



Written by [Dale Wilcox](#) on March 16, 2022

Red Flags in Ketanji Brown Jackson's Immigration Rulings

As the Senate Judiciary Committee prepares to conduct hearings on Judge Ketanji Brown Jackson's nomination to the Supreme Court, her positions on a number of critical issues are beginning to emerge. Immigration is one of the most consequential areas the Court will address, and it is there that Jackson's track record has a number of red flags that warrant further scrutiny in hearings.

Jackson has only served on the D.C. Circuit Court of Appeals for less than a year, but her nearly eight years as a district judge provide some insight into how she approaches immigration issues.



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In 2019, Jackson issued an injunction [blocking](#) the Trump administration from expanding its use of expedited removal for illegal aliens. Jackson sided with anti-borders groups in the case, ruling that Trump had violated the Administrative Procedure Act when implementing the rule. However, Jackson's ruling in this case was later overturned by her future colleagues on the D.C. Circuit Court.

In 2020, Jackson [struck down](#) another Trump program called the "Credible Fear Lesson Plan," which required asylum seekers to prove in initial screenings that they faced a credible fear of persecution in their home country. Jackson [also rejected](#) a challenge to Trump's border wall on environmental grounds in 2019, ruling that the Department of Homeland Security had broad discretion to waive laws regarding border barriers, and that there was no basis for the environmentalists' lawsuit.

Additionally, in 2020, Jackson [upheld](#) the Trump administration's Prompt Asylum Claim Review (PACR) and Humanitarian Asylum Review Process (HARP), which required some illegal border crossers to wait in Customs and Border Patrol facilities instead of Immigration and Customs Enforcement facilities, and limited their access to legal counsel.

While Jackson's record on immigration issues is limited, it's fair to say that her record on the issues is mixed. Perhaps the biggest tell of Jackson's worldview though, is the language she used when deciding immigration cases.

Throughout her nearly nine years as a federal judge, Jackson has refused to refer to illegal aliens by their proper legal term and has instead referred to them in opinions as "non-citizens." In one opinion, Jackson [acknowledged](#) that she was using activist language instead of referring to illegal aliens by their legal term.

"The Court uses the term 'undocumented non-citizens' throughout this Memorandum Opinion to refer to persons born abroad — the federal immigration statutes call them 'aliens' — who are deemed 'inadmissible' under 8 U.S.C. §§ 1182(a)(6)(C) or 1182(a)(7) because they have not received authorization to come into, or remain, in the United States," Jackson wrote in a footnote.

Jackson's language also aligns with that of the White House that nominated her. Shortly after taking office last year, the Biden Administration ordered agencies to stop using the term "illegal alien," and



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start using the term “non-citizen.” The White House claimed this shift in language was meant to confer dignity, but in reality, it only serves to obscure and denigrate the criminality of illegal immigration. That Jackson would accept this framing is deeply troubling, and perhaps the firmest sign we have on her immigration worldview.

Another troubling sign is the way Jackson’s nomination has been enthusiastically cheered by anti-borders groups, including the [National Immigration Law Center](#) (NILC) and the American [Immigration Lawyers Association \(AILA\)](#). AILA President Allen Orr said he was “inspired and encouraged” by Jackson’s nomination, while NILC Legal Director Lisa Graybill urged the Senate to confirm Jackson “without delay.” These endorsements are concerning, but the most concerning endorsement Jackson has received is from the man who nominated her. In just over a year, Joe Biden has decimated America’s sovereignty with a radical immigration policy.

Because Biden committed to placing a woman of color on the Court, senators on the Judiciary Committee may be pressured by media and activist groups to treat this process as more of a coronation than a confirmation hearing. To give in to that pressure would be a mistake. The American people deserve a respectful but rigorous vetting of anyone who would assume such an important position. At a time when the crisis at our border is raging, senators need to fully investigate Jackson’s positions on immigration.

Dale L. Wilcox is executive director and general counsel for the [Immigration Reform Law Institute](#), a public interest law firm working to defend the rights and interests of the American people from the negative effects of mass migration.



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