Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
At an Executive Business Meeting
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Good morning. Today, we are considering a piece of legislation and several nominations.

Before I turn to today's agenda, I'll say a few words about the Supreme Court vacancy. On Monday evening, the President announced his nomination of Judge Brett Kavanaugh to serve as an Associate Justice of the Supreme Court of the United States.

Judge Kavanaugh has a very distinguished record of public service, serving in the Executive Branch and as a judge on the D.C. Circuit. He is one of the most influential judges in the country. Twelve of his opinions have been adopted by the Supreme Court. That's a remarkable record.

But before the nomination of Judge Kavanaugh was even announced, liberal outside groups and some of my Democratic colleagues pledged to oppose any and all of the potential 25 nominees. Instead of being open to evaluating the nominee on the merits, these interest groups and their allies in the Senate announced a policy of pre-emptive obstruction. So we knew even before the nomination was made, these senators were going to oppose whoever it was.

The fact that not one of the 25 nominees was even worthy of their consideration says much more about them than any nomine.

It's clear that my colleagues have shown their hand. When we hear arguments from the other side to slow down the process, we know the real reason: blocking Judge Kavanaugh's confirmation by any means necessary. In fact, just this week, the Minority Leader, in the presence of every single one of the Democratic members of the Judiciary Committee stated "we must defeat Judge Kavanaugh's nomination."

Therefore, while I'm committed to a full and fair confirmation process, I'll view any complaints about the process with a healthy degree of skepticism. After all, those who will raise such complaints have already seemingly made up their minds on this nomination. It's kind of like a jury that has already found a defendant guilty, even before the defendant has had his day in Court.

I'll address a few of the groundless arguments we've heard so far. First, it's been said we shouldn't confirm a Supreme Court nominee during a midterm election year.

This is inconsistent with historical precedent. Two sitting justices—Kagan and Breyer—were confirmed in midterm election years. Many of their predecessors were as well. The Biden Rule, by its terms, applies only to presidential election years. Nominating a Supreme Court justice is one of the President's most important duties. The Biden Rule recognizes that the American

people should weigh in on *who* makes the nomination—the President. Because the President is not on the ballot, this logic doesn't apply in midterm election years.

Second, it's been said that the Senate shouldn't consider a nomination while Robert Mueller's investigation is ongoing. But this is also inconsistent with history. And frankly, this argument is silly.

Indeed, President Clinton, for example, nominated Justice Breyer while he was under investigation by the Independent Counsel.

In fact, the Independent Counsel had the President's documents under a grand jury subpoena. President Trump is not in such a precarious situation. By all accounts, he's not personally under investigation. And even if he were, what other constitutional duties do some of my Democratic colleagues demand that the President give up? I recognize this argument for what it is: a pretense advanced by those who are already opposed to Judge Kavanaugh's confirmation.

Third, some have said that Judge Kavanaugh doesn't believe a sitting President may be criminally investigated or prosecuted. This is false. In fact, it's the opposite of what he said. What Judge Kavanaugh wrote in a law review article is that *Congress* should pass a law to make the President *temporarily* immune from criminal prosecution while he's in office. This implies he believes the President *may* be investigated and prosecuted under current law. Moreover, a nominee's academic musings are not the law. Justices follow the law, including precedent.

I strongly urge my colleagues to stop misrepresenting Judge Kavanaugh's writing on this issue. I've heard my colleagues say that he believes the President is above the law. But his article states that he "strongly agrees" with the principle that no one is above the law in our system of government. The Washington Post calls the minority's claim an "extreme distortion." The Post gave this claim two Pinocchio's. And I think that is too generous.

I met with Judge Kavanaugh earlier this week. I hope all of you have the chance to do the same. And I urge you to keep an open mind about this highly accomplished, highly respected nominee.

Now, turning to today's agenda. We have several nominees on the agenda for the first today and the minority has requested they be held over. So, the following nominees will be held over:

- Marvin Quattlebaum, Fourth Circuit
- Julius Richardson, Fourth Circuit
- Roy Altman, Southern District of Florida
- Raul Arias, District of Puerto Rico
- Rodolfo Ruiz, Southern District of Florida

We intend to vote on Britt Grant to the 11th Circuit and David Porter to the 3rd Circuit today. Justice Grant is a well-respected judge and public servant. Since joining the bench, she has a clear record of being fair and impartial. In five different cases, she's ruled for criminal defendants

when she found their sentences did not match the law. In each case, she ordered the lower court to correct the errors.

