

## OPINION

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## JUDGES AS UMPIRES IN ROBES? HARDLY

Democrats must organize to match Republican intensity on U.S. judicial appointments as a crucial voting issue.

With Republicans controlling the Senate and the judicial filibuster dead, the Democrats' odds of denying President Trump a second Supreme Court appointment are slim. Barring some unforeseen development, the president will lock in a 5-to-4 conservative majority, shifting the court solidly to the right for a generation.

This is all the more reason for Democrats and progressives to take a page from "The Godfather" and go to the mattresses on this issue. Because this battle is about more than a single seat on the nation's highest court. With public attention focused on all that is at stake with this alignment, this is the moment for Democrats to drive home to voters the crucial role that the judiciary plays in shaping this nation, and why the courts should be a key voting concern in Every. Single. Election.

This call to arms may sound overly dramatic. It's not. As hyperpartisanship, gridlock and a general abdication of responsibility have rendered Congress increasingly dysfunctional, the judiciary is taking an ever-greater hand in policy areas ranging from immigration to guns to ballot access to worker rights.

Of course, it's not only Supreme Court picks that count. Lower-court appointments matter enormously as well, a reality of which the Senate majority leader, Mitch McConnell, is exquisitely aware. Thanks to Mr. McConnell's labors, Mr. Trump installed a record number of federal appeals judges in his first year.

The trillion-dollar question is whether Democrats can also use this battle to turn out their voters. This is not a given. If progressives wind up feeling as though their team didn't fight fiercely enough against Mr. Trump's nominee, they could be less inspired to show up at the polls. But even if Senate Democrats pull out all the stops, the political reality is that Republicans have been far more effective than Democrats at galvanizing their base around the judiciary.

Certainly this was the case in 2016: Whatever impact the former F.B.I. director James Comey or Russian hackers had on the race, Mr. Trump owes a big chunk of his win to Mr. McConnell for shamelessly refusing to fill Justice Antonin Scalia's empty seat until after the election. Even conservatives turned off by Mr. Trump's sexual creepiness could be rallied around the prospect of claiming that seat. In his endorsement of Mr. Trump, Senator Ted Cruz of Texas listed the Supreme Court as his top reason, warning supporters, "We are only one justice away from losing our most basic rights, and the next president will appoint as many as four new justices."

This is not to suggest that Democrats don't care about the judiciary. The issue just hasn't resonated as widely and viscerally with their base as it has with Republicans, where the threat of judicial activism has become a reliable, enduring motivator. At least since early in the Obama era, Democratic voters have held a generally more positive view of the Supreme Court than their Republican counterparts.

Even before Justice Anthony Kennedy announced his retirement last week, nervous progressives had started working to close the urgency gap. This spring, the Committee for a Fair Judiciary, which advocates progressive judicial values, beefed up its lobbying shop. Around the same time, a gaggle of Democratic operatives formed a nonprofit group, Demand Justice, aimed at energizing voters around the courts. Demand Justice hopes to change the current political dynamic, in which Democrats and progressive interest groups typically mobilize to battle a specific court nominee, after which their energy and attention quickly dissipate. Through a combination of education and activism, the group wants to make judicial appointments a core electoral concern for progressive voters and a standard talking point for Democratic politicians.

The fire now raging against Mr. Trump and his nominees can't be sustained indefinitely. Before it burns out, Democrats need to tap some of the energy to help make the courts an enduring cause for their voters.

Long after Mr. Trump is nothing but a toxic memory, the federal judiciary — from the Supreme Court on down — will bear the smear of his fingerprints. The coming confirmation battle will be fierce, but no matter what happens, the fight cannot end there. On Nov. 6, voters will have their first chance to arrest Mr. Trump's warping of the judiciary. Reversing the damage already done will require a much longer-term commitment.

## Life as a lawyer at the border

Efrén Olivares

In the Italian film "Life Is Beautiful," a Jewish bookstore owner uses creative stunts to distract his child from the horrible reality of being held in a Nazi concentration camp. I was reminded of that movie recently as I found myself part of an eerily similar heartbreaking moment.

As lawyers with the Texas Civil Rights Project, my team has been working around the clock to document hundreds of cases of children taken from their parents since the Trump administration started its "zero tolerance" immigration policy. Under that policy, the government charges every immigrant apprehended at the border with illegal entry, a misdemeanor offense — regardless of whether they're fleeing violence and seeking asylum, or traveling with children.

