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SUBVERTING THE JUDICIARY: A GUIDE TO AUTOCRATIC ATTACKS ON JUDICIAL INDEPENDENCE

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Introduction

At a Federalist Society event in November 2025, then-Deputy Attorney General Todd Blanche urged the lawyers present to join a “war” against what he termed “rogue activist judges.”¹ His words made plain that the current U.S. Department of Justice (DOJ) views the federal judiciary as an adversary rather than a co-equal branch of government. This framing is consistent with the current “wave” of autocratization seen globally. Unfortunately, this wave is currently impacting 41% of the global population, according to the Varieties of Democracy Index, with more countries worldwide experiencing autocratization than are experiencing democracy.² A key component of this autocratization is the attempt to enlarge executive power while subverting checks and oversight – the most effective of which is typically the judicial branch.³

¹ Avery Lotz & Andrew Pantazi, DOJ No. 2 frames legal fight as “war” on judges, state bars, *AXIOS* (Nov. 9, 2025), <https://www.axios.com/2025/11/09/doj-blanche-war-activist-judges-dc-bar-associations>.

² Marina Nord, Ana Good God & Staffan Lindberg, State of the world 2025: unravelling the democratic era?, *DEMOCRATIZATION* 33(4) 703-728 (May 18, 2026), <https://www.tandfonline.com/doi/full/10.1080/13510347.2026.2661683#d1e249>.

³ Nancy Bermeo, On democratic backsliding, *J. DEMOCRACY* 27 (1), pp. 5-19 (2016), <https://doi.org/10.1353/jod.2016.0012>; Marina Nord, Democracy Under Threat: Protecting Democracy at Times of Autocratization, *GLOCAL ISSUE MONITORING REPORT* Vol. 4, pp. 5-6 (June 26, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4778424.

The Taxonomy of Attacks on the Judiciary

In the playbook of state capture and autocratization, there is a familiar taxonomy of ways in which judicial oversight is checked, judicial independence removed, and the third branch politicized, as outlined by the current UN Special Rapporteur on the independence of judges and lawyers, and her team.⁴ Indeed, research on democratic backsliding demonstrates that judiciaries are one of the primary institutions targeted by autocrats when they seek to grab power.⁵ Why? Research by Rachel Riedl and Paul Friesen, including analysis of datasets across many instances of backsliding, shows that the judiciary exhibits the greatest capacity to directly stop abuse of power (its effectiveness overall is followed by the civil service within the agency structure, and then civil society and mass mobilization.)⁶

There are several clusters or types of executive or legislative action that attempt to degrade judicial independence and exert greater control over the judiciary. One such cluster involves executive capture. In these cases, executives seek to place the judicial appointment process or body under greater control of political branches, altering the rules and processes through which judges serve on the bench.⁷ Examples may include packing the courts, forcing out judges through lowering the retirement age,⁸ or creating a specialized court focused on politically sensitive cases whose judges are subject to a political appointment process – so a political body determines who will hear these particular cases. We saw executive capture in this category in Hungary when Viktor

⁴ Margaret L. Satterthwaite, Katarina Sydow & Ben Polk, Unchecking Power and Capturing Courts How Autocratization Erodes Independent Judicial Systems, 76 RUTGERS L. REV. 1147 (2025).

⁵ McKenzie Carrier & Thomas Carothers, Democratic Backsliding in Comparative Perspective, CARNEGIE ENDOW'T FOR INT'L PEACE (Mar. 15, 2025), <https://carnegieendowment.org/research/2025/08/us-democratic-backsliding-in-comparative-perspective>.

⁶ Paul Friesen & Rachel Beatty Riedl, Effective Strategies to Resist Democratic Backsliding: An Events Analysis of Instigators, Targets, and Resistance Mobilization, CTR. ON GLOBAL DEM. (March 2025), <https://ash.harvard.edu/wp-content/uploads/2025/03/Effective-Strategies-to-Resist-Democratic-Backsliding.pdf>.

⁷ Margaret L. Satterthwaite, et al. 76 RUTGERS L. REV. at 1158-64.

⁸ While adding judges to a court may assist with backlogs and efficiency, adding judges to change the political bent of a court risks politicizing the one branch that is designed to act non-politically and should be avoided if at all possible. This is also true of lowering the retirement age of judges; if it is done alongside lowering the retirement age across the board for civil servants it may be acceptable, but should not be done to modify the political outlook of a court. Azul A. Aguiar-Aguilar, Courts and the Constitutional Erosion of Democracy in Latin America, THE VARIETIES OF DEMOCRACY INSTITUTE WORKING PAPER (May 2020) https://www.v-dem.net/media/publications/uwp_31_final.pdf; Ronald Cass, On Expanding Federal Courts, NATIONAL AFFAIRS (Spring 2022) <https://www.nationalaffairs.com/publications/detail/on-expanding-federal-courts>.

