



Why Judges Matter: Trump Judge Actions Have Seriously Harmed Biden Administration Efforts to Help Americans

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The Biden Administration, with the help of Democrats in Congress, has accomplished a lot in its first year. Highlights have included helping the country combat and recover from the COVID-19 pandemic, undoing much of the damage done by the Trump Administration in a variety of areas and making lifetime [appointments](#) of a historic number of diverse and highly qualified judges to the federal bench. A key barrier that has significantly harmed Biden Administration efforts, however, has been decisions by lifetime Trump-appointed judges that have blocked a number of these actions.

As [documented](#) in People For the American Way's *Our Courts, Our Fight* blog series, Trump judges at all levels have issued multiple decisions in 15 cases that have improperly delayed or stopped important and legal Biden initiatives. As explained below, moreover, the methods used by Trump judges – including nationwide injunctions by Trump judges in a single district, unsigned “shadow docket” rulings with little or no explanation, and judicial second-guessing of expert health and other agency determinations -- threaten to do even more damage in the future.

Some of the serious harm to the American people by Trump judges may be reversible. Tragically, some may not, particularly the loss of life due to damage to the COVID-19 effort. These decisions reinforce the importance of the Senate continuing to promptly confirm fair-minded judges who can counter harmful votes by Trump judges.

Harm to anti-COVID-19 efforts

The Biden Administration's top priority since taking office continues to be the COVID-19 pandemic, which persists in harming our health, economy, and our daily lives. For all the Administration has done to promote vaccinations and take other important actions, however, Trump judges have stopped or caused harmful delays in several areas. Specifically:

Halting crucial limits on eviction

During the Trump Administration, the Centers for Disease Control (CDC) recognized the serious health danger caused by eviction of lower-income residents because of problems, many caused by the economic effects of COVID-19 itself, in paying rent. Studies documented the risk to health and the literal loss of life when people are evicted and must seek temporary shelter with family and friends, and the courts, including Trump judges, upheld the eviction moratorium ordered by the CDC.

Things changed dramatically once Joe Biden became president. Although the CDC continued to issue limitations on eviction, a [number](#) of [Trump](#) district [judges](#), including



one who [had upheld](#) such a moratorium a few months earlier under Trump, ruled that the CDC eviction restrictions were illegal and struck them down. Several [appellate judges](#) nominated by Trump upheld or refused to stay such orders. This was despite the fact that the [DC Circuit](#) court of appeals ruled that the CDC's temporary moratorium enacted in early 2021, as the Delta variant spiked throughout the country, was legal. In an unsigned "shadow docket" opinion made possible by the three Trump justices, however, the Supreme Court effectively [struck down](#) the eviction moratorium in August, 2021. This was despite the warning in the dissent by the Court's three moderate justices that the majority's action threatened the "health of millions," and that some "10,000 deaths" could well result from the majority's "second-guessing" the CDC's expert judgment. It is too soon to determine precisely the effects of the Court's action, but evictions have [increased](#) since the Court's ruling and such dire predictions are all too likely to become true as the Omicron variant ravages our country.

Stopping important vaccination and related requirements

Although millions of Americans have heeded the advice of the Administration, medical experts, and many others to get vaccinated against COVID-19, millions more have not, threatening their health and the health of people around them. After consultation with experts and others, the Administration announced in the fall a [Path out of the Pandemic](#) plan, which relied on recognized federal authority to require COVID-19 vaccinations by companies employing health care workers serving vulnerable Medicare and Medicaid patients, large corporations with more than 100 employees, and federal contractors, as well as requiring vaccination of federal workers and military personnel. A number of Trump judges have blocked some of these important requirements, however, with a key Supreme Court hearing on the subject set for January 7. Specifically:

