

Trump administration ramps up rhetoric targeting the courts amid mounting legal setbacks

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AP

The new populist president railed against the judiciary as they blocked his aggressive moves to restructure his country's government and economy.

This was in Mexico, where former President Andrés Manuel López Obrador eventually pushed through changes that required every judge in his country to be elected rather than appointed. The reforms, and the promise of more by his successor, caused markets to lose confidence in his country's reliability as a place to invest, which led its currency to weaken.

It was one in a series of assaults that populists around the globe have launched on the courts in recent years, and legal observers now wonder if the United States could be next.



As the courts deliver a series of setbacks to his dramatic attempt to change the federal government without congressional approval, President Donald Trump's supporters are echoing some of the rhetoric and actions that elsewhere have preceded attacks on the judiciary.

Trump's deputy chief of staff, Stephen Miller, posted last week on X: "Under the precedents now being established by radical rogue judges, a district court in Hawaii could enjoin troop movements in Iraq. Judges have no authority to administer the executive branch. Or to nullify the results of a national election."

"We either have democracy," said Miller, who once ran a legal group that sued to get judges to block former President Joe Biden's initiatives, "or not."

Trump's supporters in Congress have raised the specter of impeaching judges who have ruled against the administration. Elon Musk, the billionaire Trump backer whose Department of Government Efficiency has ended up in the crosshairs of much of the litigation, has regularly called for removing judges on his social media site, X.

On Sunday, the chairman of the Senate Judiciary Committee, Republican Chuck Grassley, reacted furiously to a Washington judge's order briefly halting deportations under an 18th century wartime law that Trump invoked hours earlier.

"Another day, another judge unilaterally deciding policy for the whole country. This time to benefit foreign gang members," Grassley wrote. "If the Supreme Court or Congress doesn't fix, we're headed towards a constitutional crisis."

Activists contend it's the administration that's increasing the odds of a crisis.

"They don't like what they're seeing in the courts, and this is setting up what may very well be a constitutional crisis about the independence of the judiciary," said Heidi Beirich, founder of the Global Project Against Hate and Extremism.

‘Threats against constitutional government’

Despite the rhetoric, the Trump administration has so far not openly defied a court order, and the dozens of cases filed against its actions have followed a regular legal course. His administration has made no moves to seek removal of justices or push judicial reforms through the Republican-controlled Congress.

Justin Levitt, a law professor at Loyola Marymount University and voting rights expert who previously served in the Justice Department’s civil rights division, said he’s no fan of Trump’s moves. But he said the administration has been following legal norms by appealing decisions it doesn’t like.

“I think most of this is bluster,” said Levitt, noting courts can imprison those who don’t obey orders or levy crippling fines that double daily. “If this is the approach the executive wants to take, it’s going to provoke a fight. Not everybody is going to be content to be a doormat the way Congress is.”

Even if no firm moves are underway to remove judges or blatantly ignore their rulings, the rhetoric has not gone unnoticed within the judiciary. Two Republican-appointed senior judges last week warned about the rising danger of the judiciary being targeted.

“Threats against judges are threats against constitutional government. Everyone should be taking this seriously,” said Judge Richard Sullivan, whom Trump in his first term appointed to the federal appeals court in New York.

Targeting judges an ‘authoritarian instinct’

In Mexico, López Obrador was termed out of office last year. But several other populist Trump allies who have shown no inclination to leave power have made their judiciaries a central target.

Hungary’s Viktor Orbán lowered the mandatory retirement age for judges to force out some who might have blocked his agenda. In Brazil, former President Jair Bolsonaro’s supporters have feuded with that country’s high court. After Bolsonaro was charged with trying to overturn his 2022 election loss, his party is hoping to win enough seats in next year’s elections to impeach at least one of the justices. In El Salvador, President Nayib Bukele’s party removed supreme court justices with whom he had clashed.

Bukele has even egged Trump on to take on the judiciary: “If you don’t impeach the corrupt judges, you CANNOT fix the country,” Bukele wrote on X, following a post by Musk urging Trump to follow the Salvadoran president’s lead.

“This is a basic authoritarian instinct,” said Steven Levitsky, coauthor of “How Democracies Die” and a Harvard political scientist. “You cannot have a democracy where the elected government can do whatever it wants.”

It would take two-thirds of the U.S. Senate to remove an impeached judge. With only 53 Republicans in the chamber, it’s highly unlikely that supermajority could be reached. The Trump administration, though, has expressed exasperation at the frequency with which lower courts are ruling against it.

U.S. presidents have long clashed with the courts

Saturday night, the judge blocked a round of deportations of people Trump officials claimed were gang members, though the administration ended up deporting more than 200 anyway. Another judge in San Francisco required the administration to rehire tens of thousands of federal workers he ruled had likely been improperly fired. The administration appealed several rulings putting on hold its effort to end the constitutional guarantee of birthright citizenship to the Supreme Court.

And the administration is still fighting with aid organizations that contend the government has not complied with a federal judge's order to pay them for work performed under contract with the U.S. Agency for International Development.

"You have these lower-level judges who are trying to block the president's agenda. It's very clear," Trump spokeswoman Karoline Leavitt said on Friday, adding that judges have issued 16 orders blocking Trump initiatives compared to 14 against Biden during the previous four years.

Presidents have groused about being checked by courts for decades. Biden complained when the courts blocked his efforts to forgive student loan debt. Former President Barack Obama warned the conservative majority on the U.S. Supreme Court not to overturn his landmark health care expansion. In the 1930s, then-President Franklin Delano Roosevelt tried to expand the number of seats on the Supreme Court to get rid of its conservative majority, an idea some Democrats wanted to revisit during Biden's presidency.

Respecting the courts a foundation of the rule of law

But the anti-judicial rhetoric has not for decades reached the pitch that it's at now, experts say. One reason for that is that Trump has issued more orders than any other new president. Many of them rely on novel legal theories about presidential power that go against longstanding judicial precedent or have never been tested in court.

Anne Marie Slaughter, a former State Department official in the Obama administration, compared judges to referees in sports who enforce the rules. She said the U.S. has long advocated for the importance of the rule of law in young democracies and helped set up legal systems in countries ranging from India to South Africa to ensure they stayed free.

"At this point, I think many of our allies and peer countries are deeply worried and essentially no longer see us as a beacon of democracy and the rule of law," Slaughter said.

Rafal Pankowski, a Polish activist, recalled mass protests that followed new requirements that country's populist Law and Justice party placed on judges in 2019. They also drew sanctions from the European Union for interfering with judicial independence.

Those demonstrations, Pankowski said, contributed to the party losing power in the following elections.

"Over time, it became difficult for people to follow technicalities of the legislation," Pankowski said, "but the instinct to defend the independence of the judiciary has been one of the main things behind the democratic movement."

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