

Minority Representation on the U.S. Court of Appeals: Do Foreign-Born Judges Influence Immigration Case Outcomes?

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ABSTRACT: This paper assesses the impacts of minority representation on judicial decision-making within three-judge panels on the Ninth Circuit of the U.S. Court of Appeals. While much of the existing literature regarding this issue has looked at racial and gender minorities in the federal judiciary, this paper seeks to identify whether the presence of foreign-born judges on appellate panels has an effect on the holdings of immigration-related cases. To address this question, I compiled an original database of 200 immigration cases decided between 2016 and 2020. The results reaffirm previous findings that panels with at least one female judge or judge of color are more likely to vote in favor of immigrant appellants. However, contrary to theoretical expectations, the results find that foreign-born judges were not more likely to vote in favor of immigrant appellants, signaling that the identity of being an immigrant may not have as strong of a predictive value on judicial decision-making as race or gender. This has broad implications for how we understand the role of different identities in shaping case outcomes in the U.S. Court of Appeals.

Introduction

The judicial branch of the United States government is its most objective.¹ Unlike the chambers of Congress or the President, federal judges are meant to make decisions independent of personal or political pressures; rather than passing laws, their job is to apply the law correctly based on the facts of a case.² However, a growing body of research into judicial decision-making suggests that judges do not always vote objectively. Scholars have found that certain factors — namely the race and gender of judges within appellate panels — can influence case decisions.^{3,4} Controversy over this issue arose in 2016, when then-President Donald Trump claimed that U.S. District Judge Gonzalo Curiel should not have presided over a case involving Trump University because his Mexican heritage presented an “absolute conflict.”⁵ Since Trump was advocating to build a wall on the U.S.-Mexican border at the time, he asserted that the judge would harbor an unfair bias towards him during legal proceedings. In the end, Judge Gonzalo Curiel remained on the lawsuit’s panel and would go on to rule in Trump’s favor to stop a lawsuit aimed at blocking the border wall’s construction.⁶ While Trump’s remarks were deemed racist by many, the situation begs the question: Do personal identities influence judicial decision-making?

In this section, I summarize the existing literature surrounding the effects of minority representation on the federal bench. Despite criticisms about the objectivity of minority judges, researchers have only found persistent differences in case decisions when the identities of minority judges substantively relate to the issues at hand. To illustrate this, Boyd, Epstein, and Martin (2010) performed a comprehensive analysis of the effect of judges’ gender on case outcomes across 13 areas of law. They did not find gender effects in any area of law besides cases of sex

discrimination, in which female judges were more likely to side with plaintiffs.⁷ This suggests that a general pro-plaintiff or otherwise liberal attitude among female judges is not driving gender differences in voting behaviors, but rather, the content of sex discrimination cases specifically elicits different responses in male and female judges.

Since the focus of this paper is on the U.S. Court of Appeals, my research must properly account for its institutional features. While some studies have assessed differences in individual voting behaviors between minority and nonminority judges, these individual effects cannot explain Court of Appeals outcomes because federal appellate panels do not operate by having judges decide cases on their own.⁸ Instead, judges in the Court of Appeals deliberate together in panels of three and must come to a unanimous decision about a case's holding. Research shows that minority representation on appellate panels impacts judicial decisions both at the individual and panel level. That is, not only are individual female judges more likely to vote in favor of appellants alleging sex discrimination, but panels that include at least one female judge are also more likely to vote in favor of these appellants.^{9,10} Similarly, Black judges and panels with Black judges are more likely to vote pro-appellant in cases of racial discrimination and affirmative action.^{11,12} In discussing appellate panels, it is also important to note their institutional norm of consensus. An overwhelming majority of cases are decided with consensus; only around 6-8% of cases include a dissent opinion from one of the co-panelist judges.¹³ However, the low percentage of dissents does not fully capture the amount of disagreement within panels — judges do not always dissent when they disagree with their co-panelists because there are costs associated with doing so.¹⁴ For example, dissenting can undermine the federal judiciary's sense of legitimacy and perceived objectivity. Additionally, writing a dissent can ostracize a judge from their colleagues and create a fruitless workload for them. Therefore, judges in disagreement are often compelled to align themselves with the majority opinion and vote differently than they might otherwise have, making it difficult to determine whether judges voted in accordance with their true views.