Orbán's government reduced the retirement age of judges so they could appoint a large group of more malleable replacements.⁹

The second cluster involves curbing judicial independence by reducing the judiciary's overall power. In these instances, the executive or legislature may limit the jurisdiction of the court over certain kinds of cases (such as terrorism cases), the legislature may be granted power to overturn certain judicial decisions, or legislation may prescribe specific legal interpretations or criminalize judicial interpretations with which the legislature or executive disagrees.¹⁰ An example is South Korea's recent constitutional amendment allowing judges to be criminally prosecuted if they are deemed to "distort" legal precedent by ruling in a way the legislature deems incorrect.¹¹

A third cluster involves punitive measures against judges, by either creating new forms of discipline or from weaponizing the existing legal process. This includes the use of criminal cases, disciplinary proceedings, or administrative actions to punish judges who rule in undesired ways, and reward those who rule as desired.¹² This can include removal of the judge from the bench through a criminal or disciplinary action, or the reassignment of a judge to a less desirable court – such as one located far away from their home or in a different jurisdiction. An example of this third cluster occurred in Lebanon where judges have been disciplined in apparent reprisal for criticizing the functioning of the judiciary¹³

When attacks on the independence of the court system or formal attempts to target individual judges fail, or when there are obstacles to employing these more structural methods, autocrats often attempt to influence judges from a different angle. In this fourth cluster, autocrats pressure judges directly, through threats of removal, name-calling, and framing the actions of the court as overturning the "true will" of the people. They may denigrate the rulings of judges by indicating they will refuse to comply, or by not complying,

⁹ Kim Lane Scheppele, How to Evade the Constitution: The Case of the Hungarian Constitutional Court's Decision on the Judicial Retirement Age, I-CONNECT (Aug. 8, 2012) <https://www.icconnectblog.com/how-to-evade-the-constitution-the-case-of-the-hungarian-constitutional-courts-decision-on-the-judicial-retirement-age/>.

¹⁰ Margaret L. Satterthwaite, et al. 76 RUTGERS L. REV. at 1164-65.

¹¹ THE KOREA HERALD, Judicial reform laws take effect allowing constitutional appeals of court rulings, punishment for 'legal distortion' (Mar. 12, 2026) <https://www.koreaherald.com/article/10693225>.

¹² Margaret L. Satterthwaite, et al. 76 RUTGERS L. REV. at 1170-72.

¹³ See Margaret Satterthwaite, Letter dated June 26, 2023 from Special Rapporteur on the Independence of Judges and Lawyers to the Government of the Republic of Lebanon, at 1-2, U.N. Doc. OL LBN 3/2023 (June 26, 2023); International Commission of Jurists, Dismissal of public prosecutor, Ghada Aoun, and draconian limitations on judges freedoms a blow to judicial independence (May 12, 2023), <https://www.icj.org/lebanon-dismissal-of-public-prosecutor-ghada-aoun-and-draconian-limitations-on-judges-freedoms-a-blow-to-judicial-independence/>.

while at the same time denouncing judges as bad actors or agents of anti-democratic action. These attacks frequently open the judges up to attacks from the public, who take cues from politicians who identify judges as enemies. These public attacks can involve threats against the lives of judges or the lives of their loved ones.

How this Works in Practice

In Poland, from 2016 to 2023 the Law and Justice Party engaged in actions that exemplified all four of these clusters. To capture the judiciary, the government inserted political appointees into the bodies that appointed and disciplined judges – bodies that previously were made up of judges chosen by their peers.¹⁴ To curb the judiciary, the government created a new Chamber of Extraordinary Review with the authority to re-review and re-decide all court decisions.¹⁵ The Chamber was made up of political appointees rather than judges, providing the government a vehicle for overturning past court cases when they disagreed with the decision – even if the case had been decided many years ago.¹⁶ To target individual judges, the legislature passed what came to be known as the “muzzle law,” which provided for disciplinary charges against judges for stating that court reforms violated the rule of law, or seeking review of such changes by the Court of Justice of the European Union (whose job it is to review proposals to determine whether they are consistent with European law).¹⁷

The cluster of intimidation and attacks on individual judges was used alongside all the others to discipline over a thousand judges. In one case, the newly-created politicized Disciplinary Chamber removed Judge Igor Tuleya when he issued an order to investigate the ruling party for passing a budget in a side hall of the parliament,¹⁸ allegedly without the presence of opposition lawmakers.¹⁹ Judge Tuleya had also expressed concerns that

¹⁴ Melissa Hooper, Poland, in *Anatomy of Illiberal States: Assessing and Responding to Democratic Decline in Turkey and Central Europe*, p. 16-20, Brookings (2019).

¹⁵ *Id.*

¹⁶ In 2021, the European Court of Human Rights declared that this body was not legally established nor was it independent. *Dolinska-Ficek and Ozimek v. Poland*, App. nos. [49868/19](#) and [57511/19](#), Eur. Ct. H.R. Aug. 2, 2022.

¹⁷ Lauren Pech, Doing Justice to Poland’s Muzzle Law, VERFASSUNGSBLOG (June 11, 2023) <https://verfassungsblog.de/doing-justice-to-polands-muzzle-law/>.

¹⁸ Aleksandra Gliszczynka -Grabias and John Morijn, Today Tuleya, Tomorrow the EU, VERFASSUNGSBLOG (Oct. 1, 2020) <https://verfassungsblog.de/today-tuleya-tomorrow-the-eu/>.

