disagree about some of these questions, but rather than focus on the Appellate process or uncorrecting the legal defects, this administration and many of its supporters have suggested that the problem is District judges and rather than use its Constitutional authority to enact laws that would give the President the power to do some of the things he wishes to do, this body has devoted itself to two things: (1) Stripping the power of Federal courts to issue injunctions, and (2) pursuing impeachments of Federal judges who have merely discharged their obligation to uphold the Constitution.

In my mind, the District Court judges who have ruled against the administration have not come close to engaging in high crimes and misdemeanors, the Constitutional standard for impeachment. Although Congress has considerable power to regulate the Federal courts, including potentially restricting courts' ability to issue nationwide relief, the current moment calls for caution in pursuing change that would curtail courts' ability to meaningfully review and remedy unlawful Executive action.

It has been suggested already this morning that rulings against the administration for the will of the people, but democracy does not begin and end with elections for Presidents. It includes elections for membership in Congress, the branch closest to the people and the entity whose authority many of these decisions protect. Democracy also means more than just elections. It includes values like the ability to engage in speech and expression, to associate, to petition, meaningful democracy also requires genuine political equality, procedural fairness, and mechanisms for the protection of minorities. In our system, courts can be a key guarantor of those aspects of democracy. They are doing their part to preserve both law and democracy. Other branches of government should join them.

Thank you again for the invitation and I look forward to your questions.

[The prepared statement of Ms. Shaw follows:]

Committee on the Judiciary

Subcommittee on Courts, Intellectual Property, Artificial Intelligence, and the Internet

and

Subcommittee on the Constitution and Limited Government

Hearing: "Judicial Overreach and Constitutional Limits on the Federal Courts"

Tuesday, April 1, 2025, 10:00 am

Testimony of Kate Shaw
Professor of Law, University of Pennsylvania Carey Law School

Chairman Issa, Ranking Member Johnson, Chairman Roy, Ranking Member Scanlon, Chairman Jordan, Ranking Member Raskin, and Distinguished Members of the Subcommittees:

Thank you for the invitation to testify today. My name is Kate Shaw, and I am a Professor of Law at the University of Pennsylvania Carey Law School, where I teach and write about Constitutional Law, among other topics. Before joining the Penn faculty last year, I spent a dozen years teaching at Cardozo Law School, in New York City; prior to entering law teaching I served as an attorney in the White House Counsel's Office.

I understand that the purpose of today's hearing is to discuss recent judicial rulings against the Trump administration, and to evaluate some of the responses to those rulings being considered by this body—in particular, resolutions of impeachment against federal judges, and a bill that would limit the power of district courts to issue nationwide injunctions.

Let me say at the outset that what I take to be the premise of this hearing—that courts have overreached or transcended the limits of their constitutional authority in recent rulings invalidating various actions taken by the Trump administration—is badly mistaken.

It is true that the Trump administration has been on a losing streak in the federal courts. But despite the claims of some critics, these rulings do not grow out of substantive disagreements with President Trump's policy choices. The lawsuits against the executive orders and other directives issued by the President have been brought, and have overwhelmingly succeeded, because many of the President's policy initiatives have been undertaken without regard for, and often with outright contempt for, the Constitution. That includes both the constitutionally required process for lawmaking, and the rights the Constitution commands government to respect.

As every student of Constitutional Law learns, the Constitution has some provisions that are broad and open ended, and some that are specific. The Article I provisions governing the lawmaking process are relatively detailed and specific. Laws must be passed by both houses of Congress and signed by the president or repassed over a veto.[1] Laws governing funding—appropriations—are laws like any other; in other words, the Constitution gives Congress the primary authority to decide how money will be spent.[2]

The Article II provisions creating and empowering the presidency are actually far less detailed. That is particularly true about what are considered by many to be the most important provisions of Article II—specifically the "Vesting" and "Take Care" clauses, which are subject to considerable debate. But whatever the proper understanding of those provisions of Article II, it has long been settled that when the President acts, it needs to be pursuant to some authority Congress has granted, or within one of the narrow areas in which Article II gives the President the authority to act without congressional authorization. That is the heart of Justice Jackson's concurring opinion in the *Youngstown* case, still the most influential judicial account of presidential power, and one the Supreme Court reaffirmed just last year in an opinion that cited *Youngstown* ten times.[3]

What all of this means is that if President Trump wished to reshape or even eliminate many federal agencies, or to dramatically reduce government expenditures on things like foreign aid, working with his many allies in Congress, including those on this committee, was the constitutionally permissible way to do that.

If he wanted to change the laws that protect various officials from being fired at will by the president, or to remove procedural protections enjoyed by individuals in the civil service, he could have worked with Congress to make those changes.

Rather than pursue those pathways, he has ignored the laws passed by Congress and the constitutional rules that give Congress primacy in lawmaking.

Beyond those largely procedural failures, many of the administration's initiatives have flouted core constitutional principles: the freedom of speech and expression; due process; equal justice under law. President Trump has used the power of government to exact retribution against individuals and entities that have engaged in constitutionally protected activities; and he has brought the full weight of the state down on vulnerable groups the Constitution protects.

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[1] Art. I § 7 cl. 2.

[2] Art. I § 9 cl. 7, the Appropriations Clause, provides that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." *See* JOSH CHAFETZ, CONGRESS'S CONSTITUTION 45-77 (2017).

[3] Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 634 (1952) (Jackson, J., concurring). In Trump v. United States, 144 S. Ct. 2312 (2024), the Court, while announcing a broad immunity from criminal prosecution, made clear the enduring importance of *Youngstown*. *See also* Nomination of Judge John G. Roberts, Jr. To Be Chief Justice of the United States Before the S. Comm. on the Judiciary, 109th Cong. 152 (2005) (statement of John Roberts, J.) ("there often arise issues where there's a conflict between the Legislature and the Executive over an exercise of Executive authority, asserted Executive authority. The framework for analyzing that is in *Youngstown Sheet and Tube"); id.* at 243 ("[T]he appropriate approach in this area is that it is the *Youngstown* analysis, the one set forth in Justice Jackson's concurring opinion.").

In short, this administration has been marked by a breathtaking degree of presidential unilateralism that is flatly inconsistent with statutes and the Constitution. That is true in general terms, and it is true as to specific actions. *That* is why President Trump has fared so badly in court; because so many of his actions have been clearly unlawful, and because that is clear to jurists of all stripes.

A careful examination of the administration's track record in court makes this plain. There have been approximately 151 court challenges to President Trump's actions since his second inauguration.[4] As Georgetown law professor Steve Vladeck recently noted, data available as of March 28 reveal that district courts that have issued rulings in these cases have granted some type of preliminary relief against the government in nearly 70% of cases (46 out of 67).[5]

Rulings against the government in these cases have transcended both geography and ideology. First, as to geography: 39 judges appointed by five presidents in 11 district courts have granted relief.[6] In contrast to lawsuits filed against the Biden administration, not a single one of the 67 cases was filed in a "single-judge division," and no district has been responsible for more than one sixth of the TROs or PIs (except D.D.C., the natural forum for many lawsuits against the federal government).[7]

Judges appointed by presidents of both parties have ruled against the administration. In another recent analysis, political scientist Adam Bonica examined the rulings in cases brought against the Trump administration, finding that judges Bonica terms "conservative" ruled against the administration half the time (4 of 8 as of March 19).[8] The analysis found that "centrist" judges ruled against the administration 88% of the time (7 of 8) and that "liberal" judges ruled against the administration 76% of the time (26 of 34). Professor Vladeck's analysis confirms Professors Bonica's finding that Republican appointees have ruled against the government in approximately half of the cases they've decided (9 out of 20 judges appointed by Republican presidents as of March 28). Professor Vladeck also found that although all eight cases assigned to Trump-appointed judges led to denials of relief, nine out of 12 cases before judges appointed by previous Republican presidents resulted in rulings against the government.

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[4] *Litigation Tracker: Legal Challenges to Trump Administration Actions*, Just Security (last updated Mar. 28, 2025), https://www.justsecurity.org/107087/tracker-litigation-legal-challenges-trump-administration/.

[5] Preliminary relief includes either a TRO or PI. Steve Vladeck, *Setting the Record Straight on the Anti-Trump Injunctions*, One First Substack (Mar. 30, 2025), https://www.stevevladeck.com/p/136-setting-the-record-straight-on. These numbers only reflect those cases that have generated rulings either granting or denying preliminary relief in some of the approximately 151 court challenges to President Trump's actions since his second inauguration. *Litigation Tracker: Legal Challenges to Trump Administration Actions*, Just Security (last updated Mar. 28, 2025), https://www.justsecurity.org/107087/tracker-litigation-legal-challenges-trump-administration/.

[6] *Id.*

[7] *Id.*

[8] Adam Bonica, *Measured Resistance: Data Reveals Cross-Ideological Judicial Opposition to Trump Administration*, On Data and Democracy Substack (Mar. 20, 2025), https://data4democracy.substack.com/p/measured-resistance-data-reveals?r=10322&utm_campaign=post&utm_medium=web&triedRedirect=true. Bonica's original Bluesky thread showed greater uniformity between conservative and non-conservative judges, but he has since revised his analysis. Bonica uses political campaign contributions to assess judicial ideology, Adam Bonica & Maya Sen, *Estimating Judicial Ideology*, 35 J. ECON. PERSPS. 97, 105 (2021), while Vladeck considered only appointing president.

To be sure, some of these rulings against the government will be—and some have been—reversed on appeal. But rather than focus on the appellate process, or on remedying the many legal defects this litigation has revealed, this administration and many of its supporters have suggested that the problem is district judges. And rather than use its constitutional authority to enact laws that would give the President the power to do some of the things he wishes to do, this body has devoted itself to two things: stripping the power of federal courts to issue injunctions; and pursuing the impeachments of federal judges who have done nothing other than discharge their obligations to uphold the Constitution.

To my mind, the district court judges who have handed down decisions identifying legal defects in the administration's actions have not come close to engaging in "high crimes and misdemeanors," the constitutional standard for impeachment. And although Congress has considerable power to regulate the federal courts, potentially including restricting courts' ability to issue nationwide relief, the current moment calls for caution in pursuing change that would curtail courts' ability to meaningfully review and remedy executive action that violates the law.

In recent weeks, some criticism of courts has invoked democracy, suggesting that rulings against the administration thwart the will of the people.[9] But democracy does not begin and end with elections for president. It includes elections for membership in Congress, the branch closest to the people, and the entity whose authority these decisions protect. Democracy also means more than just elections. Of course, regular elections are a core component of democracy;[10] but so are values like the ability to engage in speech and expression, and to associate and petition. Meaningful democracy also requires genuine political equality,[11] procedural fairness, and mechanisms for the protection of minorities.[12] And in our system, courts can be a key guarantor of *those* aspects of democracy.

In the remainder of this testimony, I will first discuss the pending impeachment resolutions against federal judges in light of the prevailing understanding of the role of impeachment in the constitutional order. I will then briefly turn to proposals, including one introduced by Chairman Issa, to limit the power of federal courts to issue nationwide injunctions.

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[9] *See* @realDonaldTrump, TRUTH SOCIAL (Mar. 18, 2025, 9:05 AM), https://truthsocial.com/@realDonaldTrump/posts/114183576937425149. ("This Radical Left Lunatic of a Judge, a troublemaker and agitator who was sadly appointed by Barack Hussein Obama, was not elected President - He didn't WIN the popular VOTE (by a lot!), he didn't WIN ALL SEVEN SWING STATES, he didn't WIN 2,750 to 525 Counties, HE DIDN'T WIN ANYTHING! I WON FOR MANY REASONS, IN AN OVERWHELMING MANDATE, BUT FIGHTING ILLEGAL IMMIGRATION MAY HAVE BEEN THE NUMBER ONE REASON FOR THIS HISTORIC VICTORY. I'm just doing what the VOTERS wanted me to do. This judge, like many of the Crooked Judges' I am forced to appear before, should be IMPEACHED!!!").

[10] Melissa Murray & Katherine Shaw, *Dobbs & Democracy*, 137 HARV. L. REV. 728, 761 (2024)

[11] JEREMY WALDRON, POLITICAL POLITICAL THEORY: ESSAYS ON INSTITUTIONS 37 (2016).

[12] DANIELLE ALLEN, JUSTICE BY MEANS OF DEMOCRACY 68 (2023).

Impeachment

Seven pending impeachment resolutions target six district judges who have ruled against the administration. These resolutions suggest that the judicial rulings themselves, in one case together with outside activities of the judge, constitute "high crimes and misdemeanors."

The resolution against Judge Boasberg charges him with abusing the judicial power and interfering with the President's authority under the Alien Enemies Act by blocking the removal of individuals allegedly associated with a foreign terrorist organization.[13] The resolution against Judge Chuang accuses him of undermining President Trump's Article II foreign policy powers by issuing a preliminary injunction ordering the government to restore electronic access and communications for USAID employees.[14] Judge Ali is similarly accused of "marginaliz[ing]" the President's foreign policy authority, as well as his "fiduciary obligation to review federal agencies and programs," by issuing a temporary restraining order against the pausing of certain USAID funds.[15]

The resolution targeting Judge Bates stems from a TRO mandating that LGBTQI+-related content be restored to CDC, HHS, and FDA webpages.[16] Chief Judge McConnell is accused of improperly failing to recuse himself as he presided over *New York v. Trump*,[17] a case concerning federal funding to states, as he allegedly held a position as a director of a non-profit organization which receives funding from one of the plaintiff states.[18] The resolution also accuses Chief Judge McConnell of "prioritiz[ing] his own political views and beliefs over his duty of impartiality" in the case.[19] Finally, Judge Engelmayer faces two resolutions of impeachment. The first charges him with halting an Executive Order establishing the Department of Government Efficiency, "demonstrating clear bias and prejudice against the President and the 74,000,000 Americans who voted for him."[20] The second arises from an order regarding access to Treasury Department data and systems containing personally identifiable information, which the resolution alleges interfered with the President's broad authority over the executive branch.[21]

Under any existing understanding of the role of impeachment in our constitutional order, pursuing any of these would be an abuse of the impeachment power.

The Constitution provides that "The President, Vice President and all Civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or

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[13] H.R. Res. 229, 119th Cong. (2025).

[14] H.R. Res. 246, 119th Cong. (2025).

[15] H.R. Res. 174, 119th Cong. (2025).

[16] H.R. Res. 157, 119th Cong. (2025).

[17] No. 25-cv-39-JJM-PAS (D.R.I. Mar. 6, 2025)

[18] H.R. Res. 241, 119th Cong. § 2 (2025).

[19] *Id.* § 1.

[20] H.R. Res. 143, 119th Cong. (2025).

[21] H.R. Res. 145, 119th Cong. (2025).

other high Crimes and Misdemeanors."[22] The document then divides responsibility between the two chambers, giving the power of impeachment to the House, and the power to try impeachments to the Senate. The document also provides that "Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of Honor, Trust or Profit under the United States: but the Party convicted shall ... be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law." Under Article III, "Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour[.]"[23] Together, the good behavior clause and the impeachments clauses have been understood to make impeachment the sole method for removing federal judges.[24]

What does history tell us about accepted understandings of the phrase "Treason, Bribery, or Other High Crimes and Misdemeanors" in the context of judges?[25] While judicial impeachments have been infrequent, the history of judicial impeachments makes clear that disagreement with or disapproval of ordinary judicial rulings—which is what underlies each of the current resolutions—has not been deemed a proper object of impeachment.

Since the founding, there have been 15 judicial impeachments, with 8 convictions.[26] The first was in 1803, of Judge Thomas Pickering; the most recent, of Judge Thomas Porteous, was in 2010.[27] Some of these impeachments have been in response to manifest unfitness for the bench, as in the case of Judge Pickering, who was impeached and removed for habitual drunkenness, or Judge Kent, who was impeached for sexual assault and obstructing an investigation, and resigned before proceedings ran their course. Other impeachments have targeted corruption and bribery, like the 2010 impeachment and removal of Judge Porteous. One, of West Humphreys in 1862, was for waging war against the United States.[28]

In the only impeachment of a Supreme Court Justice, Justice Samuel Chase, the core of the impeachment case was excessive and explicit partisanship from the bench.[29] Chase, a committed and

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[22] This discussion is largely drawn from Katherine Shaw, *Impeachable Speech*, 70 EMORY L.J. 1, 7–8 (2020).

[23] Art. III § 1.

[24] There have been some scholarly suggestions that impeachment might not be the only way to remove federal judges, and that Congress might exercise its "necessary and proper" power to remove misbehaving federal judges for conduct short of "high crimes and misdemeanors." *See* Saikrishna Prakash and Steven D. Smith, *How to Remove a Federal Judge*, 116 YALE L.J. 72 (2006).

[25] *See* Katherine Shaw, *Impeachable Speech*, 70 EMORY L.J. 1, 40 (2020).

[26] Federal Judicial Center, Impeachments of Federal Judges, https://www.fjc.gov/history/judges/impeachments-federal-judges.

[27] Steve Vladeck, *The* One First *"Long Read": Why Judicial Impeachments Have Been Rare*, ONE FIRST (Mar. 3, 2025), https://www.stevevladeck.com/p/128-impeaching-federal-judges.

[28] Federal Judicial Center, Impeachments of Federal Judges, https://www.fjc.gov/history/judges/impeachments-federal-judges.

[29] GENE HEALEY, CATO INST., INDISPENSABLE REMEDY: THE BROAD SCOPE OF THE CONSTITUTION'S IMPEACHMENT POWER 20 (2019); *https://www.cato.org/sites/cato.org/files/pubs/pdf/gene-healy-indispensable-remedy-white-paper.*pdf (describing the "triggering offense" of the Chase impeachment as a "partisan diatribe Chase had unleashed on a Baltimore grand jury");

partisan Federalist, had been nominated by President George Washington in 1796, and after the change in party control following the election of 1800, became an outspoken critic of the Jefferson administration and Jefferson's Republican party.[30] In 1804, the House approved eight Articles of Impeachment against Chase, all related to his conduct during several trials and grand jury proceedings.[31] One involved Chase barring defense counsel in a treason trial from addressing the jury; two dealt with highly partisan jury charges; another centered on a grand jury charge in which Chase registered his opposition to the repeal of the Judiciary Act of 1801 and "suggested that the authors . . . should be replaced at the next election."[32] In short, Chase's partisan speech and conduct were worlds away from the rulings at issue in the cases that have drawn the current impeachment resolutions. Moreover, Chase was ultimately acquitted after several members of the Senate broke party ranks; today, the impeachment and acquittal are viewed as helping to develop a norm both of judicial nonpartisanship and of the impropriety of purely partisan impeachments.[33]

The clear difference between historical impeachment efforts and current calls for judicial impeachment by President Trump and others is likely what led Chief Justice Roberts to issue a rare statement last month responding to such calls. The Chief Justice's statement was brief but pointed: "For more than two centuries, it has been established that impeachment is not an appropriate response to disagreement concerning a judicial decision. The normal appellate review process exists for that purpose."[34]

Late last week, the Chief Judge of the Eleventh Circuit, Judge William Pryor, endorsed Chief Justice Roberts's statement, noting that: "All the chief justice did, I thought modestly and appropriately, was to point out the unbroken tradition in American history that we don't impeach judges for decisions that are unpopular or that we may think are wrong or right, whatever it may be, wrong, controversial."[35]

WILLIAM H. REHNQUIST, GRAND INQUESTS: THE HISTORIC IMPEACHMENTS OF JUSTICE SAMUEL CHASE AND PRESIDENT ANDREW JOHNSON 115 (1992).

[30] Katherine Shaw, *Partisanship Creep*, 118 NW. U. L. REV. 1563, 1586 (2024).

[31] 3 Asher C. Hinds, Hinds/ Precedents of the House of Representatives of the United States §§ 2344–47 (1907).

[32] KEITH E. WHITTINGTON, CONSTITUTIONAL CONSTRUCTION: DIVIDED POWERS AND CONSTITUTIONAL MEANING 22 (1999); Charles D. Harris, *The Impeachment Trial of Samuel Chase*, 57 A.B.A. J. 53, 54–56 (1971).

