

# Vox

## Donald Trump's smear campaign against a federal judge, explained

**Judge Gonzalo Curiel is hearing one of the lawsuits against Trump University. Trump's attempt to bring him down is deeply troubling — even for Trump.**

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Donald Trump is trying to bring down a federal judge.

The judge, Gonzalo Curiel, is presiding over a pair of class-action fraud lawsuits against Trump by students of the now-defunct Trump University. When the case goes to trial in late November, Trump himself is likely to be called to testify — even though at that point he might be president-elect of the United States.

It's a delicate situation. So Trump is, of course, responding with absolutely no delicacy whatsoever.

He's been insinuating for months that Curiel should recuse himself from the case because he's Hispanic. On Friday, at a rally in San Diego — where Curiel presides — he spent 12 minutes going after the judge: claiming that Curiel is "Mexican" (he is a US citizen), calling Curiel's court "a rigged system," and hinting, darkly, that "they ought to look into Judge Curiel because what Judge Curiel is doing is a total disgrace." And on Monday — Memorial Day — Trump continued his attacks on Curiel via Twitter.

It's not news that Donald Trump doesn't have a lot of respect for democratic norms. But the smear campaign against Curiel is one of those moments in the Trump campaign when the presumptive Republican nominee isn't just damaging political discourse — he's posing a threat to the independence of the judiciary itself.

Trump is being sued for defrauding Trump University students out of thousands of dollars for nothing

Donald Trump is currently defending himself against three different lawsuits over Trump University, which folded in 2010. All the suits make versions of the same claim: that Trump University lured in students by promising access to Trump's real estate "secrets," then forced

them to pay more and more money for the chance to actually learn those secrets, and never actually delivered.

In short, as my colleague **Libby Nelson** has written, "Trump University wasn't anything close to a university. It was a multilevel marketing scheme."

Trump and his lawyers are appealing a \$40 million suit brought by New York Attorney General Eric Schneiderman to the state's Court of Appeals, after they lost in lower court.

The other two cases — one of which is a nationwide class-action suit, and the other of which is specific to Trump University "students" in New York, California, and Florida — are in front of Judge Curiel.

The first trial in Curiel's court is set for November 28 — after Trump might already have been elected. (That's arguably better for Trump than having to take the stand in a fraud case in the middle of a presidential campaign.) But in the meantime, Curiel has had to rule on which evidence can be admitted into the case and released to the public. And Trump hasn't liked those decisions.

Most recently, on Saturday — after Trump's 12-minute tirade against Curiel — the **Washington Post** reported that Curiel had ordered Trump and his lawyers to release 150 pages of internal Trump University "playbooks." The "playbooks" guided Trump University sales reps in how to keep students paying out: A 2010 playbook published earlier this year by **Politico**, for example, told salespeople to "collect financial information from those who attended and rank them by their liquid assets to see who could afford more coursework."

In a sense, this is ironic: Donald Trump often threatens litigation to intimidate people into going along with him — but in this case, the litigation is already happening, and it's not going Trump's way at all. But instead, Trump has used his public profile to intimidate his opponents.

He's accused Schneiderman of trying to extort donations out of him. He's **advertised the full names** of the Trump University students who made a video criticizing him. And, repeatedly, he's gone after Judge Curiel.

Trump and his campaign say Curiel is biased because he's "Mexican" and an Obama appointee

The attacks on Curiel started in late February. Marco Rubio (back before he decided Donald Trump was an okay standard-bearer for the Republican Party after all) had brought up the Trump University lawsuits as a way to go after Trump; Trump responded by going after Curiel.

"There is a hostility toward me by the judge — tremendous hostility, beyond belief," Trump told a crowd at a rally in Arkansas. "I believe he happens to be Spanish, which is fine. He's Hispanic, which is fine. We haven't asked for a recusal, which we may do."

Trump repeated the insinuation that Curiel was biased against him in a **Fox News interview** a few days later. This time around, he attributed Curiel's supposed "hostility" to the fact that Trump is "strong on the border" — an odd claim to make about a former prosecutor **whose life has literally been threatened by a Mexican cartel**. (For a man who's quick to claim that "the

Hispanics" love him, Trump certainly seems quick to assume that actual Hispanics do not.) Then Trump, and the rest of the country, got distracted by something else and moved on.

But at the San Diego rally on the Friday before Memorial Day weekend, Trump unleashed his 12-minute rant against Curiel. You can read the transcript of his remarks, as written by conservative lawyer **Josh Blackman**, or watch the video below (Trump's remarks begin at 22:16).

In San Diego, Trump went from hinting that Curiel should recuse himself to stating it outright. He pointed out that Curiel was appointed by President Obama as a way of delegitimizing him (the Senate confirmed Curiel by voice vote, without any controversy) and attacked Curiel for being not only "Hispanic," which is accurate, but "Mexican" (which is only accurate if you think that someone of Mexican ancestry born in the US doesn't deserve the "American" in "Mexican-American"). And he added the vague threat that "they should look into" Curiel.

Trump and his campaign aren't letting up. Trump spent part of his Memorial Day continuing the attack. And **during a CNN interview Monday**, campaign spokesperson Katrina Pierson pointed out that Curiel is a member of a group of Latino lawyers in California called the La Raza Lawyers Association.

"This is an organization that has been out there organizing anti-Trump protesters with the Mexican flags," Pierson said (apparently confusing the La Raza Lawyers Association with the National Council on La Raza, which is a different group). "And so Mr. Trump is just stating the obvious."

Judges are often susceptible to pressure, and that's a problem

In a perfect world, Judge Curiel's decisions in the Trump University class-action suits would have absolutely nothing to do with what Donald Trump and his supporters were saying about him. But we don't live in a perfect world. Judges are human beings with their own interests — and those interests often shape how judges view the law.

