

Trump Judges: Even More Extreme Than Reagan and Bush Judges

September 3, 2020

Executive Summary

In June, President Donald Trump [pledged](#) to release a new short list of potential Supreme Court nominees by September 1, 2020, for his consideration should he be reelected in November.

While Trump has not yet released such a list, it likely would include several people he has already picked for powerful lifetime seats on the federal courts of appeals. Trump appointees' records raise alarms about the extremism they would bring to the highest court in the United States – and the people he would put on the appellate bench if he is reelected to a second term.

According to People For the American Way's [ongoing research](#), these judges (including those likely to be on Trump's short list), have written or joined more than 100 opinions or dissents as of August 31 that are so far to the right that in nearly one out of every four cases we have reviewed, other Republican-appointed judges, including those on Trump's previous Supreme Court short lists, have disagreed with them.¹

Considering that every Republican president since Ronald Reagan has made a considerable effort to pick very conservative judges, the likelihood that Trump could elevate even more of his extreme judicial picks raises serious concerns. On issues including reproductive rights, voting rights, police violence, gun safety, consumer rights against corporations, and the environment, Trump judges have consistently sided with right-wing special interests over the American people – even measured against other Republican-appointed judges.

Many of these cases concern majority rulings issued or joined by Trump judges. For example:

- Trump Eighth Circuit judge David Stras cast the deciding vote to rule that a woman could be [prosecuted in federal court for manslaughter](#) because she used drugs while pregnant, which contributed to the death of her newborn child. Even a previous Trump Supreme Court short-lister, Steven Colloton, strongly dissented.
- Trump Seventh Circuit judge Michael Scudder wrote an opinion, joined by fellow Trump appointees Amy Coney Barrett, Michael Brennan and Amy St. Eve, ruling that older job

¹ The *Confirmed Judges, Confirmed Fears* [blog series](#) and [tool](#) focus on divided decisions involving Trump justices and appeals court judges – decisions in which other judges, often including conservative Bush appointees, have dissented from harmful rulings written or joined by Trump judges, or where Trump judges have dissented to try to push the law further to the right. We include cases in specific issue areas, but do not include unanimous decisions, cases outside these issue areas (such as disputes between two corporations), or cases on specialized issues such as patents, trademarks, or, as of January 2020, the U.S. Sentencing Guidelines.

applicants cannot claim that a business's hiring practices have a [discriminatory impact on older workers](#) under the Age Discrimination in Employment Act. Noted Reagan conservative judge Frank Easterbrook was among the strong dissenters.

- Trump Sixth Circuit judges John Bush, Joan Larsen, John Nalbandian and Amul Thapar joined a decision by the full court that [upheld Ohio's ban on Planned Parenthood funding](#). Dissenters included a George W. Bush nominee.
- Trump Eighth Circuit judge David Stras wrote a ruling, joined by Trump appointees Ralph Erickson, Steven Gras and Jonathan Kobes, that partially [struck down a Missouri lobbying disclosure law](#). Four of the five dissenters were Republican appointees, including previous Trump Supreme Court short-lister Colloton.
- Trump Seventh Circuit judges Barrett, Brennan, Scudder and St. Eve joined a refusal to rehear a decision that reversed prior precedent and ruled that [the Federal Trade Commission cannot seek restitution for victims of consumer fraud](#). A George H.W. Bush judge was among the dissenters.

Just as troubling as Trump judges' majority rulings are their dissents from decisions of other Republican judges. And today's dissenters could well become the majority with additional Trump appointments in a second term. For example:

- In a [voting rights](#) case, Trump 11th Circuit judge Elizabeth Branch tried to rule that the state of Alabama can't be sued for violating the federal Voting Rights Act. The majority, which included a Reagan appointee, disagreed.
- Trump Fifth Circuit judges Kyle Duncan, Kurt Engelhardt, James Ho, Andrew Oldham and Don Willett tried to reconsider a decision that upheld a federal [gun safety](#) law that requires firearms dealers to sell guns only to state residents, complaining that the ruling treated gun rights as "second class." Conservative judge Priscilla Owen and several other Bush nominees declined to reconsider the ruling.
- Trump Third Circuit judge David Porter dissented from a decision by a Reagan judge and George W. Bush judge Thomas Hardiman, who was on Trump's previous Supreme Court short list, that required reconsideration of an [asylum case concerning an "abhorrent" Chinese forced sterilization policy](#).
- Trump D.C. Circuit judge Neomi Rao argued that House committees [cannot conduct any investigation of the president](#) other than via impeachment. That view was not accepted by a George W. Bush nominee nor, when the case reached the Supreme Court, by Trump justices Neil Gorsuch and Brett Kavanaugh.
- The parents of a teenage boy who was shot and permanently injured by police officers tried to [hold the officers accountable](#) for using excessive force against their son. Eleven judges on the Fifth Circuit Court of Appeals agreed that they could go forward with their

lawsuit, including noted conservative Edith Brown Clement and three other judges nominated by President George W. Bush. But Trump judges Duncan, Oldham, Willett and Ho dissented and argued that the officers should get qualified immunity.

