



## **Why Judge Curiel may be Donald Trump's best friend**

By Nat Hentoff and Nick Hentoff

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On May 6, Daniel Petrocelli, the lead lawyer defending Donald Trump against two class action fraud lawsuits, appeared before U.S. Judge Gonzalo Curiel in San Diego at a hearing to set a trial date. Attorneys for the plaintiffs sought a trial date in August, after the Republican National Convention, but before the general election in November. Petrocelli requested a February trial date.

Class action trials often take weeks, if not months, before all of the evidence is presented and the jury is able to reach a verdict. A class action fraud trial, in which Trump would be forced to testify, would likely have lasted throughout the general election campaign. Daily news reports of the trial -- which include allegations that Trump used deceptive advertising to defraud the elderly -- would have been, to put it mildly, an unwelcome distraction as he tried to stay on message during a general election campaign.

Petrocelli argued that it would be unfair to force Trump to defend the lawsuits in trial while he was running for president. Judge Curiel agreed with him and continued the trial until after the November election.

If Judge Curiel were biased against Trump, he could have simply torpedoed Trump's presidential campaign by denying the motion to continue and forcing the Trump U case to trial before the election. "The judge is doing his job," Petrocelli told a group of reporters outside the courthouse after the ruling.

Three weeks later, on May 27, Donald Trump launched into a tirade against Judge Curiel during a campaign stop in San Diego.

"The trial is going to take place sometime in November. There should be no trial. This should have been dismissed on summary judgment easily," Trump said. "Everybody says it, but I have a judge who is a hater of Donald Trump, a hater. He's a hater. His name is Gonzalo Curiel."

What Trump hasn't told his followers is that Judge Curiel has repeatedly ruled in Trump's favor on other motions and was obligated to deny his motion for summary judgment. Judge Curiel had no other choice.

A judge is required, when considering a motion to dismiss a case on summary judgment, to follow both the Federal Rules of Civil Procedure (FRCP) and past court decisions interpreting those rules (case law). Rule 56 of the FRCP provides that judges are not permitted to dismiss cases on summary judgment unless the party bringing the motion is able to show there are no disputed issues of material fact. The case law interpreting this rule requires that a judge must consider the facts in the light most favorable to the party against whom summary judgment is sought.

Trump frequently argues that the positive evaluations prepared by Trump U students at the end of the course should have resulted in the case being dismissed. But the same plaintiffs who prepared the evaluations have also filed additional affidavits and deposition testimony stating they were pressured by their instructors to give positive evaluations. The plaintiffs also claim they did not become aware they had been defrauded until after the course was over and the evaluations were submitted.

While the evaluations cited by Trump may be relevant, and will be introduced as evidence at trial, they are not dispositive. They do not, standing on their own, entitle Trump to summary judgment. The dueling affidavits and depositions offered by the plaintiffs in opposition to Trump's motion are textbook examples of disputed issues of fact that would require any judge, regardless of his ancestry, to deny a motion for summary judgment.

Trump also failed to inform his followers that Judge Curiel actually granted his motion for summary judgment on other issues, such as a request by the plaintiffs for injunctive relief that would have prevented him from reopening Trump U. These are not the only rulings Judge Curiel has issued in Trump's favor.

Writing in his blog on [LitigationAndTrial.com](http://LitigationAndTrial.com), attorney Max Kennerly conducted a review of all the orders issued by Judge Curiel since he was assigned to the Trump University case in 2013. Kennerly concluded that the judge has ruled in Trump's favor far more often than he has ruled against him. According to Kennerly, "Judge Curiel ... generally ruled against the plaintiffs, including refusing their request to amend the complaint and extend discovery, and, most recently, rejecting their trial plan."

Donald Trump has an odd way of showing his appreciation for a trial judge who, as his attorney said, is just "doing his job."

*Nat Hentoff is a nationally renowned authority on the First Amendment and the Bill of Rights. He is a member of the Reporters Committee for Freedom of the Press, and the Cato Institute, where he is a senior fellow. Nick Hentoff is a criminal defense attorney in New York who has worked as a judicial clerk for a U.S. district court judge.*