[33] FRANK O. BOWMAN, HIGH CRIMES AND MISDEMEANORS: A HISTORY OF IMPEACHMENT IN THE AGE OF TRUMP (135) ("Chase's acquittal is generally agreed to stand for the proposition that impeachment should not be employed as a purely partisan weapon, particularly against the judiciary."); KEITH E. WHITTINGTON, CONSTITUTIONAL CONSTRUCTION: DIVIDED POWERS AND CONSTITUTIONAL MEANING 41 (1999).

[34] Amy Howe, *Chief Justice Rebukes Trump's Call for Judicial Impeachment*, SCOTUSblog (Mar. 18, 2025, 3:01 PM), https://www.scotusblog.com/2025/03/chief-justice-rebukes-trumps-call-for-judicial-impeachment/.

[35] Amarica's Constitution, *Wisdom from Breyer to Pryor - Special Guest Judge William Pryor*, Apple Podcasts, at 1:01 (Mar. 27, 2025), https://podcasts.apple.com/us/podcast/wisdom-from-breyer-to-pryor-special-guest-judge-william/id1549624070?i=1000701148744.

Until now, that practice has been largely beyond dispute. Indeed, during the Biden administration, despite numerous lower-court injunctions of administration policies,[36] not a single impeachment resolution was introduced against a district court judge. The introduction of the current impeachment resolutions has already been a profound escalation—one that threatens the ability of courts to impartially administer justice and discharge their constitutional duties. The resolutions should go no further.

Reforming the Nationwide Injunction

Recent years have seen pitched debates about the desirability and permissibility of nationwide or universal injunctions—that is, injunctions that order relief that reaches beyond the parties to the litigation.[37]

There has been an undeniable recent increase in the number of nationwide injunctions. A compilation last year in the *Harvard Law Review* found that of 127 nationwide injunctions issued between 1963 and 2023, 96 were issued between 2001 and 2023, with just over half (64) issuing against the Trump administration.[38] These numbers are striking, and they are likely the result of a number of background conditions: less congressional activity resulting in more unilateral executive action; the decline of the class action device; the ascent of states as plaintiffs in challenges to federal policy.

As discussed above, in the first two months of the new administration, judges in 46 cases brought against the federal government have granted some sort of preliminary relief, although not all have been nationwide injunctions.[39]

There are many potential explanations, all more plausible than bias or antipathy for Trump administration initiatives, for these numbers. To begin, the second Trump administration has issued more executive orders in its first two months than any administration in history.[40] As I've already noted, many of those orders were procedurally or substantively at odds with existing statutes or constitutional rules. In addition, many directives appear to have circumvented traditional Department of Justice processes for drafting executive orders and other presidential directives.

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[36] This was true despite highly questionable rulings by district judges in this period, including by Texas District Judge Matthew Kacsmaryk, whose decision to allow antiabortion doctors and organizations to challenge the FDA's approval of mifepristone was later unanimously reversed by the Supreme Court. All. for Hippocratic Med. v. FDA, 668 F. Supp. 3d 507, 560 (N.D. Tex. 2023), *aff'd in part, vacated in part*, 78 F.4th 210 (5th Cir. 2023), *rev'd*, 602 U.S. 367 (2024).

[37] Mila Sohoni, *The Lost History of the "Universal" Injunction*, 133 HARV. L. REV. 920, 943 (2020); Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 HARV. L. REV. 417, 420 (2017).

[38] *Chapter Four District Court Reform: Nationwide Injunctions*, 137 HARV. L. REV. 1701, 1705 (2024).

[39] Steven Vladeck, 136. *Setting the Record Straight on the Anti-Trump Injunctions*, One First Street, https://www.stevevladeck.com/p/136-setting-the-record-straight-on.

[40] Jack Goldsmith, *Problems with Universal Injunctions Against Trump's Program*?, EXECUTIVE FUNCTIONS (March 21, 2025), https://executivefunctions.substack.com/p/problems-with-universal-injunctions.

All of this suggests that in many or most recent instances, courts have merely responded to an environment in which internal executive-branch legal checks are being circumvented or are not operating, leaving the judiciary to step into the breach.

In this environment, limiting or eliminating the ability of courts to issue nationwide relief would remove the only currently operating mechanism for responding to violations of statutes and core constitutional protections. Beyond that concern, relegating plaintiffs to individual litigation to assert the rights that have been threatened by many of this administration's moves would be both deeply inefficient and out of reach for many individuals.

That is not to say that there is no need for reform of any aspect of the universal injunction. Single-judge divisions, for example, which allow plaintiffs to hand-pick judges, are clearly in need of reform.[41] Some judges have abandoned adherence to traditional equitable tests in favor of rulings that focus exclusively on the merits[42]—and merits determinations often made under extreme time pressure and without full ventilation of either facts or law. The bill that is currently pending, however, does not appear to address those concerns.[43]

Thank you again for the opportunity to testify today. I look forward to your questions.

[41] Stephen I. Vladeck, *Don't Let Republican 'Judge Shoppers' Thwart the Will of Voters,* N.Y. TIMES (Feb. 5, 2023), https://www.nytimes.com/2023/02/05/opinion/republicans-judges-biden.html.

[42] Samuel L. Bray, *The Purpose of the Preliminary Injunction*, 78 VAND. L. REV. (forthcoming 2025).

[43] No Rogue Rulings Act, H.R. 1526, 119th Cong. (2025).

Mr. ISSA. Thank you. We will now go out of order to give Mr. McClintock the first round of questioning.

Mr. MCCLINTOCK. Thank you, Mr. Chair. The Ranking Member offers us an example of an outstanding law-abiding Marylander in the case of *Abrego Garcia*. As Mr. Issa said, "Mr. Garcia has been identified as a member of MS–13," the most violent criminal gang on the planet and there is one report just published that he is implicated in human trafficking in this country. Not exactly Rotary Club material. Shouldn't the circumstances of his case be examined in an individual action before a District Court and not dumped into a far-reaching edict arising from another case that has very different circumstances, Mr. Larkin? What is your opinion of that? Your microphone.

Mr. LARKIN. How about now? My mistake, sorry. My understanding is that these actions that have been challenged have been challenged under the Administrative Procedure Act, not as actions seeking Federal habeas corpus relief. Federal habeas corpus is the traditional remedy that someone uses when they are claiming the government has unjustly seized them. There is even the provision for next friend.

Mr. MCCLINTOCK. That option exists in law and I think that this is the appropriate option, is it not?

Mr. LARKIN. The Administrative Procedure Act is not.

Mr. MCCLINTOCK. Yes.

Mr. LARKIN. For example, you can't use Section 1983 to challenge the legitimacy of your conviction. You have to use the Habeas Corpus Act.

Mr. MCCLINTOCK. Right.

Mr. LARKIN. So, while—

Mr. MCCLINTOCK. These are individual cases with very different individual circumstances and ought to be—

Mr. LARKIN. That is right. I mean what you have, particularly John Doe, Nos. 1, 2, 3, whatever, each case has to be examined separately, but it should be in Habeas Corpus, not the Administrative Procedure Act.

Mr. MCCLINTOCK. Mr. Gingrich, I am told that 92 percent of the judges who have issued blanket injunctions against the administration have been appointed by Democrats. That at least suggests a rather partisan tilt to all this and it is not being done even handedly. What is your view of that? Doesn't that undermine public confidence in our courts?

Speaker GINGRICH. Well, I think if you look at the recent reports from various polling firms, clearly a majority of Americans believe that no single District judge should be allowed to issue a nationwide injunction, and I think that when you look—my judgment is as a historian. This is clearly a judicial coup d'état. You don't have these many different judges issuing these many different nationwide injunctions all of them coming from the same political ideological background and just assume it is all random efforts of justice. This is a clear effort to stop the scale of change that President Trump represents. I agree. A lot of this stuff can be fought out—some of it should be fought out in Congress, but it shouldn't be micromanaging the Executive Branch on national security issues by random, single judges who have no standing. They have no par-

ticular knowledge. They weren't in the room. They don't know what the consequences of what they are doing are, and they put both Americans and the Nation at risk when they intervene to become basically alternative presidents. We now have potentially 677 alternative presidents, none of whom won an election.

Mr. MCCLINTOCK. We all believe in due process. Every injured party should have access to the courts, and they do. The question is whether a single District Court can go beyond the case before them and apply the same decision to others whose cases are not before the court in jurisdictions that go far beyond their own.

Mr. Gingrich, you have pointed out that there are several ways to address this. One is Congressional action. The other is the Supreme Court putting its own house in order. In fact, the Alito dissent recently suggested there are at least four of the justices who very much want to do this. It seems to me that it is the cleanest and most surgical route, assuring that the rule is done from within the court and not imposed by legislation.

What are your views on what the Supreme Court—you already mentioned what we should do.

Speaker GINGRICH. Look, I think the Chief Justice would achieve far more judicial independence if he cleaned up his own judiciary, rather than lecturing the rest of us. There are ways he could intervene as I mentioned in my testimony. They could establish a rule that any nationwide injunction issued by a District Court will be held in abeyance and will be immediately appealed to the Supreme Court. Lincoln makes his case. It buries a head-on fight which is ironic because Chief Justice Taney, as Attorney General for Jackson, had ruled against the courts and it said as Attorney General, the courts cannot order the President. Now, he then becomes Chief Justice and extends slavery, potentially, to the whole country, and is lectured by Lincoln in his first inaugural as Taney sits there and Lincoln is essentially saying this was the law of the case, not the land and we will not enforce it, and they don't. They never enforced *Dred Scott*. So, I think Chief Justice should think seriously about intervening to preempt any requirement for something such as Chair Isis' bill which I support strongly, but there would be no reason to have it if the Chief Justice did his job.

Mr. ISSA. I thank the gentleman. I now ask unanimous consent that the previously played video be placed into the record. Additionally, I ask unanimous consent that the *Wall Street Journal* article entitled, "Why Judge Boasberg's Deportation Order Is Legally Invalid," be placed in the record and that the *Harvard Law Review* article entitled. "District Court Reforms: Nationwide Injunctions," be placed in the record. Without objection, so ordered.

We now go to the Ranking Member, Mr. Johnson, for five minutes.

Mr. JOHNSON. Thank you, Mr. Chair. I am reminded of the quote that goes something like, "When the law is not on your side, argue the facts. When the facts are not on your side, argue the law. When neither is on your side, then pound the table." Well, Trump doesn't have the facts or the law on his side and so with this exercise today, he is vicariously pounding the table.

Professor Shaw, President Trump has targeted and attacked some very wealthy and powerful entities to send a message to the

less powerful. Trump has attacked Columbia University. He has attacked the white shoe/silk stocking law firms like Paul, Weiss and Skadden, Arps. These powerful, wealthy entities can afford to sue to protect their interests and our rule of law. Instead, they chose to lay down and get steamrolled by the bully.

Professor Shaw, how does laying down and getting steamrolled compromise the rule of law and undermine our democracy?

Ms. SHAW. Let me just say that there have been targeted entities, right, including a number of law firms that have, in fact, not laid down, that are taking a strong position of resistance to what they believe to be the unlawful components of some of the targeting orders. So, law firms including Wilmer Hale, Jenner & Block, Perkins Coie have made their responses and their views of the impermissibility of the targeting of law firms for no reason other than their decision to take on disfavored representation and to advance legal arguments that the President has personally objected to and sometimes been on the receiving end of. So, I do think that calling out clearly unlawful Executive action is critically important particularly for entities with resources and stature and I think that it encourages the targeting in unlawful ways for institutions to refuse to take a stand.

The orders targeting law firms are clearly unlawful. Some judges have already found, and I think that the judges that rule on those orders will continue to find that and the last thing I will say is I think that law firms that have decided not to fight and that are complying haven't bought themselves any security necessarily. I am not sure there is any guarantee that they won't be subject to further targeting simply because they have acquiesced in sometimes coercive terms in the first instance.

Mr. JOHNSON. Yes, when the bully knows that he can bully you, he is going to continue bullying you until you stand up and so I am glad that these other law firms and other academic institutions have and are standing up. What would happen to access justice for the least of these if these very wealthy and powerful entities that are being targeted today, if each and every one of them laid down and just allowed themselves to be steamrolled?

Ms. SHAW. I think there could be a chilling effect on the willingness of law firms to take on disfavored representation. The targeting has not been limited to law firms either, right? There has been an effort to suggest that sanctions be sought by the Department of Justice against nonprofits and other legal actors that have engaged in litigation against the administration. So, it does seem quite clearly designed to reduce the amount of courageous litigation against and challenges to Executive action. So that the costs, the potential costs for the rule of law are incalculable.

Mr. JOHNSON. Yes, because it is based on the adversarial system and if you wipe out the adversaries, then you wipe out the adversarial system or the adversary system.

Ms. SHAW. It is right that an attack on—look, lawyers are not always popular, right? So, attacking lawyers is not something that everyone is always going to object to, but judges need lawyers to present arguments to them and our system of justice, and the rule of law requires lawyers to take on representations, including potentially unpopular representations. I do not think these attacks on

white shoe law firms should be understood as just about white shoe law firms. I do think they are attacked on the very idea of access to justice and to the rule of law.

Mr. JOHNSON. When you attack, in addition to the lawyers, you attack the judges and claim that they need to be impeached, not for committing high crimes and misdemeanors, but for simply ruling in a way that is against the bully. What impact does that have on our justice system and our democracy?

Ms. SHAW. I worry that the intent there is the same, to basically have a chilling effect on the willingness of judges to rule against the administration in the same way the—part of the intent of these Executive Orders is to create a climate of fear and intimidation, and to disincentivize taking on representations, including against the Federal Government. So, the intended effect is likely the same.

Mr. JOHNSON. Thank you. I yield back.

Mr. ISSA. The gentleman yields back. We now go to the gentleman from Kentucky, Mr. Massie.

Mr. MASSIE. Thank you, Mr. Chair. This hearing reminds me of a breakfast I had with Antonin Scalia. About a dozen of us Congressmen invited him to breakfast, and this was about a decade ago when Obama was the President and John Boehner was the Speaker. My colleagues appealed to Scalia and said, "What can you do? You need to get involved here." The courts need to get involved. Obama is running rough shod over Congress. Scalia refused to accept that premise. He said,

> No. This is not my job to referee fights between your two branches. My job is as a jurist to decide if somebody has been harmed and what the remedy is and occasionally, we interpret the law and the Constitution and the constitutionality of it.

He said, by the way,

> You are the most powerful branch of government. I don't know what you are complaining about. All the tools you need to restore the balance are in the Constitution.

One of my colleagues protested that impeachment was just too hard to pull off, given the threshold in the Senate and the political backlash. Scalia, he shook his head, and said,

> I am not talking about impeachment. You all have the power of the purse. You are funding everything you complain about that Obama is doing. Just quit funding it.

It was a pretty clear message. Now, that was about tension between Congress and the Executive Branch and our hearing today is about tension between the judicial system and the Executive Branch, but I think it is still the case that what Scalia said is true.

Let me give you an example of something I am going to predict is going to happen in the courts soon that I am not going to have much sympathy for the President. So, the President recently had a press conference and said he is going to wind down the Department of Education. Oh, great. That is my bill. I have got a one-sentence bill that eliminates the Department of Education. I should be very excited about this. The problem is much of the activity that he says he will undertake he just signed into law the funding of it a week before. We did a Continuing Resolution that fully funds every single penny of the Department of Education, and the President signed it. This is as Professor Shaw pointed out that appro-

priations bills are laws, too. They require both chambers and then the President to sign it. It is an appropriation bill. It is a law. It is in the law and a week later, he announces that he doesn't like some of the law, and so he is going to do things differently. So, that is the problem that I have.

Now, I do think it is a good hearing, and this is a great question. I tend to think that probably there are cases where they shouldn't have nationwide injunctions. This is a double-edged sword. Under the Biden Administration, he did unconstitutional and unlawful things during COVID that were stopped with nationwide injunctions. For instance, he had a rent moratorium that was stopped until the Supreme Court eventually basically said it was illegal. He refused to grant religious exemptions to the vaccines. In the military, there was a nationwide injunction. Actually, one of the attorneys in that is a constituent of mine, Chris Weist, who stopped all the vaccine mandates at that point in the Air Force. That was a nationwide injunction. Then, his OSHA vaccine mandate was stopped with the nationwide injunction. I am torn on this. Maybe if we just don't have nationwide injunctions, people in certain districts can live under tyranny, or the perception of it, and if you are in a different Judicial district or Circuit, you get some remedy from the tyranny. Maybe it works out better that way. Maybe we should have tried each of these cases in each of these courts and found out the answer.

Mr. Speaker, former Speaker Newt Gingrich, what do you have to say about this since you were Speaker and led this appropriations process? Do you think the President can unwind the Department of Education a week after he signed the bill that funded it?

Speaker GINGRICH. Well, as you know, when I was Speaker, we balanced the budget, something you believe in, for four straight years, the only time in the last century. I can talk with some authority about this. I suspect there will be a real fight at the Supreme Court level, although whether or not the President has impoundment authority which was taken away during the collapse of the Nixon Presidency that had existed before that. That will be a legal fight.

Your point about injunctions is semi-right, that is, the court should be able to issue the injunction. My point about the Chief Justice is if that particular single-District judge says this is a valid injunction, if it immediately went to the Supreme Court, and then the Supreme Court agrees that it was a valid injunction, then you can have a nationwide injunction. I agree with Lincoln, who said, "Even though the court had decided seven to two that slavery could be extended nationally," he refused to accept the legitimacy of that decision because it wasn't unanimous.

Now, for the precedent, it is pretty clear, your instinct is right, there are times you need nationwide action. My only point is: The District judge says that. The following morning, it should be in the Supreme Court and the Supreme Court should have to render judgment. If they agree, then you have a nationwide injunction. If they say no, you are in error, then there is no nationwide injunction.

Mr. MASSIE. It makes sense to me. I yield back.

Mr. ISSA. I thank the gentleman. We now go to the Ranking Member of the Full Committee, Mr. Raskin for five minutes.

Mr. RASKIN. Thank you, Chair. Respect for the separation of powers is intertwined with respect for due process of the citizens. The gentleman from California essentially invited us to accept the deportation of someone from America without any due process at all which the administration has admitted was a mistake, because now he is hypothetizing that person belongs to a different criminal gang and engaged in other different hypothetical crimes and obviously, the reason why we have due process is because we can't try these cases in the Judiciary Committee's House of Representatives, but just reading from a court document here, *Plaintiff Abrego Garcia* is not a member of, nor has any affiliation with Tren de Aragua, MS–13, or any other criminal or street gang. Although he has been accused of general gang affiliation, the U.S. Government has never produced any evidence to support this unfounded accusation. He has no criminal history. He has never been charged or convicted of any criminal charges in the United States. Who knows? That is why we have due process. It shouldn't just be father of four, cable TV. We are talking about people's lives here.

Professor Shaw, what does due process actually mean? Should Judge Boasberg be impeached for saying that the Alien Enemy Act of 1798 doesn't apply because we are not at war, and we have not suffered an invasion by a foreign power?

Ms. SHAW. The core components of due process are straightforward right? It involves some notice and an opportunity to be heard, right, to make some sort of case in your own defense prior to deprivation of life, liberty, or property. So, that is in the Constitution. Due process applies to every person, not just a citizen. Due process doesn't look identical. If we are talking about due process in the context of potential deportation or due process in the context of a change to your Social Security benefits, right? Due process is deeply context dependent, and all Judge Boasberg has ruled as a preliminary matter in this case is that some process has to be afforded before this potentially irreversible act occurs. Judge Boasberg has not ordered anyone released in the United States, has not objected to the detention of the covered individuals. It has simply said provide reasons and an opportunity to respond and—

Mr. RASKIN. Follow the law, right?

Ms. SHAW. Follow the law. It seems from public reporting as though there is real reason to believe that errors were made.

Mr. RASKIN. My colleagues are calling for the impeachment of Judge Boasberg. Has there ever been a Federal District judge, a Federal Appeals board judge, or a U.S. Supreme Court justice impeached because someone disagrees with the content of their ruling?

Ms. SHAW. We have no tradition of impeaching judges based on the contents of their ruling.

Mr. RASKIN. We impeach them for bribery or corruption or habitual drunkenness on the bench.

Speaker Gingrich, by the way, do you agree with the Republicans and with Donald Trump and Elon Musk calling for the impeachment of these judges? That is a yes or no?

