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Kate Shaw  
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June 26, 2025

Hon. Charles E. Grassley  
Chairman  
Senate Committee on the Judiciary  
Washington, DC 20510-6275

Re: Questions for the Record — June 3 Joint Sub-Committee Hearing

Dear Chairman Grassley:

Thank you for the invitation to testify at the June 3 hearing, “The Supposedly ‘Least Dangerous Branch’: District Judges v. Trump.” Following the hearing, I received Questions for the Record from Senator Booker. Below please find my answers to those questions (along with copies of the questions themselves) for inclusion in the hearing record.

**Questions for the Record for Professor Kate Shaw  
Submitted June 10, 2025**

1. The United States Constitution’s system of checks and balances was designed to allow each branch to hold the others accountable, not to threaten or undermine them. President Trump and members of his Administration have publicly targeted judges and their families by name or called for their impeachment when they’ve ruled against his policies—i.e., when they’ve served as a check on the executive.
  - a. Is this an unconstitutional overstep, violating the separation of powers?

The separation of powers is dynamic, not static, and a certain degree of friction between the branches is inevitable in a system in which each branch operates to check the power of the others. This means that criticism of judges, and even discussions of ways to limit judicial power through legislative mechanisms like jurisdiction-stripping or regulation of the power to issue nationwide injunctions, can

be both appropriate and constitutionally sound. So can criticism of some judicial conduct off the bench, in particular where that conduct raises serious concerns about ethics or impartiality.

But singling out individual judges based on the substance of their rulings, and extending such attacks to members of judges' families—in particular on social media platforms where such rhetoric can lead to threats of violence—is something entirely different. Such rhetoric appears designed to influence the outcome in individual cases outside of the judicial process, and to coerce or intimidate individual judges, rather than to check institutional power. And it seems likely that such attacks are related to the alarming increase in serious threats to federal judges in recent months.<sup>1</sup>

In addition, while impeachment is the constitutional mechanism for removing federal judges, the grounds for impeachment are limited to “Treason, Bribery, or other high Crimes and Misdemeanors.”<sup>2</sup> Judicial impeachments have been relatively uncommon since the founding, with just 15 judicial impeachments and 8 convictions.<sup>3</sup> Each of these historical impeachments responded to serious judicial misconduct: manifest unfitness for the bench; corruption; bribery; waging war against the United States.<sup>4</sup>

By contrast, the current discussions of judicial impeachment, and the actual impeachment resolutions that have been introduced in the House, focus almost exclusively on the content of judicial rulings.<sup>5</sup> Under any plausible account of the role of impeachment in our constitutional order, pursuing impeachment against district judges merely for handing down rulings against the administration would be a gross abuse of the impeachment power.

## b. What dangers does the delegitimization of the federal judiciary pose?

There is a fine line between healthy debates about the role and power of the federal courts in our constitutional order, and efforts to question the legitimacy of courts or the Supreme Court. Courts play an important but limited role in our constitutional scheme. At their best, they can serve both to make rights meaningful, and to facilitate commitments to popular sovereignty and self-rule. They have not always faithfully performed that role, and when they fall short, they can and should be criticized

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<sup>1</sup> Mattathias Schwartz, *Marshals' Data Shows Spike in Threats Against Federal Judges*, N.Y. TIMES (May 27, 2025), <https://www.nytimes.com/2025/05/27/us/politics/federal-judges-threats.html>

<sup>2</sup> Art. II § 4.

<sup>3</sup> Federal Judicial Center, *Impeachments of Federal Judges*, <https://www.fjc.gov/history/judges/impeachments-federal-judges>.

<sup>4</sup> *Id.*; see also *Judicial Overreach and Constitutional Limits on the Federal Courts*: Hearing Before the Subcomms. on Courts, Intellectual Property, Artificial Intelligence, and the Internet & the Constitution and Limited Government of the H. Comm. on the Judiciary. 119<sup>th</sup> Cong. (2025) (statement of Kate Shaw, Professor of Law, University of Pennsylvania Carey Law School). I also discuss some of these impeachments in *Impeachable Speech*, 70 EMORY L.J. 1 (2020).

<sup>5</sup> See, e.g., H.R. Res. 229, 119<sup>th</sup> Cong. (2025) (“Impeaching James E. Boasberg, United States District Court Chief Judge for the District of Columbia, for high crimes and misdemeanors”).

like any other government actor. But efforts to delegitimize courts raise real questions about courts' ability to perform their rights-protecting and democracy-enhancing function effectively.

2. Where is the line between criticism of court rulings by executive branch officials and coercive intimidation that threatens an independent judiciary?

Again, this is a line that may be difficult to discern but important. Certainly public attacks on judges' family members should normally be off-limits; so should impeachment threats or efforts predicated on nothing beyond judicial rulings.

3. In your view, what are the risks of having the U.S. Marshals Service under the control of the executive branch, when their primary mission is to protect the federal judiciary and enforce court orders?

The current location of the U.S. Marshals Service, within the executive branch, means that the lower federal courts are the only governmental institution whose security apparatus is subject to the direct control of another branch.

For that reason, Congress should seriously consider the pending bill that would move control of the Marshals Service from the executive branch to the judiciary. Such a move would ensure that the Marshals Service is able to focus on its core responsibilities of protecting federal judges and executing federal court orders.<sup>6</sup> It would also respond to something that has long been viewed as a structural weakness: the Marshals Service's dual accountability to both the executive and judicial branches.<sup>7</sup>

Moving the Marshals back to the judicial branch would be consistent with the original mission of the Marshals, who were not directly answerable to the Attorney General until 1969.<sup>8</sup> It would also align the security practices of the judicial branch with those of Congress<sup>9</sup> and the executive—with each branch in control of its own security arm.

4. How can we ensure the separation of powers is respected when the executive is in control of protecting a coequal branch, particularly one it disagrees with?

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<sup>6</sup> MARSHALS Act, S. 1873, 119<sup>th</sup> Cong. §2(b)(1)(A) (2025).  
<https://www.booker.senate.gov/imo/media/doc/marshalsact.pdfv>.

<sup>7</sup> U.S. Gov't Accountability Off., GGD-82-3, U.S. Marshals' Dilemma: Serving Two Branches of Government (1982), <https://www.gao.gov/assets/ggd-82-3.pdf>.

<sup>8</sup> *Id.* at ii.

<sup>9</sup> *See* 2 U.S. § 1966 ("Protection of Members of Congress, officers of Congress, and members of their families").

Ideally, a security apparatus within the executive branch would faithfully discharge all of its duties, including duties to protect the courts, regardless of the executive's agreement or disagreement with courts' rulings. But this administration has unsettled many long-standing practices of good faith, accommodation, and mutual respect that have long undergirded the separation of powers. For that reason, relocation of the Marshals Service would be more consistent with the proper functioning of the separation of powers.

Thank you again for the opportunity to testify earlier this month.

Very truly yours,

Kate Shaw