¹⁹ Joana Berendt, Opposition Party of Poland Ends Monthlong Occupation of Parliament, N. Y. TIMES (Jan. 12, 2017) <https://www.nytimes.com/2017/01/12/world/europe/poland-parliament-protest-opposition.html>.

newly-passed laws taking greater political control of the judiciary threatened the rule of law.²⁰ The Disciplinary Chamber removed his immunity allowing the prosecutor to criminally charge him, he was suspended from the bench indefinitely, and his pay was cut.²¹ The case was just the beginning. The new body launched 1174 disciplinary investigations by 2020, targeting approximately 10% of Poland's judges.²²

The severe damage done to the court system in Poland, which the pro-democracy coalition that came to power in 2023 has not yet been able to repair,²³ is itself a cautionary tale regarding democracy harms that follow from such actions. Poland has no legal mechanism for fixing the problems absent new legislation, and the current president – a member of the Law and Justice Party that initiated these changes – has vetoed proposed reforms – even those that have been developed with and approved by experts and by the Venice Commission.²⁴ The government has been unable to remove several Constitutional Tribunal judges, or the 3000 so-called neo-judges who were appointed through improper procedures, some of whom were unqualified for their positions. This has resulted in holdover judicial appointees in positions of power who can thwart efforts at pro-democratic reform.

²⁰ American Bar Association Center for Human Rights, The Case of Igor Tuleya: Continued Threats to Judicial Independence in Poland, pp. 6-9, (November 2020) https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/igor-tuleya.pdf.

²¹ *Id.*

²² Parliamentary Assembly of the Council of Europe, The functioning of democratic institutions in Poland, p. 1-2 (January 6, 2020) https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28504&lang=en&_cf_chl_f_tk=1_KaL.pvZ55UGdAtMOY5aYY.EBKCBgPz7rVf3fPSa0l-1783397574-1.0.1.1-bvMezXyo7gTJEWkFaytPliGS8gK0SAGHK7O09upnk4l.

²³ Jakub Jaraczewski, Poland's Ongoing Rule of Law Crisis Explained, NOTES FROM POLAND (March 17, 2025) <https://notesfrompoland.com/2025/03/17/polands-ongoing-rule-of-law-crisis-explained/>.

²⁴ See Reuters, Polish president vetoes court reform, deepening feud with government, Reuters (Feb. 19, 2026), [Polish president vetoes court reform, deepening feud with government | Reuters](#); European Commission for Democracy Through Law (Venice Commission, Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on The Draft Law Concerning the Status of Judges Appointed or Promoted Between 2018 and 2025 and Other Related Matters, CDL-PI(2026)002 (Feb. 26, 2026), [Poland: Venice Commission issues an Urgent Joint Opinion on the draft law concerning the status of judges appointed or promoted between 2018 and 2025 and other related matters - Venice Commission of the Council of Europe](#) The Venice Commission (officially the European Commission for Democracy through Law) is an advisory body of the Council of Europe composed of independent experts in constitutional law that helps countries align their legal and institutional structures with international standards for democracy, human rights, and the rule of law.

Application of the Taxonomy in the United States Now

During its first 18 months, the second Trump administration has implemented multiple elements of this globally familiar taxonomy. While the administration has not directly attempted to capture the bodies that administer the courts, such as the Administrative Office of the Courts, this is mostly unnecessary, because the political party of the President already controls the Senate and thus controls the confirmation process for federal judges. The repeated refusal of numerous judges in Senate confirmation hearings even to answer the question of which presidential candidate won the 2020 election reflects their absence of judicial independence that is a hallmark of a healthy democracy.²⁵

The Trump administration has tried to curb the courts, or reduce their power, by arguing that under the unitary executive theory the courts have less power overall to check the actions of the president. The President and his Department of Justice have repeatedly argued in court that the judiciary cannot review his decisions because they concern aspects over which he has absolute power – such as the deployment of emergency powers.²⁶ Many of these arguments have been rejected by the courts. However, decisions such as the Supreme Court’s ruling in *Trump v. Slaughter*, which overruled a 90-year precedent to determine that President Trump has the power to fire an agency head (here the head of the Federal Trade Commission), have begun to contort the law to support the President’s reinterpretation of separation of powers to limit the courts’ power to act as a check on the executive. These decisions’ endorsement for some of the administration’s attempts to enlarge executive power wear away the norms of separation of powers and the role of the judiciary.

President Trump himself, and many of his senior political appointees and aligned members of Congress, have attempted to use the politicization cluster by punishing judges who rule against Trump administration priorities. For example, Trump allies in Congress have initiated impeachment proceedings against several judges who ruled against the administration or ruled in ways the administration disagreed with. These examples include Chief Judge James Boasberg of the District of Columbia District Court who considered

²⁵ Jeffrey Toobin, *The One Question Trump’s Judicial Picks Refuse to Answer*, N. Y. TIMES (Mar. 24, 2026) [Opinion | The One Question Trump’s Judicial Picks Refuse to Answer - The New York Times](#).

