

Are Trump Judges Different?

Evidence from Immigration Cases

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Judges appointed by President Trump are more likely to vote in favor of the government in cases challenging the second Trump administration's immigration policies. While Trump's Supreme Court nominees behave like other Republican nominees on the Court, Trump's lower court nominees are twice as likely to vote in favor of the government as nominees of other Republican presidents; in contrast, other Republican nominees to the lower courts are statistically indistinguishable from Democratic nominees. The difference between Trump nominees and other judges is driven almost entirely by judges 55 years old or younger, who may be influenced by the prospect of promotion.

A. Introduction

Many Presidents have been disappointed by their judicial appointments. For example, Eisenhower “frequently remarked that his biggest mistake was the appointment of ‘that dumb son of a bitch Earl Warren’” (Ambrose 1984, 2:190; Cray 1997, 10). Does President Trump have reason to be similarly upset about his judicial nominees?

This chapter investigates that question by examining the decisions of Trump's judicial nominees in cases challenging the second Trump administration's immigration policies. It finds that, overall, Trump nominees are little different from other judges appointed by Republican presidents. On the other hand, when one focuses on lower court judges, and especially on judges under the age of 55, Trump appointees are startlingly

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different.² District and appellate court judges appointed by Trump are twice as likely to uphold Trump administration immigration policies as judges appointed by other Republican presidents. Moreover, lower court judges appointed by Trump who are 55 years old or younger are more than three times as likely to vote to uphold Trump policies, while those over 55 vote in ways indistinguishable from other judges appointed by Republican presidents; in fact, Trump-appointed judges over 55 are statistically indistinguishable from judges appointed by Democratic presidents in immigration cases. One reason judges 55 or under may be so different is that they may be “auditioning” for the Court of Appeals or Supreme Court. That is, they may be hoping that President Trump will promote them and so they may be tailoring their decisions to meet his preferences (Brown et al. 2025).

Section B of this chapter reviews the literature. Section C describes the data, and Section D analyzes the data.

B. Literature

For several decades, if not longer, it has been well understood that judicial decisions reflect the ideology and policy preferences of the deciding judge, and that a good proxy for judges’ ideology or preferences is the political party of the president who appointed them (Segal & Spaeth 2002; Sunstein et al. 2004). The political party of the appointing president (Democratic or Republican) rather than the identity of the president (e.g. Obama or G.W. Bush) is a good predictor because presidents of the same party are relatively similar, especially with respect to judicial appointments. Is Trump different? He has embraced policies – such as tariffs and a conciliatory policy toward Russia – that deviate from more than half a century of Republican orthodoxy. Perhaps his judicial nominees also reflect a significant deviation from nominees by Presidents George Bush, H.W. Bush,

2 One might have thought that the overall figures would be similar to the figures for district and appellate court judges because there are so many more lower court judges than Supreme Court justices. On the other hand, because, as discussed below, the unit of analysis in this article is the judicial vote not the case, each Supreme Court case results in nine observations (nine votes), while each district court decision results in just one observation and each court of appeals decision results in only three observations. As a result, inclusion or exclusion of the Supreme Court can have a large effect, as discussed in more detail in section 3.

and Ronald Reagan. On the other hand, given that during his first term, Trump reportedly outsourced judicial appointments to the Federalist Society (Toobin 2017) – a group whose ideology reflects decades of mainstream conservative ideology (e.g. originalism and opposition to *Roe v. Wade*) – one might have expected that Trump’s judicial nominees would be like the nominees of other recent Republican presidents.

A number of studies have analyzed the behavior of judges appointed by Trump. Most have found that they are significantly different from those appointed by other Republican presidents. Rebecca Brown, Lee Epstein, and Mitu Gulati (2025) studied federal district court and circuit court judges’ votes in cases relating to gun rights. They found that Trump appointees rendered decisions favoring gun rights about 40 % of the time, while judges appointed by other Republican presidents supported gun rights 28 % of the time. Republican appointees who were 55 or under, whom the authors called “auditioners” (potential appointees to the Supreme Court), were more than twice as likely to vote in favor of gun rights as older judges (60 % v. less than 30 %) in cases after the Supreme Court’s landmark *Bruen* decision, while Democratic appointees’ behavior did not differ by age.