- Trump Eighth Circuit judge David Stras dissented from a ruling reversing a judgment against a man [who suffered severe respiratory injuries](#) he developed by working at a nitric acid manufacturing plant. The majority consisted of a George H.W. Bush nominee, a George W. Bush nominee and previous Trump short-lister Colloton.

These are only a few examples of the harm Trump appellate judges are causing to Americans. Their decisions and dissents move or try to move the law so far to the right that even other Republican judges disagree.

The dangers of more Trump judges and Supreme Court justices are clear – and we all must keep this in mind when we vote in November.

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Analysis: Cases by Issue Area

Listed below are 107 cases through August 31, 2020, in which Trump-nominated appellate judges wrote or joined opinions or dissents so extreme that other Republican-appointed judges disagreed. From a total of 428 cases reviewed for PFAW's [Confirmed Judges, Confirmed Fears](#) project, other Republican judges disagreed with about one-fourth of them.

These decisions are listed below in the following 11 categories: reproductive rights; health care and disability issues; workers' rights; other civil rights; consumers and corporations; environment; immigration; police misconduct; criminal law; other abuse of government authority and other constitutional issues.

Reproductive Rights (seven cases: four majorities, three dissents)

[Planned Parenthood v. Hodges](#): Trump Sixth Circuit judges **Amul Thapar**, John Bush, Joan Larsen, and John Nalbandian joined a full court decision reversing a three-judge panel and upholding Ohio's ban on Planned Parenthood funding.² Dissenters included a George W. Bush nominee.

[June Medical Services v. Gee](#): Trump Fifth Circuit judges James Ho, Don Willett, Kurt Engelhardt, and Andrew Oldham joined a refusal to rehear en banc a ruling that upheld a restrictive Louisiana abortion law, which was later reversed by the Supreme Court. Dissenters included a Reagan appointee.

[U.S. v. Flute](#): Trump Eighth Circuit judge **David Stras** cast the deciding vote to allow the prosecution of a woman for manslaughter for her prenatal drug use. George W. Bush judge Colloton, who was on a previous version of Trump's Supreme Court short list, dissents.

[Planned Parenthood v. Box](#): Trump Seventh Circuit judges **Amy Coney Barrett**, Michael Brennan, and Michael Scudder dissented from the denial of an en banc rehearing of a panel decision that struck down an improper parental consent law. The majority included three Republican judges: conservative Reagan appointee Frank Easterbrook, a George H.W. Bush appointee, and Trump judge Amy St. Eve.

[Planned Parenthood v. Comm'r](#): Trump Seventh Circuit judges **Barrett** and Brennan joined a dissent from refusal to rehear en banc a decision by three judges, appointed by Republican presidents Reagan, Ford, and George H.W. Bush, and argue, contrary to their opinion, that

² Bolded text indicates that the judge has been included on Trump's previous Supreme Court short list or is likely to appear on one.

states should be able to ban abortions related to the sex, disability or other characteristics of the fetus.

In re Rutledge: Trump Eighth Circuit judge Ralph Erickson cast the deciding vote to countermand a district court and allow Arkansas to ban abortions using COVID-19 as an excuse. A George H.W. Bush nominee dissented.

Adams & Boyle P.C. v. Slatery: Trump Sixth Circuit judge **Thapar** dissented from a decision affirming an order that allowed abortions to continue in Tennessee despite a state COVID-19-related prohibition. A George W. Bush nominee was part of the majority.

Health Care and Disability Issues (nine cases: three majorities, six dissents)

USA ex rel. Stephanie Strubbe v. Crawford Cty. Mem. Hosp.: Trump Eighth Circuit judge Erickson issued the deciding vote to dismiss a Medicare fraud claim against a hospital. A Reagan judge dissented.

Chronis v. United States: Trump Seventh Circuit judge **Barrett** dismissed a claim by a patient against medical provider and government. A George H.W. Bush nominee dissented.

Austin v. Saul: Trump Ninth Circuit judge Lawrence VanDyke dissented from a decision written by George W. Bush appointee Jay Bybee that reversed the denial of Social Security disability benefits.