Speaker GINGRICH. I actually agree with Jefferson that impeachment is a cumbersome and difficult process, virtually impossible to achieve which is why—

Mr. RASKIN. Do you oppose the impeachment?

Speaker GINGRICH. Which is why Jefferson abolished 14 courts because you abolish—

Mr. ROY. Professor Shaw, forgive me, you remember the five-minute rule. I have got more time. It is a yes or no question and I didn't get an answer from you.

Chief Justice Roberts has said, "That the correct response to disagreement with the District Court decision is to appeal." I just heard Speaker Gingrich call this a judicial coup d'état and he said the Chief Justice should stop lecturing the rest of us. Who is right? Is it Newt Gingrich or is it Chief Justice Roberts here?

Ms. SHAW. In this instance, Chief Justice Roberts and we have no tradition of impeaching judges. Appeal is the remedy for disagreeing with a District judge or if it is a statutory ruling, that is wrong, Congress can respond, right? If there is a bias or misconduct issue, there are disciplinary processes and complaints that can be brought against judges. You can seek to recuse or a remand to a different judge. There are many remedies our system affords if there is some sort of problem with the judge presiding over a case. Impeachment has never been in that tool kit.

Mr. RASKIN. Do you believe that there has been a conspiracy for a coup d'état among 34 U.S. Federal District Court judges appointed by Presidents Reagan, Bush, Clinton, Bush, Obama, and Trump?

Ms. SHAW. No. As you said, these judges are simply doing their jobs.

Mr. RASKIN. The only comparable case I can think of here is the Impeach Earl Warren movement after *Brown* v. *Board*, where there were racist segregationists who wanted to impeach Earl Warren because they did disagree with the content of his opinion. What happened with that? Do you think that he should have been impeached?

Ms. SHAW. As far as I know, there were no impeachment resolutions introduced at that time. There was rhetoric. There was a critique. To be clear, criticizing judges is absolutely healthy in a democracy. I am not suggesting otherwise, but this is already a pretty serious escalation to have seen these resolutions introduced. I really don't think they should go any further.

Mr. RASKIN. Thank you. I yield back, Mr. Chair.

Mr. ISSA. Thank you. We now go to the gentleman from Wisconsin, Mr. Fitzgerald, and I would like to ask if I could have 15 seconds of his time.

Mr. FITZGERALD. I yield back to the Chair.

Mr. ISSA. Speaker Gingrich, I just have one short question, and it is a yes or no unlike the other one. In your two decades as a Member of Congress, did you seek Members of Congress to put bills in of any sort, because they were popular and felt strongly within their district, whether or not they were moving anywhere?

Speaker GINGRICH. Of course.

Mr. ISSA. That would include things like impeachment, whether they were likely to succeed or not?

Speaker GINGRICH. They are political symbols, not legislative symbols.

Speaker GINGRICH. Very good. I thank you. I thank the gentleman from Wisconsin.

Mr. FITZGERALD. Reclaiming my time. Mr. Larkin, nationwide injunctions, they are a relatively new phenomenon, right? Isn't that correct?

Mr. LARKIN. Yes.

Mr. FITZGERALD. Yes, it is fair to say nationwide injunctions became more commonplace in the sixties and seventies, and that is because Congress began authorizing general rulemaking by Federal agencies, such as passage of Clean Air Act or the Clean Water Act.

Mr. LARKIN. There are several factors that led to the late development of it. One is a change in philosophy of what it meant to say that something was unconstitutional. For example, Professor Samuel Bray explained this at length in his article, that traditionally when a court said something was unconstitutional, it meant that government could not enforce it against you.

Over time, courts gradually began to say no, that means you can't force it against anybody. The problem is that overlooks the role that a District Court judge has both horizontally and vertically within the Federal system.

No one District Court judge can bind the Appellate Court or the Supreme Court. No one District Court judge in Maine can bind a District Court judge or any judge in Alaska.

So, unfortunately, this practice developed, and we didn't have anybody stepping back and saying no, wait a minute, are there constitutional, statutory, etc., limitations on it. It has actually hurt both parties, because each party has suffered through this process.

Mr. FITZGERALD. Thank you.

Speaker Gingrich, as you mentioned in your testimony, between 2001–2023, there were 96 nationwide injunctions issued, of which 64 were granted against or granted against President Trump.

Why do you think the courts have issued nationwide injunctions against President Trump with such frequency? It is a question we are all pondering right now.

Speaker GINGRICH. One of my favorite books on the law is the Bramble Bush, which is the 1929 introductory lectures at Columbia Law School, and which draws a distinction between as it is practiced and the law as it is written.

So, let's just, at a commonsense level, will you be honest. Donald Trump represents a profound, fundamental shaking up of a very deeply resistant establishment, which can be traced back to Franklin Roosevelt in 1933. You take on a system that is almost 100 years old, the system fights back.

The last great bastion of power held by the Left is District Court judges and their allies on the Supreme Court. They are behaving, as a historian, this is a perfectly natural thing. They are doing everything they can to stop the President, who was elected by millions of Americans. They were elected by no one.

Under our system, they have a certain amount of power. Not nearly as much as the modern legal system believes, because the 1958 decision by the Supreme Court, which said we are supreme, is baloney. The Supreme Court is supreme in Article 3. It is not supreme over the whole Constitution.

We are now going to face a genuinely important, historic conversation as a country about whether or not unelected judges on a randomized basis, who happen to be 92 percent Democrat, have the power to stop the elected Commander-in-Chief on item after item after item. My guess is the American people will say to the Legislative Branch you got to be kidding me.

If Justice Roberts wants to cut this off, he should act now. Because this is going to get worse, not better.

Mr. FITZGERALD. Thank you.

Mr. Larkin, I will just finish up with a quick question about forum shopping. It is something that has clearly been happening, and we are used to it at the State level within the judiciary, as well as at the Federal level. I was wondering if you had a comment about that.

Mr. LARKIN. Sure. The problem attempts to be avoided by having random assignments. Unfortunately, there are sometimes where there is only a limited number of judges in a particular district. As the result, if there is only one, that is who you are going to get. If there are two, you have a 50 percent chance.

People wind up doing this, not surprisingly, because they think Judge A is going to give them a better likelihood of success. Now, that is bad enough when what you are talking about is a damages action, because that damages action is going to result in a check, perhaps, that goes just to one party.

It is different when you are talking about having one judge in any one town enjoying the entirety of the Federal Government across the Nation. That is a much more severe problem, and that is why this is a reasonable effort to cabin that. Picking favorable judges is the reason why.

Mr. FITZGERALD. Thank you, I yield back.

Mr. ISSA. Thank the gentleman. We now recognize the gentlelady from California, Ms. Lofgren, for five minutes.

Ms. LOFGREN. Thank you, Mr. Chair.

It seems ironic that today's hearing is titled "Judicial Overreach and Constitutional Limits on the Federal Courts," because if we really care about constitutional limits, we should start by confronting the recent attacks on judicial independence, attacks that themselves defy the Constitution.

In the past few months, we have seen Elon Musk, President Trump, and even Members of Congress call for the impeachment of judges, not for misconduct, but because they don't like their rulings. That is not how a constitutional democracy works.

It is true that Members of the Judiciary were not elected by the Electoral College. That is beside the point. As my colleague Mr. Massie pointed out, when Congress enacts a law, signed into law by the President, the President can overturn that law with a statement, which is essentially what an Executive Order is.

That judges are making that finding is the role that they have been assigned.

Now, Professor Shaw, the recent Federal Court decisions, which by the way, have been made by judges appointed by both political parties, have led to calls for the President's supporters to impeach these judges.

Now, only 15 Federal judges have been impeached by the House since 1804, and only eight have been removed by the Senate. I was involved in one of them, in a very severe misconduct case. What is the standard in the Constitution for impeachment for a Federal judge?

Ms. SHAW. Well, it has been understood that the impeachment, the constitutional language of treason, bribery, and other high crimes and misdemeanors, applies with full force to Federal judges, although it is actually not explicit in the Constitution. There are some scholars who have raised some questions about it.

Our practice is consistent that this is the same standard that applies to other officers. It applies to judges. In terms of how our practice has implemented that standard, it has been exactly as you said.

In the 15 traditional impeachments that have resulted in eight convictions and removals, they have been for serious misconduct, things like habitual drunkenness, sexual assault, corruption, bribery, or those types of offenses.

The one impeachment of a Supreme Court justice, Justice Chase, was somewhat different because it involved explicit partisanship from the bench. There you had repeated jury charges and actually kind of electioneering from the bench that also clearly distinguish the conduct at issue there from any of the rulings at issue here.

So, just to be succinct, none of these historical examples have anything to do with the substance of the rulings rendered by the judges who were subject to impeachment.

Ms. LOFGREN. Well, even for those who cite the section of the Constitution that judges serve during times of good behavior, that wouldn't include disagreement with the outcome of a case.

Ms. SHAW. No, I would say the combination of the "good behavior" language and the impeachment language has suggested that the way to implement the requirement of good behavior is through impeachment. There is no other mechanism that we have ever used to remove judges, other than the impeachment mechanism.

Certainly, there is nothing to suggest that disagreement with a ruling, whether we are talking about as a matter of good behavior or the specific impeachment language, would ever be the basis for seeking to remove a Federal judge.

Ms. LOFGREN. Senator Chuck Grassley, Chair of the Senate Judiciary Committee and hardly a bleeding heart liberal, recently said, and this is a quote, "You can't impeach a judge because you disagree with their opinion."

I take that you agree with Senator Grassley's statement there?

Ms. SHAW. I do.

Ms. LOFGREN. Now, would doing so be damaging to our constitutional system of separation of powers? If so, why would that be?

Ms. SHAW. I do want to be clear that I think that there is a healthy interbranch debate and dialog that can include criticisms, including sharp criticisms, of the rulings handed done by District judges, Appellate judges, and Supreme Court justices.

That can include hearings that consider and maybe adopt legislative change. Right, obviously Congress has considerable authority to regulate the jurisdiction of the Federal Court. So, I don't think any of that is unhealthy or destructive.

I do think that moving into an era in which substantive disagreement with the rulings of Federal judges gave rise to impeachment proceedings would involve an escalation of this kind of interbranch warfare and the politicization of the judiciary that would be extremely damaging to judicial independence and to the role of courts in our democracy.

Ms. LOFGREN. Thank you very much.

Ms. Romero, I found your testimony riveting, and I am sorry that you and your neighbors went through such a nightmare. There is not a single Member of this Committee on either side of the aisle that doesn't want violent criminals who in this situation to be deported.

The issue is standing up for the rule of law, making sure of their due process when that is done. I want you to know that I listened very carefully to your testimony. I am sorry for what you went through.

Ms. ROMERO. Thank you very much.

Mr. ISSA. We now go to the Chair of the Full Committee, Mr. Jordan.

Chair JORDAN. Thank you, Mr. Chair.

Professor Shaw, so was Judge Boasberg correct when he said turn the plane around?

Ms. SHAW. So, I think that protecting the jurisdiction of his court—

Chair JORDAN. That wasn't the question. Was he correct when he said, turn the plane around, bring the guys back who harassed Ms. Romero, drove her out of her home, harassed her neighbors, shot her car, was he correct when he said turn the plane around, bring those individuals back to the United States?

Ms. SHAW. Based on the record before him, I think that was an absolutely defensible decision to have made in the time pressured condition.

Chair JORDAN. That he was correct?

Ms. Romero, what do you think? Do you agree with the professor and with the judge? Three of those, by the way, three of those individuals on the plane, Thomas Morillo Pena (phonetic) is wanted for kidnaping in Chile, was in the Denver area, where they got him.

Javier Vargas Lugo, attempted kidnaping, was in the Denver area. Nickson Asusa Perez was in the Aurora area. He may have been one of the guys who harassed you. Do you think that plane should have come back and brought those individuals back to the United States?

Ms. ROMERO. I feel safer every time a plane is loaded up and leaving this country.

Chair JORDAN. Yes, I was the previous Member from California talked about your riveting testimony. One of the lines you had in your testimony that got everyone's attention was, "There are no government programs to grant citizens temporary protected status from imported gangs in our country." Amen to that. There is none. That is why this is so important that we move these people out.

Mr. Speaker, should the judge, who has been assigned the *Hegseth* case, Judge Boasberg, should he recuse himself from that case? I understand the standard and I know you do, Speaker. The

standard is a reasonable person, would a reasonable person believe that this judge can be impartial with this case.

I would just remind you of a couple of things. This is the judge—this is the judge who was on the FISA Court when they granted warrants to spy on President Trump's campaign. This is the judge who handled the *Kevin Clinesmith* case, an FBI lawyer who lied to the FISA Court to help get those warrants and was given a slap on the wrist by Judge Boasberg.

Not my words, the *Wall Street Journal* said it, because it was. He was a member of the bar, lied to a court, and got some probationary sentences. Now this judge said turn the plane around, and now he has been assigned the *Hegseth* case.

I am just asking, do you think Judge Boasberg should recuse himself from that case?

Speaker GINGRICH. I think this a classic case where the Chief Justice should intervene. When you have a blatant, continuing record of prejudice, that judge should not be put in charge of the case. As I said earlier, I am not for going through the whole process of impeachment because I think it is at a practical level not possible.

I am, however, for using the potential capacity of the Congress to simply defund, which Jefferson did and which clearly is possible. This, what you just described is illustrative of why I use the term "coup d'état."

You have a small group of people who believe that they have the right to arrogate rejecting the American people and doing whatever they want and cooperating with people who clearly were behaving illegally. It is one of the great tragedies of the last six or eight years is it is the government which has been illegal.

It is the FBI which was illegal. How can you possibly have the rule of law when the people in charge of the law are illegal? I think in that case that you raise a very powerful point.

Chair JORDAN. Mr. Larkin, should Judge Boasberg recuse himself in the *Hegseth* case?

Mr. LARKIN. Oh, I don't want to offer an opinion about a specific case that I know only—

Chair JORDAN. Do you think Judge Boasberg, based on what the Speaker just said, what I highlighted, you think Judge Boasberg has a bias against President Trump and what he is trying to accomplish?

Mr. LARKIN. That is just phrasing the same question another way. I don't want to comment on a—

Chair JORDAN. That is what we do in Congress—a lot of time.

Mr. LARKIN. Yes, I know. Yes, when I was an agent, we did the same thing to see if we could get the suspect to say something.

Chair JORDAN. How about this, Speaker Gingrich, I think you are exactly right. We have three avenues to address this.

First, we can do legislative, which we are going to do tomorrow, we are going to pass Chair Issa's bill, which says that some District judge injunction doesn't apply nationwide.

We may want to come back with another bill that says automatic appeal to the Supreme Court, what you have suggested, and we are looking at that very thing.

Second, we have oversight, which is what we are doing now. We are highlighting how ridiculous some of these decisions have been.

Third, what you have pointed out, is we got the appropriation process. The ultimate power we have, Mr. Massie is right, the power of the purse. We should use it. We should use all three of those avenues to make sure the will of the people, we the people, gets accomplished.

Speaker GINGRICH. Well, my personal view is that if you were to pass the Issa bill tomorrow, you just sent a very clear and compelling signal—

Chair JORDAN. Yep.

Speaker GINGRICH. To the Chief Justice.

Chair JORDAN. Yep, sure did.

Speaker GINGRICH. That he had better get out of lecturing the Congress and get into managing the judiciary, or he is going to be facing a real crisis of the system and a real erosion of judicial authority.

Chair JORDAN. Well said. I yield back.

Mr. ISSA. The gentleman yields back.

We now go to the gentleman from Tennessee, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chair.

The Judicial Branch in our country plays a critical role in checks and balances, which as the Constitution mandates. Our President doesn't understand that or respect it, and in my opinion, he accordingly is the one doing the overreach, not the judiciary.

He overreaches with birthright citizenship, which is in the Constitution, and he can't with an Executive Order, a press release with a nice stationery and a little sign on it, overrule the Constitution.

Nor can he declare a third party—a third term for himself, which he will probably do eventually, that he can run for office again. He can't do that.

This man is abusing the office of President by signing an Executive Orders in so many areas, against Congress for passing an appropriations bill, which he doesn't respect. By destroying agencies created by Congress, which he can't do because they are independent. Like the Peace Institute, it is independent, but he has gone in and taken it over.

He has also gone after lawyers and law firms. It is no mystery why he did it. Jenner & Block and WilmerHale, they are two firms that have had attorneys with them, Andrew Weissman, who worked at Jenner & Block, and Robert Muller, who worked at WilmerHale, who had cases against the President.

To get into court, you have got to have an attorney. If attorneys are fearful of having their opportunities to interact with the Federal Government, to enter Federal buildings, to have clearances, they will be reluctant to take cases.

That destroys the opportunity for the Justice Department, for the judiciary, for the third branch to work as a check and balance. You destroy it when you don't have somebody to give entree into the courts.

Professor Shaw, your testimony was brilliant. Just ask you about a Federal judge. A Federal judge cannot institute a case, can they?

Ms. SHAW. No, sir, they cannot.

Mr. COHEN. So, what they do is they take what lawyers put before them and then they determine what it is.

Ms. SHAW. A case for controversy is brought to a Federal Court, and the Federal Court can resolve it. They are not a self-starting body.

Mr. COHEN. If lawyers are afraid to bring an action against the administration or the President, then the courts won't ever get a chance to do anything.

Ms. SHAW. Absolutely, and I think it is important to understand that some of the attacks on lawyers and law firms as indirectly attacks on the judiciary, as well as attacks on the ability of what causes the President may deem unpopular to secure representation or for litigation against the Federal Government to proceed.

I think that all those values are implicated in the attacks on lawyers and law firms.

Mr. COHEN. Do you remember some of the things President Trump said in his Executive Orders against some of these law firms about lawyers? Can you tell us? They are criminal, and they are trying to destroy our country and they are trying what are some of the other things he said?

Ms. SHAW. The law firm—the Executive Orders were singling out and targeting law firms begin with sort of a recitation of specific representations of disfavored individuals or representations that law firms have taken on. There are suggestions that the law firms are deceitful or dishonest. That they are committing fraud.

They were quite explicit, the orders, that it is the specific representations made by and viewpoints held by the attorneys that have given rise to the Executive Order. So, that is why the lawsuits have framed these orders as containing a tax on the right to counsel, on the separation of powers, on independent judges, and on the First Amendment.

There are at least four or five I would say independent constitutional flaws with each of these Executive Orders.

Mr. COHEN. They sounded like, first the lawyers, first we get the lawyers. It was the most anti-lawyer thing I have ever heard. I am a member of the bar, I respect the bar, and I understand its importance to the American jurisprudence system and the government system at large.

I would like to yield one minute to Mr. Moskowitz.

Mr. MOSKOWITZ. Thank you, Mr. Chair, thank you for yielding.

It is so nice to see my Republican colleagues fight to protect Executive power, but they aren't interested in fighting to protect this body and Legislative power.

Representative Gill from Texas filed impeachment proceedings against Judge Boasberg. It has 22 cosigners. He is not here at the moment; he is probably filing impeachment proceedings against Louis Brandeis.

Speaker Gingrich says that this is a cumbersome process. Speaker Gingrich is absolutely an impeachment expert. Well, allow me to DOGE this cumbersome process for you, Speaker Gingrich.

Why don't we just ask Chair Issa or Chair Jordan when is the hearing on impeachment of Judge Boasberg? When is the hearing? Give me a date, give the American people a date. Oh wait, Chair

Issa says that this is actually a political symbol and not actual legislation.

It is a fake impeachment. When are you going to tweet that out? That ought to be popular. We had a fake impeachment for the last two years. I hope Representative Gill isn't a Comer. We got to DOGE James Comer, spending millions of dollars in two years on fake impeachments.

I guess that is what we do, we file fake impeachments now. That is what we—

Mr. COHEN. I take back my time. It is appropriate—

Mr. ISSA. I thank the gentleman for taking back his time.

Mr. COHEN. It is appropriate that on April Fool's Day that he discusses this.

Mr. ISSA. Thank you. Since the question was posed toward me, I will take the liberty of saying that we take all bills that are referred to our Committee seriously, including that. I would only say that be careful what you wish for.

There will in fact undoubtedly be investigations of a number of judges, but we don't predetermine them on this Committee. We don't denounce them when they are put in by a Member. We also don't accept them as anything other than something for our staff to look at. I appreciate the gentleman's question.

