

US immigration

Trump's battle with judges sets stage for constitutional showdown

After loss in appeals court, questions mount over how far rhetorical fight will go



Donald Trump's clash with the judiciary over his travel ban is likely to be taken to the highest level © FT montage

8 MINUTES AGO by: **David J Lynch** in Washington

Three weeks after taking office, [President Donald Trump](http://next.ft.com/content/40825e36-ef3f-11e6-930f-061b01e23655) (<http://next.ft.com/content/40825e36-ef3f-11e6-930f-061b01e23655>) is embroiled in a feud with the nation's judges that has legal experts and Democrats warning of a possible constitutional showdown.

The president's repeated [personal attacks](http://next.ft.com/content/36acfc86-ed9b-11e6-930f-061b01e23655) (<http://next.ft.com/content/36acfc86-ed9b-11e6-930f-061b01e23655>) on judges reviewing his controversial travel ban — including a call to “blame the court system” if a terror attack happens soon — have alarmed critics who detect an authoritarian streak in the former reality television star.

An administration that delights in shattering political norms may push its rebel ways too far, they fear, threatening the separation of powers that is the foundation of the American system and inciting the worst political crisis since Watergate.

“We’re dealing with a president who has no respect for the basic institutions of our society, including an independent judiciary and the Fourth Estate,” said Laurence Tribe, a professor of constitutional law at Harvard Law School. “This is just the tip of a very scary iceberg that the ship of state is heading toward.”

Over the past week, Mr Trump has denigrated the district court judge in Seattle who blocked his 120-day global ban on refugee admissions and 90-day halt to arrivals from seven majority-Muslim nations and questioned the competence of an appeals court. The president referred to a “so-called judge” and said even a “bad high school student would understand” that he has the authority to limit entry to the US.



Neil Gorsuch, Trump's US Supreme Court nominee, reportedly said the president's attacks were 'demoralising' © Getty

Even before a federal appeals court [refused \(http://next.ft.com/content/8673d6c6-ef2c-11e6-930f-061b01e23655\)](http://next.ft.com/content/8673d6c6-ef2c-11e6-930f-061b01e23655) on Thursday night to reinstate the travel ban, the White House was on the defensive over reports that [Judge Neil Gorsuch \(http://next.ft.com/content/40f2fff6\)](http://next.ft.com/content/40f2fff6)

[-e8a0-11e6-893c-082c54a7f539](#)), Mr Trump’s Supreme Court nominee, had told senators the president’s jibes about the judiciary were “disheartening” and “demoralising”.

Sean Spicer, the White House press secretary, insisted that Mr Gorsuch was speaking generally about attacks on judicial independence rather than responding to the president.

But the White House counterattack was undermined by Republican senator Ben Sasse, who said Mr Gorsuch had been talking about Mr Trump. “I asked him about the ‘so-called judges’ comment,” Mr Sasse said. “He said any attack on any — I think his term to me was brothers and sisters of the robe — is an attack on all judges.”

Instant Insight

The ruling against Trump’s travel ban dissected (<http://next.ft.com/content/c3a48748-ef6d-11e6-930f-061b01e23655>)

Cleverly structured opinion could allow conservatives to back liberal constraints, writes Brooke Masters

Alberto Gonzales, attorney-general under President George W Bush, agreed that Mr Trump’s remarks were ill-considered. “It’s not something I would ever do. I can’t imagine President Bush ever saying anything like that.”