It can be hard to distinguish between the two — especially in the federal judiciary, where judges are appointed and where their interests aren't always apparent. (Many conservatives have long suspected that Chief Justice John Roberts deliberately upheld the Affordable Care Act in 2012 because he was concerned about the backlash if the Supreme Court struck down the president's signature legislative accomplishment — but we won't know what really happened in the case until long after all the justices involved are dead, if ever.)

It states that elect their judges, though, the susceptibility to political pressure is often painfully obvious.

A 2013 study by the liberal American Constitution Society found "a statistically significant, positive relationship between campaign contributions from business groups and justices' voting in favor of business interests," for example. And other studies have found that judges are more likely to rule harshly against criminal defendants when they're up for reelection — especially when they're **up against attack ads**.

All of this has many legal experts (including at least some elected judges themselves) concerned that the independence of the American judiciary is ailing. But the difference between these long-term trends and the threat posed by a President Trump is the difference between a chronic disease and a lethal blow to the head.

Just by calling out Judge Curiel, Trump is opening him up to harassment and threats

Curiel can't respond to Trump directly. "He's not supposed to talk out of court about proceedings before him," Arthur D. Hellman, a professor at University of Pittsburgh School of Law who specializes in judicial ethics, told **the New York Times**. "Judges have gotten into trouble defending themselves from attacks." (It's clear Curiel is paying attention to what Trump's saying: In his order unsealing the Trump University "playbooks," he wrote that Trump had placed the "integrity of these court proceedings at issue.")

But Curiel doesn't have to say anything to attract the ire of Trump's often rabid fans — Trump himself has given supporters online and in Curiel's own town the judge's full name. That's all Trump supporters have needed to launch harassment campaigns against the candidate's presumed enemies in the past.

When the journalist Julia Ioffe wrote a profile of Melania Trump that Trump supporters didn't like, they **inundated her with tweets and voicemails** referencing the Holocaust and depicting her being sent to gas chambers (Ioffe is Jewish). At one point, Ioffe said she got a phone call from a casket company, which said it had been told she'd be "needing our services."

At best, Trump is acting with reckless disregard in making it so easy for his supporters to harass, threaten, and intimidate Curiel. This is especially problematic to many liberals because of the racial overtones of Trump's smear campaign. By saying that Curiel's ethnicity makes him "biased," Trump is revealing a belief that's come up in his campaign in other contexts: that the only people who can be trusted with power in a Trump administration are white men.

That turns many Trump supporters' distrust of "Mexicans" (and other groups) into a problem not for the supporters but for the nonwhite people themselves. And combined with Trump's at best blasé attitude toward his supporters' harassment and violence against people who are nonwhite or non-male, that could be legit dangerous.

The judiciary is supposed to be independent of the president — but if the president ignores the judiciary, judges can't do anything about it

What makes Trump's anti-Curiel crusade unusual, though, is that the people raising the loudest alarms about it are conservatives.

Josh Blackman, the conservative lawyer who transcribed Trump's remarks about Curiel at Friday's rally, **wrote**, "His jaw-dropping comments reflect an utter ignorance about what judges do, and amounts to a dangerous attacks on the fairness of our court system." David Post, an adjunct at the Cato Institute, wrote on the conservative/libertarian law blog **the Volokh Conspiracy** that Trump's rant "is truly appalling and, given that this guy could become president, terrifying."

Even Breitbart, which has **literally fired people** for not being nice enough to Trump, ran **an article by Joel Pollak** criticizing his tactics: "It is generally unwise for a defendant in a lawsuit to question the integrity of the judge — certainly in ethnic or national terms. It is worse when a president, or presidential candidate, does it, because it suggests he or she lacks respect for the judiciary."

Liberals have also expressed their concerns in terms of the independence of the judiciary. But for conservatives, who feel that the current president is already an "imperial president" who is taking too much power from the legislature and the judiciary, the situation seems especially dire. (The headline of Pollak's piece at Breitbart: "**First Obama, Now Trump: Can An Independent Judiciary Survive?**")

It's intuitive that it would be bad to elect a president who's willing to disrespect a federal judge because someone in the other party appointed him; who says that the courts are "rigged" because a judge doesn't always rule in his favor; who calls for that judge to recuse himself from a case or be investigated. But it's conservatives who are most directly articulating why it's bad: If the president doesn't respect the judiciary, there's nothing the judiciary can do to make him respect them.

As David Post wrote: "Our form of government will not work if the executive branch does not respect the legitimacy of decisions made by the judicial branch, because our judicial branch is *entirely* without power to enforce its judgments without the assistance of the executive branch."

This has happened before, under the presidency of Andrew Jackson (whom Trump **has defended**, although not in this particular context). When Chief Justice John Marshall ruled that the state of Georgia couldn't require Cherokees to relocate out of the state, Jackson may never have actually said that Chief Justice "John Marshall has made his decision, now let him enforce it," but he definitely didn't lift a finger to enforce Marshall's decision himself. (Admittedly, the Supreme Court decision didn't ask for the US marshals to enforce the ruling, but Jackson didn't volunteer to do it himself either.)

And when the state of Georgia decided to ignore the Supreme Court's decision, Jackson was definitely **nonchalant**: "The decision of the Supreme Court has fell still born," he wrote, "and they find that they cannot coerce Georgia to yield to its mandate."

Of course they could not. As Post says, the only way the judicial branch can "coerce" anybody to do anything is for the executive branch to support its interpretation of the laws. That is how the US government works. But it's hard to imagine that a president capable of believing not only that what a judge is doing is wrong under the law, but that he's therefore totally illegitimate and ought to be recused or punished, would be terribly interested in doing that part of the job.