With that, we go to the gentlelady from Wyoming, the Senior Member of the Committee—of the House from Wyoming, Ms. Hageman.

Ms. HAGEMAN. Not the only.

In March, the *Miami Herald* reported on a team of former U.S. officials and Venezuelans assisting the Trump Administration with tracking Tren de Aragua, or TdA. They have focused on ties between TdA and the Maduro regime, identifying 1,800 gang members sent to our country. Reportedly, 300 received paramilitary training in Venezuela, and the regime has operational control over them.

Information obtained by the team from police agencies in South America has resulted in the arrest of at least 800 TdA members or smaller affiliated entities. According to the article, TdA has been setting up a drug distribution system in our country, and the individuals, "are not criminals sent to cause havoc, they are soldiers sent in an asymmetrical warfare operation against the United States."

On March 15th, President Trump issued an EO invoking the Alien Enemies Act regarding the TdA invasion. The EO finds that TdA is perpetuating, attempting, and threatening an invasion or a predatory incursion against the territory of the United States.

TdA is undertaking hostile actions and conducting irregular warfare against the territory of the United States, both directly and at the direction, clandestine or otherwise, of the Maduro regime in Venezuela.

Judge Boasberg of the D.C. District Court recently ordered the Trump Administration to turn around removal flights bound for El Salvador and carrying members of this Venezuelan terrorist group, TdA. Judge Boasberg's temporary restraining order at first was limited to the named plaintiffs, but he later provisionally certified

a class for "all noncitizens in U.S. custody who are subject to President Trump's order against TdA and its implementation."

Mr. Larkin, what are the problems associated with the breadth of this order, rather than it being just applied solely to the parties in front of it?

Mr. LARKIN. There seem to be at least two issues.

First is what he, I am told, I haven't seen the complaint, but I am told that the complaint that was filed seeking relief was brought under the Administrative Procedures Act. That is not an appropriate vehicle for this. It should be the Federal habeas corpus laws.

Second, if you are going to grant class wide relief, you have to first properly certify a class. The Supreme Court has so ruled and has told the District Courts that they have to do first the job of certifying the class and only then awarding class relief.

In footnote one in Baxter versus, I think it is pronounced Palmigiano, but don't hold me to that, the Supreme Court said the District Court had gotten it wrong in that case for following the reverse order.

If that is what happened, what happens then is you are seeing some of the problems that can arise when a judge wants to stop an entirety of the government rather than award relief to one person. Because there are steps that you have to go through to certify a class.

To my knowledge, although like I said I haven't followed that case, I don't know if those steps were followed here. My understanding is that this is the first I have heard of it from you, so.

Ms. HAGEMAN. Well, there is another problem associated with that as well. In the case involving TdA, the judges and other injunctions that have been issued, nationwide injunctions issued by these courts, they have not been requiring the parties seeking the injunction to put up a bond, even though Rule 65 of the Federal Rules of Civil Procedure mandates that a party seeking a preliminary injunction or TRO must provide security, a bond to cover potential costs and damages to the party who is wrongfully restrained or enjoined.

In fact, such a bond is a condition precedent for an injunction to be valid. So, in light of that, does this violation or failure require the posting of a bond undermine if not actually nullify the legality of Judge Boasberg's order?

Mr. LARKIN. I have to say, and it is going to sound like begging off, but I am not trying to, that I haven't research that effect in this sort of context, in part because I am not sure how you set a bond in a case like this, where what you are talking about is essentially relief that should be granted under the habeas corpus laws.

To the extent there are separate procedures that you have to follow in a habeas corpus action, I don't know to what extent that part of Rule 65 would apply.

Ms. HAGEMAN. What I would like to do is encourage you to read the opinion article in the *The Wall Street* Journal from yesterday, entitled, "Why Judge Boasberg's Deportation Order Is Legally Invalid." This individual, Daniel Huff, goes through the analysis of what is required under Rule 65 for an injunction to be enforceable.

Mr. LARKIN. Yes.

Ms. HAGEMAN. One of the problems associated with the decision is the fact that no bonds have been required in these injunctions.

Mr. LARKIN. Not every provision of the Federal Rules of Civil Procedure automatically translates over to habeas corpus. I just don't know if that provision does. If it does, then it has to be addressed. If it doesn't, then you have a different set of rules that you follow.

Mr. ISSA. Would the gentlelady yield for one second?

Ms. HAGEMAN. Sure.

Mr. ISSA. Would your—

Ms. JAYAPAL. The time, Mr. Chair, the time.

Mr. ISSA. Thank you. Would your question be for all these cases, not just the one that you were speaking of?

Ms. HAGEMAN. That is correct. For all the injunctions that have been issued in these decisions around the country. I also would ask—

Ms. JAYAPAL. Mr. Chair, the time has expired.

Ms. HAGEMAN. I would ask unanimous consent to submit two articles for the record. Three articles. One is *The Wall Street Journal* article. Another one is the article I was referencing earlier, "As the U.S. Tracks Suspected Venezuelan Gang Members, a Look at a Group That's Helping." The Executive Order issued by President Trump.

Mr. ISSA. Without objection, so ordered.

We now go to the gentlelady from Washington, Ms. Jayapal, for five minutes.

Ms. JAYAPAL. Thank you, Mr. Chair.

Perhaps my colleagues on the other side of the aisle should consider that the very reason that Donald Trump has faced more nationwide injunctions than Joe Biden is precisely because Trump is grabbing unprecedented power from Congress and from the judiciary, power that is not accorded to any President because we do not have kings in this country.

If you try to eliminate birthright citizenship, jail people for free speech, slash funding, and fire people, and eliminate departments that are actually established by Congress, if you try to use cold war era regulations to do mass deportations, then yes, you are going to get nationwide injunctions. Maybe if you don't like the injunctions, stop doing the illegal stuff.

The argument that the judiciary has run amok is a very convenient political argument that is being weaponized to eliminate the fundamental checks and balances that our founders put in place to protect the independence of the judiciary from the political branches of government.

If there are threats to the independence of the judiciary, they come when unelected billionaires try to buy court seats. They come when there is no ethics code that stops justices from being captured by special interests.

The lower courts have played a critical role in this independence from political systems, delivering results that people from both parties have liked and disliked. During the Obama and Biden Administrations, lower courts did rule against the government in cases dealing with student debt relief and DACA.

The courts have also ruled in favor of guns, religious liberty, and abortion restrictions. Democrats may not have liked those rulings, but we did not simply try to eliminate those courts or impeach those judges. Did you ever hear Republicans complaining about the judiciary when those favorable rulings were coming about? Of course not.

One of the most important roles of independent judiciary is upholding civil rights and liberties. The Judiciary is often the last line of defense for protecting the vulnerable from the powerful and the minority from the majority.

This is particularly true when it comes to immigration. Last night we learned that the Trump Administration mistakenly deported a father with protected legal status. This is the latest among numerous questionable deportations, including men being deported for having tattoos, for autism awareness, and the names of close family members.

Trump's basis for these deportations is the Alien Enemies Act of 1798. This statute authorizes the President to detain and deport noncitizens when there is "a declared war or an invasion or predatory incursion" by a "foreign nation or government."

Professor Shaw, could you briefly explain why the courts have determined why there is no appropriate basis for Trump to invoke the Alien Enemies Act?

Ms. SHAW. Well, I should say it is all in a very preliminary posture, but Judge Boasberg issued his initial temporary restraining order essentially on the grounds that individuals who were subject to this deportation on the basis of this invocation of a 1798 statute that has been used three times in our history needed some opportunity to contest or present evidence before being sent to prisons in El Salvador.

This was—just to be really clear, Judge Boasberg did not order anyone's release inside the United States. Everyone is able to stay in U.S. custody. It was simply a determination that the basic demands of due process were not suspended by the invocation of the Alien Enemies Act.

Ms. JAYAPAL. Why are those due process rights so important in the immigration context in particular?

Ms. SHAW. Well, so that the example that you gave, Congresswoman, of this reporting we saw of an individual who appears to have been incorrectly seized and sent to a prison—maybe there was some other basis, but not the specific Alien Enemies Act invocation basis for deporting him—makes clear that the stakes kind of couldn't be higher than in the immigration context especially if we are talking about not just detention, but deportation and expulsion.

Due process protects us from being summarily deprived of life, liberty, or property and those interests in some ways are at their highest when we are talking about the government taking custody and potentially expelling an individual.

Ms. JAYAPAL. This law was used, wasn't it invoked by President Franklin D. Roosevelt to detain 120,000 Americans of Japanese ancestry during World War II?

Ms. SHAW. That is right. It was part of the basis if the detention and internment of Japanese–Americans.

Ms. JAYAPAL. these actions don't just affect foreigners. What is at stake are constitutional rights for all Americans. Can you explain to any American who might be watching this hearing why they should be concerned about their rights given what the Trump Administration is doing?

Ms. SHAW. Right. I think that the Constitution is the only thing standing between any of us and being summarily placed on a plane. Judges are the ones who are often in the position of enforcing those constitutional rights. This is not about protecting another, right? This is about protecting all of us. If the administration is not duty-bound to respect the basic requirements of the Constitution with respect to these individuals, it is not clear why it is duty-bound to respect those rights as to any of us.

Ms. JAYAPAL. I think that is a very important point and I think we should be focusing our attention on how to best preserve our independent judiciary, not delegitimize it.

Mr. Chair, I would like to submit an article—seek unanimous consent to submit an article for the record. This is from *The Atlantic*, "An Administrative Error Sends a Maryland Father to a Salvadoran Prison."

Mr. ISSA. Without objection, so ordered.

Ms. JAYAPAL. Thank you. I yield back.

Mr. ISSA. The gentlelady yields back.

We are now go to the gentleman from Virginia, Mr. Cline, for five minutes.

Mr. CLINE. Thank you, Mr. Chair. I want to briefly yield at the start to the Chair of the Full Committee for a few seconds.

Chair JORDAN. I thank the gentleman for yielding.

Professor Shaw, should Congress add four associate justices to the U.S. Supreme Court?

Ms. SHAW. I think that Congress certainly has the power. I think that any—

Chair JORDAN. You support packing the court?

Ms. SHAW. Look, anything Congress does with respect to the Court should be responsive to current conditions. There have been moments when I thought that Congress should take seriously changing the size of the Supreme Court. It certainly has the power to do it.

Chair JORDAN. That is what I figured you would say. I yield back.

Mr. CLINE. I will reclaim my time and find it interesting that to be responsive to current events that you would support adding four justices to the Supreme Court, court packing essentially when many on the other side saw rulings that they didn't like. Over the past several years their response was to pack the court.

Mr. Speaker, do you consider it appropriate to add four members to the Supreme Court when decisions come down that people don't like?

Speaker GINGRICH. Let me say first, if I might, that hearing a Democrat talk about fake impeachments after the two fake impeachments of President Trump, which were repudiated by the Senate, I thought it was a lovely moment of historical awareness.

[Laughter.]

Speaker GINGRICH. Look, the Supreme Court has been at nine since 1869. Before that it differed at times, but there has never been a serious effort—Roosevelt tried and as powerful and as popular as he was—the country has an instinctive sense of stability at that level. I would say barring something extraordinary you—the Court, Supreme Court again; Supreme in terms of the Article 3, not Supreme in terms of the country—I think the Supreme Court is best dealt with carefully and cautiously. It evolves over time. It is not always what conservatives like; it is not always what liberals like, but over time it has been a relatively stable part of our system.

Mr. CLINE. Now, that we have a Republican Majority in the House, Republican Majority in the Senate, and a Republican President, I wonder how those same Democrats feel about adding four new justices to the Supreme Court right now. They probably wouldn't be so excited about it.

Ms. Romero, let me ask you since you were so directly affected by Tren de Aragua. Are these gang members the kind of folks Americans want in our neighborhoods? Were they good neighbors when you lived near them?

Ms. ROMERO. No, they were not good neighbors.

[Laughter.]

Mr. CLINE. I read your testimony. It is shocking what went on in your neighborhood. How long have you and your community suffered from this invasion?

Ms. ROMERO. My husband and I lived in the apartment for four years. For the last year-and-a-half it was pretty bad.

Mr. CLINE. Now, if you went around in an apartment complex with a rifle trying to kick in people's doors, you would expect police would act swiftly to take you into custody, right?

Ms. ROMERO. Yes. Any time someone calls 9–1–1, I expect the police to come swiftly.

Mr. CLINE. Yes, that is the reason we have law enforcement to respond to situations like that.

Ms. ROMERO. That wasn't my experience with the local police there.

Mr. CLINE. Your cries for help went unanswered?

Ms. ROMERO. Yes. Very.

Mr. CLINE. Unfortunately, Federal judges seem to have taken up those same talking points and taken issue with President Trump's Administration calling what is happening in communities like yours an invasion. Instead, they just call it a migration. Did it feel like a migration to you?

Ms. ROMERO. It felt like there were large groups of people moving onto the property to destroy it and cause me harm and cause many of my neighbors harm.

Mr. CLINE. Felt more like a textbook definition of an invasion?

Ms. ROMERO. Yes, nobody made sure my rights were protected.

Mr. CLINE. What message does it send when a District judge in D.C. says the President can't take action to remove these violent criminals and invaders from your community?

Ms. ROMERO. I think the President was asked very specifically to take care of this problem. Promises made and promises kept. I feel like he is keeping his promise to me.

Mr. CLINE. Do you think that these injunctions will make the problem worse in your community as it emboldens criminals and handcuffs law enforcement?

Ms. ROMERO. I think all sanctuary city policies are a mistake and they are harmful to regular citizens. There is no one in here fighting for my rights.

Mr. CLINE. Well said. Thank you. I yield back.

Mr. ISSA. The gentleman yields.

Mr. CLINE. I yield to the Chair.

Chair JORDAN. Well done.

Mr. ISSA. Mr. Larkin, there has been a question that I have been begging to ask: National injunctions. If a judge in Hawaii were to rule on something, what prevents shopping for a declaratory judgment on the opposite end of the country, maybe in Texas, by the administration and that judge ruling that there is no such injunction, ruling the opposite and creating a constitutional challenge as we currently have it?

Speaker GINGRICH. Well, you put your finger on one of the great challenges because due process has to assume that there is a balance and honesty and integrity in the very system. When you start getting into an ability to shop—and this—by the way, this is true for a whole different zone in terms of civil litigation and trial lawyers. There are lots of things you could talk about where the system is crumbling because it is so clearly no longer balanced by due process and a pursuit of justice. I think that it is a danger.

Frankly, again we are either going to eliminate nationwide injunctions or the Supreme Court is going to find a way to make them immediately a national question, not a single District Court judge. If we don't do something like that, I think the system is in real trouble.

Mr. ISSA. Thank you. The gentleman from Colorado.

Mr. NEGUSE. I thank the Chair. I

I want to thank all the witnesses. I have the privilege of representing Colorado in the Congress, and so I want to say Ms. Romero welcome to Washington and thank you for being here.

Mr. Gingrich, I wasn't planning on talking about impeachment, but I just have to spend a minute on it given the statement you made just a minute ago. I think you said—if I am not mistaken, you said the two impeachments against President Trump were repudiated in the Senate. Is that the right word you used?

Speaker GINGRICH. Yes.

Mr. NEGUSE. Yes. OK. Would you describe the impeachment that you initiated against President Clinton 35-some-odd years and the Senate's reaction to that impeachment in the same way?

Speaker GINGRICH. Well, it failed, which is part of why Jefferson thought impeachment was not a realistic possibility.

Mr. NEGUSE. Well, I would just simply suggest to you that—because I served as an impeachment manager in the second impeachment trial against President Trump following the attack on our Nation's capital. In that impeachment, as you well know, of all the Presidential impeachments, which I suspect you have studied, seven Republican Senators did something that no Senators had done in the history of our republic, which is voted to convict a

President of their own political party. That is a far cry from repudiation.

I understand that it didn't meet the constitutional threshold for success. I, of course, recognize that.

Speaker GINGRICH. Actually, President Johnson had the same experience in I believe in 1868.

Mr. NEGUSE. I will just again simply say to you that unlike the impeachment—no, one, that is inaccurate. Republican Senators, excuse me, with respect to the impeachment trial of 1868, against President Johnson, that is not accurate. It is the first time in American history in which Senators of an opposing political party voted to convict a President of their same party, but I digress.

I want to talk to you about a phrase you used. I think this is accurate. You called it a judicial coup d'état. Am I right?

Speaker GINGRICH. That is correct.

Mr. NEGUSE. OK. You would describe 14 Federal judges appointed by a President of an opposing political party issuing nationwide injunctions against a President's Executive Orders as a judicial coup d'état?

Speaker GINGRICH. I would describe the wave of decisions in the last seven weeks deliberately designed to slow down, unwind, and block the President as clearly an effort by a group of judges.

Mr. NEGUSE. Sure. I hear you. What I am asking you—again, I don't think I am mischaracterizing your testimony. Fourteen Federal judges, all an opposing political—that is to say 14 Federal judges appointed by a President of an opposing political party issuing nationwide injunctions—

Speaker GINGRICH. Right.

Mr. NEGUSE. —against the President's policies in your view would be a judicial coup d'état?

Speaker GINGRICH. It depends on how long the time—

Mr. NEGUSE. Sounds like it depends—

[Simultaneous speaking]

Mr. NEGUSE. —on the President, Mr. Gingrich, because the President I am describing is President Biden.

Speaker GINGRICH. I know.

Mr. NEGUSE. During his tenure 14 Federal judges issued injunctions against policies that he pursued via Executive Order. How many of them were appointed by a Republican Presidents? Do you know?

Speaker GINGRICH. No.

Mr. NEGUSE. One hundred percent. All of them.

Speaker GINGRICH. Well, you are making my case.

Mr. NEGUSE. I am making your case?

Speaker GINGRICH. They shouldn't be—

Mr. NEGUSE. What is fascinating, Mr. Gingrich, is I didn't hear much from you about judicial coup d'états when President Biden's policies were being rejected by Federal judges across the country.

Speaker GINGRICH. Well—

Mr. NEGUSE. It is very convenient now.

Speaker GINGRICH. No.

Mr. NEGUSE. Lo and behold that you take great issue, and you describe it as a judicial coup d'état when I didn't hear these words two years ago.

Speaker GINGRICH. Had the Judiciary Committee invited me in during the Biden Administration I would have been glad to say I don't approve of—

Mr. NEGUSE. Oh, I see. I see. I regret that Chair Jordan didn't issue an invitation to you when, as Mr. Massie articulated, policy after policy, Executive Order after Executive Order issued by President Biden were being rejected by Federal Courts subject to nationwide injunctions across the land. Approximately you were just waiting—

Speaker GINGRICH. No.

Mr. NEGUSE. —to come testify in front of the Committee to call that a judicial coup d'état against President Trump. That is what it sounds like.

Speaker GINGRICH. That is why I believe any kind of nationwide injunction should go immediately to the Supreme Court to be validated as a nationwide activity.

Mr. NEGUSE. Well, I—

Speaker GINGRICH. I don't believe District judges have the authority.

Mr. NEGUSE. I understand that alternative. I understand that you have provided that particular alternative as something for this Committee to consider. Your written testimony indicates far more significant and structural changes. You reference the Judiciary Act of 1802 and this notion that the Congress can abolish District Courts and the rest. You seem to be suggesting those as remedies that we ought to consider.

In any event, I just want to talk—I will ask the Chair to indulge me since I know he has indulged other Members.

You have talked about, and I will just read from an article here:

> There is a long tradition which has only been broken really starting in the late–1950s with this crazy idea that lawyers and judges are superior to the rest of us and they get to define everything.

Right?

Speaker GINGRICH. That is correct.

Mr. NEGUSE. You are referencing what case?

Speaker GINGRICH. *Cooper* v. *Aaron*.

Mr. NEGUSE. *Cooper* v. *Aaron*. That case was a desegregation case, right?

Speaker GINGRICH. Yes, but that wasn't the point of the—

Mr. NEGUSE. I understand, but this was a case in which the State of Arkansas was seeking—

Speaker GINGRICH. Right.

Mr. NEGUSE. —the ability to not comply with *Brown* v. *Board of Education* in desegregating schools in Arkansas. It had nothing to do by the way, Speaker Gingrich, with Presidential power. It had to do with the supremacy of the Constitution and the ability of States to respect the Supreme Court's interpretation of the Constitution. There are a variety of cases long before Cooper in which the Supreme Court has opined on the constitutionality of a President's actions. Youngstown being a great example. It is convenient that for whatever reason you have landed on these 1950s desegregations as the inception in your view of the Supreme Court's—

Speaker GINGRICH. No.

