

Responses of Jesse Panuccio

to

Questions for the Record for Jesse Panuccio Hearing on “Rule by District Judges II: Exploring Legislative Solutions to the Bipartisan Problem of Universal Sanctions” Submitted April 9, 2025

QUESTIONS FROM SENATOR WHITEHOUSE

1. In your testimony, you said that nationwide injunctions “affirmatively flout several legal rules and norms.”
 - a. As part of any proceeding in federal court not involving a class action, have you ever requested a nationwide injunction, universal vacatur, or any other nonparty relief against the federal government?

Response: Consistent with the rules of professional conduct, I decline to comment on pending litigation for existing clients. But I expressed my general position in my written testimony at the 2020 hearing the Committee held on this topic:

“So long as Congress and the Supreme Court permit lower federal courts to issue non-party injunctions against the government, it is difficult to criticize any lawyer for seeking one on behalf of a client whose interests would be served by obtaining one. I will certainly do so if it is in a client’s interest. But, as I explain in this testimony, for the good of our legal system, it is my personal view that either Congress or the Supreme Court must soon address the issuance of non-party injunctions.”

A lawyer can argue for the application of current precedent and still believe that precedent is erroneous. Indeed, appellate judges sometimes join majority decisions applying binding precedent while issuing a concurring opinion explaining that they view the precedent as legally erroneous. *See, e.g., People for the Ethical Treatment of Animals v. U.S. Dep’t of Agric.*, 797 F.3d 1087, 1099 (D.C. Cir. 2015) (Millett, J., dubitante).

- b. If the answer to the above question is yes, please explain why you requested a court order that “affirmatively flout[s] several legal rules and norms.”

Response: Please see my response to Question 1(a).

- c. Do you believe that an attorney's duty to provide zealous advocacy permits requesting that a court take actions that "affirmatively flout several legal rules and norms"?

Response: Please see my response to Question 1(a).

- d. Have you ever expressed support for or approval of any nationwide injunction, universal vacatur, or any other nonparty relief issued against the Biden Administration?

Response: I do not recall every utterance I may have made relating to litigation challenging, enjoining, and/or vacating the various unlawful policies and practices of the Biden Administration. I do recall being relieved when various illegal, oppressive, and damaging Covid-era policies were invalidated by courts, so it is certainly possible I expressed general support for the underlying substantive conclusions in those cases. Of course, had Congress acted in 2020—when I last testified on this topic—to prohibit non-party relief, the relief referenced in this question would have been prohibited, and I would have had no objection to district courts being constrained to issuing appropriate relief.

- e. Do you believe that members of the Senate Judiciary Committee who, in their previous capacities as state attorneys general, sought or defended district courts' grants of nationwide injunctions or universal vacatur against the Biden administration "flout[ed] several legal rules and norms"?

Response: Please see my response to Question 1(a).

- 2. In your view, what is the proper remedy when a court declares a law to be facially unconstitutional?

Response: Assuming that "a court" refers to a federal district court, such a court's remedial powers are confined to the parties before it. That court may provide such parties a declaratory judgment (if requested) or an injunction (if requested).

- 3. During the hearing, Senator Schmitt said, "It's statistically impossible for Judge Boasberg to be getting the cases he's getting" and that "the appellate bar . . . know[s]" something is "wrong" with random case assignment among district court judges.
 - a. As a member of the appellate bar, do you agree with Senator Schmitt's statement that "[i]t's statistically impossible for Judge Boasberg to be getting the cases he's getting"?

Response: The topic of this hearing is “Rule by District Judges II: Exploring Legislative Solutions to the Bipartisan Problem of Universal Sanctions.” Accordingly, I have not prepared testimony regarding the statistical probabilities of judicial assignments on the United States District Court for the District of Columbia.

- b. As a member of the appellate bar, do you agree with Senator Schmitt’s statement that there’s “something wrong” with Judge Boasberg being assigned to major cases involving challenges to Trump administration actions?

Response: Please see my response to Question 3(a).

- 4. Senate Judiciary Republicans have introduced multiple bills to restrict or eliminate district courts’ authority to issue nationwide injunctions. The title of one of these bills is the “Restraining Judicial Insurrectionist Acts of 2025.”
 - a. Do you believe that judges who issue nationwide injunctions or similar relief are “Judicial Insurrectionists”?

Response: I am not aware of what is meant by the term “Judicial Insurrectionists.” As I explained in my testimony, my view of the “judicial Power” granted in Article III of the United States Constitution is that federal district courts do not have the legal authority to issue non-party relief.

- b. Please name a “Judicial Insurrectionist.”

Response: I am not aware of what is meant by the term “Judicial Insurrectionist.”

- 5. President Trump has issued executive orders against several law firms directing agency heads to cancel contracts involving those firms, limit those firms’ access to federal buildings, limiting federal government employees’ interactions with those firms, and prohibit the hiring of any employees of those firms.
 - a. As a member of the legal profession, do you think executive orders like these have a chilling effect on law firms’ ability to do business?

