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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

May 11, 2022

VIA ELECTRONIC TRANSMISSION

The Honorable Merrick Garland
Attorney General of the United States
950 Pennsylvania Avenue NW
Washington, DC, 20530

Dear Attorney General Garland:

Since the unprecedented leak of a draft of the Supreme Court’s opinion in *Dobbs v. Jackson Women’s Health Organization*, I’ve watched this administration’s refusal to condemn the efforts to threaten and intimidate the justices with grave disappointment. I’ve waited for this administration to commit to protecting the justices from violence and to denounce the effort by far-left activists to undermine the independence of the judiciary and influence judges through protests at their homes. As the Ranking Member on the Senate Judiciary Committee, I have serious concerns about the safety of the justices and the attacks on our judiciary. I urge you to publicly commit to protecting the justices, and to condemn and prosecute anyone seeking to threaten and intimidate the Court into changing its decision.

Protesting and rioting near the Supreme Court or the justices’ homes to influence their decisions is illegal. 18 U.S.C. § 1507 states that anyone who “pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by [a] judge” “with the intent of influencing any judge . . . in the discharge of his duty . . . shall be fined under this title or imprisoned not more than one year, or both.”

It is beyond dispute that far-left activists have launched a concerted and coordinated effort to intimidate the Court into changing the draft *Dobbs* decision. As the *Washington Post* recently reported, “[p]rotestors outside Brett M. Kavanaugh’s house warned the Supreme Court justice this weekend, ‘If you take away our choices, we will riot.’”¹ Demonstrators outside Justice Samuel A. Alito’s home chanted “Abort the court!”² These are plainly efforts to bully the Court in response to the leaked *Dobbs* opinion.

¹ Marc A. Thiessen, *Protesting at Justices’ Homes is Illegal. What is Biden Doing About It?*, Wash. Post, May 10, 2022, <https://www.washingtonpost.com/opinions/2022/05/10/abortion-protest-supreme-court-justice-homes-brett-kavanaugh-samuel-alito-john-roberts-illegal/>; see also Rafael Sanchez-Cruz, *Pro-Choice Protests Outside Maryland Homes of Justices Roberts and Kavanaugh*, WUSA 9, May 8, 2022, <https://www.wusa9.com/article/news/local/protests/pro-choice-protests-outside-the-homes-of-justices-roberts-and-kavanaugh/65-eebbc2e2-7593-4eaa-9992-f34383a6544f>.

² See *id.*

But instead of investigating and prosecuting this illegal activity, the administration has been sadly dismissive of the threats and danger to both the justices and our judicial system writ large. The White House Press Secretary refused to characterize progressive activists targeting justices' homes with protests as "extreme."³ Instead, she explained that "the President's view is that there's a lot of passion, a lot of fear, a lot of sadness."⁴ Confusingly, she went on to say, "I don't have an official U.S. government position on where people protest."⁵

The Press Secretary's unwillingness to condemn threats of violence and intimidation does not change the law or what the official U.S. government position ought to be: protesting outside the homes of the justices to intimidate them into deciding a case a certain way is illegal.

The President may choose to characterize protests, riots, and incitements of violence as mere passion. But these attempts to influence and intimidate members of the federal judiciary are an affront to judicial independence. No fair-minded person can question that "such conduct inherently threatens the judicial process."⁶

The consequences of this administration's unwillingness to act have been predictable. Activists published the justices' home locations and announced plans to continue protesting outside of those justices' residences. The justices are limiting public appearances.⁷ Eight-foot fencing has been erected around the Supreme Court.⁸ According to news reports, "the nine Supreme Court justices have been given extra security since general threats of violence against the justices have increased." Targeted personal threats have increased too.⁹

As you yourself have said, "[t]hreats against public servants are not only illegal, they run counter to our nation's core values."¹⁰ Unfortunately, the American public has heard little from the Justice Department about threats against the public servants serving on the Supreme Court. After this administration chose to publicly and vigorously marshal the Justice Department's resources in response to a letter from the administration's allies on school boards, the tepid response to the demonstrations against the justices has been deeply concerning. It took this administration just five days to forcefully respond to a letter concerning the supposedly grave risk

³ *White House Daily Briefing*, C-Span, May 5, 2022, <https://www.c-span.org/video/?520018-1/jen-psaki-congratulates-incoming-white-house-press-secretary>.