Mr. NEGUSE. tyranny, as you describe it, I suppose. I don't think that this is consistent with the values of the American people. It is the reason why Republican jurists, Michael Mukasey, a very distinguished Federal jurist, as you know, has attacked your ideas in the past. I think you would concede with that. I yield back.

Speaker GINGRICH. Just one second.

Mr. ISSA. In continued indulgence I would let the speaker finish his answer.

Speaker GINGRICH. All I will say is the reference to that is from a book by a liberal lawyer who says specifically that it is *Cooper* v. *Aaron* where, with no reference to the case, the Supreme Court decides to issue a statement that it is clear that we are supreme. They are not talking about we are supreme over Arkansas. We are the supreme deciders. That is explicitly false and historically wrong. It is what Jefferson was so furious about in 1800 because he did not believe judges had the ability to overrule the American people.

Mr. ISSA. I thank the gentleman.

We now go to the gentleman from Texas, Mr. Roy.

Mr. ROY. I thank my colleague from California.

Ms. Romero, you have testified about your experience in Aurora, Colorado. As we talked about at the beginning, I came to Aurora and visited with you and others that were impacted by what you were dealing with. To be clear, you felt terrorized in your home, your apartment? Can we have order, Mr. Chair? Can we—we are—

Mr. ISSA. If you have conversations, please take them off the dais.

Mr. ROY. Right.

Mr. ISSA. The gentleman is recognized.

Mr. ROY. With all respect to my colleagues, I notice Ms. Romero who was bothered by it. We are talking about people's lives. Americans' lives.

Ms. Romero, your life. Yes or no, in short answer, was your life turned upside-down by the existence of Tren de Aragua in your home, in your apartment complex in Aurora, Colorado?

Ms. ROMERO. Absolutely. Continue to be.

Mr. ROY. People were in danger? American citizens? Americans were in danger?

Ms. ROMERO. I was in danger. My family was in danger. I couldn't get my grandchildren to even come visit. It was dangerous over there. The police didn't want to respond. The local government in Aurora did not want to acknowledge. There was continued pushback and gaslighting.

Mr. ROY. I mentioned earlier when I opened up this—the extent to which we had a young woman here who was testifying last year in this Committee, Alexis Nungaray whose daughter Jocelyn was murdered at the hands of Tren de Aragua members in Houston, Texas. Is that acceptable?

Ms. ROMERO. It is absolutely not acceptable.

Mr. ROY. Let me ask you this: Should TdA gang members or MS–13 gang members be removed and deported from the United States of America?

Let me first ask Ms. Shaw, Professor Shaw, should they be removed?

Ms. SHAW. The President certainly has the authority to make that determination. The question is how do we know who is a member of these bodies?

Mr. ROY. These members should be removed? These TdA gang members and MS–13 gang members, who are posing a danger to the American people and citizens, should be removed from the United States of America?

Ms. SHAW. I am a scholar. I am not going to take a policy position on how immigration should be enforced or carried out.

Mr. ROY. You come out on these issues all the time.

Ms. SHAW. I opine on the law. The President has certain authority, significant authority to enforce the immigration laws, but the Constitution is supreme.

Mr. ROY. The President has significant authority as the Commander in Chief to protect the United States?

Ms. SHAW. Absolutely. Of course.

Mr. ROY. Ms. Romero, do you think these TdA gang members and MS–13 gang members, and other dangerous individuals should be removed from the United States, so they do not pose a harm to American citizens?

Mr. ROMERO. Every last one of them.

Mr. ROY. Given that, do you believe it was appropriate for the President to remove those that were removed, that Judge Boasberg decided to from his perch in the District Court in the District of Columbia stop, or attempt to stop a plane leaving Harlingen, Texas—to remove said individuals because this judge in D.C. decided to assert that he had jurisdiction over that plane that the Commander in Chief was using to remove these dangerous individuals from our country? Do you think the President was right or the judge was right?

Ms. ROMERO. I think the President was absolutely right. If you can describe them as illegal and an immigrant to this country and a criminal all at the same time, they need to go out of our country.

Mr. ROY. Much has been made of this individual from Maryland. To be clear, this is an individual that by all accounts was a member and affiliated with MS–13, the dangerous in Maryland.

Mr. RASKIN. Would the gentleman yield?

Mr. ROY. I will not. This individual was affiliated with MS–13, had an order of removal against him, was here illegally in the United States of America, and was put on a plane; a separate plane, by the way from the one under the Alien Enemies removal, because he was on an order of removal.

Now, the fact is my colleagues on the other side of the aisle would like the American people to believe that it is more important for us to be concerned about the specific mechanics of an individual illegal alien affiliated with MS–13 endangering the American people and whether or not the intricacies of due process about what claims that guy was making to alleged asylum—by the way, asylum because he was afraid of what might happen to him at the hands of the gangs he affiliated with if he is sent back home to El Salvador—that would somehow trump the extent to which Ms. Romero or Alexis Nungaray would be the ones that are put down at the hands of dangerous gangs making your life upside-down as an American citizen. Do you think that is fair, Ms. Romero?

Ms. ROMERO. It is not fair. I have rights, too. We weren't asked permission to allow these unvetted criminals into our country. Nobody stopped them once we sounded the alarm. Something has to be done now.

Mr. ROY. Mr. Speaker, thank you for being here. We talked a little bit about what we might be able to do, and you talked about the fast track to the Court and so forth. I remain of the belief—and we passed legislation out of here, and it would be important to send that to the Senate, I agree with you, to send a message to the Supreme Court.

I would posit and see if you agree. We need to clarify for the record, both sides of the aisle in response to my friend from Colorado's commentary, that we had a wake-up call for our Democratic friends when suddenly there were some judges in the Northern District of Texas who were saying wait a minute, we don't think some of these ridiculous rulings about men being in locker rooms with our girls in schools should somehow be OK because radical administrators under the Biden Administration were allowing it to occur.

Do you agree that having the ability to say that you are not going to have a nationwide injunction at the hands of one judge but then have a process by which you can have a nationwide injunction either through a three-judge panel at the Appellate or fast track to the Court to clarify for the record we are saying that is not a partisan exercise that—we are saying that no one judge should make that there should be a process though, and there are times when a nationwide injunction does need to occur to stop administrators making law?

Mr. ISSA. The gentleman's time is expired, but you may answer.

Speaker GINGRICH. Well, whether it is a liberal or a conservative, whether it is a Democrat or a Republican, the very concept of the distribution of power in the American system would indicate that no single person should have the power to dictate to the entire country what they personally happen to believe that week.

That we need to demystify the process of judgeship, recognize that it is occupied by humans. There is an amazing passage from Jefferson where he says look, these are people. They are subject to exactly the same problems as politicians or anybody else and you can't put them up on a pedestal.

You have got to have a system which blocks power from being exploited by the personality or the idiosyncrasies of one person imposing on 335 million people. That what Chair Issa has brought out is a very useful first step. As I said earlier, I think the Chief Justice could vitiate this entire issue if he took the right steps. We as a people cannot allow random individuals arrogate to themselves being alternative Presidents and imposing their personal will on the entire country.

Mr. ROY. Thank you, Mr. Speaker. I yield back.

Mr. ISSA. Thank you.

The gentlelady from Vermont is recognized for five minutes.

Ms. BALINT. Thank you, Mr. Chair. Given that Mr. Roy went over by almost two minutes, I would like to give the Ranking Member a minute before I begin.

Mr. ISSA. You are yielding a minute to the gentleman?

Mr. RASKIN. Thank you.

Ms. BALINT. I am.

Mr. RASKIN. Well, I appreciate that. Thank you to the gentlelady from Vermont.

I just want to be clear about this. First, I want to align myself with Members on both sides who have found your testimony, Ms. Romero, very important and very disturbing. We all agree that gang members should be prosecuted to the full extent of the law and if they are here unlawfully in the country, they should be deported.

The idea that this should become the basis for a mass round-up and deportation of people who have never been charged with anything, who have no criminal record, strikes me as absolutely preposterous. The administration at least was willing to come forward to say, OK, they have the wrong person. This was a mistake to have him. Now, c'est la vie I suppose, he is stuck in El Salvador under a dictator who throws people into a prison that engages in torture.

My colleagues would rather go all the way down to the end of the field with Donald Trump rather than admit that this is a blatant violation of American due process and all of our constitutional values. That is just extraordinary to me that Members of the House Judiciary Committee would be taking that position. That is a very serious problem.

Now, Judge Boasberg, who is a conservative judge, who was appointed to the bench by President Bush, correctly determined that the Alien Enemies Act of 1798 doesn't apply. It had only been used before in that original Alien Sedition Act period, World War I and World War II. It is for wartime. It is for the deporting of foreign nationals who belong to enemy States or if there is a military invasion of the country. It doesn't apply. He said we have got to use the Immigration and Nationality Act, but that requires a due process hearing.

That is too much for my colleagues who can evince no sympathy at all for this father of a five-year-old with autism who has been sent to another country. Now, I don't know because we are not a criminal court whether he has done anything, but I do know based on court records he has no criminal record. He has not been convicted of anything. Suddenly they are saying well, he is a member of MS–13.

He had an asylum petition, which I will enter for the record, which showed that he was actually being harassed and persecuted by a criminal gang which is why he originally came to America. The court determined although his application for asylum was time-barred, nonetheless he has established past persecution based on a protected ground and he has established the presumption of a well-founded fear of future persecution. Maybe you guys know something about the case I don't know, but that is why I believe in due process, because I think a court should be hearing this.

I thank the gentlelady for her indulgence and her kindness.

Ms. BALINT. Absolutely. Thank you, Mr. Chair.

I have heard the suggestion from some of our witnesses today that because President Trump eked out a narrow win, he should

have the right to do whatever he wants with no checks on his power. I find this deeply disturbing.

As a former civics teacher, it feels like we failed somewhere along the way. Presumably we have all had some basic civics education and I am hearing a shocking misunderstanding of how the Constitution works.

Professor Shaw, thanks so much for being here. Let's briefly reestablish the fundamentals here. We have three branches of government, correct?

Ms. SHAW. Correct.

Ms. BALINT. The Executive, Legislative, and Judicial Branch, correct?

Ms. SHAW. Correct.

Ms. BALINT. Under our constitutional order the head of the Executive Branch, the President, generally must obey orders by judges, correct?

Ms. SHAW. Absolutely.

Ms. BALINT. One of the ways Congress oversees judges and the President is through impeachment or removal from office for violating the law or other egregious behavior. Is that correct?

Ms. SHAW. Treason, bribery, other high crimes, and misdemeanors, correct.

Ms. BALINT. Thank you. Congress does not remove judges because of a disagreement with how they rule. Is that correct?

Ms. SHAW. That is correct.

Ms. BALINT. Why is that?

Ms. SHAW. Judicial independence requires the judges not to be constantly afraid that they will be removed from office if they issue a decision that is unpopular or that is opposed to the interests of the political powers or that runs against the political winds. Judicial independence requires judges to be confident and secure in their rulings and not fear the consequences of those rulings other than reversal on appeal. That is a consequence judges can and should fear, but that really is the primary consequence.

Ms. BALINT. As you have said, this has a chilling effect. This entire presidency, so far, is about having a chilling effect on the way that government works. The House must not take up impeachment resolutions based on anything but serious misconduct or illegal behavior, yet Republicans, including people on this Committee who claim to respect the Constitution, have introduced impeachment resolutions against judges because they don't like how judges did their job. They have introduced seven impeachment resolutions so far. I am sure there are more to come. Trump and Musk have publicly called for the impeachment of judges that they just don't like. Just by introducing these impeachment resolutions, my colleagues have attacked and weakened the independent judiciary.

Does a weakened judiciary, Professor Shaw, endanger Americans' constitutional rights?

Ms. SHAW. The courts are a key guarantor—

Mr. ISSA. The gentlelady's time is expired, but I will give indulgence. You may answer.

Ms. SHAW. I apologize. I didn't see. Sorry.

I think that an independent judiciary has been and continues to be a key guarantor of all our rights and so anything that threatens judicial independence is a threat to all of us.

Ms. BALINT. Thank you, Ms. Shaw. I will just say in closing I taught my students for years the Constitution requires that we respect the rule of law and not the rule of one man. Thank you so much for being here. I yield back.

Mr. ISSA. I thank the gentlelady. With that we go to the gentleman from Texas, Mr. Hunt.

Mr. HUNT. Thank you, Mr. Chair. Democrats love to talk about democracy. They claim Donald Trump is a threat to it. They say actions taken by his administration undermine it. Let's be clear: Democrats have twisted and weaponized the word democracy to nothing more than a partisan talking point.

Let me tell you what democracy is not. Democracy is not the tyranny of the majority. When 77 million Americans cast their vote for a President and when every major swing State breaks in his favor, and when the Electoral College delivers a clear mandate, it is not democracy when a District Court judge overturns the will of the American people and usurps the constitutional authority of the Commander in Chief, full stop.

President Trump, along with Tom Homan, CBP, and ICE, are doing an outstanding job securing our homeland and in just a few months we have seen historic progress on border enforcement, gotaways are down, arrests are up, and deportations are finally happening. Now we are beginning to see that progress stall. Why? Because of the tyranny of the minority and activist judges targeting immigration Executive Orders. It is not the role nor is it the authority of a single judge to undermine the Commander in Chief's constitutional responsibility to repeal an invasion. Make no mistake about it, this is an invasion. Twenty million people entered our country illegally for the past four years is, in fact, the quintessential definition of an invasion.

It is not just a border crisis. We are fighting cartels like Tren de Aragua and MS–13. You see groups like these in coordination with the Chinese Communist Party are flooding our country with fentanyl. It is not just a crisis here on drugs. It is chemical warfare. Fentanyl is not a simple drug, it is also poison.

In my conversations with Texas sheriffs on the front lines there is absolutely no confusion about what is happening. The mission of these cartels backed by the CCP is simple. They have told me this, and I quote, "Kill the gringo." That is the reality. President Trump is using his power and his constitutional power given to him by the American public to stop this from happening.

Ms. Romero, thank you very much for being here. I really appreciated your testimony earlier. You went as far as saying publicly that in Kamala Harris' America every State is a border State and every community is under threat. You also said that after Tren de Aragua invaded your apartment complex you reached out to local media and several NGO's in your community begging for help. Begging for help. You were turned away because there were no government programs that grant citizens' protected status.

I have a question for you, ma'am. Do you feel more or less safe now that President Trump is back in the White House?

Ms. ROMERO. More.

Mr. HUNT. Why do you say that?

Ms. ROMERO. Because he is getting rid of the criminals that were harassing all of us.

Mr. HUNT. Do you think that President Trump is putting the priorities of America and the average American citizen above the priorities of the cartels and those people that want to destroy this Nation?

Ms. ROMERO. Yes, because these people were causing immediate harm to citizens, not some imaginary harm that could happen 1 day.

Mr. HUNT. Ma'am, if you had a message for the American people today what would it be?

Ms. ROMERO. This is a real threat to our communities, not just mine, not an isolated incident, not just regulated to one building. These are all over the United States. Apparently have forgotten 9/11. There are dangerous criminals in our country and if we don't start getting them out now, then when? After they victimize someone just like me?

Mr. HUNT. I fought for this country. There are many people in this room that fought for this country. I flew 55 combat air missions in Baghdad in an Apache helicopter because I do not want to see animals in our country terrorize my fellow Americans. That is what we took an oath to do. Sitting here in the halls of Congress it is also our responsibility to protect the American citizen first.

For the record, as somebody who has deployed all over this world, no other country operates like this. None. You cannot tell me a country that would allow 20 million people to enter their country illegally and their country does absolutely nothing about it. For the record, this is the greatest country in the world. That is why there are 20 million people trying to enter it illegally. Therefore, we bear an even greater responsibility to keep these animals from entering our country to protect you the American public. That is our job.

President Trump won, and he was given a mandate for that very reason. He promised to protect us and put our priorities first. It is just that simple. I understand my colleagues on the Left may disagree with this to a certain extent, but quite frankly, the mandate was already given to us and, ma'am, you are sitting here right now because you were terrorized by the very animals that had no business being in our country in the first place.

I will let you answer this last question, ma'am. As we move forward what would you like us to do to protect you?

Mr. ISSA. Briefly, please.

Ms. ROMERO. Stop wasting tax dollars trying to interrupt him and stop him from doing what he is doing. Do something to protect the people who elected you, and put you in your spots, to look down and decide what happens to the rest of us.

Mr. HUNT. Thank you, ma'am. I yield back the remainder of my time.

Mr. ISSA. Thank you.

The gentlelady from North Carolina, Ms. Ross, for five minutes.

Ms. ROSS. Thank you, Mr. Speaker, and thank you to the witnesses for being here today. This is an extremely important issue for our country and for the future of our country.

Let me be clear before I ask my question. Donald Trump's contempt for the Judiciary is not new. He has fought civil cases against him because of real estate deals and people he hasn't paid.

He's fought victims that he has sexually assaulted, and he has been convicted of sexually assaulting. His disrespect for the judiciary is based on his disrespect for anybody who doesn't let him do whatever he wants whenever he wants, and he is very dangerous right now because he is the President of the United States of America.

We are seeing him treat the people of the United States of America the same way he treated those poor contractors he never paid, the same way he treated women who he sexually assaulted. He is doing the same thing to the United States of America.

So, Professor Shaw, on February 9th, Donald Trump told reporters that no judge, quote, "should be allowed to rule against his administration's unconstitutional changes to how our government operates," and the next day Vice President J.D. Vance posted on X judges aren't allowed to control the Executive Branch's legitimate power.

Just to be clear, does the President decide what issues judges get to rule on under our Constitution?

Ms. SHAW. No, really, since *Marbury* v. *Madison*, 1803, judges on the Supreme Court, right, sitting at the top of the Federal judiciary have had the final word on the meaning of the Constitution and the laws and the consistency of laws or Executive action with the Constitution.

In our system it has been the courts and not the President who have had the final word.

Ms. ROSS. Thank you for that.

I am going to quote Fourth Circuit Judge Michael Luttig, who I can testify no liberal. I had a case in front of him. He was a tough customer in the Fourth Circuit.

He was appointed by George H.W. Bush and he recently noted in an op-ed for *The New York Times*, quote,

> A country without an independent judiciary is not one in which any of us should want to live, except perhaps Mr. Trump while he resides in the White House.

Trump has railed against the Federal judiciary for years, as I said in my opening, and especially now that his administration is losing in courts nationwide.

So, Professor Shaw, what could Congress do to stand up against Trump's attacks on the judiciary to ensure that it remains functioning, independent, and co-equal in our system of governance?

Ms. SHAW. Well, I certainly don't think resolutions of impeachment for no other reason than rulings that Members disagree with are constructive from the perspective of preserving judicial independence.

One thing that I would imagine that bipartisan support could easily rally behind is judicial security, right? We are in a moment in which we have read about the U.S. Marshal Service concern about heightened levels of threats to Federal judges.

When there was an actual threat against Justice Kavanagh in 2022 on a bipartisan basis security for Supreme Court justices was increased. I'm not sure that we have seen anything to that effect now.

Shoring up judicial independence at a moment where, frankly, there are not a lot of other functioning checks on the Executive Branch is, to my mind, critically important and maybe that's one way this body could devote itself to doing that.

Ms. ROSS. Then going back to the impeachment issue that my colleague from Vermont discussed, if Trump is successful in getting judges impeached in the House—I don't think he would be successful with the final decision in the Senate—is he allowed to demand that a judicial nominee promise not to rule against him or his administration if he—under his appointment power?

Ms. SHAW. There's nothing in the Constitution that speaks to that one way or another but it is certainly a very established tradition, bipartisan, and long standing that presidents do not secure commitments in particular with respect to particular rulings from nominees they are considering.

Certainly, the Senate in its advice and consent role could seek to enforce that long standing principle by asking nominees if they have been asked or have given any kinds of assurances.

It would be wildly inconsistent with our practice for our President to seek such assurance from a nominee.

Ms. ROSS. Thank you, Mr. Chair, and I yield back.