Stephen Choi, Mitu Gulati, and Eric Posner (2025) examined judicial voting patterns in court of appeals cases involving the free exercise of religion. They found that Trump-appointed judges were more likely to vote for the plaintiff in cases brought by Christians or Jews than judges appointed by Democratic presidents (54 % v 31 %), but less likely to vote for the plaintiff in brought by Muslims (17 % v 44 %). Judges appointed by other Republican presidents had voting records in between those of Trump appointees and Democratic appointees. The difference between Trump-appointed judges and Democratic-appointed judges is statistically significant for both types of cases, but the difference between Trump appointees and other Republican appointees is only significant for cases brought by Christians and Jews. The authors did not find any significant difference between Trump appointees who were 55 or younger and those who were older.

Zalman Rothschild (2022) examined judicial voting patterns in free exercise cases. Unlike Choi et al. (2025), he looked at district court as well as appellate court decisions. His results are even more stark. Trump appointed judges upheld free exercise claims 77 % of the time, judges appointed by other Republican Presidents upheld free exercise claims 44 % of the time, and Democratic appointees upheld such claims only 7 % of

the time. Rothschild did not check for differences between judges by age.

C. Data

The data for this study are all federal cases challenging the legality of Trump administration actions relating to immigration and citizenship during his second term in office. Cases analyzed include those challenging the use of the Alien Enemies Act, those challenging Trump's Executive Order on Birthright Citizenship, and those challenging DHS's revocation of Temporary Protective Status (TPS). Cases decided by immigration judges and immigration cases that disputed the application of settled law – e.g. whether an individual is subject to removal or deportation under provisions of the Immigration and Naturalization Act that were not affected by new orders or policies of the second Trump administration – were not included. The cases challenging Trump administration policies were assembled by Just Security as part of its Litigation Tracker. According to its website, "Just Security is an editorially independent, non-partisan, daily digital law and policy journal . . . based at the Reiss Center on Law and Security at New York University School of Law." The database was last checked on August 24 so the cases span roughly seven months, from Trump's inauguration (January 20, 2025) through August 24, 2025.

For most district court cases, the judge makes dozens of decisions, most of a procedural nature. A district court decision was only analyzed in this study if it granted or denied a temporary restraining order, a preliminary injunction, or a permanent injunction. If such a decision was followed by a decision clarifying or amending the prior decision, only the later decision was analyzed, unless the later decision followed an appeal. A decision was coded as favoring the individual (and therefore not in favor of the government) if it granted a temporary restraining order, preliminary injunction, or permanent injunction against some aspect of Trump's immigration policy, even if it did not grant all the relief that the plaintiff(s) requested.

Appellate court decisions – whether by circuit courts or the Supreme Court – were analyzed if they involved the appeal of a coded district court decision. The unit of analysis was the judge's vote (not the case), so a circuit court opinion would generally involve three observations – the votes of the three participating judges. If the appellate decision was unanimous,

the votes were coded as favoring the government if the decision granted a stay or vacated a temporary restraining order, preliminary injunction, or permanent injunction, but not if the appellate court narrowed an order or injunction issued by the district court but left part of it in force. If an appellate decision was not unanimous, the votes of the judges were coded based on their relative position. That is, if some judges would uphold a preliminary injunction in its entirety, but others on the same panel would narrow it, the latter would be coded as pro-government, whereas the former would not.

Decisions were coded by a second-year law school research assistant under the supervision of the author.

Information about which president appointed each judge and the judge's birth year are from the Federal Judicial Center Biographical Directory of Article III judges, while a judge's gender, when not clear from his or her name, is from other sources, such as Wikipedia. Judges were coded as over 55 if they were born in 1969 or earlier.

D. Analysis

Figure 1 below analyzes all judicial votes³ on cases challenging President Trump's immigration policies during the first months of the Second Trump administration. It includes votes by judges of all levels of court – district court, court of appeals, and Supreme Court – and judges of all ages.

