Dear Acting Attorney General Boente and Acting Solicitor General Francisco:

We are lawyers who practice regularly in the Nation’s federal trial and appellate courts or have served as law clerks on the Supreme Court of the United States and other U.S. appellate and district courts.

An independent federal judiciary, in which judges have the power to decide cases and controversies that come before them and to interpret and apply the law in their best judgment, is a hallmark of our American constitutional structure. It is crucial to our system of checks and balances and furthers the interests of democracy.

We are writing to express our deep concern regarding President Donald Trump’s public criticism of Judge James L. Robart in connection with a matter pending before Judge Robart, State of Washington et al. v. Trump, et al., (W.D. Wash., Case No. C17-0141JLR ), in which the President, in his official capacity, is a party.

Judge Robart issued a legal ruling on February 3, 2017, restraining the operation of certain provisions in the President’s January 27, 2017 Executive Order concerning travel restrictions on entry into the United States. Judge Robart reached his determination after considering the evidence and written legal arguments and after hearing oral argument by all parties. Feb. 3 Order at 1-2.

Judge Robart determined that he had jurisdiction, that the States of Washington and Minnesota were likely to succeed in showing that the Executive Order would cause irreparable harm, and that the States also were likely to succeed on the merits of their claims that portions of the Executive Order are unlawful. Feb. 3 Order at 4.

President Trump reacted to this ruling with a tweet referring to Judge Robart as a “so-called judge,” calling the Feb. 3 Order “ridiculous,” and asserting that the ruling will be overturned.

The President’s tweet is a personal attack on a sitting federal judge based on a substantive disagreement on a legal issue in a case in which the President himself is a party. Personal attacks
of this sort are not befitting our Nation’s Chief Executive, especially in referring to a member of a co-equal branch of our government.

Judge Robart was nominated by President George W. Bush, and was confirmed by the Senate 99-0. He has served with distinction as a federal district court judge in Washington since 2004. There is no basis for the President’s suggestion that Judge Robart, in issuing his Feb. 3 Order, did anything other than decide the matter before him to the best of his ability. The President’s statement is reminiscent of a personal attack that Donald Trump as a candidate for office made against Judge Gonzalo Curiel during the presidential campaign. Such personal attacks—particularly to the extent they suggest that any judicial action against the President’s initiatives will trigger a personal and vindictive response—are a wholly inappropriate assault on the independence of the judicial branch and the values of our Constitution.

We strongly value our country’s system of federal trial and appellate courts, with judges who have been nominated by a President and confirmed by the Senate. Our federal appellate circuit courts review decisions of the trial courts of each district of the United States. The circuit courts have the power to determine if a district court judge’s legal rulings are right or wrong and to reverse any such ruling when an error of law affects the outcome. If a party, including the President, disagrees with a ruling of a district court judge, that party can seek review in an appellate court; if the party remains unsatisfied, the party can ask the Supreme Court to review the case. It is that process on which individuals, corporations, and government officials rely for the fair administration of justice. But in our system of government, we should not abide the most powerful executive official in the country demeaning and disparaging the judiciary through personal attacks on a sitting federal judge.

Because judges are ethically constrained from responding directly to such conduct, we feel it is necessary for the legal community to speak up on the matter and call, in as clear a voice as possible, for the President to retract his comment and to refrain in the future from personal attacks on judges in all matters. We ask that you please advise the President to do the same.

Sincerely,
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