²⁶ Mariano Florentino Cuellar, *The New Presidential Adjudication*, 135 YALE L. J. (Feb. 9, 2026) <https://yalelawjournal.org/collections/the-new-presidential-adjudication>; WASH. POST, *Federal Judges Blocking President’s EO’s is ‘Abuse of Power’*, (Feb. 12, 2025) https://www.washingtonpost.com/video/politics/wh-federal-judges-blocking-trumps-eos-is-abuse-of-power/2025/02/12/c1dfee28-a48a-41bb-8f5c-dfcfaaf78f06_video.html.

holding the administration accountable for flouting a court order,²⁷ Judge Deborah Boardman of the District of Maryland who gave a sentence on the lighter end to a defendant who intended to assassinate Justice Kavanaugh,²⁸ and Judge John McConnell Jr. of the District of Rhode Island after he issued an order pausing the administration's freeze on federal funding to states.²⁹ The Department of Justice additionally brought a misconduct complaint against Judge Boasberg³⁰ based on closed-door comments he made during a nonpublic judicial conference relaying to the Chief Justice of the Supreme Court his fellow judges' concerns that the Trump administration may disregard federal court rulings.³¹ DOJ also filed a complaint against Judge Ana Reyes, after she commented on the apparent lack of preparedness of DOJ lawyers in her courtroom, and after she ruled against the administration in a case over transgender rights.³² Both misconduct complaints were ultimately dismissed.³³

²⁷ Impeaching James E. Boasberg, United States District Court Chief Judge for the District of Columbia, for high crimes and misdemeanors, H.Res. 229, 119th Congress (2025), <https://www.congress.gov/bills/119th-congress/house-resolution/229/text>; Rebecca Beitsch & Zach Schonfeld, Judge Boasberg rules migrants at Salvadoran megaprison can contest gang accusations, THE HILL (Jun. 4, 2025), <https://thehill.com/regulation/court-battles/5333555-venezuelans-deported-prison-judge-ruling/>.

²⁸ Impeaching Deborah Boardman, United States District Court Judge for the District of Maryland, for high crimes and misdemeanors, H. Res. 818, 119th Congress (2025), [H.Res.818 - 119th Congress \(2025-2026\): Impeaching Deborah Boardman, Judge of the United States District Court for the District of Maryland, for high crimes and misdemeanors. | Congress.gov | Library of Congress](https://www.congress.gov/bills/119th-congress/house-resolution/818/text); Ilya Shapiro, Impeach Judge Boardman, CITY JOURNAL (Oct. 9, 2025), <https://www.city-journal.org/article/judge-deborah-boardman-nicholas-roske-sentencing-brett-kavanaugh>.

²⁹ Impeaching John McConnell, Jr., Chief Judge of the United States District Court for the District of Rhode Island, for high crimes and misdemeanors, H. Res. 1354, 119th Congress (Jun. 9 2026), <https://www.congress.gov/bills/119th-congress/house-resolution/1354> ; Impeaching John McConnell, Jr., Chief Judge of the United States District Court for the District of Rhode Island, for high crimes and misdemeanors, H. Res. 241, 119th Congress (Mar 24, 2025), <https://www.congress.gov/119/bills/hr/res241/BILLS-119hres241ih.pdf>; Ian Dennis, Georgia congressman moves to impeach chief federal judge, The Public's Radio (Mar. 25, 2025), <https://thepublicsradio.org/politics/georgia-congressman-moves-to-impeach-r-i-s-chief-federal-judge/>.

³⁰ Misconduct complaint against judge who handled CECOT deportation case dismissed, PBS NEWS HOUR (Feb. 2, 2026) <https://www.pbs.org/newshour/politics/misconduct-complaint-against-judge-who-handled-cecot-deportation-case-dismissed>; Complaint against United States District Court Chief Judge James Boasberg, USDOJ (Jul. 28, 2025), <https://www.courthousenews.com/wp-content/uploads/2025/07/FINAL-Misconduct-Complaint-7.28.pdf>.

³¹ Complaint against United States District Court Chief Judge James Boasberg, USDOJ (Jul. 28, 2025), <https://www.courthousenews.com/wp-content/uploads/2025/07/FINAL-Misconduct-Complaint-7.28.pdf>.

³² Complaint dismissed against judge who overturned transgender executive order, ASSOCIATED PRESS (2025) <https://apnews.com/article/justice-department-judge-complaint-transgender-executive-order-150dec66b471ecc3f6224d6324d44dbe>.