Response: The topic of this hearing is “Rule by District Judges II: Exploring Legislative Solutions to the Bipartisan Problem of Universal Sanctions.” Accordingly, I have not prepared testimony regarding the executive orders referenced in this question.

- b. As a member of the legal profession, do you think executive orders like these undermine the rule of law?

Response: Please see my response to Question 5(a).

- c. As a member of the legal profession, do you support government actions to punish lawyers or law firms based on those firms' clients?

Response: Please see my response to Question 5(a).

- d. As a member of the legal profession, do you support government actions to punish law firms based on former employees of those firms?

Response: Please see my response to Question 5(a).

- e. Would you object to a similar executive order targeting Bois Schiller Flexner based on its current or former clients?

Response: Please see my response to Question 5(a).

- f. Would you object to a similar executive order targeting Bois Schiller Flexner based on the identities of its current or former employees?

Response: Please see my response to Question 5(a).

- g. If the President could strip Bois Schiller Flexner's ability to appear in federal courthouses, how would this affect the firm's ability to represent its clients?

Response: Please see my response to Question 5(a).

- h. If the President could strip Bois Schiller Flexner's ability to enter other federal buildings or interact with federal government employees, how would this affect the firm's ability to represent its clients?

Response: Please see my response to Question 5(a).

Responses of Jesse Panuccio

to

Judiciary Committee Hearing: “Rule by District Judges II: Exploring Legislative Solutions to the Bipartisan Problem of Universal Injunctions”

Questions for the Record

Submitted April 9, 2025

QUESTIONS FROM SENATOR CORY A. BOOKER

Questions for Jesse Panuccio

1. In their confirmation hearings, several high-ranking Department of Justice officials suggested there are circumstances under which people bound by federal court orders can be ignore those orders.

- a. Should orders issued by a federal court always be followed?

Response: The topic of this hearing is “Rule by District Judges II: Exploring Legislative Solutions to the Bipartisan Problem of Universal Sanctions.” Accordingly, I have not studied, or prepared testimony regarding, the testimony of Department of Justice nominees at their confirmation hearings.

- b. Are there circumstances under which, if a government official has a moral disagreement with a court order, they can ignore that order or should they recuse themselves?

Response: Please see my response to Question 1(a).

- c. Is there such a thing as “rogue” judges whose orders should not be followed?

Response: Please see my response to Question 1(a).

2. During the hearing, Senators Whitehouse and Durbin discussed the worsening problem of threats to the safety of federal judges. In 2020, Judge Esther Salas of the United States District Court for the District of New Jersey was the target of an attack in which a person who had appeared before her in court went to her family home and fatally shot her son Daniel. A March 2025 New York Times article discussed serious threats made to federal

judges appointed by both Republicans and Democrats, including bomb threats and anonymous calls to dispatch police SWAT teams to home addresses.¹

- a. What are the impacts on our legal system if judges continue to be threatened by parties appearing in cases over which they are presiding?

Response: The topic of this hearing is “Rule by District Judges II: Exploring Legislative Solutions to the Bipartisan Problem of Universal Sanctions.” Accordingly, I have not prepared testimony regarding the broad topic of “the impacts on our legal system if judges continue to be threatened by parties appearing in cases over which they are presiding.” Confining the question to judges who have issued non-party relief, they should not be subject to threats of violence or acts of violence, as I explained in my testimony. Judges, however, as government officials with life tenure and tremendous power, are not exempt from criticism if they abuse that power. In my testimony, I explained as follows:

“The more life-tenured judges act like policymakers, the less confidence the public will have in federal courts. History has shown the American people have a stubborn tendency to demand a say in the rules that govern their lives. One of the virtues of our system is that we may rid ourselves of our elected officials every few years if we do not like them. But not federal judges. They have life tenure. And that lifetime share of the governing power means federal judges *must* be modest in their application of that power. Humility is a necessary judicial virtue. But, in recent years, the third branch has lost all sense of itself; it will either rediscover judicial humility or lose the support of the People and force a constitutional crisis. Of late, we have heard much about how criticism of judges can undermine respect for the judiciary. The judiciary itself frequently offers this warning in response to criticism. It is, no doubt, a very important point. But it is also incumbent upon a judiciary that wants to avoid the rough-and-tumble of politics to refrain from injecting itself into our nation’s political life by reaching beyond the cases and parties that come before it.”

- b. How does rhetoric by elected officials that delegitimizes the judiciary branch risk the likelihood of attacks?

Response: Please see my response to Question 2(a).

¹ Mattathias Schwartz & Abbie VanSickle, *Judges Fear for Their Safety Amid a Wave of Threats*, NY TIMES (Mar. 19, 2025) <https://www.nytimes.com/2025/03/19/us/trump-judges-threats.html>.