United States v. Florida: Trump 11th Circuit Judge **Elizabeth Branch** dissented from a ruling by a Reagan appointee and argued that the U.S. can't sue states to enforce the Americans with Disabilities Act (ADA).

Noerper v Saul: Trump Eighth Circuit judge **Stras** dissented from a ruling written by a George W. Bush nominee that reversed the denial of Social Security disability benefits.

Childress v. Fox Associates: Trump Eighth Circuit Judge Steven Grasz dissented from a decision by two George W. Bush appointees that required a theater to provide adequate accommodations for deaf and hard of hearing people as required under the ADA.

Nall v. BNSF Railway: Trump Fifth Circuit judge Ho dissented from a ruling whose majority including a George W. Bush appointee that granted trial on an ADA claim by an employee with Parkinson's disease

Guest-Marcotte v. Life Ins. Co. of N. Amer.: Trump Sixth Circuit judge **Thapar** dissented from a decision by Reagan and George W. Bush appointees that granted attorneys' fees to the claimant in a disability case.

O'Keeffe v. Continental Cas. Co.: Trump Sixth Circuit judge Chad Readler wrote a ruling that affirmed the lower court's dismissal of a claim that an insurance company improperly cut off an elderly woman's medical care coverage. A George W. Bush nominee dissented.

Workers' Anti-Discrimination and Other Rights (13 cases: eight majorities, five dissents)

[*Kleber v. Care Fusion*](#): Trump Seventh Circuit judges **Barrett**, Brennan, and St. Eve joined Scudder's en banc decision that reversed a three-judge panel and ruled that job applicants cannot prove age discrimination based on the discriminatory effect of an employer's hiring practices on older workers. Reagan judge Frank Easterbrook and a George H.W. Bush appointee were among the dissenters.

[*Bender v. Champlain Ind.*](#): Trump Sixth Circuit judges Larsen and Bush let an airline fire a worker who complained of defects that threatened public safety. A George W. Bush appointee dissented and said that the wrongful discharge claim should have gone to a jury.

[*U.S. EEOC v. VC Wings*](#): Trump Fifth Circuit judge Oldham cast the deciding vote to prevent a fired employee from intervening in an Equal Employment Opportunity Commission age discrimination case. A George W. Bush appointee dissented.

[*Inocencio v. Montalvo*](#): Trump Fifth Circuit judge Engelhardt cast the deciding vote to prevent a trial for a Latino police detective's race discrimination claim. George W. Bush nominee Leslie Southwick dissented.

[*Barrow v. Cleveland*](#): Trump Sixth Circuit judge Bush dissented from a decision that affirmed a jury verdict in favor of an employee's Title VII retaliation claim. George W. Bush nominee Raymond Kethledge, who was on Trump's previous Supreme Court short list, voted with the majority in the case.

[*Morgan v. Robinson*](#): Trump Eighth Circuit judges **Stras** and Grasz joined a full court ruling that reversed a three-judge panel and threw out a First Amendment job retaliation claim by a deputy sheriff. Dissenters included a George W. Bush appointee and Trump judge Erickson.

[*Webb v. Financial Ind. Reg. Auth.*](#): Trump Seventh Circuit judge **Barrett** wrote an opinion dismissing a claim of unfair arbitration despite a strong dissent by a Reagan appointee.

[*Jones v. Hosemann*](#): Trump Fifth Circuit judges Willett and Oldham reversed a district court and dismissed a race discrimination claim brought against officials in the Mississippi secretary of state's office. A George W. Bush appointee issued a strong dissent.

[*Ozburn-Hessey Logistics v. NLRB*](#): Trump Sixth Circuit judge Readler dissented from part of a decision written by a George H.W. Bush appointee that affirmed penalties ordered by the National Labor Review Board (NLRB) for labor law violations, including for improperly firing employees.

[*Scott v. Chipotle Mexican Grill, Inc.*](#): Trump Second Circuit judge Richard Sullivan dissented and tried to prevent more than 500 employees of Chipotle from suing collectively under the Fair Labor Standards Act to recover overtime pay they contended was improperly denied by the chain. A George W. Bush nominee was part of the majority.

[*Nethery v. Quality Care Investors*](#): Trump Sixth Circuit judge **Thapar** cast the deciding vote to affirm the dismissal without trial of a woman's workplace retaliation claim for firing her after

she reported that her supervisor sexually harassed her and other female employees. A George W. Bush nominee dissented.