- Pursuant to its recognized authority to establish rules for health care facilities that want to receive such federal funds, the Center for Medicare and Medicaid Services (CMS) issued a rule that requires them to ensure that health care workers who come into contact with vulnerable patients under these programs get COVID-19 vaccinations. [Three different](#) Trump district [judges](#) issued injunctions to block this requirement, including one who blocked it nationwide. This was despite the fact that a Florida judge nominated by President George W Bush [refused](#) to grant such an injunction in a decision that was affirmed by the Eleventh Circuit court of appeals (with a Trump judge dissenting), as well as previous [criticisms](#) by Republicans of injunctions by a judge in one judicial district that apply nationwide. The [Justice Department](#) filed prompt appeals in the first two of those cases and, after the appellate courts declined to grant a stay of the rulings pending appeal, went to the Supreme Court seeking a stay, asking that the CMS order be allowed to "take effect before the winter spike" in COVID-19 cases "worsens further" and to help save "hundreds or even thousands of lives each month." The Court scheduled prompt briefing and set oral argument for [January 7](#).

- With respect to big business, the Occupational Safety and Health Administration (OSHA) adopted a rule that mandates that such corporations ensure that workers are either vaccinated or wear masks at work and get tested at least weekly. Lawsuits challenging the rule were filed immediately in circuit courts of appeal, including some contending that the rule was not stringent enough. The ordinary procedure is for a panel on multidistrict litigation to determine at random which court will hear the case. Jumping the gun, however, a three-judge panel on the Fifth Circuit, including two Trump judges, [stopped](#) the rule in its tracks in a one-sentence “shadow docket” order the day after the suit was filed. A week later, an opinion by Trump judge Engelhardt [extended](#) the stay indefinitely. After all the cases were consolidated before the Sixth Circuit, a 2-1 panel including judges nominated by Presidents George W Bush and Obama [dissolved](#) the stay and ordered that the rule go forward because the relevant Congressional law clearly gave OSHA authority to “protect workers against infectious diseases” like COVID-19. Trump judge Joan Larsen dissented, and the Supreme Court agreed to hear challenges that seek to reinstitute the stay, with oral arguments on [January 7](#), the same day as the health care worker argument. Bush judge Julia Gibbons was particularly critical of judges who improperly “substitute our judgment” for that of expert agencies like OSHA.
- Other COVID-19 vaccine requirements have not yet reached the high Court. Pursuant to its authority over companies and others seeking to contract with the federal government, the Administration required that federal contractors ensure that employees working on federal contracts be vaccinated against COVID-19. In response to a lawsuit by seven Republican states, however, a Trump district judge issued a preliminary injunction that [blocked](#) the order, not just in those seven states, but nationwide. An Eleventh Circuit panel including two Trump judges refused to stay the injunction pending appeal in a one-paragraph unsigned [ruling](#) because they claimed the government had not shown “irreparable injury.” This was despite a brief by the American Medical Association and 14 other national health groups explaining why the continuation of the injunction will “cause grave, severe, and irreparable harm.” Briefing in the case will be complete by January 24. Literally as 2022 dawned, moreover, two Trump district judges issued injunctions that [blocked](#) in 24 states similar vaccination and also masking requirements designed to protect children, families and staff in federally funded Head Start programs.

We do not know how the Trump justices and other far-right members of the Court will rule on these crucial vaccine requirements after the January 7 arguments, although there is significant reason for [concern](#). In any case, the delays already caused by Trump lower court judges, as the Justice Department has [explained](#), “will likely cost many lives per day,” as well as “large numbers of hospitalizations” and “other serious health effects.”

Causing other harm to anti-COVID efforts

Shortly after passage of the American Rescue Plan Act of 2021, Trump judge Amul Thapar issued a 2-1 decision granting a [preliminary injunction](#) against an important part of the law that prioritized for 21 days the processing of relief requests by small restaurants harmed by the pandemic with female, minority, or socially disadvantaged owners. The ruling could well lead to other invalidation of what the dissent called “narrowly tailored” efforts to provide a “monetary lifeline aimed at ameliorating short-term economic devastation” caused by COVID or other disasters.

