GEORGETOWN LAW

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

Re: Questions for the Record — January 7 Subcommittee Hearing

Dear Chairman Grassley,

Thank you again for inviting me to testify at the Subcommittee on Federal Courts, Oversight, Agency Action and Federal Rights' January 7 hearing, "Impeachment: Holding Rogue Judges Accountable." I have received Questions for the Record submitted by two members of the Subcommittee—Senator Whitehouse and Senator Welch. Please find below my answers to those questions (along with copies of the questions themselves) for inclusion in the hearing record.

I. Questions from Senator Whitehouse

1. During the hearing, Senator Cruz said "it makes it worse" if Chief Judge Boasberg "did not know" that non-disclosure applications he approved implicated records of Members of Congress.

   a. Do you agree?

I do not agree. Indeed, there are at least three different respects in which I believe that Senator Cruz is flatly incorrect:

First, it was standard practice at the time, as relayed not only in the letter this Committee received from the Administrative Office of the U.S. Courts on December 1, 2025, but in the Department of Justice Office of the Inspector General (OIG)'s December 2024 report, for the Department to seek NDOs based on applications that "relied on general assertions about the need for non-disclosure rather than on case-specific justifications." OIG Report at 4; 12/1/25 AO Letter at 2. An NDO application thus would not have identified the names of the individuals associated with the relevant phone numbers—nor would it have provided enough information about the account-holders for a judge to have reason to believe (or even suspect) that the

numbers belonged to Members of Congress, and might therefore implicate 2 U.S.C. § 6628.

Second, and speaking of § 6628, as that provision was written at that time, the obligations it created with respect to identifying phone records that belonged to Senators or their offices belonged *only* to the service providers themselves and the Senate Sergeant-at-Arms. Although the Department of Justice has since revised its internal policies so that NDO applications will *now* make clear that at least some of the records at issue belong to Members of Congress, that policy was revised in September 2024—well after the NDOs Chief Judge Boasberg signed here. Thus, not only was Chief Judge Boasberg unaware that the NDOs he approved related to records belong to Members of Congress, but the Department of Justice was under no statutory or regulatory obligation to inform him of the same.

Third, although Senator Cruz appeared to be skeptical that a federal judge would not aggressively push beyond the face of the application, it is worth reiterating that the records at issue pertained solely to "envelope" information relating to these phone records—not to the content of any communications undertaken on the affected devices. Ever since Edward Snowden disclosed the existence of the NSA's phone records program under section 215 of the USA PATRIOT Act, I've been an advocate for Congress to impose far more checks and protections before the government can obtain subpoenas (and NDOs) for comparable records. But as you know well, Congress has not meaningfully addressed those critiques—such that, as much as we might *all* prefer a legal regime in which judges were inclined and required to be more skeptical of these kinds of requests, there was nothing remotely unusual about Chief Judge Boasberg's handling of the requests on which Senator Cruz has been so focused. Were it otherwise, I would've expected the Senator and his colleagues to champion legislation that would limit the circumstances in which *all* federal judges are allowed to issue NDOs relating to call-record subpoenas. And yet, I'm unaware of any proposals to that end.

2. During the hearing, Professor Luther repeatedly referred to Chief Judge Boasberg's continued exercise of jurisdiction in *J.G.G.* v. *Trump* as "imaginary."

    a. Do you agree with that description?

Not only do I *not* agree with that description; in full candor, I find it offensive given the stakes. Even after the Supreme Court on April 7, 2025, stayed Chief Judge Boasberg's two temporary restraining orders in *J.G.G.*, the litigation continued along two distinct tracks—both of which remain very much live, and not "imaginary," as of today. I'll elaborate upon both of those tracks below, but the first—the habeas petitions on behalf of 137 Venezuelan nationals who were removed to CECOT in violation of Chief Judge Boasberg's TROs—reflects the very real plight of more than 100 non-citizens, for whom habeas relief from the D.C. district court was the only *possible* remedy. The Supreme Court's April 7 ruling, which held that non-citizens

detained *in the United States* needed to challenge their detention in the district of their confinement, obviously has no applicability to non-citizens held outside the jurisdiction of any district court. To refer to these proceedings as "imaginary" is to ignore those individuals' very real fate.

b. Please explain the current status of the *J.G.G.* case.

The habeas litigation remains ongoing. On December 22, 2025, Chief Judge Boasberg granted summary judgment to the petitioners and ordered the parties to come to an agreement on a means for facilitating the return of the individuals wrongly removed under the Alien Enemies Act consistent with the Supreme Court's decision in *Noem* v. *Abrego Garcia*, 145 S. Ct. 1017 (2025) (mem.). *See J.G.G.* v. *Trump*, No. 1:25-cv-766 (D.D.C. Dec. 22, 2025). That agreement has not yet been reached, but the matter remains very much alive before Chief Judge Boasberg.

Another feature of the *J.G.G.* case that remains very much live is Chief Judge Boasberg's investigation into whether any government officials can and should be held in contempt of court for their role in removing individuals in violation of Boasberg's March 15 temporary restraining orders. The case is currently in the D.C. Circuit (for the third time) on whether Chief Judge Boasberg has the authority to continue pursuing contempt proceedings. A divided panel of the court of appeals entered an administrative stay pausing those proceedings on December 12, 2025, and briefing on whether to issue a stay pending appeal (or a writ of mandamus to Chief Judge Boasberg) was completed on January 8, 2026. Thus, the next step should be the panel's ruling.

II. Questions from Senator Welch

1. The articles of impeachment introduced against U.S. District Court Chief Judge James E. Boasberg reference a decision he reached in *J.G.G.* v. *Trump*.

a. To your knowledge, has a federal judge ever been impeached for deciding that the President unlawfully issued an executive order?

To my knowledge, no. As I noted in my testimony, 15 federal judges and justices have been impeached in American history; none of the articles of impeachment in those cases related to such a ruling.

b. Do you believe the stated reasons for the articles of impeachment introduced against Judge Boasberg constitute high crimes or misdemeanors? Why or why not?

Even assuming the most one-sided, skewed version of the claims advanced by Senator Cruz and Professor Luther at the hearing on January 7, the worst that could possibly be said about Chief Judge Boasberg's conduct with respect to the Arctic Frost investigation is that "maybe he should have been more skeptical," albeit in a context

in which none of his colleagues would have been (or, historically, have been). As for the reasons relating to his handling of the *J.G.G.* case, the short and unequivocal answer is "no." Handling a highly sensitive, fast-moving case in which there's significant reason to believe that the government defied his rulings, Chief Judge Boasberg handled everything by the book.

c. In your view, is it prudent to impeach a judge solely based on a decision they reach in a case?

As I suggested in my written testimony and oral statement, not only is it deeply *im*prudent, but it would set a terrible precedent for the future of judicial independence in this country. As Chief Justice Roberts explained in March 2025, appeals, not impeachment, are the remedy for any case in which a district judge has issued a ruling with which we disagree—no matter how strongly our disagreements may be, nor how egregious the judge's errors may have been (which they weren't here).

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Thank you again for the invitation to testify, and for the opportunity to provide further information to the Subcommittee. Please don't hesitate to let me know if I can provide any additional assistance to you and your colleagues.

Sincerely yours,

Stephen I. Vladeck