[*Rittman v. Amazon.com Inc.*](#) Trump Ninth Circuit judge Daniel Bress dissented and argued that the common claims of thousands of Amazon drivers that they were underpaid had to be resolved through individual arbitrations. Two judges nominated by George W. Bush rejected that view and affirmed a district court decision that Amazon could not enforce mandatory arbitration language in its contracts with drivers.

[*Delta Sandblasting Co. v. NLRB*](#): Trump Ninth Circuit judge Patrick Bumatay tried in dissent to excuse a company that significantly cut pension contributions for its workers without notifying or bargaining with their union. In an opinion by a George W. Bush nominee, the majority rejected that view and upheld an NLRB finding that the company committed an unfair labor practice.

Other Civil Rights (five cases: three majorities, two dissents)

[*Inclusive Communities Project v. Lincoln Property Co.*](#) **(2)**³: All five Trump Fifth Circuit judges –Ho, Willett, Engelhardt, Duncan and Oldham – voted to deny the rehearing of an Engelhardt decision that seriously undermined the Fair Housing Act by ruling against a challenge to practices with a discriminatory impact on African Americans. Judges appointed by George W. Bush and Reagan strongly dissented.

[*Alabama State Conf of NAACP v. Ala.*](#): Trump 11th Circuit judge **Branch** dissented and argued that the state of Alabama can't be sued for voting discrimination under the Voting Rights Act. The majority included a Reagan judge who, in another case, declared the Affordable Care Act unconstitutional.

[*Chisholm v. St. Mary's School Dist.*](#): Trump Sixth Circuit judge Readler wrote an opinion refusing to allow parents to go forward with a claim against a high school teacher and football coach for harassment. A George W. Bush nominee dissented.

[*Doe v. Boyertown Area Sch. Dist.*](#): Trump Third Circuit judge Stephanos Bibas dissented from a ruling, which included a George W. Bush appointee, that declined to rehear a decision rejecting attack on school district policy respecting transgender student rights.

Consumers and Corporations (13 cases: six majorities, seven dissents)

[*FTC v. Credit Bureau Center*](#): Trump Seventh Circuit judges **Barrett**, Brennan, Scudder and St. Eve joined the refusal to rehear a decision (in which Brennan participated) that reversed prior precedent and ruled that the Federal Trade Commission can't seek restitution for victims of consumer fraud. A George H.W. Bush judge was among the dissenters.

[*Casillas v. Madison Ave. Associates*](#): Trump Seventh Circuit judge Brennan ruled that a consumer did not have the standing to pursue a clear violation of the Fair Debt Collection

³ The number (2) indicates that there were two decisions involving Trump and other Republican-appointed judges in those cases. The total number of rulings in each category is listed, broken down by majority decisions and dissents.

Practices Act. Trump judges **Barrett**, Scudder, and St. Eve joined the refusal to rehear en banc, as to which George H.W. Bush judge was among the dissenters.

[Association of Equipment Manufacturers v. Burgum](#): Trump Eighth Circuit judge **Stras** cast the deciding vote to strike down a state law protecting farmers from harmful practices of equipment manufacturers under *Lochner*-era theory. A George W. Bush judge dissented.

*[Collins v. Mnuchin](#) (2): In the *en banc* decision striking down a federal statute that provided that the president cannot fire the director of an independent housing finance agency at will, Fifth Circuit Trump judges Ho, Duncan, Willett, Engelhardt and Oldham also reversed the district court's dismissal and ruled that big investors could challenge the substance of some agency actions to protect consumers. Two George W. Bush judges were in dissent. Willett also was in the panel decision in which his partial dissent disagreed with a George W. Bush judge on that issue.

[Taillard v. Roto Corp.](#): Trump Sixth Circuit judge Bush dismissed a product liability case against a corporation whose product burned the skin of a man and his four-year-old child. A George W. Bush judge dissented.

[Tamarin Lindenberg v. Jackson Natl. Life Ins. Co.](#): Trump Sixth Circuit judges **Thapar**, Bush, Larsen, and Nalbandian dissented from the refusal to rehear a decision, from which Larsen had dissented, that struck down a cap on punitive damages against an insurance company that had intentionally denied a death benefit. All other Republican-appointed judges on the Circuit were in the majority, including noted conservative Jeffrey Sutton and one other George W. Bush nominee.

[Deutsche Bank v. Cornish](#): Trump Seventh Circuit judge St. Eve dissented from an order, joined by a George H.W. Bush nominee, that stopped the foreclosure of a family's home that would have left them homeless.