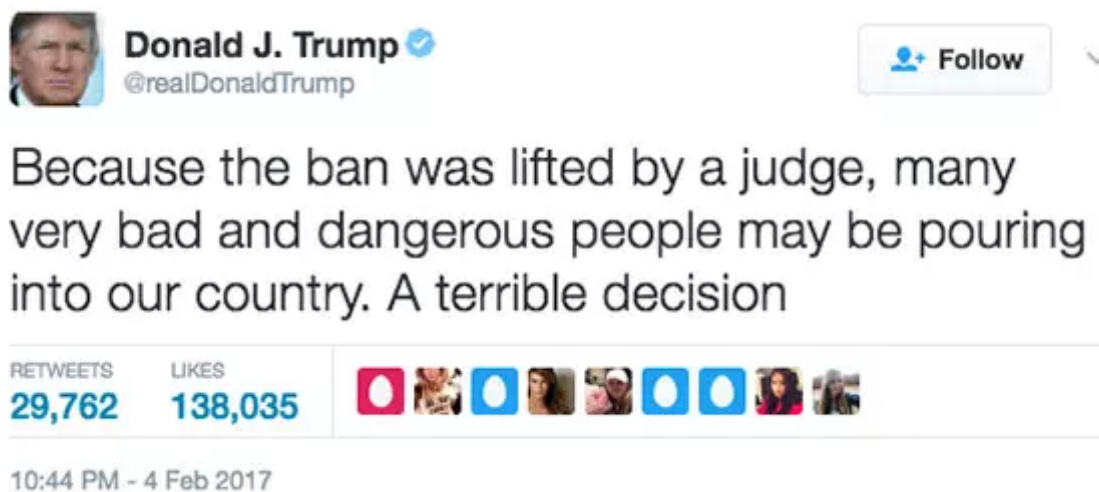
With the president accusing the US Court of Appeals for the Ninth Circuit judges of being motivated by politics, some worry that Mr Trump might ultimately defy an unfavourable [Supreme Court \(http://next.ft.com/content/b4d145e4-ed42-11e6-ba01-119a44939bb6\)](http://next.ft.com/content/b4d145e4-ed42-11e6-ba01-119a44939bb6) ruling.

Already, immigration officers at Washington Dulles International Airport ignored a court order in the travel ban’s initial hours and refused to allow detained travellers access to attorneys.

On Thursday night, a defiant Mr Trump responded to his appeals court loss by [tweeting \(https://twitter.com/realDonaldTrump/status/829836231802515457\)](https://twitter.com/realDonaldTrump/status/829836231802515457): “SEE YOU IN COURT, THE SECURITY OF OUR NATION IS AT STAKE!”

Senator Richard Blumenthal, the Connecticut Democrat who first disclosed Mr Gorsuch’s comments, said the US “is careening, literally, toward a constitutional crisis”.

Erwin Chemerinsky, dean of the University of California, Irvine, law school, said via email: “President Trump’s attack on the federal judiciary is unprecedented for a president. To be sure, presidents have at times criticised decisions, but never in such harsh terms as President Trump has done. The judiciary is crucial to check presidential — and all governmental abuses. It is clear that he does not want checks from anyone.”



Trump's Tweet on February 4 was one of a series attacking judges who ruled against the travel ban

At the White House, Mr Spicer said presidential complaints about unfavourable court rulings are “as old as our republic”, adding that the press was applying a “double standard” to Mr Trump.

Indeed, Mr Trump’s predecessor criticised a Supreme Court ruling during his 2010 State of the Union address.

“With all due deference to separation of powers, last week the Supreme Court reversed a century of law that I believe will open the floodgates to special interests, including foreign corporations, to spend without limits in our elections,” Barack Obama had said, with the high court justices seated just a few feet in front of him.

That remark prompted Justice Samuel Alito to shake his head in disagreement and mouth what appeared to be the words “not true”.

Gillian Tett

The real risks of keeping America safe (<http://nex>

But Mr Obama’s complaints about the court’s legal reasoning were in line with traditional practice, according to Eric Posner, a University of Chicago

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‘The chance of dying in a terrorist attack by a refugee is lower than the risk of being struck by lightning’

law professor. Political candidates and sitting presidents alike, for example, have long criticised the Supreme Court’s 1973 Roe v Wade abortion rights decision.

Mr Obama may have breached decorum by using a high-profile political venue to censure the justices in their presence, Mr Posner said. But Mr Trump’s personal barbs seem designed to undermine judges’ legitimacy.

“There’s a very strong constitutional norm that a president will obey a judicial order directed at him,” said Mr Posner. “That’s what’s at stake here.”

Mr Trump is familiar with the legal system. He has been sued thousands of times, including by vendors alleging that he failed to pay for completed work. Earlier this week, liberal groups including Public Citizen sued the president in US District Court in Washington, arguing that he had exceeded his authority by issuing an executive order requiring federal agencies to scrap two regulations for every new rule.

The president’s judicial gripes are unlikely to be welcomed at the Supreme Court. Chief Justice John Roberts, a Republican appointee, devoted his annual report this year to the unsung virtues of the nation’s 600-plus district court judges, saying they “deserve tremendous respect”.

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