

# A LETTER FROM MEMBERS OF THE SOUTH CAROLINA BAR

April 24, 2025

In re: Attack on the Rule of Law by the U.S. Government

To Members of the Bench, Bar, and Public We Serve:

We the undersigned members of the South Carolina Bar write to record our dissent, show solidarity with colleagues of good faith serving on the bench and in government service, and to explain to the public the crisis precipitated by the U.S. Government's attack on the rule of law in the United States of America. We write to specifically address two matters that are foundational to the U.S. Constitution and our profession.

*First*, we cannot remain silent over the U.S. Government's arrest and rendition of persons in the United States for imprisonment in a foreign country without the due process of law. We acknowledge the possibility that some of the 261 individuals being held in an El Salvadoran prison may have, in fact, committed crimes or been subject to removal. However, the Constitution required that they receive notice and an opportunity to challenge their removal in court. They received neither.<sup>1</sup>

The government has made plain that it does not intend to give these individuals the process they are due. This is illustrated by the case of Kilmar Abrego Garcia whom the government conceded was erroneously removed in contravention of a federal court order. The government has been ordered to facilitate Mr. Garcia's return, and the U.S. Supreme Court upheld that order in a unanimous opinion.<sup>2</sup> That should have been the end of the matter. Instead, the government professes an inability to retrieve Mr. Garcia now that he is outside U.S. territory.

As the U.S. Court of Appeals for the Fourth Circuit explained in refusing to pause the district court's order requiring Mr. Garcia's return:

It is difficult in some cases to get to the very heart of the matter. But in this case, it is not hard at all. The government is asserting a right to stash away residents of this country in foreign prisons without the

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<sup>1</sup> *Trump, et al. v. J.G.G., et al.*, 604 U.S. \_\_\_, Split Op. at 3 (April 7, 2025).

<sup>2</sup> *Noem, et al. v. Garcia, et al.*, 604 U.S. \_\_\_ (April 10, 2025).

semblance of due process that is the foundation of our constitutional order. Further, it claims in essence that because it has rid itself of custody that there is nothing that can be done.

This should be shocking not only to judges, but to the intuitive sense of liberty that Americans far removed from courthouses still hold dear.<sup>3</sup>

The unlawfulness of these actions is underscored by another case<sup>4</sup> where a federal court found probable cause to hold the government in contempt for violating an order to pause the removal of the accused gang members until a hearing could be held on their claims. Instead of abiding the court's ruling and arguing its case in court, the government ignored the order and proceeded with the removals.

The government's actions are an emergency for the rule of law. We reject the proposition that our government can defy the courts and refuse to correct its errors by citing the extraterritorial status of the person unlawfully removed. If the government's actions stand, it is only a matter of time before it uses rendition tactics to remove U.S. citizens to a foreign prison. During an April 14, 2025, meeting with President Nayib Bukele of El Salvador, President Trump stated: "The homegrown are next, the homegrown. You've got to build about five more places." We take President Trump at his word.

*Second*, we stand in solidarity with colleagues fighting executive orders that retaliate against law firms who represent clients with whom the government disagrees. Our oath as lawyers obligates us to zealously advocate for our clients. Because the right to legal counsel is critical to protect all other rights guaranteed by the Constitution, the need for it is most present when the client is adversarial to the government.

Executive orders that cancel contracts with targeted law firms and their clients are an attack on the right to counsel. They seek to chill the exercise of professional ethics and judgment when deciding whether and how best to represent a client and force lawyers to weigh whether the representation would displease the government. This undermines the integrity of our legal system.

Regrettably, some law firms have acquiesced and pledged their professional skills to represent clients and causes that the government decides are favorable as means of avoiding retribution. We believe this bargain is deeply misguided, which is why we are heartened by the four law firms fighting the executive orders in court and the more than 800 law firms and lawyers who signed onto an amicus brief supporting these firms. We too stand with these colleagues.

Our oath as lawyers obligates us to "preserve, protect and defend the Constitution of this State and of the United States." The constitutional guarantees of process before a neutral magistrate

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<sup>3</sup> *Garcia, et al. v. Noem, et al.*, No. 25-1404 (4th Cir., April 17, 2025).

<sup>4</sup> *J.G.G., et al. v. Trump, et al.*, C.A. No. 1:25-cv-00766 (JEB) (D.D.C.).

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and legal counsel of one's own choosing are foundational to our system of ordered liberty. The government's attack on these rights is a present danger to the rule of law we are sworn to uphold such that we cannot remain silent.

*To our colleagues serving on the bench or as lawyers employed in government service, we stand with you in all efforts to uphold the Constitution and protect the rule of law. We do not ask you to join us as signatories below because the duty of serving in your respective offices requires your independence until called upon to act in cases and controversies. Take courage that when the Constitution requires you to exercise the prerogatives of your office in the defense of our rights and liberty, we stand with you.*

*To the public we serve, we have diverse views about the Constitution, its meaning, and our laws. We have argued with and against one another in the service of our clients. That is what our system requires of us. But we are unified in our belief that the Constitution places limits on government power to guard our most basic freedoms and that the government's conduct here presses far beyond what the Constitution allows.*

We feel compelled to speak out because a threat to your rights is a threat to us all. As the court of appeals explained, "If today the Executive claims the right to deport without due process and in disregard of court orders, what assurance will there be tomorrow that it will not deport American citizens and then disclaim responsibility to bring them home?"<sup>5</sup> The obligation to preserve, protect, and defend the Constitution requires that we act and share this warning. We support your efforts to do the same and urge you to make your voices heard as well.

Respectfully,

[email [signup@sclawyersforlaw.com](mailto:signup@sclawyersforlaw.com) to add your name]

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<sup>5</sup> *Garcia, supra*, Order, 5.