[Keathley v. Grange Ins. Co.](#): Trump Sixth Circuit judge **Thapar** cast the deciding vote to affirm the dismissal without trial of a homeowner's claim that an insurer refused to provide coverage for water damage. A George W. Bush appointee dissented.

[Perry v. Allstate Indemnity Co.](#): Trump Sixth Circuit judge Readler dissented from part of a decision that included a George W. Bush appointee finding for a homeowner in a claim against an insurance company.

[Arkansas Teachers Ret. Sys. v. Goldman Sachs Group, Inc.](#): Trump Second Circuit judge Sullivan dissented and tried to reverse a district court and rule that shareholders of a large investment firm could not bring a class action suit against the firm for securities fraud for allegedly misrepresenting conflicts of interest in its business practices. A George W. Bush nominee wrote the opinion.

[Allen v. Pennsylvania Higher Education Assistance Agency](#): Trump Sixth Circuit judge Nalbandian argued in dissent that the Telephone Consumer Protection Act does not prohibit automated debt collection calls from a stored list, which would have reversed a judgment of over

\$176,000 in damages to consumers, who received more than 350 such calls from one debt collector. The majority included a George H.W. Bush nominee.

City of Portland v. United States: Trump Ninth Circuit judge Bress argued in dissent that local governments should be able to charge high fees for allowing the construction of necessary equipment for 5G service, harming consumers by slowing the spread of such service. The majority, which included George W. Bush nominee Jay Bybee, rejected that claim and upheld the Federal Communication Commission's order to the contrary.

Environment: (three dissents)

Scott v. Dyno Nobel Inc: Trump Eighth Circuit judge **Stras** dissented from a decision reversing summary judgment against an individual who suffered severe respiratory injuries caused by a nitric acid manufacturing plant. The majority consisted of George H.W. Bush nominee Kethledge and George W. Bush nominee Colloton.

Guertin v. Michigan: Trump Sixth Circuit judges **Thapar**, Larsen, Nalbandian, and Eric Murphy joined the dissent from refusal to rehear en banc a case allowing a consumer to sue Flint, Michigan officials concerning lead-poisoned water. The majority included a George W. Bush judge who criticized the dissent and Trump judge Bush.

EPIC v. Carlson: Trump Ninth Circuit judge Kenneth Lee tried in dissent to permit the U.S. Forest Service to hire logging companies to cut down and log numerous trees near a fire that had been put out in a national forest without first assessing the project's environmental impact. The majority, which included a George W. Bush appointee, disagreed and required the Forest Service to assess the environmental effect before it could proceed.

Immigration (14 cases: six majorities, eight dissents)

New York v. U.S. Dept. of Justice: Trump Second Circuit judges Steven Menashi, William Nardini, Richard Sullivan, and Joseph Bianco cast deciding votes preventing the full court from rehearing a panel decision that upheld Trump administration requirements that states cooperate with federal immigration enforcement or lose important Byrne Grant law enforcement funds, contrary to rulings in four other circuits. A George W. Bush nominee disagreed.

Martinex v. Larose: Trump Sixth Circuit judge **Thapar** cast the deciding vote to allow the continued detention without a bond hearing of an immigrant who had fled to the U.S. and had already been in custody for more than two years. A George W. Bush nominee strongly dissented.

Bautista v. Barr: Trump Ninth Circuit judge VanDyke dissented from a ruling reversing the denial of a motion to reopen an immigration case to present evidence that the persecution to which an immigrant would be subject had become much worse. Conservative George W. Bush nominee Jay Bybee was part of the majority.

Lin v. Attorney General: Trump Third Circuit judge David Porter dissented from a decision by a Reagan judge and Bush judge Thomas Hardiman, who was on Trump's previous Supreme Court short list, requiring the reconsideration of an "abhorrent" Chinese forced sterilization policy in an asylum case.

Yafai v. Pompeo (2): Trump Seventh Circuit judges **Barrett**, Brennan, Scudder and St. Eve, provided the deciding votes to deny the rehearing of **Barrett**'s decision denying a spousal visa. A Reagan judge dissented from the original ruling; a George H.W. Bush nominee joined the en banc dissent.

Dieng v. Barr: Trump Sixth Circuit judge **Thapar** cast the deciding vote to deny asylum to a family whose wife would face likely female genital mutilation upon their return to Senegal. A George W. Bush nominee dissented.

Solano-Abarca v. Barr: Trump Sixth Circuit judge Nalbandian dissented from a decision joined by a George W. Bush nominee requiring consideration of a child's risk of hardship if her father was deported.

U.S. v. Fuentes-Canales: Trump Fifth Circuit judge Willett cast the deciding vote to affirm the conviction for unlawful reentry of an immigrant despite a lower court's "plain error" and a dissent by a George W. Bush judge.