Republican-appointed judges, whether appointed by Trump or not, are more than twice as likely to vote for the government's position on immigration matters than judges appointed by Democrats (51 % or 62 % v. 20 %). Although Trump-appointed judges are slightly more likely to vote pro-government than judges appointed by other Republican presidents (62 % v 51 %), the difference is not statistically significant.

Figure 2 separates judges by whether they are on the Supreme Court or whether they are on a lower court (court of appeals or district court).

3 District court judges do not technically vote because they ordinarily make decisions alone. Nevertheless, for simplicity, district court decisions are classified as "votes" for the purpose of this analysis.

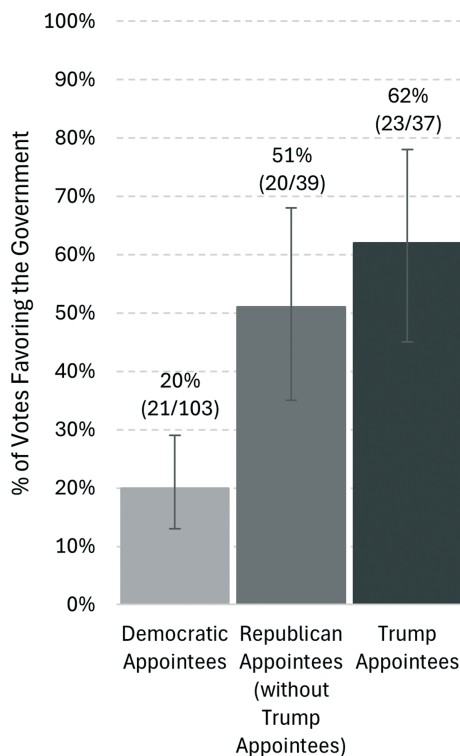


Figure 1. Voting on Immigration Matters, All Judges (2025)

Note. Error bars indicate the exact Clopper-Pearson binomial 95 % confidence intervals.

Figure 2 shows that, while Trump nominees on the Supreme Court are similar to other Republican nominees, Trump nominees to the lower courts are very different.

Republican nominees to the Supreme Court (whether appointed by Trump or not) are about four times as likely to uphold Trump immigration policies as Democratic appointees (78 % or 67 % v 17 %). The voting of Trump appointees on the Court is actually very similar to that of other Republican nominees. Although the data suggest that Trump appointees are slightly *less* likely to uphold Trump immigration policies (67 % v 78 %), the difference is not statistically significant. The main reason Trump's Supreme Court nominees look similar to other Republican appointees is

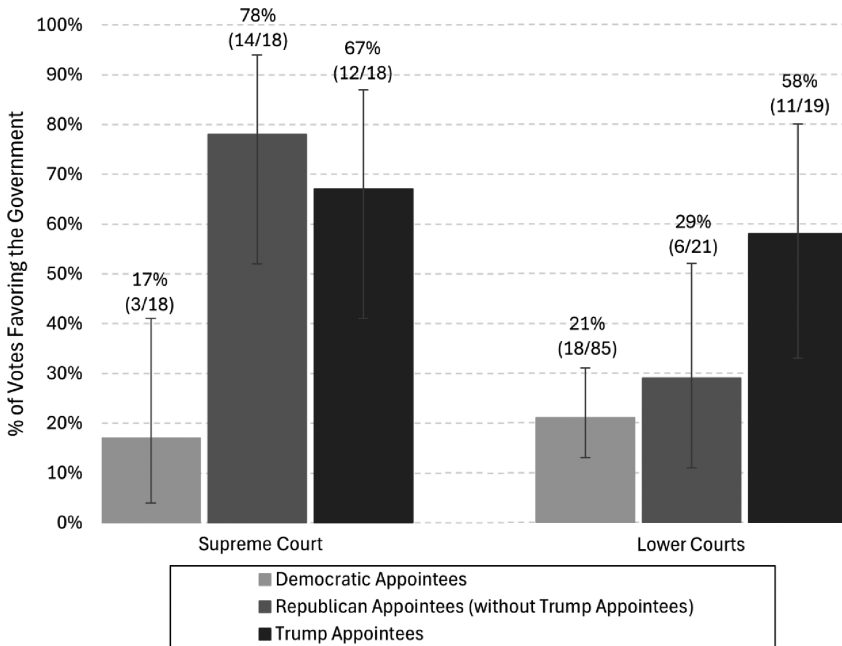


Figure 2. Voting on Immigration Matters by Court Level (2025)
See Note to Figure 1 for information on the error bars.