⁴ *Id.*

⁵ *Id.*

⁶ See *Cox v. Louisiana*, 379 U.S. 559, 566, 85 S. Ct. 476, 481, 13 L. Ed. 2d 487 (1965) (discussing crowds demonstrating near a courthouse and upholding the constitutionality of a state law based on 18 U.S.C. § 1507).

⁷ See, e.g., Nate Raymond, *Exclusive: U.S. Supreme Court's Alito cancels conference appearance after abortion ruling leak*, Reuters, May 5, 2022, <https://www.reuters.com/legal/government/us-supreme-courts-alito-cancels-conference-appearance-after-abortion-ruling-leak-2022-05-04/>.

⁸ Ed O'Keefe, *Supreme Court justices get increased security after Roe v. Wade leak: "The risk is real"*, CBS News, May 6, 2022, <https://www.cbsnews.com/news/supreme-court-justices-security-roe-v-wade-abortion/>.

⁹ *Id.*

¹⁰ Cf. Attorney General Merrick Garland, Justice Department Addresses Violent Threats Against School Officials and Teachers, Oct. 4, 2021, <https://www.justice.gov/opa/pr/justice-department-addresses-violent-threats-against-school-officials-and-teachers>; <https://www.justice.gov/ag/page/file/1438986/download>.

posed by parents seeking to have a say in how their children are taught in schools.¹¹ The serious threats to the Supreme Court demand no less of a robust response.

This administration's response also fails to recognize the foundational interests protected by 18 U.S.C. § 1507. First, the law addresses real concerns about the increased threats of physical harm to a judge and the risks that the judicial process could be influenced by protests and demonstrations. Second, it is directed at countering the pernicious effect that the public could believe that one side in a dispute has resorted to mob tactics to win a case that they could not through the legal process.

A fair and just judicial system cannot abide "influence or domination by either a hostile or friendly mob. There is no room at any stage of judicial proceedings for such intervention; mob law is the very antithesis of due process."¹² It should surprise no one, then, that the government is authorized to take measures to assure that judicial proceedings are not influenced by outside forces. Such protections are "obviously a safeguard both necessary and appropriate" to meet that goal.¹³

The Justice Department has been charged with protecting the integrity of the judicial process through this criminal statute. "[U]nhindered and untrammelled" courts are "part of the very foundation of our constitutional democracy."¹⁴ After all, as you have said, there cannot be "one rule for Democrats and another for Republicans; One rule for friends and another for foes; One rule for the powerful and another for the powerless; One rule for the rich and another for the poor; Or different rules depending upon one's race or ethnicity."¹⁵ "The success of the Department of Justice depends upon the trust of the American people. That trust must be earned every day."¹⁶ You need to take prompt and decisive action to earn that trust by committing to protecting the justices and the integrity and independence of the Court.

Sincerely,



Chuck Grassley
Ranking Member
Judiciary Committee

¹¹ Letter from the National School Boards Association to President Joseph R. Biden (Sept. 29, 2021), available at <https://s3.documentcloud.org/documents/21094557/national-school-boards-association-letter-to-biden.pdf>.

¹² *Cox*, 379 U.S. at 562 (citing *Frank v. Mangum*, 237 U.S. 309, 347 (1915) (Holmes, J., dissenting)).

¹³ *Id.*

¹⁴ *Id.* at 562.

¹⁵ Merrick Garland, Remarks to DOJ Employees on His First Day, (Mar. 11, 2021), available at <https://www.justice.gov/opa/speech/attorney-general-merrick-garland-addresses-115000-employees-department-justice-his-first>.

¹⁶ Memorandum from the Attorney General to All Department Personnel (July 21, 2021), available at <https://www.justice.gov/ag/page/file/1413766/download>.

CC: U.S. Attorney for the District of Columbia
U.S. Attorney for the Eastern District of Virginia
U.S. Attorney for the District of Maryland