Mendez v. Barr: Trump Second Circuit judge Sullivan dissented and tried to uphold a Board of Immigration Appeals decision preventing a man who had been a permanent legal resident for 15 years from returning to the U.S. after a trip overseas. A George W. Bush nominee wrote the decision rejecting that claim and vacating the BIA's decision.

Rattu v. Barr: Trump 2d Circuit judge Sullivan dissented and tried to uphold the denial of asylum to an Indian national fleeing persecution despite an immigration judge's legal errors. A George H.W. Bush nominee rejected the claim and remanded the case for reconsideration.

Cook County v. Wolf: Trump Seventh Circuit judge **Barrett** dissented and tried to uphold the Trump administration's new "public charge" rule to deny immigrants permanent resident status if they receive even one form of public assistance.

Ramirez v. Barr: Trump Sixth Circuit judge **Thapar** dissented and tried to immediately deport a Nicaraguan man who sought asylum due to threatened persecution. The majority, including a George W. Bush nominee, granted a stay of removal so the man could fully present his case.

Hong T. Vo v. Barr: Trump Ninth Circuit judge Bridget Bade tried in dissent to uphold a ruling that a woman who testified that she was repeatedly arrested and abused by Vietnamese police lacked credibility in her claim for asylum. The majority, including a George W. Bush nominee, disagreed and sent the case back for reconsideration.

Police Misconduct (seven cases: two majorities; five dissents)

[*Bullock v. City of Detroit*](#): Trump Sixth Circuit judge Murphy wrote an opinion reversing a district court and granting qualified immunity to police officers who searched a Detroit woman's home, despite evidence that one of them lied to obtain a search warrant. George W. Bush nominee dissented.

[*U.S. v. Curry*](#): Trump Fourth Circuit judges Julius Richardson, Marvin Quattlebaum and Allison Rushing dissented from a full court decision that upheld a ruling that a police stop-and-seizure of an African American man without "reasonable suspicion" was improper. The majority included a judge nominated by George W. Bush.

[*Jones v. City of Elyria*](#): Trump Sixth Circuit judge Readler wrote an opinion reversing a district court decision and granting qualified immunity to a police officer involved in excessive use of force. A George W. Bush nominee dissented.

[*Rudolph v. Babinec*](#): Trump Sixth Circuit judge **Thapar** dissented from decision including a George W. Bush appointee that rejected qualified immunity for a police officer who forced a woman to leave home around 3 am for a psychiatric evaluation.

[*Howl v. Alvarado*](#): Trump 10th Circuit judge Allison Eid dissented from a decision by a Reagan appointee allowing a civil case to proceed against a police officer who was allegedly involved in fabricating evidence.

[*Leonard v. City of Nelsonville*](#): Trump Sixth Circuit judge Murphy dissented and tried to prevent a man who had filed a complaint on his own, seeking damages because police had violated his Fourth Amendment rights by seizing and towing away his legally parked vehicle, from pursuing his case. The order was joined by a George W. Bush nominee.

[*Cole v. Carson*](#): Trump Fifth Circuit judges Willett, Ho, Oldham, and Duncan dissented from an en banc ruling, including Edith Brown Clement and three other George W. Bush appointees and Trump judge Engelhardt, rejecting a qualified immunity claim concerning officers charged with using excessive force in shooting a teenager.

Criminal Justice (11 cases: two majorities, nine dissents)

*[*Walker v. U.S.*](#): All six Trump Sixth Circuit judges – **Thapar**, Larsen, Bush, Nalbandian, Readler, and Murphy – refused to grant the rehearing of a case that sent a 65-year old back to jail for seven years, despite a dissent including two George W. Bush appointees, including Judge Kethledge.

[*U.S. v. Ramos*](#): Trump Fifth Circuit judge Duncan dissented from a decision that included a George W. Bush appointee that reversed a district court ruling for improperly removing a juror without investigation.

[*Nalls v. Vanney*](#): Trump Fifth Circuit judge Ho dissented from a ruling that included conservative George W. Bush appointee Clement, allowing the late filing of a post-conviction review petition.

[US v. Garcia](#): Trump Seventh Circuit judge Brennan dissented from a ruling, joined by George H.W. Bush nominee, reversing a conviction due to lack of evidence.

[U.S. v. Moya](#): Trump 10th Circuit judge Eid dissented from an order joined by conservative George W. Bush appointee Timothy Tymkovich that excluded a government expert's report due to lack of proper notice.

