

NINA MOINI: Legal experts from around the country are convening at the University of St.

Thomas tomorrow to explore the constitutional questions that came out of this winter's surge of federal agents to Minnesota. The event looks at the power and limitations states have to hold the federal government accountable for any unlawful actions. We're joined now by University of St. Thomas law Professor Rachel Moran. She'll be moderating a panel during the event. She was part of shaping the event, and you've helped us out many times before with explaining a lot of things to us. We really do appreciate your time, Professor.

RACHEL MORAN: Of course. Thank you for having me.

NINA MOINI: You may have heard our earlier segment. We're just learning about some of this breaking news in the last hour, the Department of Justice announcing a filing a complaint against several Minnesota judges, alleging that they made improper or unethical comments to *The New York Times* about cases that came before them during the height of the surge. I know that Judge Patrick Schiltz is going to be at the event tomorrow. He's one of the folks named. What's your reaction to this latest move from the DOJ?

RACHEL MORAN: Yes, I just came out of class and saw that. I glanced at the complaint. I can't say too much because I haven't had a chance to think about it thoroughly, but the one thing I will say is that the DOJ has done something like this quite a few times in the past year, and by something like this, I mean trying to potentially retaliate against or make-- discourage people from doing things that are publicly critical of their actions.

So we've seen that with protesters and other observers who end up getting charged with things like impeding federal agents, most of those charges later get dismissed. We've seen the DOJ publicly complain about other judges who made decisions in immigration cases they didn't like. And now we're seeing that with the judges who spoke up in Minnesota.

NINA MOINI: Yeah, and I should just repeat because we're a little later in the program that Judge Schiltz did release a statement as well saying that-- that he-- it was OK that it was emphasized in an opinion by the courts to speak and write on core judiciary matters such as advocacy for the rule of law and judicial independence. And then he goes on to say that's exactly what I did. So just wanted to make sure that we read that response as we're still gaining more information. This is developing.

But this is central to what you're going to be talking about at this event. It's the idea of checks and balances and when are people going too far and how do we hold accountable those who have the most power among us. Tell me a little bit about how the event came together.

RACHEL MORAN: Yeah, that's a great summary of what the event is. In terms of how it came together, our law journal, which is student run but also takes advice or direction from faculty advisors, chose to host an event this fall on reflections from Operation Metro Surge, and I think part of the thinking was enough time has passed that we're-- we've had some time to reflect, legal scholars have had time to examine some of these really complex legal issues that arose out of it, but it's still close enough in time that it's very much on people's minds. The DOJ and Homeland Security are still conducting searches all over the country although in a quieter fashion.

And so these are really important legal issues. Were the right city to be hosting a convening like this because we were the subject of the largest deployment. And there's fantastic experts from all over the country who are coming.

NINA MOINI: Are there some central questions that you can just state that you're going to be tackling because I think what was alarming for people throughout-- among many things throughout Operation Metro Surge was that we heard a lot from officials at the state level and city level, county level saying, well, we don't feel like we can do anything about x, y, or z. Well, we just don't have the authority to, and everyone was left very confused about how checks and balances can occur. So I'm just wondering what are your thoughts or what are the central questions you hope to be able to try to answer?

RACHEL MORAN: So the two big areas that we're diving into are can states or even private actors sue the federal government. So that's-- there's a panel called state civil law remedies. That's about filing lawsuits. And then there's another panel, the one I'm moderating that's about when and whether states can prosecute federal agents. And that last piece, the idea of can you actually file charges, state criminal charges against federal agents, I think is where the most confusion has arisen.

The Trump administration repeatedly and incorrectly claimed that federal agents are completely immune from state prosecution, and as you alluded, a lot of people were just confused. They just don't know because this isn't a topic that has come up a whole lot over the years.

NINA MOINI: Mmm hmm. And just building on what you're talking about, Hennepin County as an example in the state have had to sue to remind folks we've been following this to extradite ICE agent Cristian Castro. They had to sue to get evidence in three shootings, two of them fatal, of course, that took place. So what does this bring to light about the challenges states may be facing?

RACHEL MORAN: Well, I think their challenges they're not used to facing. Historically we do have a fairly collaborative history between federal and state law enforcement agencies. And so when that calculus suddenly changes and the federal government is actively preventing states from, for example, gathering evidence like they did here in Minnesota, states are confused. They're not necessarily equipped, especially local county attorneys. That's not the first thing they tend to have expertise in is can we prosecute federal agents or can we sue for evidence.

And so they are-- we have a federalist form of government, and that's something that raises a lot of complex issues about who has power, state or federal government. And that's really what we're exploring a lot tomorrow, but we are hoping to provide specific answers to the questions like can the states prosecute, can the federal government withhold evidence.

NINA MOINI: So it sounds like you're going to be talking-- and this makes sense-- a lot about what is possible within the framework of the laws as they're currently written. Is there a conversation here in your space or is there another space for talking about any changes to language perhaps in laws or loopholes that could be closed or ways to ensure more effective checks and balances? Is that part of the conversation at all?

RACHEL MORAN: I think it is a little bit. I actually have been doing quite a lot of research on how do we change the laws to make this issue of collaboration more clear and simpler for agencies to follow. But tomorrow-- I'm sure that will come up tomorrow as well, but I think the primary focus is on helping people understand what are the laws currently and how do states actually have power that they might not realize they have.

NINA MOINI: And I don't what's going to happen. We all don't exactly what's going to happen, but a lot of people have talked about if something like Operation Metro Surge happens again, if something like this happens again. Was part of the planning for this in case of another series of events like before, or is it more about just what's currently going on within the country? What are you hearing from other states?

RACHEL MORAN: I think a lot of states are looking to Minnesota to say, oh, now we just had a shooting by an ICE agent. What do we do? The knee jerk response a year ago might have been we can't do anything, and now they're learning actually there are things we can do.

It's hard. There are many obstacles, but they're looking for more information. And so we want our symposium. It is a national convening of both practitioners and academic experts. We want our symposium to be useful information, not just here, although that certainly matters to me, but also to people all over the country who might experience similar complicated legal issues and need to what to do.

NINA MOINI: Professor Moran, thank you so much for your time as always. I wish you well with the event.

RACHEL MORAN: Thank you so much.

NINA MOINI: That's University of St. Thomas professor Rachel Moran.