that the two most conservative Justices – Alito and Thomas – were appointed by Presidents George and H.W. Bush. In comparison to those two justices, Trump’s nominees – Barrett, Kavanaugh, and even Gorsuch – although still conservative, are much more moderate.⁴

When one looks at the lower courts (the right half of Figure 2), a very different picture emerges. Trump-appointed judges are twice as likely to uphold government immigration policy as other Republic appointees (58 % v. 29 %). The difference is statistically significant at the $p=0.06$ level, very close to the 5 % cutoff often used. The absence of more clearly robust statistical significance reflects the small number of votes available for analysis – 19 votes by Trump appointees and 21 votes by other Republican

4 According to Epstein et al. 2025, p. 10, Alito and Thomas receive Martin-Quinn scores of 2.5 and 3.1, whereas Barrett, Kavanaugh, and Gorsuch receive scores of 0.4, 0.6, and 1.1 respectively.

appointees. Given that the votes analyzed come from only a seven-month period, the number of votes is remarkably large, but it does not provide the power necessary to yield results that are statistically significant at the 5% level even for the large differences found here.

In contrast, lower court judges appointed by Republican presidents other than Trump vote in ways similar to Democratic appointees, upholding government actions about one quarter of the time (29% for other Republican appointees, 21% for Democratic appointees). The difference between Democratic appointees and non-Trump Republican appointees is not statistically significant by any standard ($p=0.47$), whereas the difference between Trump appointees and Democratic appointees is clearly significant ($p=0.001$).

This analysis suggests that, while Trump's appointments to the Supreme Court have garnered the most attention and, in fact, have moved the Court significantly to the right, it is his lower court nominees who are a more significant departure from historical norms.

It is also notable that even Trump-appointed lower court judges vote to invalidate Trump administration policies 42% of the time. One could interpret that as a testament either to their independence or to the radicalism of the immigration policies that the Trump administration has implemented.

The difference between Trump nominees and other judges in immigration cases is larger than what Brown et al. (2025) found with respect to gun rights. They found a 17-percentage-point difference between Trump lower court nominees and other Republican nominees (45% v 28% post *Bruen*), whereas the analysis here suggests a 29-percentage-point difference (58% v 29%). The large differences found here with respect to immigration are more similar in magnitude to the differences relating to religion found by Choi et al. (2025) and Rothschild (2022).

Figure 3 further breaks down the voting of lower court judges by age: whether the judge is 55 or under, or older than 55. The break point of 55 was chosen because it corresponds to the age at which many scholars think judges become too old to be promoted, because Presidents prefer to maximize their influence by nominating judges who will serve for several decades (Brown et al. 2025). The 55 cutoff also conveniently divides the data on Trump-nominee lower courts almost perfectly in half (10 votes by judges 55 or younger, 9 votes by judges over 55). Of course, by slicing the data this finely, the number of votes analyzed becomes relatively small, so results must be viewed with caution.

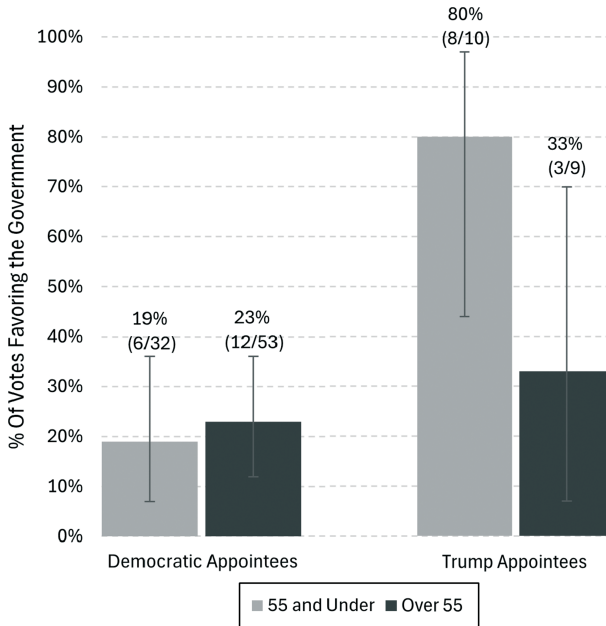


Figure 3. Voting on Immigration Matters by Age (Lower Courts, 2025)
See Note to Figure 1 for information on the error bars.