[U.S. v. Hanchett](#): Trump Fifth Circuit judge Engelhardt dissented from a ruling joined by George W. Bush judge Clement that vacated part of a criminal sentence.

[Sims v. Hyatte](#): Trump Seventh Circuit judge **Barrett** dissented from a decision by a Gerald Ford nominee that granted post-conviction relief based on discovery that a key witness had been hypnotized.

[U.S. v. Russell](#): Trump 11th Circuit judge Grant dissented and tried to uphold the conviction of an African American man who had not been allowed to present evidence to the jury that could have shown he was not guilty. A Reagan nominee was part of the majority that rejected that view, vacated the conviction, and sent the case back to the lower court.

[U.S. v. Yarbrough](#): Trump 11th Circuit judge **Branch** cast the deciding vote to reverse a district court decision to throw out evidence obtained when police re-entered a home without a warrant to search. A George H.W. Bush nominee dissented.

[U.S. v. Medley](#): Trump Fourth Circuit judge Quattlebaum tried in dissent to uphold a conviction, despite conflict with a recent Supreme Court decision, requiring proof of a specific element of the offense. The majority opinion was written by a judge nominated by George W. Bush.

[Long v. Hooks](#): Trump Fourth Circuit judges Richardson, Quattlebaum, and Rushing tried in dissent to uphold the conviction of a man who had served in prison for more than 40 years for crimes he contended he did not commit, despite the revelation that the state suppressed evidence that could have proven his innocence. The majority, which included a judge nominated by President George W. Bush, sent the case back to a lower court to give him the chance to prove his innocence with all the evidence.

Other Abuse of Authority (12 cases: four majorities, eight dissents)

[Qassim v. Trump](#): Trump D.C. Circuit judge **Neomi Rao** joined a dissent arguing that Guantanamo detainees have no due process rights. The majority, which included a George W. Bush nominee, rejected that claim.

[Rodgers v. Bryant](#) (2): Trump Eighth Circuit judge **Stras** dissented from a decision by two George W. Bush appointees affirming the preliminary injunction against enforcement of an anti-loitering law aimed at poor people. **Stras** later was the only dissenter from the en banc refusal to rehear the case. See *2020 U.S. App. LEXIS 7674*.

[Reid v. Hurwitz](#): Trump D.C. Circuit judge Gregory Katsas dissented from a decision joined by a George W. Bush appointee, giving an imprisoned man a chance to prove his claim of improper Bureau of Prisons treatment.

[Ericson v. Frankenberry](#): Trump Seventh Circuit judges Brennan and St. Eve dismiss an invasion of privacy claim by an airline pilot who was awoken, searched and arrested by officers in a pilot's lounge. A George H.W. Bush appointee dissented.

[Tolliver v. Noble](#): Trump Sixth Circuit judge John Bush dissented from a decision, which included George H.W. Bush nominee Kethledge, that allowed an imprisoned man to pursue due process and religious liberty claims.

[Moya v. Garcia](#): Trump 10th Circuit judges Eid and Joel Carson joined the denial of the rehearing of a claim that people were being kept in prison for long periods without arraignment. Dissenters include conservative George W. Bush appointee Tymkovich.

[Seals v. McBee](#): Trump Fifth Circuit judges Duncan, Engelhardt, Ho and Oldham dissented from a denial of rehearing, which was joined by conservative Reagan appointee Edith Jones and two George W. Bush appointees, of a decision that invalidated a state law that criminalized making lawful threats against public officials.

[CIC Services v. IRS](#): Trump Sixth Circuit judges Bush, Larsen, Murphy, Nalbandian, Readler, and **Thapar** dissent from the denial of rehearing en banc, which included three George W. Bush nominees, and launched a broad attack against the Internal Revenue Service and executive authority.

[Contreras v. Doña Ana County Bd. of Comm.](#): Trump 10th Circuit judge Carson cast the deciding vote to affirm the dismissal of a claim of deliberate indifference to a threat of violence at a juvenile detention center, including granting qualified immunity to a law enforcement officer. A Ronald Reagan nominee dissented.

[Baldwin v. Fannon](#): Trump Ninth Circuit judge Nelson casts the deciding vote to reject an imprisoned man's claim of unjustified use of excessive force against him. A Nixon nominee dissented.

[Small v. Brock](#): Trump Sixth Circuit judge **Thapar** dissented and tried to affirm the dismissal of an imprisoned man's claim that he was improperly threatened with a knife by a prison guard. George W. Bush appointee Julia Smith Gibbons wrote the decision explaining that he should be allowed to proceed with his case.

