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Trump lashes out at judiciary over immigration ruling

President Trump escalated his war of words with the American judiciary Wednesday in an extraordinary exchange of statements with John Roberts, the chief justice of the Supreme Court. The public clash with the highest official of what is, under the US Constitution, an independent branch of government, underscores the increasingly dictatorial and fascistic character of the Trump administration.

The latest conflict began on Monday evening, when Judge Jon S. Tigar, a federal judge for the Northern District of California, based in San Francisco, ruled that the Department of Homeland Security acted illegally when it instituted a new policy of refusing to accept asylum applications from immigrants who had crossed the US-Mexico border illegally.

Tigar ruled late Monday that federal law clearly states that migrants can seek asylum anywhere on US soil, however they enter the country, and are not limited to applying at entry points designated by the Department of Homeland Security. The DHS entry points are overcrowded and frequently inaccessible. “Whatever the scope of the President’s authority, he may not rewrite the immigration laws to impose a condition that Congress has expressly forbidden,” the judge wrote in a 37-page opinion.

The temporary restraining order by Judge Tigar, an Obama appointee, remains in effect until a December 19 hearing, when the court will hear arguments on making the injunction permanent. Under the terms of the order, migrants can apply for asylum as they have for decades, no matter where or how they enter the country. Four immigrants’ rights groups

brought the lawsuit against the new asylum policy as soon as it was issued on the eve of the election. The American Civil Liberties Union argued the case before the court.

On Tuesday Trump erupted in rage against the decision. “This was an Obama judge. And I’ll tell you what, it’s not going to happen like this anymore,” the president tweeted. “Everybody that wants to sue the United States, they file their case in—almost—they file their case in the 9th Circuit. And it means an automatic loss no matter what you do, no matter how good your case is.” He concluded: “We will win that case in the Supreme Court of the United States.”

The 9th Circuit Court of Appeals covers most of the western United States. It is perfectly natural that many immigration cases come before the lower courts in this region, which has the largest number of immigrants of any region in the United States, and includes two of the states bordering on Mexico, California and Arizona.

Trump followed with a further denunciation of the 9th Circuit, one of the more liberal appeals courts. “Every case in the 9th Circuit we get beaten and then we end up having to go to the Supreme Court like the travel ban and we won.”

These statements provoked an unprecedented public conflict with Chief Justice John Roberts, who went out of his way to respond to an inquiry from the Associated Press on his reaction to the criticism of Judge Tigar as an “Obama judge.”

“We do not have Obama judges or Trump judges, Bush judges or Clinton judges,” Roberts said in a statement released by the court’s public information office. “What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them. That independent judiciary is something we should all be thankful for.”

Trump immediately responded via Twitter, writing, “Sorry Chief Justice John Roberts, but you do indeed have ‘Obama judges,’ and they have a much different point of view than the people who are charged with the safety of our country. It would be great if the 9th Circuit was indeed an ‘independent judiciary’ ...”

He continued his attack on the 9th Circuit, saying “a vast number” of its rulings on border and security issues are overturned. “We need protection and security - these rulings are making our country unsafe! Very dangerous and unwise!”

Roberts did not issue any further statement, but the public exchange has no precedent in American politics. It follows a series of judicial decisions overturning actions taken by the White House or other executive branch agencies. These include:

- The ruling on November 16 by US District Judge Timothy Kelly, a Trump appointee, overturning the White House decision to revoke the press credentials of CNN reporter Jim Acosta after he asked a question at a presidential press conference critical of Trump's attacks on immigrants.
- The ruling by another federal district court judge, Brian Morris in Montana, overturning the Trump administration's decision to green-light the Keystone XL pipeline from Canada to the US Gulf Coast, on the grounds that the administration had violated the legal requirement to present a "reasoned" explanation for its action.
- The ruling Tuesday by a federal district court judge, Mark Goldsmith, in Detroit, that the federal government must release 110 Iraqi immigrants now held in detention, no later than December 20, so they can be reunited with their families before the Christmas holidays. Most of the Iraqis are Christians who fear repression or attacks by groups like ISIS. The judge cited "demonstrably false statements to the Court designed to delay the proceedings."

Wednesday saw another demonstration of Trump's efforts to subordinate the judicial process to the direction of the White House. The *New York Times* published a front-page report detailing Trump's demands last spring that the Department of Justice and the FBI bring criminal charges against two of his political opponents—former Secretary of State Hillary Clinton, the Democrat whom he defeated in the 2016 presidential election; and former FBI Director James Comey, whose firing by Trump triggered the appointment of special prosecutor Robert Mueller to investigate allegations that the Trump entourage colluded with Russia during the presidential campaign.

According to the *Times* account, which has gone essentially without rebuttal from either the White House or Trump's media defenders like Fox News, Trump asked White House counsel Don McGahn to order the Justice Department to prosecute Comey for leaking classified information to the *Times*, although the information he leaked to the newspaper was not classified. Trump wanted Clinton indicted on charges that as secretary of state she had backed the sale of a US uranium company to the Russian government in return for a large contribution from the company to the Clinton Foundation. The sale was approved by an interagency panel that included a State Department representative, but which Clinton did not control.

McGahn reportedly told Trump that he had no authority over the Justice Department, and that even requesting an investigation, let alone demanding an indictment, would lead to accusations of abuse of power. McGahn's office drafted a memorandum warning that if

Trump sought Justice Department investigations of his political opponents, “he could face a range of consequences, including possible impeachment,” according to the *Times* account.

This report underscores the fact that the incessant chants of “lock her up” that punctuate Trump campaign rallies are not merely a rhetorical device for whipping his ultra-right followers into a frenzy. The perspective of Trump is that opposition to his policies should be illegal, even when it comes from pillars of the capitalist political establishment like the former secretary of state and former FBI director.