³³ Michael Kunzelman, Court official dismisses Justice Department's misconduct complaint against a federal judge in DC, ASSOCIATED PRESS (Nov. 25, 2025) <https://apnews.com/article/justice-department-judge->

With mixed success at capturing, curbing, and politicizing proceedings against the courts, the government has resorted to the name-calling, intimidation, and attempts to frame judicial decisions as politically driven to urge Americans not to trust or comply with their orders. Administration officials have vociferously called out individual judges as “activist judges,” “corrupt judges,” or as President Trump called Supreme Court justices who ruled against his tariff policies, “fools,” “lapdogs,” and “a disgrace to our nation.”³⁴ When Judge Maame Ewusi-Mensah Frimpong issued a temporary injunction halting indiscriminate ICE sweeps, White House Deputy Chief of Staff Stephen Miller posted that “A communist judge in LA has ordered ICE to report directly to her and radical left NGOs — not the president,”³⁵ and when Judge Allison Burroughs temporarily blocked the administration from barring foreign students from American universities, Miller claimed a “communist judge has created a constitutional right for foreign nationals” to be admitted.³⁶ Miller labeled Judge Randolph Moss a “marxist judge” after Moss ruled unlawful President Trump’s day-one proclamation that shut down the right to claim asylum at the southern border.³⁷ He also used the term to describe Judge Paula Xinis after she ordered the administration to assist in returning a mistakenly deported, legally residing individual from a prison in El Salvador.³⁸ His repeated use of the terms communist and marxist is particularly odd in the U.S. context but appears to be an appropriation of the Hungarian and Polish autocratic trope of referring to judges as communists (in a context where it made much more sense).³⁹

[complaint-transgender-executive-order-150dec66b471ecc3f6224d6324d44dbe](https://www.reuters.com/world/us/us-justice-departments-misconduct-complaint-against-judge-boasberg-gets-tossed-2026-01-31/); Nate Raymond, US Justice Department’s misconduct complaint against Judge Boasberg gets tossed, *REUTERS* (Jan. 31, 2026) <https://www.reuters.com/world/us/us-justice-departments-misconduct-complaint-against-judge-boasberg-gets-tossed-2026-01-31/>.

³⁴ Fools Lapdogs and a Disgrace to our Nation: Trump’s Latest Attacks on the Judiciary, *DAILY JOURNAL* (2026) <https://www.dailyjournal.com/article/390052-fools-lapdogs-and-a-disgrace-to-our-nation-trump-s-latest-attacks-on-the-judiciary>.

³⁵ Brittany Mejia & Rachel Uranga, Federal judge halts indiscriminate immigration stops in Los Angeles and beyond, *L.A. TIMES* (Jul. 12, 2025) <https://www.latimes.com/california/story/2025-07-11/federal-judge-temporarily-halts-alleged-indiscriminate-immigration-stops>.

³⁶ Nathan J. Robinson, The Bristling Propaganda of Stephen J. Miller, *CURRENT AFFAIRS* (June 3, 2025) <https://www.currentaffairs.org/news/the-bristling-propaganda-of-stephen-miller>.

³⁷ Robert McCoy, Stephen Miller Spirals After Judge Shuts Down Trump’s Asylum Ban, *THE NEW REPUBLIC* (Jul. 2, 2025) <https://newrepublic.com/post/197558/stephen-miller-judge-trump-asylum-ban-invasion>.

³⁸ Taylor Odisho, Stephen Miller Mocks Judge Who Ordered Return of Man Mistakenly Deported to El Salvador Mega-Prison: ‘Thinks She’s President of El Salvador’, *LATIN TIMES* (Apr. 5, 2025) <https://www.latintimes.com/stephen-miller-mocks-judge-ordered-return-man-mistakenly-deported-el-salvador-mega-prison-580024>.

³⁹ Adam Bonica, When leaders attack judges as enemies: The Global Authoritarian Playbook and How to Stop It, *SUBSTACK: DATA & DEMOCRACY* (May 28, 2025) <https://data4democracy.substack.com/p/when-leaders-attack-judges-as-enemies>.

After Judge John Coughenour in Washington State ruled the Trump administration's challenge to birthright citizenship unconstitutional, the police showed up at his house in response to a caller who alleged he was beating his wife – a phenomenon called swatting that is used to intimidate the recipient.⁴⁰ Numerous judges have also received pizzas delivered to their homes, in a strategy that communicates that the perpetrators know where the judge lives. Many of these pizza deliveries have been made in the name of Daniel Anderl, the son of Judge Esther Salas who was shot in 2020 when a litigant showed up at her house because of an order she issued; when her son answered the door the litigant shot and killed him.⁴¹ In 2025, Representative Andy Ogles from Tennessee placed a poster board outside his office on Capitol Hill displaying the faces of several federal judges under the heading "Wanted: No Get Trump Judicial Activists."⁴²

It is not surprising in this environment that credible death threats have increased. The U.S. Marshal Service documented 564 threats against federal judges in 2025, surpassing the 509 documented for 2024.⁴³ Judge John McConnell, the Chief Judge for the District of Rhode Island, said that after he blocked the administration's attempts to freeze federal aid, he received half a dozen credible death threats.⁴⁴ Supreme Court Justice Amy Coney Barrett's sister received a bomb threat tied to the work of the Justice.⁴⁵ Judges have described in off-the-record conversations with this author and other researchers the extreme fear they feel from receiving massive amounts of hate mail. One judge stated that he stopped walking his child to school as a result of threats.