Mr. ISSA. The gentlelady yields back.

Does the Ranking Member have a unanimous consent request?

Mr. RASKIN. Thank you very much, Mr. Chair.

This is from March 31, 2025, the makeup artist that Donald Trump deported under the Alien Enemies Act from the Atlantic.

Mr. ISSA. Without objection, so ordered.

Mr. ISSA. The gentleman from Texas, Mr. Gooden.

Mr. GOODEN. Thank you, Mr. Chair.

Ms. Shaw, earlier you said that you worried that some of the intent of these actions will have a chilling effect to disincentivize the taking on of clients and that the legal system we have requires lawyers to take on unpopular clients. Would you expand on that, please?

Ms. SHAW. So, lawyers—the idea that even individuals charged with crimes are entitled to counsel and to vigorous representation in their defense regardless of what they may have done is actually a core belief pillar of our legal system, and so that's one example.

Individuals even charged with serious crimes have a right to counsel.

Mr. GOODEN. I guess one of the things that I struggle with is after the 2020 election one of the groups that comes to mind is the 65 Project which is a legal activism campaign seeking to disbar and discredit Trump-affiliated lawyers who worked on lawsuits supporting Trump's attempts to question the 2020 election.

They're a dark money group and I don't recall my colleagues or you are speaking out against this and, in fact, there were attorneys that were disbarred for representing their client.

Now, sure, there's folks in this room that didn't agree with them but one of the things you said during that time was, quote, "There

need to be serious social, professional and reputational kinds of sanctions if we want to disincentivize this kind of conduct," and I think this kind of conduct is perhaps taking on a client that supports a belief that maybe is not popular and I really hope that we'll get away from this lawfare and that's something that was prevalent over the last four years throughout this campaign and now we're seeing it from this judiciary.

I'm disappointed in this judge but I am happy we're having this discussion, and I'll yield the balance of my time to Chair Jordan.

Chair JORDAN. I thank the gentleman for yielding.

Some of the previous speakers on the other side have said—Members on the other side have said attacks by President Trump—I think I got this right—attacks by President Trump on the Judiciary are dangerous. They said criticism of judges weakens the judiciary.

Mr. Larkin, have Democrats ever criticized the judiciary?

Mr. LARKIN. Yes, sir.

Chair JORDAN. Can you give me an example that maybe comes to mind? I have several, but I wonder what's one that comes to mind for you?

Mr. LARKIN. Well, I guess the best example recently was the Supreme Court's decision in *Dobbs* to overturn *Roe* v. *Wade*.

Chair JORDAN. Yes, where hundreds of churches and prolife centers were attacked and firebombed and got all kinds of criticism coming from people that have—how about this one?

How about the Minority Leader in the Senate said,

> I want to tell you, Gorsuch—I want to tell you, Kavanagh, you've released the whirlwind and you will pay the price.

How about that one? Do you remember that one, Speaker Gingrich, from Senator Schumer?

Speaker GINGRICH. Well, I think it's fair to say that the passion of the Left when the court does the wrong thing probably is more professionally organized than any passion on the Right.

Look, Franklin Roosevelt tried to pack the court. He was a Democrat. There's a long tradition in America that we're allowed to argue over—the courts are not—they're not temples. This is not a religious judicial system. It's a secular judicial system.

Chair JORDAN. Yes, fair enough. We're going to criticize decisions all along. We're giving it one way. This goes both ways. Both sides have criticized the courts and criticized decisions. We're allowed to do that in this country. That's the way it works.

Professor Shaw, do you think it was appropriate for what Mr. Schumer—Senator Schumer—said on the steps of the Supreme Court when he said, "You will pay the price," referencing two members—sitting members of the U.S. Supreme Court?

Ms. SHAW. I think he should have phrased it differently. I'm sure he feels the same way.

Chair JORDAN. What about the *Dobbs* leak? What do you think about that and some of the comments that were made after that decision was leaked? Do you think that was good?

Ms. SHAW. I'm not sure what comments you're talking about. There was very, very sharp criticism of Justice Alito's opinion in *Dobbs*. I think that's perfectly healthy, yes.

Chair JORDAN. I think we had a Member said that there should be impeachment for the decisions that happened after the *Dobbs* decision there should be impeachment of one of the Supreme Court justices. A Member of Congress said that. Do you think that's appropriate?

Ms. SHAW. Impeachment rhetoric is something that we have seen from time to time. I guess I'm not categorically opposed to talking about it. Introducing resolutions, as we have seen, has been a significant escalation and, of course, it would depend on why.

There was serious discussion of impeachment of several sitting Supreme Court justices over ethics matters in the last few years. I don't think there's anything unhealthy about those discussions.

Chair JORDAN. It's OK to talk about impeaching a Supreme Court justice, it's OK to add four associate justices to the Supreme Court, and you had no problems with the comments made after the *Dobbs* leak. Is that your testimony?

Ms. SHAW. I'm sorry, I'm not sure what specific comments you're talking about, but criticism of the substance of the substance of the *Dobbs* ruling I have no problem with that.

Chair JORDAN. OK. I yield back.

Mr. ISSA. The witnesses were very kind and there are more people that want that kindness. With that, we'll take a five-minute recess.

[Recess.]

Mr. ISSA. The Committee will come to order.

We now recognize the gentlelady from California for five minutes.

Ms. KAMLAGER-DOVE. Thank you, Mr. Chair and Ranking Member.

The student tours have started back up here in the Capitol. When I was walking through the rotunda I walked past a group of young kids from Ohio and the kids were listening to their teacher talk about George Washington, and then I heard the teacher say that this is where we have all our checks and balances.

I remember thinking to myself, well, only for a few months more. You talk about banning books. I was like, well, we might have to ban all the books that talk about checks and balances because we won't have any at the rate this Committee is going.

In fourth grade children are learning about civics, the three branches of government, the checks and balances of power between the different branches, the co-equal partnership between the Executive and Legislative, the independence of the Judiciary. Not a new phenomenon. Article 3 judges were established 236 years ago in the Constitution with a lifetime tenure.

We could go back, and I've heard it in this Committee, and talk about *Marbury* v. *Madison*, *Plessy* v. *Ferguson*, *Dred Scott*, but more recent is where I want to land and I thank the Chair for also bringing up some of these rulings.

We have had *Bush* v. *Gore*. We have had Citizens United. We have had *Hobby Lobby*. We have had *Masterpiece Cake Shop*. We have had the overturning of *Roe* v. *Wade*, and yes, all major wins hailed by the Right.

In the aftermath of these rulings, even with the passion of the Left, Mr. Speaker, the judicial institutions remained intact and

bench officers were not excoriated or physically threatened. In fact, one U.S. District judge her son was killed.

Now, we have an administration aggressively and unapologetically pushing the boundaries of what is constitutional and erasing the checks and balances of power by going after judges who do not side with Trump, to the point that even Justice Roberts of Republican lore says it is inappropriate to impeach judges and, after all, he is part of the ultimate arbiter in this arena which favors the Republican Party with a 6–3 majority.

So, I'm asking myself what is really going on. What is going on is we are setting a dangerous precedent by replacing judicial independence with judicial fealty, because if judges feel like they must follow a partisan ideology rather than independently interpret the law then we as law makers are a shill in this charade.

We do not make laws for ourselves to interpret. We make laws for judges to interpret and impose punishment to those who don't follow them, and what is sad is that all these decisions that Trump doesn't like are still appealable.

Once again, what is going on? What is going on is instead of being a party that supports smaller government Republicans are creating a far-reaching Leviathan, an insatiable, chaotic monster of power and once that locomotive starts going you cannot put the brakes on.

This judicial independence, checks and balances, has withstood 118 Congresses and 46 Presidencies and somehow today we are supposed to be at some critical moment where we are told to believe we have to blow this thing up.

It makes me think about March Madness, which is happening right now. These kids are playing their hearts out. They are trying to win, and they are dealing with good calls and bad calls from referees, and not all calls are perfect, but they are still respected. No one says, I didn't like that call. Go after the referee. Go after the system.

In fact, in organized sports the most classless and unpalatable thing you can do is blame your loss on the referee or blame the umpire for the outcome of the game, or cheat, and five, 10 years ago we saw these parents attending these Little League games and then violence was being committed. People were running onto the field attacking and assaulting the referees and it was distasteful.

Now, we are here with this court doing the same thing. The games do not work without officials and our system of justice does not work without judicial officials, and Justice Roberts says all we do is call balls and strikes. Judges, like referees, are a neutral party. You don't always like what they say.

You might not always agree with their calls, but you have to respect the institution and the officials, and if you take away the one element that brings integrity with it then the competition itself has no integrity.

Then, you have to ask the question why do we even take an oath? Why do we even obey any of these laws? What we have right now at this hearing with Trump's attack of the bench officers with the threat to impeach judges is the equivalent of parents rushing onto the field and trying to punch a judge in the face.

It is disrespectful, it is unseemly, it is unprecedented, and it is a disgrace.

With that, I yield back.

Mr. ISSA. I thank the gentlelady.

We now yield to the gentleman from California for his five minutes, Mr. Kiley.

Mr. KILEY. Thank you, Mr. Chair.

In our State of California we have a Governor who routinely attacks judges when he doesn't get his way, often in very harsh terms, this being Governor Newsom, of course.

After one ruling related to the Second Amendment, Newsom threw a veritable temper tantrum, calling a special press conference to lambast the judge, calling him an extremist, a stone-cold ideologue, a wholly funded subsidiary of the NRA, and saying, quote, "We need to call this Federal judge out. He will continue to do damage. Mark my words."

It is curious hearing some of the comments about the appropriate relationship between the different branches of our government and the appropriate way to opine on judicial opinions with that in view and we have also, of course, seen examples brought up by Chair Jordan related to Chuck Schumer's comments on the steps of the Supreme Court that were rebuked by Chief Justice Roberts himself.

There certainly is—it's appropriate as elected officials for us to express views on opinions of the judiciary. The idea that one side has crossed the line but the other has not simply is not borne by the evidence.

Now, the broader question before us today is related to this issue of checks and balances, because we have reached a point where checks and balances have gotten a bit out of whack, given developments that were not really on the minds of the Founders related to the idea of nationwide injunctions, which didn't exist in the early years of the republic or really not until modern times.

Given the expansive growth of the Federal judiciary such that now you have not just an issue of the judiciary impeding the President or impeding Congress but, rather, you have the ability of any individual judge to do so.

As Justice Gorsuch has said,

> The government's hope of implementing any new policy could face the long odds of a straight sweep, parlaying a 94 to zero win in the District courts into a 12 to zero victory in the courts of appeal.

What these nationwide injunctions have effectively done is not just shifted power from one branch to another but empowered the most extreme people within the Judicial Branch by saying that we're going to give one judge who can be essentially picked by the plaintiffs the ability to put a policy on hold.

What this creates is a sense of stasis and a sense of frustration and you see this during Republican and Presidential Administrations that the levers that we have to really have our citizenry exercise its will are getting increasingly difficult to pull.

We have increasing hurdles to legislation, the ability to get over a filibuster in the Senate, to change policy that way, and then even when the President is exercising his duly granted authority we

have these nationwide injunctions that are putting the President's agenda into stasis.

I do think there is an appropriate opportunity here to see if we need to recalibrate the way checks and balances are functioning, and I think that on top of that it's a matter for the judiciary itself because the way our system generally works is you have different forums, you have different cases addressing similar issues involving different fact patterns.

You develop a factual record. You have different judges that provide a different sort of analysis, and then to the extent that they conflict it percolates up the system.

You have that record in place and you can then come to a decision that has the most fully considered process within our system and these nationwide injunctions are short circuiting that entire process, not allowing for the merits of an issue to be duly considered and simply giving one particular judge, often on the extreme end of the distribution, full say on the matter.

So, Mr. Gingrich, Speaker Gingrich, you've mentioned a few possible remedies here. One that caught my attention was the ability of the Chief Justice to establish a procedure as it concerns nationwide injunctions.

What would that look like?

Speaker GINGRICH. Well, thank you. Look, it will be the least intrusive and least disruptive to have the Chief Justice decide and the court decide. It would be very simple.

Yes, a District judge can render a judgment but the moment he or she renders an injunction beyond their district the Supreme Court would immediately intervene, suspend imposition of the remedy until the Supreme Court rendered a decision.

If the Supreme Court said, you're right, then you have a Supreme Court enforced nationwide injunction. If the Supreme Court said, we're not convinced then it would vitiate the whole thing and it'll be over, and you would not have the ability of individual District judges to make radical decisions.

Remember, justice delayed is justice denied. You start having—and this is where the judge—frankly, the Chief Justice was a little bit silly to say, well, there's an appeals process.

If you're talking about getting rid of criminals or you're talking about defending the country an appeals process can run so long that the damage has already been done by the time you go through the appeal.

In some form if we're going to retain the ability of District judges to issue any injunction it has to be modified. If we can't get a modification it has to be abolished.

Mr. KILEY. Thank you very much.

I would encourage the Chief Justice to, hopefully, be thinking about this from his perspective and in Congress we, of course, also have tools to create expedited appeals and I think that, frankly, that's hopefully, perhaps, a compromise that both sides could come to since this will be an issue that arises in future administrations as well.

Mr. ISSA. I thank the gentleman.

I now ask unanimous consent that Ms. Crockett to be permitted to participate in today's hearing for the purpose of questioning a

witness if a Member yields time for that purpose, and without objection so ordered.

I now recognize the gentleman from California Mr. Swalwell.

Mr. SWALWELL. We're about two-plus hours into this hearing, maybe three, and as I'm taking stock we're here because some guy I've never heard of—he might be in Congress—introduced an impeachment resolution.

He's not here. He hasn't been here for at least the last hour, and every witness here is in agreement that we really shouldn't be impeaching judges. I haven't heard a single colleague on the other side say we should be impeaching—

Mr. ISSA. Would the gentleman yield?

Mr. SWALWELL. Not yet. This guy's just raising bucks on this issue. This is like a fundraising ploy. We are all here. Like, we're in our suits. We're wasting—we're not dedicating ourselves to other matters because this guy wrote some articles.

It just seems kind of absurd to me because no one even thinks that's the remedy and I dare whoever this person is—I hoped he would come—I dare him to bring a privilege resolution because we can actually debate this.

It's just a stunt. I promise you it's a stunt. I will contribute to his campaign if he brings before this Committee an impeachment resolution.

Now, Speaker, you said some of these judges are pretend Presidents, rogue judges—

Mr. ISSA. How much would the gentleman give to his campaign?

Mr. SWALWELL. —700 District judges that are pretending that they're president.

There's a judge, a single judge in a Federal courthouse in Amarillo, Texas, where conservatives are forum shopping and having cases sent to him, Judge Kacsmaryk.

In 2023, he suspended Mifepristone approval. That's a medical abortion pill. Can you direct me, Speaker, to the statement you gave objecting to him doing that? I couldn't find it.

Speaker GINGRICH. No. Look, I haven't spoken out on this issue until I was invited to come here.

Mr. SWALWELL. OK.

Speaker GINGRICH. I wrote about it in 2011, and I submitted that for the record.

Mr. SWALWELL. How about when Judge Kacsmaryk ruled against ACA protections for LGBTQ individuals in November 2022? Did you speak out against that rogue judge?

Speaker GINGRICH. Well, I think the term I have not spoken on this issue until I was invited here was generic and included every single one of the cases you want to ask about.

I will stipulate in advance I did not comment because I did not comment, and I'm not here to comment on a single case.

Mr. SWALWELL. How about an—OK, I got it.

Speaker GINGRICH. I'm here to say that the system is out of whack which, by the way, I wrote about in 2011.

Mr. SWALWELL. Speaker, an elected Trump third term, is that constitutional? I think it's funny, too.

Speaker GINGRICH. If the Congress wishes to pass a constitutional amendment and the requisite number of States decide to en-

dorse that amendment of course he would have the option to run for reelection. In the absence of that kind of constitutional change I think that it's impossible.

Mr. SWALWELL. Thank you.

With that, I'll yield to the gentlelady from Texas Ms. Crockett.

Ms. CROCKETT. Thank you so much, and I appreciate the Speaker for admitting openly on the record that it is unconstitutional.

The concerns that I have are around the fact that we are sitting here pretending as if we all are looking out for the Constitution, yet we are coming from completely different angles.

Let me go to Professor Shaw. To be clear, which branch of government is responsible for interpreting what is and what is not legal?

Ms. SHAW. Well, the Supreme Court—the Article 3 Judicial Branch has the final word.

Ms. CROCKETT. The Judiciary is who it is. It's not the legislators?

Ms. SHAW. I'd say every branch has an obligation to interpret the Constitution. The final word comes from the courts.

Ms. CROCKETT. From the courts. It's not the former speakers. It's not everyday people. It's not the President. I just wanted to make sure that we understood who it was that was responsible and what is so frustrating for so many of the American people, the ones that are watching right now and otherwise, and the reason that they're outraged and scared is because what we see right now is the diminishing of all these institutions.

Right now, we have a Legislative Branch that has decided that it intentionally would disregard their duties. They are not checking the President whatsoever. The only check that the American people have had thus far has been from the Judiciary, and the Judiciary isn't pulling this out of the sky.

In fact, they come from basic reading of the plain language of the Constitution, for all those that are constitutionalists, when we start talking about things such as what birthright citizenship is.

One of the things that I want to make sure that I get to because there are deeper implications if we go down this rabbit hole.

Imagine the type of world where the President does whatever he wants to do and no one can rein him in. It's a world that right now many people are afraid of.

Let me put it this way. If Joe Biden would have done an Executive Order for abortion despite what the Supreme Court said that would have been a problem.

Imagine if the State of Colorado kept Trump off the ballot and other States followed suit. That would have been a problem. Or imagine if Jack Smith ignored Aileen Cannon and with the help of an activist judge decided that he was going to prosecute the sitting President anyway.

The problem that we have right now is that if we continue down this road then we will not have a rule of law because we have people that are currently serving and they're saying things like, ignore the judge's order.

What it means to have law and order in this country is that you follow the order, and you go through the appeals process even if you dislike what the judge did.

Thank you, and I yield.

Mr. SWALWELL. I'll yield back, Mr. Issa.

Mr. Issa, you had a question for me, which I'll yield to you now if you want to—

Mr. ISSA. Now, that there's no time left. Thanks, Eric.

Mr. SWALWELL. I'm an entertainer.

Mr. ISSA. You're good. You're good at that. I'll take my own time. I'll recognize myself, and I'm going to note that when Ms. Ocasio-Cortez, or AOC as we know her, filed articles of impeachment on Justice Thomas and Alito, Ms. Crockett was one of the cosponsors along with Mr. Cohen, both Members of this Committee.

It does seem interesting that when the shoe is on the other foot everyone is self-righteous, and this is a good example. For the last three hours—

Ms. CROCKETT. Mr. Chair, would you—

Mr. ISSA. —for the last three hours I have had to listen to one side talking about impeachment as though it was the nature of this hearing. It is not.

I keep looking at my friend, the late Henry Hyde, and remember that although he led the impeachment when it was necessary he did so only during that time and then never mentioned it again in hearings. In fact, he was religiously able to focus on the hearing of the day.

The hearing of today is really about the question of the future of the court's ability to do its job as intended, and I'm going to get into a couple of things fairly quickly. Last night, a California judge, Judge Chen, proactively stopped the ending of these temporary protective status.

The very person that they're talking about who is now apparently back in his home country of El Salvador can no longer be sent there because a judge has decided in California to stop an action which was done completely by one President at his discretion and when another judge says—another President says, I'm ending it at my discretion, they stop him.

I'm going to go to Mr. Larkin first. You mentioned earlier on—Alaska, I think—in passing about judges in various places and I'll reiterate a question that Speaker Gingrich also answered earlier.

If one judge can take a case before them and make rulings on behalf of plaintiffs not there and, yet, it's a District Court judge, and we know that courts around the country routinely take similar cases with different plaintiffs and decide them differently and that's how we generally get to the Supreme Court is to resolve those.

Is there any reason that this administration couldn't file a declaratory judgment not in California where Judge Chen ruled but in some other place—let's say Texas, which has been mentioned today—and get a different outcome and in fact undo and give in fact the administration the legitimate right to say, no, we have been found not to be enjoined but we have a right to do it as long as we siphon it through Texas instead of California.