Regardless of whether it is a criminal defendant or the State of Georgia, every individual is equal under the law when they come to Justice Grant's courtroom.

She also previously served as Georgia's Solicitor General and clerked for the DC Circuit. I have confidence she'll make an excellent appellate judge, and I look forward to supporting her nomination.

Regarding Mr. Porter's nomination, I understand that the minority is concerned that he didn't receive two positive blue slips from his home state Senators.

However, consistent with my blue slip policy, and the policy of most of the other Chairmen before me, I'll generally continue to hold hearings for Circuit court nominees who lack two positive blue slips when the White House has adequately consulted with home-state Senators.

One Senator generally doesn't have the right to block the other 99 of us from merely considering a circuit court nominee so long as the White House consulted that Senator.

In the case of Mr. Porter's nomination, the White House reached out to Senator Casey more than a year before making the nomination and suggested several potential names. Senator Casey evidently rejected all the suggestions but never proposed any potential candidates himself. Eventually, the White House needs to move forward with filling the vacancies, and because they tried to consult with Senator Casey, we are moving forward with his nomination today.

On the agenda today is S.2946, the *Anti-Terrorism Clarification Act of 2018*.

I was proud to introduce this bipartisan bill, which is co-sponsored by Senators Nelson, Rubio, Whitehouse, Cruz, Blumenthal, Tillis, Coons, Cornyn, and Hatch.

As most of you know, I was the lead sponsor of the Anti-Terrorism Act of 1992, or "ATA." For over 25 years, the ATA has helped fight international terrorism and provide justice to American victims.

Since then, however, terrorists and those who financially support them have tried to blow holes in the law and stretch its exceptions beyond what Congress ever intended.

S.2946 makes three needed clarifications so that American victims of terrorism can continue to seek justice in our nation's courts against terrorists and their supporters.

First, the bill clarifies the ATA's so-called "act of war" exception. It goes without saying, but Congress never intended that designated terrorist organizations could dodge liability for attacks that kill or injure Americans overseas by simply claiming this exception.

But some have twisted the exception to get away scot free. The "act of war" exception should not be a liability shield for designated terrorist organizations or their supporters. So, this bill makes clear that the exception *doesn't apply* to those designated by the U.S. government as foreign terrorist organizations.

Second, the bill permits victims of narco-terrorism to satisfy court-awarded ATA judgments with the assets of foreign drug kingpins. Assets blocked by the federal government under the Kingpin Designation Act currently are not available to victims to satisfy their judgments. This bill fixes that.

Third, the bill responds to recent federal court decisions that undermined the ability of American victims to bring terrorists to justice. The 1992 law was specifically designed to provide extraterritorial jurisdiction over terrorists who attack Americans overseas. Last year, I led an amicus brief—with 22 bipartisan Senators—to the Supreme Court in *Sokolow v. Palestine Liberation Organization*, reiterating the purpose and scope of the 1992 law.

But I was stunned when the Justice Department failed to stand up in that case for American victims of terrorism. This bill makes crystal clear that defendants who take advantage of certain benefits from the U.S. government—such as foreign assistance—will be deemed to have consented to personal jurisdiction in ATA cases. No defendant should be able to enjoy privileges under U.S. law, while simultaneously dodging responsibility for supporting terrorists that injure or kill Americans.

The bill is supported by thousands of veterans and Gold Star families. It's supported by groups like AIPAC, the Anti-Defamation League, American Jewish Committee, Christians United for Israel, the Endowment for Middle East Truth, the Jewish Institute for National Security of America, the National Council of Young Israel, the Orthodox Union, the Rabbinical Council of America, and the Zionist Organization of America. I have several statements of support that I'd like to include in the record, without objection.

The Committee also received a petition signed by over 50,000 Americans urging the bill's swift passage.

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