Congress has held multiple hearings belittling judges as lawless and as acting politically to undermine the Trump administration. In June 2025, the Senate Committee on the Judiciary

⁴⁰ Jake Goldstein-Street, 'It's just so disgusting': Judges in WA detail threats after Trump-related rulings, *WASH. STATE STANDARD* (Aug. 8, 2025) <https://washingtonstatestandard.com/2025/08/08/its-just-so-disgusting-federal-judges-in-wa-describe-threats-after-trump-related-rulings/>.

⁴¹ *Id.*

⁴² Alex Griffing, House Republicans and Democrats Find Common Ground in Opposing GOP Member Hanging Wanted Posters of Judges Outside His Office, *MEDIAITE* (Mar. 31, 2025) <https://www.mediaite.com/politics/house-republicans-and-democrats-find-common-ground-in-opposing-gop-member-hanging-a-wanted-poster-for-judges-outside-his-office/>.

⁴³ U.S. Marshals Service, Protective Investigations – Threat Statistics (Jun. 15, 2026) <https://www.usmarshals.gov/what-we-do/judicial-security/protective-investigations-threat-statistics>.

⁴⁴ Carrie Johnson, Federal judges facing threats after ruling against the Trump administration speak out, *NPR ALL THINGS CONSIDERED* (Aug. 4, 2025) <https://www.npr.org/2025/08/04/nx-s1-5486757/federal-judges-facing-threats-after-ruling-against-the-trump-administration-speak-out>.

⁴⁵ John Fritze, Justice Barrett's sister targeted with bomb threat in South Carolina, *CNN* (Mar. 12, 2025) <https://edition.cnn.com/2025/03/12/politics/barrett-sister-bomb-threat>.

held a hearing titled “The Supposedly ‘Least Dangerous Branch’: District Judges v. Trump.”⁴⁶ Senator Cruz argued that the country is facing a problem of “judicial tyranny” because judges, who are unelected, are “impos[ing] their policy preferences ... on the voters in the United States” by ruling against the administration, in what could only be “an orchestrated campaign of judicial obstruction” against the President’s agenda.⁴⁷ And in January 2026, the Senate Committee on the Judiciary held a subcommittee hearing titled “Impeachment: Holding Rogue Judges Accountable”⁴⁸ Both of these hearings specifically targeted Chief Judge Boasberg with threats of impeachment for his rulings, alongside other judges.⁴⁹

The administration has also gone one dangerous step further, labeling the judiciary itself as a “rogue actor” or “the resistance” in response to rulings in which the judiciary ruled against the administration, implying that the institution itself somehow possesses the intent to undermine the administration. Administration officials and their party allies have made statements in response to court orders that what judges are doing is “judicial tyranny,”⁵⁰ that a judge’s decision is a “judicial coup,” that judges ruling against the administration “brazenly abused their judicial power,” or that an order is an “act of insurrection against the United States and its sovereign people.”⁵¹ After President Trump’s

⁴⁶ Joint Subcommittee Hearing, The Supposedly Least Dangerous Branch: District Judges v. Trump (Jun. 3, 2025) <https://www.judiciary.senate.gov/committee-activity/hearings/the-supposedly-least-dangerous-branch-district-judges-v-trump>.

⁴⁷ Statement of Senator Ted Cruz, Joint Subcommittee Hearing, The Supposedly Least Dangerous Branch: District Judges v. Trump (Jun. 3, 2025) <https://www.judiciary.senate.gov/committee-activity/hearings/the-supposedly-least-dangerous-branch-district-judges-v-trump>.

⁴⁸ Impeachment: Holding Rogue Judges Accountable, *Before Senate Judiciary Subcommittee on Federal Courts, Oversight, Agency Action, and Federal Rights*, 119th Congress (Jan. 7, 2026) <https://www.judiciary.senate.gov/committee-activity/hearings/impeachment-holding-rogue-judges-accountable-01-07-2026>.

⁴⁹ Impeachment: Holding Rogue Judges Accountable, Hearing Before the Senate Judiciary Subcommittee on Federal Courts, Oversight, Agency Action, and Federal Rights, 119th Congress (Jan. 7, 2026) See Statement of Senator Sheldon Whitehouse <https://www.whitehouse.senate.gov/news/release/in-time-of-elevated-threats-to-judiciary-whitehouse-blasts-cruzs-hearing-on-impeachment-of-judges-who-disagree-with-trump/>; Podcast: MAGA is Blaming the Judges, on The Oath and the Office, with Senator Whitehouse, Corey Brettschneider & John Fugelsang, MAGA is Blaming the Judges (with Sen. Sheldon Whitehouse), The Oath and The Office (December 4, 2025) <https://podcasts.apple.com/us/podcast/maga-is-blaming-the-judges-with-sen-sheldon-whitehouse/id1795734509?i=1000739659196>; Impeachment: Holding Rogue Judges Accountable, *Before Senate Judiciary Subcommittee on Federal Courts, Oversight, Agency Action, and Federal Rights*, 119th Congress (Jan. 7, 2026) <https://www.judiciary.senate.gov/committee-activity/hearings/impeachment-holding-rogue-judges-accountable-01-07-2026>.

