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March 18, 2021

Patricia S. Connor, Clerk
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, VA 23219

Via CM/ECF

Re: *District of Columbia et al. v. Trump*, No. 20-1839
In re: Donald J. Trump, No. 18-2486

Dear Ms. Connor:

On behalf of Donald J. Trump in his individual capacity, we write in response to the letter sent by counsel for the District of Columbia and Maryland yesterday. We disagree with the letter's claim that there is "tension," let alone "direct conflict," between this Court's recent orders in the above-captioned cases. Nor do we think the Supreme Court's directions to this Court can reasonably be construed to permit any resolution in the District Court other than vacatur of all orders and opinions.

To begin, there is no tension between the orders. The Supreme Court's January 25 order instructed that this case be dismissed as moot under *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950). The Supreme Court has made clear that vacatur of appellate judgments in such cases "of course" requires "the consequential vacation of the underlying judgment of the district court." *U.S. Bancorp Mortg. Co. v. Bonner Mall Partnership*, 513 U.S. 18, 28 (1994); *see also id.* at 23 (noting that "vacatur must be decreed for those judgments whose review is, in the words of *Munsingwear,* 'prevented through happenstance'—that is to say, where a controversy presented for review has 'become moot due to circumstances unattributable to any of the parties.'" (citing *Karcher v. May,* 484 U.S. 72, 82 (1987)). The Order in No. 20-1839 thus made explicit that which was implicit in the order in No. 18-2486, and which is compelled by the Supreme Court: the decisions below must be vacated.

Nor is it true that this Court lacked the power in No. 20-1839 to order vacatur of the district court's prior decisions in No. 18-2486. These proceedings all originated from the same district court case—indeed, the same Amended

Complaint—and the President's individual-capacity appeals raised and sought reversal of rulings the Court made as to the President in his official capacity, such as whether Plaintiffs had the necessary standing to enforce the Emoluments Clause. *See* Doc. 12, No. 20-1839 at 13-23; *see also* Doc. 26, No. 18-2488 at 13-20, 34-46. Because the district court's prior decisions addressed these points and were part of the individual-capacity appeal, the Court plainly had authority to dispose of them in No. 20-1839. But ultimately this does not matter, since vacatur of the proceedings below is the proper disposition of this case under *Munsingwear* and its progeny.

Respectfully submitted,

/s/ William S. Consovoy
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