The difference between younger Trump nominees and those over 55 is stark. Younger Trump nominees vote to uphold government immigration policies 80 % of the time, whereas those under over 55 do so only 33 % of the time. Even with the small number of observations, this difference is statistically significant ($p=0.04$). In fact, Trump judges over 55 are barely different from other Republican appointees, and the difference between them and Democratic appointees is not statistically significant.⁵ Although it is possible that older judges just have different judicial ideologies or preferences, the most plausible interpretation of the difference between younger and older Trump appointees is that the prospect of promotion induces younger Trump appointees to vote more in line with Trump administration preferences.

5 As can be seen in Figure 2, other Republican nominees vote for the government 29 % of the time, and Democratic nominees vote for the government 21 % of the time. The differences between Trump nominees under 55 and Democratic and other Republican nominees is not statistically significant.

In contrast to Republican nominees, there is almost no difference between Democratic appointees by age. As can be seen in the left side of Figure 3, only four percentage points separate Democratic nominees over 55 and those who are younger. Democratic nominees have no chance of being promoted by Trump, so they get no benefit from tilting their votes toward the administration. While one could think that Democratic appointees might hope to be promoted by a future president, that does not seem to induce them to be more (or less) pro-immigrant, perhaps because it is hard to predict whether a future Democratic president will be moderate or more pro-immigrant on immigration issues. Also, by the time a Democratic president is in power, many if not most of the Democratic appointees now 55 or under are likely to be over the age at which promotion is plausible.

It is not possible to analyze the voting of judges nominated by other Republican presidents by age because all of them involved in disputes in the dataset are over 55, so none of them are plausible “auditioners” for promotion.

It is notable that the gap between auditioners and non-auditioners is larger in immigration cases than in other subject matters. For example, in gun cases, Brown et al. (2025) found a 31-percentage-point gap (60 % v 29 %), whereas the analysis here finds a 47-percentage-point gap (80 % v 33 %). Choi et al. (2025) did not find any difference in religion case between those 55 or under and those who were older. Again, the large difference in immigration likely reflects the importance of immigration to Trump and his supporters and the attention immigration cases receive in the media.

E. Conclusion

Trump’s nominees have provided strong support for his immigration policies. His nominees to the Supreme Court, like other Republican nominees, vote to uphold his policies about seventy percent of the time, which is more than four times as often as Democratic nominees. In the lower courts, Trump nominees are more pro-government on immigration matters than both Democratic nominees and judges appointed by other Republican presidents. The magnitude of the differences is large, with Trump appointees voting to uphold Trump immigration policies almost sixty percent of the time, while other judges do so less than thirty percent

of the time. The difference between Trump nominees and other judges is particularly stark for nominees 55 or younger, who may be influenced by the possibility that Trump (or a future Republican president) might promote them.

While these results could be interpreted to cast doubt on judicial independence and impartiality, there are three ways in which one might interpret the results in a more positive way:

- 1) Even Trump nominees ruled against the president in a substantial percentage of immigration cases. Trump nominees to the Supreme Court voted against him one third of the time, and nominees to the lower courts voted against him forty-two percent of the time.
- 2) While Trump nominees to the lower courts seem ideological in their voting, the fact that there is hardly any difference between Democratic nominees and other Republican nominees in immigration matters might suggest that most judges are relatively constrained by the law.
- 3) While many of Trump's appointees are now 55 or under, most will relatively soon be beyond the age at which promotion is plausible. The theory that younger judges are influenced by the prospect of promotion would suggest that Trump nominees are likely to become more moderate as they get older. Similarly, if a Democrat or more moderate Republican is elected in 2028, even Trump appointees under 55 will lose the promotion incentive to be pro-government on immigration, which may moderate their decision-making.

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