Before zero tolerance, immigration and Department of Justice officials exercised their discretion on whether to press criminal charges against some immigrants and asylum seekers, particularly those traveling with children and those with special circumstances.

Each morning for the last three weeks, my colleagues and I have gone to the federal courthouse in McAllen, Tex., seven miles from the Mexican border. We arrive no later than 7:45, pass the metal detectors at the security check, and make sure to get to the eighth floor by 8.

By that time, the courtroom is already nearly full. On a typical morning, some 70 to 80 men and women are

brought to court and put in handcuffs with shackles around their ankles. A vast majority are first-time border crossers. A public defender asks the group whether any are traveling with children and have been separated from them. Struggling with the handcuffs, it's not easy for them to raise their hands. Sometimes, to answer in the affirmative, they must stand up.

The criminal proceeding begins at 9 a.m., and depending on how many separated parents are there each day, we have maybe five to seven minutes

to speak with each parent beforehand. Hopefully, that's enough to get the most basic information about them and the children taken from them — names, dates of birth, country of origin. They're frightened and confused, and most don't speak English. I tell them in Spanish that I can try to help get their children back.

The parents ask when they're going to see their children again. I try to calm them and tell them I'll do my best to make sure it happens soon. The truth is I don't have an answer. And I can't make a promise I'm not sure I can keep.

The stories they tell are all devastating. But as a father, I was really hit in the gut by one a few weeks back. I was talking with a single father whose wife left him several years ago when his daughter was 3 years old.

They were fleeing violence in Honduras in search of a better life. But it didn't work out that way. Once they crossed the border, the United States charged him with a crime, and agents told him they had to take his daughter away.

As they were leaving, his daughter asked where she was going. What can a father possibly tell his daughter in that situation?

Like the character in "Life Is Beautiful," this dad's priority was to try to shield his little girl from pain. So he made up a story: He told her she was going to summer camp. The girl, only 7 years old and oblivious to her plight, walked away with a big smile. She was so excited for her first day of camp.

I've encountered so many awful stories like this that I've become desensitized. I almost see them as normal.

The first time a crying parent asked me when she would see her son again, I struggled to find an answer. But many weeks after the Trump administration started its zero-tolerance policy — and hundreds of separated families later — I've become hardened to these conversations because I've had them over and over, day after day.

Plus, there's no time for those feelings in the courtroom. We have to get as much information as we can, and it's a race against the clock. If we don't quickly complete the intake and interview process to later track them down, no one except the government will know that a separation occurred. And without the information about these children and their parents, how will we look for them? How will anyone?

Of 381 families we interviewed, 278

are still separated. At least two children have been deported without their parents. And at least five parents have been deported without their children, who remain in the United States. This is only a small fraction of the more than 2,000 families that remain separated today.

Parents seeking asylum and safety for their families need meaningful access to lawyers and the courts. They shouldn't be forced into a Hobson's choice between seeing their children again or pursuing their asylum claim. Some of the parents we've interviewed tell us these illegal pressures from the government are increasing.

The way to end this nightmare is to rescind the zero tolerance policy that criminalizes immigrants and asylum seekers. The solution is not to detain these families indefinitely as the government currently plans. Rather, immigrants and asylum seekers should be allowed to pursue their cases in immigration court without being detained, as was done under the Family Case Management Program, which was highly successful in terms of people appearing for their court hearings, which this administration terminated.

In effect, the administration can end this crisis today with the stroke of a pen. Until then, my colleagues and I will be in the courthouse bright and early tomorrow morning, and each one thereafter. Dozens of frightened immigrants and a courtroom full of heartbreaking stories will be waiting for us at 8.

EFREN OLIVARES is the Racial Economic Justice Program director at the Texas Civil Rights Project.



SANDRA DRONIS

## Making America unemployed again

Jamie Lincoln Kitman

It used to be a refrain of the Republican faithful that the United States government shouldn't be in the business of picking winners and losers where industry and technology are concerned.

As President Trump's global trade war escalates, with the latest round of tariffs having gone into effect on Friday, his administration is doing just that. The new wrinkle is that it is no longer clear who is being set up to triumph or fail. Tariffs directed at products from one country — whether that's steel from Canada and China or cars from Italy — are just as likely to affect American companies and hurt their workers.