Is there any reason today that this doesn't exist as a problem of these national injunctions which are not in the jurisdiction of these judges?

Mr. LARKIN. What you're talking about is a problem that the Supreme Court contemplated when it decided on the *Mendoza* case some years ago.

It recognized that different courts would decide issues differently and it decided not to bind the government the first time it lost.

If the government lost in Maine it could continue to take the same position in Alaska or in the other States. They were asked to basically adopt a one and done rule and the Supreme Court rejected it. It's permissible under the law.

Mr. ISSA. When people talk about this President acting illegally, the fact is this President, by acquiescing to these and going through the Appellate process, actually is going further than he has to under the Constitution.

The reality is he could simply say, you made your decision—we just won't do it in your district, but we'll do it elsewhere and we'll seek other remedies in other areas. The fact is this Administration has been overly generous for this first 70 some days, correct?

Mr. LARKIN. The Supreme Court in Mendoza was unanimous. It included conservatives and liberals on that court, and they allowed that development to occur.

Mr. ISSA. Under Mendoza the fact is only the Supreme Court speaks for the entire Nation and that is what we are discussing here today.

It's the issue before us. Is that correct?

Mr. LARKIN. Yes, absolutely.

Mr. ISSA. OK. I'm going to just derive a couple of other quick things.

There was an earlier question on Rule 65. Now, these are produced by the court and the unambiguous language of it says that, in fact, at least in some cases—we won't argue over any one of these now approaching a hundred cases—there has to be a bond and, yet, there have been no bonds. Is that correct?

Mr. LARKIN. I have not searched the record in all those cases.

Mr. ISSA. We have. We have. There hasn't been a bond. Mr. Larkin. I'll trust you on that.

Mr. ISSA. Rule 65 is being ignored by these activist judges and as a result there's a real question about the disobedience of those rules in absence of a bond they may, in fact, not be enforceable as valid, correct?

Mr. LARKIN. That may be. I would not say they're being ignored because if they weren't raised by the government as an issue in the case then they might have just been overlooked.

Mr. ISSA. I would trust that from this day forward they will not be overlooked.

You've got enough time. This will be the last round until the recess. You're recognized.

Mr. GOLDMAN. Thank you. Thank you very much, Mr. Chair.

Mr. Gingrich, I want to focus on some of your testimony today. You say that a judicial coup d'état is being implemented by judges of the same political ideology. In another statement you said that Judge Boasberg has a clear bias against President Trump.

Do you know who appointed Judge Boasberg?

Speaker GINGRICH. I think his first appointment was by George Bush.

Mr. GOLDMAN. Correct. We have been talking about nationwide injunctions. There's been a lot of discussion about the injunction on the President's birthright citizenship Executive Order that was enjoined by Judge Coughenour. Do you know who appointed Judge Coughenour?

Speaker GINGRICH. No, I don't.

Mr. GOLDMAN. Ronald Reagan. Let's just focus on these two Republican-appointed judges so we can just remove all the allegations of partisan bias.

Speaker GINGRICH. We're removing the other 90 or so.

Mr. GOLDMAN. Let's focus first on Judge Boasberg's case, which is the Alien Enemies Act, a 1798 law that very specifically applies during wartime or if the country is subject to an invasion.

Now, you would agree, I assume, as a former Speaker of the House that it is Congress' duty to declare war?

Speaker GINGRICH. I think there's also a provision of the act which does say for an invasion and I think the average American will tell you they feel that we have been invaded by the policies of the Biden Administration.

Mr. GOLDMAN. OK. Good. Good. The average—so are we now supposed to say that the average—your assessment of the average American's view determines whether or not we are under invasion by Venezuela? That's what we're supposed to do.

Now, if not the average American what your testimony is here today is that Donald Trump, because he was elected President, alone should determine whether or not that law applies without any due process. Is that your testimony?

Speaker GINGRICH. No. My position is that the Supreme Court should have the opportunity on a nationwide issue to render.

Mr. GOLDMAN. OK. Let me reclaim my time.

Basically, what you're saying then is the problem here is that Judge Boasberg precertified a class because, of course, it is the exact same legal question for every single person who was removed to El Salvador and what really should happen is that every single one of those people should have to file their own lawsuits and each district's then judge should rule on it.

Because that's the difference, the opposite of a nationwide injunction, right?

Speaker GINGRICH. Actually, I said several times in the last three hours, there can be a provision by which the Supreme Court takes up that injunction and immediately acts on it.

Mr. GOLDMAN. Which is it? Do you oppose nationwide injunctions as a judicial coup d'état?

Speaker GINGRICH. No.

Mr. GOLDMAN. Do you think nationwide injunctions are appropriate in certain circumstances but should have expedited appeal?

Speaker GINGRICH. I believe that nationwide injunctions by an individual judge is far too much power and that—

[Simultaneous speaking]

Mr. GOLDMAN. OK. Let's keep on with Judge Boasberg's case. OK. He issued—and by the way, he did not issue an order on the underlying issue.

He temporarily enjoined the President from whisking off people to another country without due process so that the legal issue could be resolved.

Now, you say expedite an appeal. That opinion, that case, was already appealed to the District Court—the U.S.—the Court of Appeals for the District Court.

They've already ruled, and by two to one they kept the temporary injunction in, and it was a Republican appointee, Judge Henderson, who was one of the two.

I guess I'm confused as to what the problem is with a temporary nationwide injunction so that the issue can be resolved and, if necessary, ultimately, by the Supreme Court. It sounds like you agree with me that this is the appropriate process.

Speaker GINGRICH. The difference is whether or not you believe, one, that time matters and the appeals process—

Mr. GOLDMAN. Well, this was within a matter of weeks. It's now before the Supreme Court. That's expedited. I will say I wholly agree with you, and with my colleague Mr. Kiley I would happily work to expedite appeals for nationwide injunctions.

I hope my Republican colleagues would work with us to expedite enforcement of Congressional subpoenas. The courts take far too long. I agree with you.

The notion that we do not have due process and that someone should be removed without due process based on false pretenses, which the administration now admits under a petition for habeas corpus I would add, Mr. Larkin, and that there's no recourse because their mistake is now out of their control.

I think even you, Mr. Gingrich, would agree with me when you mistakenly accuse someone of being a gang member and you deport them that it is incumbent on you to fix that mistake. Do you agree?

Speaker GINGRICH. I agree.

Mr. ISSA. With that, we're going to give you at least until—let's call it 2:30 p.m. to return. We stand in recess.

Mr. ISSA. Thank you all for your patience and indulgence. It took a little longer than we planned. The Committee will now resume, and our next questions will come from the gentleman from North Carolina, Mr. Harris.

Mr. HARRIS. Thank you, Mr. Chair. Thank you all and the panel for your patience today and continuing to persevere as we go through this day.

Speaker Gingrich, you refer to this trend we're discussing today as a, quote, "emerging dictatorship of District Court judges." You posted on X that the No Rogue Rulings Act, quote, "would be an appropriate first response to the District judges who are trying to do mini-Presidents totally beyond their constitutional authority."

I totally agree with you, Speaker Gingrich, and the No Rogue Rulings Act would be an impactful first step in addressing this problem. I was proud to vote in favor of it when this Committee marked it up. I later joined on as a cosponsor and look forward to at some point having the opportunity to vote on the House floor.

Speaker Gingrich, specifically, do you believe there are any additional legislative steps that need to be taken to address the problem of activist judges acting beyond their constitutional authority as you described in your post?

Speaker GINGRICH. Well, I would just say for the moment that this issue of District judges becoming alternative Presidents and issuing nationwide injunctions is such a central point to where we are that solving this—first of all, if we can successfully limit the District judges, we will send such a strong signal of rebalancing the Constitution. I think it will sober up everybody on the Judicial side.

In the future, there are some key issues. The whole notion of whether judicial supremacy means Supreme inside Article III or Supreme over Article I and II, is an issue worth taking up. I would put that at a very distant second to solving this immediate problem.

Because if you solve the immediate problem, you both make it possible for the Executive Branch to be effective and you've sent a pretty powerful rebuke to the Judicial Branch. They can't overreach in what they're doing. I'd make it a sequence in that sense.

Mr. HARRIS. I got you. Well, as we all know, President Trump issued an Executive Order 14160, which was referenced earlier today in ending birthright citizenship for children born to illegal immigrants or those on temporary visas. It was on February 5th that U.S. District judge Deborah Boardman of the District of Maryland issued a nationwide preliminary injunction against this Executive Order, arguing that it ran afoul of the 14th Amendment.

Speaker Gingrich, do you think it is in line with the President's duties to reexamine birthright citizenship as he did with Executive Order 14160?

Speaker GINGRICH. Well, it's certainly a legitimate function of the Presidency to look at how things change and how they evolve. I suspect in the short run, this will be resolved at the Supreme Court level. I personally believe that it's pretty hard to go back and look at the debate at the time of the 14th Amendment was adopted and somehow leap from that to a birthright situation.

In fact, they're fairly clear, for example, that people who are born to diplomats in the United States do not count as citizens. There are other factors there. The next phase of that argument is going to be at the Supreme Court level and then I think depending on what happens.

We live in a very different era. The scale of illegal immigration which frankly has changed, my guess is some of these debates will change pretty dramatically because President Trump is being so stunning effective at controlling the border and pretty effective at going after illegals who are also criminal. I do think in the long run having somebody who deliberately comes in the U.S. just long enough to have a child and then having had the child maybe on a tourist visa, if you will, claiming now they have an American citizen in their family.

My guess is to the degree that continues to evolve with modern transportation that we'll probably revisit this issue. First, we ought to see exactly what the Supreme Court says.

Speaker GINGRICH. All right. Thank you, sir. Mr. Chair, I yield back.

Mr. ISSA. If you'd yield to me.

Mr. HARRIS. I'll yield to you.

Mr. ISSA. I'll followup on that briefly. A diplomat's child is not a citizen, correct?

Speaker GINGRICH. That is specifically correct.

Mr. ISSA. A diplomat is here on a visa and is lawfully in this country, including the spouse typically. Would an invading army that comes with its spouses while here occupying, let's say Texas, would their children be covered under the 14th Amendment?

Speaker GINGRICH. My reading of the debates about the amendment would suggest that you had to be here legally to be qualified to have a child who'd become an American. See, you couldn't be here illegally. You couldn't be here in a situation where you would not be within American law. In that sense, an invading army by definition is not here as part of the American law.

Mr. ISSA. It's a legitimate debate on the 14th Amendment and where you'd be in and out.

Speaker GINGRICH. I think it was a habit which grew up sort of absentmindedly when there frankly weren't very many cases. As it got to be a bigger and bigger issue, people began to say, wait a second. Do we really think that in the 1860s this is something they had in mind? It's pretty hard to read the debate and conclude that they wanted birthright citizenship for noncitizens.

Mr. ISSA. Now we go to the gentleman from Missouri next.

Ms. SCANLON. Excuse me.

Mr. ISSA. I'm sorry.

Ms. SCANLON. Thank you.

Mr. ISSA. Oh, you haven't gone yet?

Ms. SCANLON. No, I have not.

Mr. ISSA. You sit so close.

Ms. SCANLON. I know.

Mr. ISSA. The gentlelady is recognized for five minutes.

Ms. SCANLON. Thank you. It's interesting that we've returned to the birthright citizenship argument because I think the courts that have looked at this issue, several courts already, and have reviewed the debates from that time found that they did explicitly consider the issue of noncitizens and who was in the country. The court has considered it as well. Mr. Raskin, I could yield to you for a minute.

Mr. RASKIN. Thank you, Ms. Scanlon. I've looked at this question too. I've gone back and I've read the debates. All the explicit mentions I've seen were explicitly to reject the proposition that Speaker Gingrich just mentioned, the idea that somehow you wouldn't be covered.

There was an exception talked about for the children of diplomats. That was very much a discrete exception, everything identified. One way of understanding this, of course, is that the African-Americans for whom the first sentence the 14th Amendment were core intended themselves all had parents and grandparents who were noncitizens because the meaning of the *Dred Scott* Decision was that you could never be a citizen if you were an African-American or the decedent of slaves.

So, the first sentence of the 14 Amendment, all persons born or naturalized in the United States and subject to the jurisdiction thereof shall be citizens of the United States, was a direct overruling of *Dred Scott* and saying that all these people whose parents

were not citizens could come in. There were specific questions on the floor about people from other countries, especially what were considered the *Dred* Chinese at the point. There were very emphatic statements made that, yes, even the children born of Chinese noncitizens would be citizens.

I'm not quite sure what the Speaker is referring to. If you've written a law review article on that, I would love to see it. Everything that I've seen, both directly in the debates and the law review literature, is completely counter to what he just said. Thank you for yielding.

Ms. SCANLON. Thank you. The Committee has covered a lot of ground today. I just wanted to return for a minute to some of the basic civics principles that were raised by this hearing and why our courts an independent judiciary matter.

Some of our colleagues and the administration itself have suggested that since Donald Trump won the 2024 Presidential election, his actions and his interpretation of the law can't be questioned. Can you explain why that's a problem under our constitutional system?

Ms. SHAW. Sure. I would say that maybe the single most important core structural principle in our Constitution is that power be divided and that power check power because too much concentration of power leads to tyranny. All that we have seen with the rulings that have come down that have found violations of either statutes passed by Congress or provisions of the Constitution is the separation of powers working as intended. The President having the sole and final authority to determine the meaning of laws, statutes, or the Constitution is just fundamentally inconsistent with the notion of separated powers that is the core of our Constitution.

Ms. SCANLON. I think we've also had conversations today about due process and how vesting all the power to determine what the laws and who is subject to it in one person, or one branch leads to a slippery slope. We've heard today that the administration has deported someone who was not a Venezuelan gang member and in fact did not even have a criminal record. We know that in the past, the administration deported citizens because they were not able to get a hearing to prove they were citizens.

This slippery slope becomes very real. Nobody here is saying that we shouldn't punish or deport violent criminals. We are saying that you need to prove someone is a violent criminal before you can exert this kind of punishment on them. Could you talk about how that impacts every American?

Ms. SHAW. Sure, yes. I just think that the only way that government can be sure and that all of us can be sure that they are targeting the right people for these harshest of punishments is by affording a modicum of process, right? That is the notion of due process. Making sure that individuals understand what is being alleged against them and have some opportunity to respond.

That is just the heart of due process. I do think that it's important that both the initial temporary restraining order issued by Judge Boasberg that we've talked about a good amount already today, that was affirmed by a panel of the D.C. Circuit that it included appointees of both Democratic and Republican Presidents simply sort of reaffirmed that core notion that a degree of process

needs to be afforded to everyone. That's not to constrain the ultimately ability of the President to enforce the immigration laws. It just suggests the Constitution needs to be honored while he does that.

Ms. SCANLON. I want to thank our witnesses. I yield my remaining time to Mr. Raskin.

Mr. RASKIN. Thank you. It seems to me that when Donald Trump was criminally prosecuted in New York or civilly sued in New York, everybody insisted on all due process. He deserved it, and he got it.

Even then, people still doubted the integrity or the veracity of some of the findings and the verdicts. Now, we have people saying, no, we don't need any due process at all to do X, Y, or Z to someone. That just can't be right. Thank you.

Ms. SHAW. Thank you.

Mr. ISSA. We go to the gentleman from Missouri now.

Mr. ONDER. Thank you, Mr. Chair. Thanks to all the witnesses for joining us today. Speaker Gingrich, thank you for your testimony. You are a great student of history, in fact, a great teacher of history.

I'd like to recall the words of Chief Justice John Marshall who famously said, "It is emphatically the province of the judicial department to say what the law is." I've never liked that quote because on its face it implies some sort of judicial supremacy. The judges are somehow supreme oligarchs, that they're like Moses bringing down the tablets from Mount Sinai.

Marshall at the time was presiding over what was famously called the weakest and the least dangerous branch of government in *Federalist* 78 by Alexander Hamilton. Marshall if he were here today would say that, yes, the judges are the ultimate interpreters of what the law is. Of course, it is the duty of the judges to apply the law in concrete cases before them.

We face a very different situation today. I believe we do have a constitutional crisis as you say, a judicial coup. We have Chuck Schumer bragging about his 235, quote, "progressive judges," his words, not mine, in over 100 cases issuing injunctions time after time and in time, his words, not mine, to block the Article II Executive powers of a duly elected President of the United States.

Of course, we have the ridiculous decision of Judge Boardman that planes ought to be turned back to aid vicious Venezuelan drug gang members. An equally absurd TRO was issued by U.S. District Court Judge Brendan Hurston in the *PFLAG* v. *Donald Trump* case. In that decision, Hurston halted President Trump's January 28th Executive Order protecting children from chemical and surgical mutilation which blocked taxpayer dollars from being used for sex change operations for children.

This is an absurd and activist TRO. The only reason such grizzly procedures were ever covered by Medicaid is that President Obama's CMS decided they would be. There is no law passed by Congress that genital mutilation of children should be covered by Medicaid.

It stands to reason to paraphrase Barack Obama that what was done by the pen and the phone can be undone by the pen and the phone. Judge Hurston says, no, he is above the law and above the

Article II and the Constitution. I believe we do indeed have a constitutional crisis. Speaker Gingrich, I agree with you that the No Rogue Rulings Act is a very good start. I really encourage the Supreme Court to issue a ruling to make this very clear.

Professor Shaw, in December 2024, Biden's Solicitor General Elizabeth Prelogar, criticized the practice of nationwide injunctions. Then, in 2022 or previously in 2022, Justice Elena Kagan criticized nationwide injunctions. In October 2023. speaking at NYU Law School, you criticized nationwide injunctions and what you called precision judge shopping which seems to me is exactly what's being done against the Executive action of the actions of President Trump now.

Then, in February 2023, in an op-ed in *The New York Times*, you said that the U.S. Supreme Court was at the time, quote, "a genuine threat to democracy." Fast forward to March 2025, and you're here today exhibiting enormous deference to not Supreme Court Justices, but District Court judges' ruling dozens of times against the President's Executive powers. You're saying, well, they're just doing their job.

They're getting it right, and President Trump has it wrong, or it was the other way, just a couple short years ago. Ms. Shaw, this looks awfully political on your part. Your response?

Ms. SHAW. Thanks for giving me the opportunity to respond. What I was discussing in the quote that you mentioned was the problem which is a very real one of single judge divisions where plaintiffs can guarantee with 100 percent certainty that they will draw a particular judge like Judge Kacsmaryk in Amarillo, Texas.

Mr. ONDER. Isn't that what's going on right now?

Ms. SCANLON. Not a single one of the 46 rulings that the come down against the Trump Administration have been filed in single judge districts. It's entirely different. I am not standing here saying that there is never abuse of the universal injunction reform. I think it's perfectly appropriate. That's an entirely different problem. That's not what's being addressed in the legislation that's on the table.

Mr. ONDER. Was the TRO in *PFLAG* v. *Donald Trump* correctly issued? If so, where in U.S.C. 42 of the Social Security Act as amended with Medicaid, where do you see an entitlement for Medicaid coverage of sex change operations in children?

Ms. SHAW. Sir, I apologize. I'm not sure the reasoning of the opinion. Many of these opinions have come down either on the First Amendment or equal protection grounds, the TROs. I would have to take a look at the reasoning and the opinion. A temporary pause which is what these TROs are where a judge thinks there's a serious constitutional flaw with an order issued by the President I do think is appropriate.

Mr. ONDER. A temporary pause, just like puberty blockers. I yield back.

Mr. ISSA. Gentleman yields back. We now go to the gentleman from South Carolina, right down the row.

Mr. FRY. Thank you, Mr. Chair. Mr. Larkin, in your testimony, you talked about the history of nationwide injunctions and how this has not always been the practice in the courts up until the 1960s. We've seen an escalation of nationwide injunctions by District

Court judges. How would you characterize the emergence of nationwide injunctions since the 1960s and its effect on the judiciary?

Mr. LARKIN. Two things to keep in mind. First, the 1960s saw a rise in what is called institutional reform litigation, an attempt not just to win a case for a particular client, a particular John or Jane Doe, but to establish a rule of law that could be used in the whole category of cases to which could possibly be applied and then a lot of others as well. If you're doing it at a State, for example, you're not going to say that your client was the only affected by unconstitutional prison conditions.