⁵⁰ Louis Casiano, Musk blasts judge’s over Trump executive orders: ‘we do not have democracy we have tyranny’, Fox News (Feb. 25, 2025) <https://www.foxnews.com/politics/musk-blast-judges-trump-executive-orders-we-do-not-have-democracy-we-have-tyranny-judiciary>.

⁵¹ Brett Samuels, Trump White House steps up attacks on courts after tariff ruling, THE HILL (May 31, 2025) <https://thehill.com/homenews/administration/5326395-white-house-attacks-judicial-branch/> (noting that

call for the impeachment of Judge Boasberg, the Chair of the House Judiciary subcommittee on judges and courts posted: “TRUMP IS RIGHT TO CONDEMN ROGUE JUDGES,”... and “The Resistance now wears robes.”⁵² In one case Vice President JD Vance cited an “effort by the courts to quite literally overturn the will of the American people.” On Memorial Day 2025, the president posted on Truth Social – not in response to any particular case – that judges are “monsters who want our country to go to hell.”⁵³ These statements are aimed not only at questioning the authority of judicial rulings but questioning the authority of the judiciary as a branch to determine whether an action by the executive violates the Constitution – recognized as a core function of the courts since the Supreme Court decided *Marbury v. Madison* in 1803.

We Need to Protect Trust in the Courts

Trust in the courts has been declining steeply since 2020. In December 2024, a Gallup Poll showed trust in the courts hit a new low, with only 35% of Americans stating they have confidence in the judicial branch.⁵⁴ In July 2026, Gallup found approval of the Supreme Court at an all-time low, at 33%.⁵⁵ Judges themselves believe that trust in courts is declining, due in part to national-level politicization of rulings and confirmation processes.⁵⁶

Politicizing the courts inflicts damage that is hard to undo. There is no “winning” when the court system is denigrated into a position of distrust, threatening its ability to hold

Stephen Miller declared the tariff ruling “judicial tyranny”); Press release, Senator Mike Lee, Lee Introduces the Restraining Judicial Insurrectionists Act of 2025 (Mar. 24, 2025) <https://www.lee.senate.gov/2025/3/lee-introduces-the-restraining-judicial-insurrectionists-act-of-2025>; see also Brittny Mejia & Rachel Uranga, *supra* note 35 (Stephen Miller calls a judge’s order an “insurrection.”).

⁵² Ryan Tarinelli, Judicial impeachments over decisions would break long tradition, ROLL CALL (Mar. 18, 2025) <https://rollcall.com/2025/03/18/judicial-impeachments-over-decisions-would-break-long-tradition/>.

⁵³ Carrie Jung, Meet the judge hearing Harvard’s lawsuits against the Trump administration, NPR (Aug. 8 2025) <https://www.npr.org/2025/08/08/nx-s1-5495486/trump-harvard-judge-lawsuits>.

⁵⁴ Lindsay Whitehurst, “Americans’ trust in nation’s court system hits record low, survey finds, ASSOCIATED PRESS, (Dec. 17, 2024) [Americans’ trust in nation’s court system hits record low, survey finds | AP News](https://www.associatedpress.com/2024/12/17/americans-trust-in-nation-s-court-system-hits-record-low-survey-finds/).

⁵⁵ Jeffrey M. Jones, Supreme Court Job Approval Slumps to Record Low, GALLUP NEWS (2026) <https://news.gallup.com/poll/713096/supreme-court-job-approval-slumps-record-low.aspx> ; Jeffrey M. Jones, New High Say Supreme Court Is Too Conservative, GALLUP NEWS (Oct. 1 2025) <https://news.gallup.com/poll/695759/new-high-say-supreme-court-too-conservative.aspx>.

⁵⁶ Jenna Delacruz, “Nearly all judges believe the public’s respect for judges has declined,” NAT’L JUDICIAL COLLEGE (March 5, 2024) <https://judges.org/news-and-info/nearly-all-judges-believe-the-publics-respect-for-judges-has-declined/>.

individuals accountable and provide certainty in decision-making and binding disposition of disputes. To improve the functioning of our democracy, our nation, and our local communities, we need to rebuild trust in the courts. Doing so requires finding a path forward that restores respect for the court system, and that can honor a variety of genuinely held beliefs.

Democracy defenders and judges themselves have available means for shoring up the independence of the judiciary as well as public confidence in independent courts and their value in a democratic state. At a minimum, the civic work of lawyers, the public, and civic leaders must include reacting to threats against the judiciary. Allowing threats to go unchecked creates a permission structure that will normalize disrespect for courts and rulings, dangerously inviting noncompliance, creating chaos and unpredictability that breeds greater insecurity for all. To respond to the increased risk of violence, courts themselves should develop policies to address threats to judges both in courts and outside the court, securing safety for judges to support their independence.

More significantly, democracy defenders – including specifically judges – can contribute to trust-building by engaging more often and in new ways with their communities, both in person and online. This includes not only making the work of the justice system more transparent and understandable – the work of explaining – but also the work of listening: seeking information about how communities envision well-functioning courts. At bottom, this simply means more interaction, the more community members can engage with judges and courts when they are not experiencing the stress of being a litigant or defendant, the more they will see the courts as a potentially helpful institution, a place that responds to them rather than simply judges them.