Damage to environmental initiatives

In an early effort to deal with climate change and pollution problems, the Biden Administration ordered a temporary halt to new leases for oil and gas drilling on federal land and offshore as it conducts a comprehensive review of the impact of such leasing. In response to a challenge by Republican states, a Trump district judge [ordered](#) a nationwide stop to the effort, a preliminary injunction that one expert called “deeply dangerous.” The Administration has in fact continued such leases as required, and the case is currently [on appeal](#).

Restoring harmful Trump immigration policies

In three cases by Trump district judges in Texas, later approved by Trump appellate judges including on the Supreme Court, reforms by the Biden Administration to damaging Trump immigration practices were stopped. They also ordered reinstatement of Trump policies, with harmful effects that continue today. Specifically:

- As the Biden Administration began evaluating immigration practices in January, it ordered a nationwide 100-day pause on most deportations. A Trump district judge immediately [granted](#) a request by Texas and ordered that deportations resume without pause. As one immigration attorney commented, the judge’s order was an effort to force the new Administration to [“follow Trump’s xenophobic policies.”](#) In large measure, this effort succeeded, because the judge extended his order indefinitely and the case was dismissed after the 100-day period expired.
- The same Trump judge also [reversed](#) a new Administration directive that the Immigration and Customs Enforcement (ICE) agency focus efforts on undocumented immigrants who are national security or public safety risks. Instead, the judge effectively reinstated a Trump policy that allows ICE agents to, for example, pursue immigrants with long ties to the community who have committed only minor traffic offenses. Although a Fifth Circuit panel that did not include any Trump judges stayed the lower court’s order in September, the full Fifth Circuit (including six Trump judges) [vacated](#) the stay at the end of November without explanation. That means that the Trump district judge’s [“unprecedented and outrageous”](#) order remains in effect as the case is appealed.

- Another Trump district judge [overturned](#) a Biden Administration decision that terminated the harsh Trump “Remain in Mexico” policy, which required Central American refugees who have traveled through Mexico to seek asylum to return to Mexico to await asylum hearings, despite the “dangerous or unsafe circumstances” and lack of health and other services they face. A three-judge panel on the Fifth Circuit that included two Trump judges refused to stay the district court’s order, and an unsigned “shadow docket” order by the Supreme Court, which included at least one Trump justice, also refused. (This was despite the fact that when a judge had enjoined the Remain in Mexico order under Trump, a Supreme Court shadow docket order including at least one Trump justice [granted](#) a stay to the Trump Administration that allowed the harsh policy to remain in effect). Another three-judge Fifth Circuit panel with two Trump judges affirmed a district court permanent injunction in the case in December, and the Biden Administration has had to reinstate the policy, although it did reach agreements with Mexico that will provide some humanitarian relief to refugees forced to return there. The Justice Department has [asked](#) the Supreme Court to review the case, explaining that the lower court decisions erroneously “compel DHS to maintain indefinitely” the “discretionary” program that DHS has now found “contrary to the interests” of the US, threatening to “severely impair” the Executive Branch’s “constitutional and statutory authority” over immigration and foreign policy.

Conclusion

The record is clear. Despite the tremendous progress made by the Biden Administration in 2021, the rulings of Trump judges at all levels have severely impeded that progress, risking Americans’ health and lives from the COVID-19 pandemic, frustrating efforts to improve the environment and combat climate change, and forcing the Administration to continue several harsh Trump immigration policies. In doing so, these Trump judges have used questionable legal tactics – including injunctions by judges in a single judicial district that apply throughout the country, unsigned “shadow docket” orders with little or no explanation, and rulings that improperly second-guess the expert judgment of health and other agencies – that are all too likely to be used in 2022 and beyond to improperly interfere with Biden Administration and Congressional actions to help Americans.

People For will continue to track and criticize such harmful decisions. To do more, it is absolutely crucial that all of us encourage the Senate to continue to confirm fair-minded judges who can help counteract these harmful rulings, and help ensure that Senators will continue to be in place who will do so.