That message came through loud and clear in recent days during the public comment period on the administration's proposed tariffs on imported cars and parts. The global auto industry relies on supply chains that were built on the free movement of parts and goods. Suppliers, dealers and car manufacturers in the United States and other countries are petrified by the damage that the tariffs could do to their businesses.

General Motors, which warned that the tariffs could lead to job losses in the United States, said in its comments that the new levies could end up "isolating U.S. businesses like G.M. from the global market that helps to preserve and grow our strength here at home."

The Alliance of Automobile Manu-

facturers, a trade group for domestic and foreign automakers with operations in the United States, predicts that a 25 percent tariff on imported cars, the high end of what has been proposed, could increase the average price of a new imported vehicle by \$5,800.

"Tariffs will lead to increased producer costs, increased producer costs will lead to increased vehicle costs, increased vehicle costs will lead to fewer sales and less tax receipts, fewer sales will lead to fewer jobs, and those fewer jobs will significantly impact many communities and families across the country," the alliance warned in its June 27 comments to the Commerce Department.

One of America's Big Three automakers, Fiat Chrysler, which operates 23 plants and employs 56,000 people in the United States, is an Italian-American company incorporated in the Netherlands with headquarters in Britain. It builds its strong-selling Jeep Renegade model in Italy, China and Brazil. The company stands to lose as much as \$866 million in profit, according to one estimate, if a 25 percent tariff on cars from the European Union goes into effect.

Foreign carmakers with factories in America, including BMW and Volvo in South Carolina, Mercedes and Hyundai in Alabama, Subaru in Indiana, plus Toyota and Honda, which operate plants in several states, also stand to suffer, along with all of their suppliers. A study by the Peterson Institute found that 195,000 jobs will be lost if the tariffs are enacted and 624,000 lost if retaliatory tariffs follow.

Volvo, which recently opened a plant

in South Carolina, said that jobs there depended on customers outside the United States. "Thus, half of the 4,000 direct jobs at the factory that we aim to create are related to exports, and if we cannot trade freely, those U.S. jobs may not be created at all," Volvo said.

To be sure, this industry is quick to warn of job losses from policies it doesn't like but is slow to reward workers when times are good. The auto industry has not gone out of its way to use its recent corporate tax breaks to benefit workers.

The prospect of tariff-induced job losses, however, is not just hypothetical. Harley-Davidson, the Wisconsin-based motorcycle maker, could be a bellwether.

**Mr. Trump's global trade war is escalating and could cost many thousands of Americans their jobs.**

Harley sales have been in decline in the United States for years. Its bikes are big, fat, noisy and technologically backward, and the company has been too slow to make the lighter, more modern motorcycles that appeal to younger, more technically sophisticated American buyers. Japanese and European motorcycle makers have excelled at this.

Yet, ironically, sales for Harley-Davidson have been steady in Europe, the company's second-biggest market, while dropping 8.5 percent in the United States in 2017. Those European sales were helping to support hundreds of workers in the United States, along with assembly plants in Australia, Brazil, India and Thailand.

Harley's windfall earlier this year, courtesy of the G.O.P. tax cut, did not go to bolster American production or expand American hiring or raise wages, or to develop its electric offerings more quickly. Nor did the company use it to weather a potential trade war. Instead, the windfall went to stock buybacks soon after Harley announced plans to close its Kansas City, Mo., plant, despite pleas from its union to save the factory's 800 jobs.

The president was conspicuously silent about those job cuts, but he has gone on a Twitter tirade against Harley for its plans for additional layoffs of American workers as a result of retaliatory tariffs from the European Union. Harley says it must ship more of its production offshore in order to remain profitable.

Nothing the motorcycle maker has done — including importing many key components from abroad — is different from the business practices of any other corporation, including its competitors, which the president claims he is now trying to lure to invest in the United States.

One of Harley's rivals, the Iowa-based Polaris, is also considering moving some production to Poland in response to the retaliatory European levies.

Tariffs are like a long train of box-cars; each one is filled with unintended consequences that can knock into the next with devastating consequences. The names on the factories may be foreign, but the workers who stand to lose their jobs are in America.

JAMIE LINCOLN KITMAN is the New York bureau chief for *Automobile* magazine.