

# WHY DID CHIEF JUSTICE JOHN ROBERTS DECIDE TO SPEAK OUT AGAINST TRUMP?

By John Cassidy November 21, 2018



*The President's comment about an "Obama judge" prompted a rare public statement by Chief Justice John Roberts.*

Photograph by Tom Williams / CQ Roll Call / Getty

Chief Justice John Roberts didn't make any public comment in June, 2016, when Donald Trump, who was then a candidate for President, claimed that the U.S. District Court judge Gonzalo P. Curiel, who was overseeing a lawsuit against Trump University, was biased against him because of Curiel's Mexican heritage. Roberts also didn't see fit to comment last year when the newly elected Trump savaged a federal judge in Seattle, James L. Robart, who halted Trump's anti-Muslim travel ban, or when the President criticized judges in Hawaii and California who issued similar rulings.

Roberts held his tongue yet again when Trump criticized another California judge for blocking an executive order on sanctuary cities, and even suggested, in an interview, that he had thought about breaking up the Ninth Circuit.

We can presume that Roberts, who has been the top judge in the country since 2005, didn't like any of these comments by Trump. In all likelihood, he detested them and found them wildly inappropriate. He is, after all, a judicial conservative who believes in deference to the intentions of the founders, and they clearly wanted to establish the federal judiciary as an independent branch of government. But, despite all this, Roberts kept shtum. Until now, that is.

On Tuesday, Trump went on another one of his tears against the judiciary. The issue this time was a temporary restraining order that a federal judge in San Francisco issued, blocking a controversial new policy of denying migrants who cross the border between recognized ports of entry the right to appeal for asylum. "It's a disgrace when every case gets filed in the Ninth Circuit," Trump said to reporters, in response to the ruling. "That's not law. . . . Every case, no matter where it is . . . they file it in what's called the Ninth Circuit. This was an Obama judge. I'll tell you what, it's not going to happen like this anymore." It's easy to see why any judge would object to these words, but much of what Trump said on Tuesday he had said before. "Everybody immediately runs to the 9th Circuit," he told the *Washington Examiner*, in April, 2017. "And we have a big country. We have lots of other locations. But they immediately run to the 9th Circuit. Because they know that's like, semi-automatic. . . . You see judge shopping." And, as he did in his latest statement, Trump referred to efforts to challenge the judgments of the Ninth Circuit, claiming—incorrectly—that its rulings were overturned eighty per cent of the time. "What's going on in the Ninth Circuit is a shame," he said.

Roberts didn't react to that earlier fusillade, and he could have let Trump's latest outburst go, too. But on Wednesday morning, in response to a query from the Associated Press, he issued a rare public statement, which said, "We do not have Obama judges or Trump judges, Bush judges or Clinton judges. 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."

The statement didn't mention Trump explicitly, but its intended target was clear to all—including the President, who quickly fired back on Twitter: “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.”

So why did Roberts do it?

Based on his statement, he took particular objection to Trump's use of the term “Obama judge,” but that seems a bit of a stretch. Everybody knows conservative Presidents pick conservative-leaning judges and liberal Presidents pick liberal-leaning judges. For at least the past twenty-five years, both parties, but particularly the Republican Party, have had as one of their central goals the appointment of judges with a particular ideological tilt. When, in 2005, George W. Bush nominated Roberts to the Supreme Court, the White House marketed him as a reliable conservative. To suggest that all judges are alike, and that it doesn't matter which President appointed them, is to ignore this history.

In addition to standing up for individual judges, a move that will be warmly greeted in courthouses throughout the country, the larger purpose of Roberts's intervention may well have been to defend the independence of his own court, which is increasingly threatened by Trump's efforts to politicize everything and anything. With his pressuring tactics and relentless attacks, the President has already threatened the independence of the lower courts, the F.B.I., and the Justice Department. Just this week, we learned that he wanted to prosecute Hillary Clinton and James Comey. As the White House prepares for a possible legal battle with the special counsel, Robert Mueller, it may be only a matter of time before the Supreme Court itself gets drawn into the Trump maelstrom.

We already know that Roberts cares a great deal about the politicization of the Court. In crafting his 2012 ruling on the Affordable Care Act, which deemed that law a legal exercise of Congress's right to levy taxes, he was widely seen to be finding a middle ground that would avoid having the Court consumed in partisan warfare. Now Trump is threatening to undo that handiwork. Ever since the confirmation of Brett Kavanaugh, and the solidification of a five-to-four conservative majority among the nine Justices, he has made it clear that he sees the Court as his political ally. He did so again in his comments on Tuesday, saying, “Every case in the Ninth Circuit we get

beaten and then we end up having to go to the Supreme Court, like the travel ban, and we won.” Referring to the latest ruling, on his asylum policy, he stated flatly, “We will win that case in the Supreme Court of the United States.”

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Read between the lines of Roberts’s statement, and he appears to be saying, “Not so fast, Mr. President. We are not your poodle.” After Trump’s riposte on Twitter, it is extremely unlikely that Roberts will make any further comments. But he has put down a marker.

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*An earlier version of this story misidentified the judicial venues that issued rulings that Donald Trump criticized.*



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