You're going to sue the entire State Department of Corrections because what you want is to have one judge reconfigure the number of people in the rooms, how the rooms are laid out, all of that. What you had was you had judges who in some cases were trying to decide with hellish conditions that would've made Dante blanche and try to figure out how to deal with that. It's not surprising that in some of those cases, there are different prisons.

They were in Texas, Mississippi, and Louisiana. We know them all that were absolutely awful. A judge under those circumstances is probably going to have to do more than just say, OK, well, you have to give this one client a better room. What you saw was a development in this regard of judges expanding the reach of the relief that was being granted. That was part of it. Part of it was also—

Mr. FRY. Real quickly just from a time perspective, do you think that part of this emergency of nationwide injunctions, particularly against the Trump Administration now, and the numbers are kind of shocking, is partly due to partisan nature of some judges on the bench?

Mr. LARKIN. Oh, I don't doubt that at all. If you take a look at the selection process, Presidents tend to look for people who are going to rule in accordance with their views, whether you're on the Right or the Left, whether you're a Republican or a Democrat. I worked with Senator Orrin Hatch when he was the Chair of the Judiciary Committee.

If he was the Chair under Obama, you would see one type of judge being nominated. If he was the Chair under George W. Bush, you'd see a different type of judge being nominated. Different ways of looking at it are common among people, and people become judges.

Mr. FRY. Speaker Gingrich, earlier, you talked about, obviously, your support of certain Congressional actions that would correct or rectify the role of the courts in these nationwide injunctions. You also talked a little bit about the court can police itself. I think with Mr. Kiley, you went into at least one metric on how that can be done.

What are your thoughts generally on how the Chief Justice who seemed to kind of brush aside criticism of the courts and just say, well, you could just go through the Appellate process? How could the Chief Justice rein in his own court?

Speaker GINGRICH. Well, I suspect that Mr. Larkin actually knows more about this than I do. My impression is that the Supreme Court has a rather strong capacity to instruct District Courts in a broad range of procedures. Were the Chief Justice to

basically preempt Chair Issa's bill and say this is how we're now to handle it.

The argument in this hearing as I understand it is really pretty narrow. It is that with over 600 District Court judges, you cannot have them each thinking they're an alternative President. Therefore, there has to be alternative system.

One system would be to block all nationwide rulings. Another system would be to have it appealed automatically to the Supreme Court. A nationwide ruling immediately got a nationwide court looking at it and recognizing that the appeals process of the Supreme Court the Chief Justice referred to is nonsense when you're talking about Executive Branch actions because the length of time it takes to go through the appeals process is by itself destructive of the capacity to have what Hamilton called as an active Chief Executive. He said that the system will only work with an active Chief Executive.

You can't be an active Chief Executive if you have a whole bunch of little pieces tying you up. This is a classic example of Gulliver and the local District judge who suddenly has blown themselves up in their own ego and decided I too could be President. I'll show you because I'm actually a superior President because you have to obey me. It's impossible to defend the situation.

Mr. FRY. In that circumstance—sir, I know I'm overtime here briefly. In that circumstance, you have 600 Presidents of the United States. Thank you, Mr. Speaker. With that I yield back.

Mr. ISSA. Thank you.

Gentleman from Wisconsin.

Mr. GROTHMAN. Yes, I don't like being here today. It's a sad state of affairs because you don't like to have to clip the wings of the judiciary or say that sometimes we don't have to obey a judge's order, which is I think where this is leading. We have a lot of judges who are reaching decisions that are just so completely out of line and where a lot of these decisions are going to revolve around immigration and removing people.

The only reason this has become such a big issue is that we had a President who decided to the degree which he could, he's not going enforce the immigration laws of the country. After you have a completely irresponsible President and completely irresponsible judges, you wind up in the mess we are today. Now, just to clarify things, I'll ask maybe Mr. Larkin, Speaker Gingrich.

Obviously, the country has been around now under our current Constitution for about 230 years about. What precedents from the early part of our country indicate an injunction should not be beyond parties directly involved in litigation? In other words, when Abraham Lincoln went to law school, what would he have thought about these decisions?

Speaker GINGRICH. Of course, Lincoln didn't go to law school.

Mr. GROTHMAN. You're right. I was going to correct myself.

Speaker GINGRICH. He read the law.

Mr. GROTHMAN. Right.

Speaker GINGRICH. I've been around long enough that I remember talking with Jefferson. When I talked to Jefferson, he said, "you simply can't have an oligarchy." If you allow judges to be the

final determinants, you by definition have left the people behind and established an oligarchy.

I really think if you look at Lincoln and if you read Fehrenbacher's extraordinarily detailed book on *Dred Scott*, Lincoln makes the *Dred Scott* Decision the centerpiece of the 1858 campaign. When Lincoln—he's very clear about this. Think about Lincoln at Gettysburg when he says Government of the people, by the people, and for the people, he's not only referring to Southern slave owners. He's referring to the court.

He's saying by definition, you cannot usurp the right of the elected officials. Now, if you read the *Federalist* Papers, it's very clear that the Founding Fathers thought the weakest of the three branches would be the Judiciary, that it would always be cautious because it would always be subject to be overwhelmed by the Executive and Legislative together. In fact, you all represent the branch the Founding Fathers most feared because they assumed that the people elected by the people would have the greatest power. We just have to recognize there's a—

Mr. ISSA. We said they were wise.

Speaker GINGRICH. I think they had good reasons to fear the institution I once led.

Mr. LARKIN. Can I just add a short supplement to that?

Mr. GROTHMAN. Sure. I'd like to say, did this issue ever come up in the 1840s, 1850s, 1860s, or 1870s?

Mr. LARKIN. No.

Mr. GROTHMAN. OK. It was just assumed it was understood at the time?

Mr. LARKIN. The law of equity was party specific. If Person 1 sued Person 2, the court would remedy whatever harm Person 1 suffered. The court would not then go on and enter an injunction to try to govern society. That was not the role of the courts.

The Supreme Court has even made that point more recently. They've said responsibility to adjudicate a case of controversy is quite different from the responsibility to govern the society. *Lewis* v. *Casey* which is cited in one of my articles makes this point. It was not a component of equity in England or as you put it in the 1840s, 1850s, or 1860s. It happened only much later.

Mr. GROTHMAN. OK. Now we're never supposed to—they tell us you're never supposed to ask the Democratic witness, but I'll break with my staff. Ms. Shaw, what do you think is the strongest example of a case, say, before 1870 in which a District Court tried to come up with a ruling that affected the whole country?

Ms. SHAW. We don't have examples that are of the sort of nationwide injunction that we know today. I don't think that's really in question. There's been an enormous increase. The scholarly debate about how kind of well—

Mr. GROTHMAN. OK.

Ms. SHAW. —how historically grounded this is. It goes back and forth. It's either about a century old or a little more. I don't think there's much suggestion that there were injunctions of this sort in the early—

[Simultaneous speaking.]

Mr. GROTHMAN. OK. That would be an indication that under our Constitution our Forefathers never dreamed we'd have these types

of rulings come from somebody who just it comes from an individual district. Well, I could tell Speaker Gingrich wanted to get in one more swing here. We'll let you get a swing and then I'll—

Speaker GINGRICH. What we have seen over the long sweep of American history is a gradual steady increase in the self-esteem and power of lawyers. *Marbury* v. *Madison*, is totally misrepresented. The fact is that Marshall was terrified of Jefferson, knew that the Jeffersonians would gladly wipe out the court, danced around.

It's not revisited until *Dred Scott*. *Dred Scott* is a disaster. You really have a long period here where judges didn't think they had the power to define for the country how the country should behave.

What we're living through and I'm very sympathetic to the agony on the Left because this is the—if you have Jefferson, Jackson, Lincoln, FDR, and Trump, this is the fifth great cycle of a profound challenge to the existing order. Obviously, these kind of periods are very painful and they're very dangerous. You've got to work your way through them.

This is one of the examples. You have a group of people, well meaning, I believe. Ideologically deeply convinced that they have the power to overrule the President of the United States.

Now, the country has to make a decision. Do we, in fact, have alternative Presidents in the form of District judges or not? The country will overwhelmingly decide that's impossible.

This is a classic—this is what the Congress should be about at its best. This is a classic historic discussion on both sides of how we retain a balance of power between the three branches. I think that's where we are.

Mr. GROTHMAN. Thank you.

Mr. ISSA. Thank you. We now go to the gentleman from Texas who's been patiently waiting.

Mr. GILL. Thank you, Mr. Chair. Thank you to the witnesses who are here. We discussed it a little bit earlier. I'd like to put a little bit of a finer point on it.

In the 117th Congress, then Chair Jerry Nadler as well as Hank Johnson introduced the Judiciary Act of 2021 which would've increased the size of the Supreme Court from nine Justices to 13. That bill had 59 Democrat cosponsors. They were so convicted that the size of the Supreme Court should be 13 Justices that they then reintroduced the same bill in the following Congress and received 65 cosponsors.

I am looking forward to my colleagues on the other side of the aisle reintroducing that bill this Congress as well. We hear a lot about bipartisanship. I'm sure you can get a little bit of bipartisan support for that when you do.

With that said, Mr. Chair, civilization is a very fragile thing. In the Western world, particularly in the United States, it's been unraveling as the Left and their allies in the courts have intentionally and deliberately facilitated the mass migration of criminal illegal aliens into our communities. These are people who are murdering, raping, and pillaging American citizens on American soil, a country that was once the zenith of civilization. America increasingly resembles the Third World and is reverting to barbarism as Ms. Romero's testimony so poignantly underscores.

Instead of fighting for the preservation of our communities and the integrity of our Nation's sovereignty, our colleagues on the other side of the aisle want to keep alien terrorists within our borders. So, many times District Court judges are leading the charge. I think that Judge Boasberg is an excellent example of that.

Mr. Speaker, thank you very much for being here. It's an honor to be able to speak with you and ask you questions. I look up to you a lot. Could you explain how much constitutional and legal authority does Congress have to oversee lower courts?

Speaker GINGRICH. Well, it has virtually—if it acts with the Executive Branch. Part of the theory of Montesquieu's spirit of the law which is the base of the Constitution is you have these three bodies. Any two outvotes the other one.

In a very real sense, the Congress and the Judiciary could take on the Executive, or the Judiciary, and the Executive could take on Congress. It's constantly evolving.

President Jackson made the argument that in fact each of us, every elected official, has an equal obligation to enforce the Constitution. He refused to accept the idea that the court could instruct him. He very blatantly just said, "Glad you think that. I don't."

Then Taney who was his Attorney General who defended that ends up as a Supreme Court Justice, in many ways, leading the civil war by his decision in *Dred Scott*. I think you have every right. If you read the Constitution itself, you create lower courts.

The Supreme Court is superior in the sense it's the one thing in the Constitution you could not eliminate except by a constitutional amendment. Everything below that is a creature of the Legislative Executive agreement. I'm assuming you're not going to try to override the President. Theoretically, Congress could decide. If it had the votes in the House and Senate, you can override a President.

Mr. GILL. Right.

Speaker GINGRICH. The courts are actually much more subject to the policing of the elected officials of the United States than they think they are. That's because for about three generations now law schools have taught this mythology of legal supremacy based on the Judicial Branch alone. It's nonsense. It's one of three co-equal branches, and it is the weakest of the three, not the strongest.

Mr. GILL. In terms of enforcing that oversight, putting aside whether impeachment is the most expeditious or prudent means right now to oversee the courts, do you believe that it should be at least considered as an option to remedy blatant or flagrant judicial overreach from District Court judges?

Speaker GINGRICH. Well, I think that Chair Issa has exactly the right first step. We're in the middle of such enormous change that this will strike some of you who've known my career as sort of unusual. I'm actually now in a period of thinking incrementalism may be pretty good.

We've actually set an enormous shift strategically. Now, we need to spend a little bit of time cautiously. I don't want to overreach, which theoretically you could abolish the District judges.

You have that power if the President agrees. That would be an enormous jump. The country needs to educate itself and frankly the judges are going to get educated.

If they see the Legislative Branch seriously moving, I mean, it's one thing that the President say something from the bully pulpit. It's another thing to suddenly see laws moving and realize if we don't pull back a little bit, this can become uncontrollable. I'm hoping—this is why today I've repeatedly talked about the opportunity the Chief Justice has because I really hope he'll realize he has the best, easiest, and least disruptive solution.

Mr. GILL. For the record, I agree that I think that Mr. Issa's bill is an excellent piece of legislation that we should all be able to get behind. Thank you.

Mr. ISSA. As a freshman, you're going to go far. The gentleman from Washington is recognized for five minutes.

Mr. BAUMGARTNER. Thank you, Mr. Chair. Thank you to our distinguished panelists for this insightful testimony and it's been a long day.

Mr. Speaker, it's a real honor to be able to ask you a few questions. When your freshman in this body, you see a lot of portraits on the wall. Frankly, you don't know who a lot of the people are.

The American people always remember you in the mark you've left on this institution. The question I have for you is just to comment on the situation the American people find themselves in because this is a very dangerous and perilous time for America. Because the American people think the fix is in.

You talk to the average person in my district, and they look at a situation where over 12 million people came into the country illegally and there was no remedy to stop that procedurally from their elected officials. Now, they look at a situation where after they had an election, they had a President that clearly campaigned on this issue. They look at dangerous gang members who spread fentanyl that's killed over 100,000 Americans, more than died in Vietnam, more than died in the wars in Iraq and Afghanistan.

They say, let's get these people out of here. This is what we just voted for. Yet, now there's a system where the one judge or a few judges in a certain area after judge shopping can stop.

They look at the situation and say, is there any remedy to this? What is the future of the Republic if what they just voted for is something as egregious, as dangerous, hardened gang members from a foreign country in the country legal spreading a deadly drug that is killing over 100,000 Americans? They say, well, how is this supposed to work? What would be your comment to these people?

Speaker GINGRICH. Well, three quick things.

First, I run a project called the America's New Majority Project. If you ask the American people, do you think the system is corrupt, 82 percent say yes.

Now, that's really dangerous in a free society. I don't care what your ideology or what your partisanship is. When more than eight out of every ten of your fellow Americans think the system is corrupt, you have a deep challenge to somehow break through really on a nonpartisan basis.

Second, President Lincoln once said, "with public sentiment, anything is possible. Without public sentiment, nothing is possible." It's very important for every judge who thinks they want to impose themselves on the President to ask themselves, are you putting the entire judicial system in disrepute?

Because if the country sees really sort of by the standards of most Americans fairly radical positions being taken by judges, blocking what is the clear will of the American people, not just the President. I think that it literally puts the entire underlying system under enormous stress and leads to popular dissatisfaction in a way that's very, very dangerous. The stability of the system ultimately requires that all of us find a way to work together to behave in such a way that people no longer think the system is corrupt.

Mr. BAUMGARTNER. Mr. Speaker, just finally you reference Thomas Jefferson, one of our Founding Fathers, one of the founding revolutionaries of this country, the author of the Declaration of Independence in your opening statement. I was able to visit the White House for the first time last week and got to meet President Trump there. As we came in, we exchanged some pleasantries and there was kind of a humorous moment because neither of us knew quite what to do because staff weren't telling us.

As we had this kind of moment of silence, then he said, "Well, can I show you the Declaration of Independence?" He turned around and showed it to me. It was on his wall, and he was very proud.

He just had it installed. So, it was kind of a fun moment as you can imagine for any American citizen, particularly a freshman Member of Congress. I hear you loud and clear.

I hope on what you think is the best remedy at this point is that Chief Justice Roberts steps in and brings some clarity and some sanity to the craziness right now. If he didn't and President Jefferson were sitting in the White House or the President right now, what do you think President Jefferson would do if Chief Justice Roberts wouldn't step in and help this issue?

Speaker GINGRICH. The Jeffersonians as a group were bitterly anti-judge. The No. 2 demand in the American revolution after no taxation without representation was their hatred of the British judges because they were appointed by the King, served at the King's convenience, and was seen as the oppressors imposing the law of a foreign government on the American people. Jefferson had grown out of that tradition.

Jefferson is probably the most radical of the Founding Fathers. The Jeffersonians ran essentially on cleaning up the judiciary. This is why the whole thing with Marshall is such a wonderful example of the sleight of hand because if you look at the Judiciary Act—in 1801, after they lose the election, the *Federalists* pass the Judiciary Act of 1801 which creates judges, many of whom were being appointed literally the night before Jefferson is sworn in.

They were called the Midnight judges. Well, the Jeffersonians thought, we're not going to have this. They write the Judiciary Act of 1802 and they wipe out—as I said in the beginning of my statement, they wipe out I think 16 of them, 14 of which were actually occupied.

I got into this because a good friend of mine who's a great lawyer said, "Those must've been vacant because after all, it's a lifetime appointment." No, we went back and pulled up the biographies. These 14 guys had to go out and get a job. They were gone.

Marshall knew you push Jefferson very hard, a guy who buys half a continent, sends the Marines to Tripoli. You really want to play this game? They didn't.

If you read *Marbury* v. *Madison*,, it's a brilliantly clever device in which he says, we really had this authority. You don't have to worry about it because we ain't going to give it to him. Marbury doesn't get his writ.

He tweaked Jefferson. He knew if he tweaked him too much, he would probably have replaced the whole Supreme Court. Jeffersonians were very tough about this stuff.

Jefferson also was very practical. I think what Jefferson would say is you've raised the issue. You've begun to get the country aware. You might consider as a first step Chair Issa's bill.

There may be—I'm not suggesting this. I'm responding to your question. It may be speculatively at some point that the most radical and dumbest of the decisions could lead to interrogatories to the judges, first in writing.

It might even be conceivable at some point that the judges might be brought in under oath to explain what's the—how did you think of this? What's the constitutional basis? Why are you doing this?

I mean, there are many ways one could pursue this. My hope is that the comments we've made here today will, in fact, move the Chief Justice to eliminate the problem and to get back to a situation where no single District judge is an alternative President and where we can have greater respect for the court system because the court system has greater respect for us.

Mr. ISSA. I thank you all. It's been a long day. Although my closing statement I'll read in a moment says this will be in writing just to make it easier for all of you, there are approximately 8,000 petitions to the Supreme Court every year.

Over the last three calendar years, the court has accepted 68, 62, and 62 of them. We've heard a great deal today about just appeal, just go through, and now what's clearly going to hit over 100 national injunctions, all whom would, according to Chief Justice Roberts, have to go to him through an appeal process. Even with Speaker Gingrich's suggestion, that would be 100 additional cases potentially in a year going to the Supreme Court in writing.

Because it has been a long day, to the extent that any of you want to opine on the question of the burden on the court that comes from these many, many, many national injunctions because we've talked about my bill here quite a bit today. We've also talked about impeachment quite a bit today. You're all welcome to opine on that in writing.

It's important that we also ask a lot of functional questions. The Ranking Member Johnson and I, we oversee the courts. We've moved again to this Congress on a bipartisan basis to add 66 new judges at the District level. We all have to be concerned about the case load of how do we get the right number of cases, how do we get them to the judges, how do we get good decisions, and ultimately, the burden that flows up to the Supreme Court.

So as my script now says, this concludes our hearing. I want to thank our witnesses. I would ask that all Members have five legislative days on which to give additional written materials for the

witnesses along with other material and would ask that the witnesses be willing to respond to those if they receive them.

Before I gavel, Ms. Romero, you weren't asked any questions to speak of today because you weren't a constitutional scholar. I'll leave to you the last word.

Ms. ROMERO. I'm worried that all the outrage following the illegal immigrants' rights and their right to be here, and they could be good people, and we need to have them properly vetted before we get them out of the country. Where was all the outrage before you let them in?

Where was all the outrage when my video happened? You got to save your outrage to when it's convenient to fight a President who's trying to make a positive change in the country. Where was all your outrage when I needed your help?

Because I feel like you guys have lost the plot and you're allowing harm to come to Americans in the pursuit of stopping President Trump. I don't think that's right and I don't think that it's fair. I don't think in the next election it'll stand.

Mr. ISSA. Thank you.

Mr. RASKIN. Mr. Chair—

Mr. ISSA. We stand adjourned.

[Whereupon, at 3:25 p.m., the Subcommittee was adjourned.]

All materials submitted for the record by Members of the joint Subcommittee on Courts, Intellectual Property, and the Internet; and the Subcommittee on the Constitution and Limited Government can be found at: *https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=118073*.

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