Judges can also help reenvision the functioning of courts by speaking out – escaping the outdated norm that judges only speak through their written opinions. An Advisory Opinion issued by the Federal Judicial Conference Committee on Codes of Conduct in February 2026 provides support for this norm shift. The Advisory Opinion makes clear that federal judges may publicly defend their colleagues and the judiciary against “illegitimate forms of criticism and attacks.”⁵⁷ It also makes explicit that judges may speak or write about – and even “advocate” for – judicial independence, rule of law, and judicial security. The Advisory Opinion makes plain that judges should think beyond the old norm of speaking only through their opinions. It is this history of lack of judicial engagement, especially in the

⁵⁷ Guide to Judiciary Policy, Volume 2B, Chapter 2, p. 253, Committee on Codes of Conduct Advisory Opinion 118 (February 2026) [guide-vol02b-ch02.pdf](#).

online environment where disinformation and debate largely occur, that has contributed to declining trust. Judges now have an opening to reverse this trend.

The Supreme Court has contributed to the decline of confidence in the judiciary by its failure to intervene on the side of lower court judges who feel under constant threat. As the titular head of the federal judiciary, Chief Justice Roberts has a special obligation to speak out on their behalf. Instead, the Court's opinions, especially on the shadow docket, feed public disrespect for the lower courts.⁵⁸

The shift in how judges view their role – toward a conceptualization that includes acting as a protector of the rule of law, has been trending globally as threats to the judiciary have also globally been on the rise.⁵⁹ Research by Benjamin Garcia Holgado has shown that courts show increased resilience to autocratization in cases where judges conceptualize their role beyond hearing cases to include defending rule of law, and build relationships not only with each other but also with lawyers and civil society.⁶⁰ Greater familiarity with judges as protectors of rights can help breed greater trust. Increased interaction by judges with the communities they serve can have the added effect of improving court policy and decision-making through listening. The example of thirty sitting and retired U.S. judges riding in a Midwest bus tour to meet people at farmers' markets and state fairs this summer to discuss judicial independence and the rule of law is one such example.⁶¹

⁵⁸ Kate Klonick, Steve Vladeck & Jen Patja, Lawfare Daily: The Court Against the Courts with Steve Vladeck and Kate Klonick, LAWFARE LIVE (Aug. 6, 2026) <https://www.lawfaremedia.org/article/lawfare-daily--the-court-against-the-courts-with-steve-vladeck-and-kate-klonick>; Lawrence Hurley, In rare interviews, federal judges criticize Supreme Court's handling of Trump Cases, NBC NEWS (Sept. 4, 2025) <https://www.nbcnews.com/politics/supreme-court/supreme-court-trump-cases-federal-judges-criticize-rcna221775>.

⁵⁹ Press Release, World Justice Project, Global Rule of Law Recession Accelerates as Authoritarian Trend Deepens WJP Index Finds (Oct. 28, 2025) <https://worldjusticeproject.org/news/wjp-rule-law-index-2025-global-press-release>.

⁶⁰ Benjamin Garcia Holgado, Overruling the Executive: Judicial Strategies to Resist Democratic Erosion, CAMBRIDGE CORE (Jan. 8, 2025) [Overruling the Executive: Judicial Strategies to Resist Democratic Erosion | Journal of Law and Courts | Cambridge Core](https://www.cambridge.org/core/journals/journal-of-law-and-courts/article/overruling-the-executive-judicial-strategies-to-resist-democratic-erosion/1F8F8F8F8F8F8F8F8F8F8F8F8F8F8F8F); Sandra Botero and Benjamin Garcia Holgado, Jueces en tensión: la Corte Suprema argentina (2003-2023) y la Corte Constitucional colombiana (2002-2023) frente a la polarización/Judges under stress: The Argentine Supreme Court (2003-2023) and the Colombian Constitutional Court (2002-2023) amid polarization, Oxford Academic (2024) [Jueces en tensión: la Corte Suprema argentina \(2003-2023\) y la Corte Constitucional colombiana \(2002-2023\) frente a la polarización/Judges under stress: The Argentine Supreme Court \(2003-2023\) and the Colombian Constitutional Court \(2002-2023\) amid polarization | International Journal of Constitutional Law | Oxford Academic](https://academic.oup.com/ajil/article/118/1/1/6666666).

⁶¹ Michael P. Donnelly and Robert F. Orr, As retired US judges, we're not used to speaking out: But we cannot be silent, THE GUARDIAN (Aug. 2, 2026) <https://www.theguardian.com/commentisfree/2026/aug/02/judges-lawyers-partisan>.

Rule of law is at serious risk in the U.S., but the future of our justice system is not pre-determined. Political actors, institutions, and the public itself must choose whether to normalize pressure on courts or to resist its normalization. Democracy actors – including judges themselves – can help shape better choices through engagement rather than institutional withdrawal, shifting the current judicial norm away from a cloistered and mystified image. Greater engagement between judges and communities, including lawyers, journalists, and civic leaders, will not only increase legitimacy, but will also be an investment in reimagining the courts for a new generation that can overcome the current era of overreach.