[Wiley v. Kentucky Dept. of Corr.](#): Trump Sixth Circuit judge **Thapar** dissented from a decision, which included a George W. Bush nominee, that reversed a dismissal and gave an imprisoned man the opportunity to prove his claim that officials had improperly used excessive force against him.

[Bard v. Brown County](#): Trump Sixth Circuit judge Nalbandian dissented and tried to affirm a lower court's dismissal of a suit by the sister of a dead man who claimed that jail officials had

helped cause his death. A George H.W. Bush nominee was part of the majority that reversed and allowed the case to proceed.

Other Constitutional Issues (13 cases: two majorities, 11 dissents)

[*Trump v. Mazars*](#): Trump D.C. Circuit judge **Rao** dissented from the refusal of the full D.C. Circuit to rehear the decision that upheld congressional subpoenas against institutions that have financial records concerning President Trump. She argued that outside of impeachment, Congress has no investigative authority concerning the president other than through impeachment. A George W. Bush nominee was in the majority, and when the Supreme Court remanded the case, at least three Republican appointees, including Trump Supreme Court justices Neil Gorsuch and Brett Kavanaugh, agreed that Congress does have some such authority.

[*Kanter v. Barr*](#): Trump Seventh Circuit judge **Barrett** dissented from a ruling by two Reagan appointees that upheld a federal gun law as applied to those who have been convicted of felonies.

[*Mance v. Sessions*](#): Trump Fifth Circuit judges Willett, Ho, Duncan, Engelhardt, and Oldham dissented from a decision not to rehear en banc a ruling upholding a federal gun law requiring dealers to sell to state residents only. Those in the majority against rehearing included noted conservative Priscilla Owen and two other George W. Bush nominees.

[*Calzone v. Summers*](#): **(2)**: Trump Eighth Circuit judge **Stras** wrote an en banc decision, which was joined by Trump judges Grasz, Erickson, and Jonathan Kobes, partly striking down a state lobbying disclosure law. Four of the five dissenters were Republican appointees, including Colloton and two other George W. Bush appointees, and another by George H.W. Bush. The ruling reversed a panel decision in which **Stras** dissented from the decision upholding the law by two of those Bush appointees, including Colloton.

[*Zimmerman v. Austin*](#): Trump Fifth Circuit judge Ho dissented from the denial of rehearing en banc by majority, which included conservative judges Priscilla Owen, Edith Brown Clement, and three other George W. Bush nominees, concerning a decision upholding city campaign contribution limits.

[*Northeastern Pa. Freethought Society v. County of Lackawanna Trans. Sys.*](#): Trump Third Circuit judge Porter cast the deciding vote to require a transit system to display religion-related as opposed to other non-commercial ads. A Reagan judge dissented.

[*Tree of Life Christian Schools v. City of Upper Arlington*](#): Trump Sixth Circuit judge **Thapar** dissented from a ruling that included a George W. Bush appointee against a religious school in a Religious Land Use and Institutionalized Persons Act case concerning zoning.

[*Knight First Amendment Institute v. Trump*](#): Trump Second Circuit judges Sullivan and Michael Park were the only judges to dissent from the refusal of the Circuit to rehear a decision

that Trump could not block those who disagree with him from his Twitter account. A George W. Bush nominee criticized the dissent.

Wilson v. Houston Community College System: Trump Fifth Circuit judges Willett, Ho, Duncan and Oldham dissented from the denial of a rehearing by the full court of a decision that gives a former elected board member an opportunity to prove damages from the board's censure of him that he claimed violated the First Amendment. Reagan nominee, two George W Bush nominees, and Trump nominee Engelhardt disagreed.

CREW v. Trump: Trump Second Circuit judges Menashi and Sullivan tried in dissent to convince the full court to rehear a decision that found that a suit against President Trump for violating the Foreign Emoluments Clause of the Constitution could proceed. A George W. Bush nominee, as well as Trump nominees Bianco and Nardini, disagreed.

In re House Judiciary Committee: Trump D.C. Circuit judge **Rao** dissented from a decision, which was joined by a George W. Bush nominee, that the House Judiciary Committee can review grand jury testimony and documents from the Mueller investigation. The Supreme Court agreed in July to hear the case.

In re Michael Flynn: Trump D.C. Circuit judge **Rao** argued in dissent that allowing a district judge to hold a hearing on and evaluate the Justice Department's recent withdrawal of Michael Flynn's guilty plea, per federal rules, would violate the separation of powers and executive branch power. The majority, including a George W. Bush appointee, disagreed and sent the case back so the judge can continue the process.