

February 11, 2025

ABA condemns remarks questioning legitimacy of courts and judicial review

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CHICAGO, Feb. 11, 2025 — The American Bar Association condemns recent remarks of high-ranking officials of the administration that appear to question the legitimacy of judicial review and demand impeachment of a judge merely because the court did not agree with the government's position. These comments pose serious risks to our constitutional framework that separates power among three co-equal branches.

Last week, the administration lost a pretrial motion in a federal district court, which halted government efforts to gain access to Department of Treasury records including private records of many, if not all, U.S. citizens.

It is certainly not the first time an administration has not prevailed in a pretrial motion in one of thousands of cases it files or defends each year. There is no final judgment in this case and, in any event, the government can appeal in a manner it has done countless times over the years. The right to appeal is there for any party dissatisfied with a court's decision. It is also the right of every American and the government to criticize a decision made by the courts.

What is never acceptable is what was said by representatives of this administration, including the misleading assertion that judges cannot control the executive's legitimate power and calls for impeachment of a judge who did not rule in the administration's favor. It is also not acceptable to attack the judge making the ruling or try to interfere with the independence of the court.

These statements attack the legitimacy of judicial oversight just because a court's ruling is not what the administration wants in a particular case. It is a

fundamental cornerstone of our democracy that the courts are the protectors of the citizenry from government overreach. All lawyers know that judges have the authority to determine whether the administration's actions are lawful and a legitimate exercise of executive branch authority. It is one of the oldest and most revered precedent in United States legal history — *Marbury v. Madison*. This is a key principle that is taught in the first year of law school.

These bold assertions, designed to intimidate judges by threatening removal if they do not rule the government's way, cross the line. They create a risk to the physical security of judges and have no place in our society. There have also been suggestions that the executive branch should consider disobeying court orders. These statements threaten the very foundation of our constitutional system.

The ABA calls for every lawyer and legal organization to speak with one voice and to condemn the efforts of any administration that suggests its actions are beyond the reach of judicial review. We also call for condemnation and rejection of calls for the impeachment of a judge who did not rule in a certain way.

This is not the first time we have called out criticism and efforts to demonize the courts. The ABA spoke last fall during the previous administration and called out comments from both sides.

We recognize the potential risk to our profession, the ABA and our members, by speaking. But to stay silent is to suggest that these statements are acceptable or the new norm. They are not. And we will not be silent in the face of such words that are contrary to our constitutional system. They pose a clear and present challenge to our democracy and the separation of powers among the three independent branches. We will stand for the rule of law today as we have for nearly 150 years.

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