Most of the scholarship on judicial decision-making in the Court of Appeals has been concerned with race and gender. As a result, previous studies have mainly looked at the effects of minority representation on cases of sex and race discrimination. By contrast, very few studies have examined the influence of minority judge characteristics on cases related to immigration. One such study on immigration cases from 1999-2009 explored whether panels with judges of color and female judges systematically voted more pro-immigrant. The researchers found that consistent with previous studies, panels with at least one female judge voted more pro-immigrant than their all-male counterparts.¹⁵ However, the same study also found that panels with at least one judge of color were more anti-immigration than their all-white counterparts. The authors suggest that this finding could have arisen because judges of color were less sympathetic to “claims made by people who have entered the country illegally” or because “they are cognizant of the scrutiny they are under in deciding these cases.”¹⁶ In my view, this also suggests that immigration cases are not substantively related to the racial identities of minority judges, so I turn my focus instead to foreign-born judges, whose relationship to immigration cases parallels that of female judges and judges of color to sex and race discrimination cases.

Taken together, the literature on judicial diversity suggests that panels with racial and gender minority judges increase the likelihood of a case outcome being pro-appellant. However, in reviewing these studies, I found that there was a dearth of research into the panel effects of foreign-born judges in the Court of Appeals. Part of this problem is likely due to the fact that foreign-born judges are underrepresented in the circuit courts. Currently, the U.S. is home to roughly 44.7 million immigrants or around 13.7% of the national population.¹⁷ In states covered

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by the Ninth Circuit, the immigrant population is even higher than the national average because they harbor some of the nation's most popular airports and immigrants tend to concentrate near gateway ports of entry in their cities.¹⁸ By contrast, only 2 out of the 29 sitting judges (6.8%) on the Ninth Circuit court are foreign-born.^{19*} The underrepresentation of immigrant judges has especially worrisome implications in the Ninth Circuit, since around 40% of all cases heard in its courts are related to immigration.²⁰ Women, people of color, LGBTQ+ people, and religious minorities are also underrepresented in the Court of Appeals compared to their representation in the U.S. population, and this issue has increased with the recent judicial appointees.²¹ For example, women comprise 30% of circuit court seats although they are 50.52% of the U.S. population; Hispanics comprise 7% of seats although they are 13% of the population; Blacks comprise 11% of seats although they are 13% of the population; etc.²² In discussing diversity in the federal judiciary, I must highlight the difference between the descriptive representation that I have just described and substantive representation.²³ Descriptive representation relates to being represented by judges who have the same demographic characteristics as the population. On the other hand, substantive representation relates to being represented by judges who hold the same opinions and views as the population. While these terms have some overlap in that judges who share demographic characteristics with a population may hold the same beliefs as them, minorities are certainly not a monolith and cannot be assumed to have one set of views, even in areas of law that are salient to their identities.

Importantly, the Ninth Circuit's diversity has gone through a shift in recent years. During Trump's presidency, he filled 10 vacancies in the Ninth Circuit court alone.²⁴ This effectively flipped the composition of the court, which had long been hailed for its commitment to diversity ever since Jimmy Carter's 1970 initiative to appoint minority judges to the federal judiciary.²⁵ As of January 2021, a third of the 29 sitting judges on the nation's traditionally most liberal court were right leaning Trump appointees. Of Trump's picks, there were 2 Asian men, one of whom was born outside of the U.S., and 2 White women. The rest were White men.

In response both to the gap in the literature and the pressing need for more representation of foreign-born judges in the federal judiciary, I narrowed the focus of my research to answer the following question: Do Ninth Circuit Court of Appeals panels with at least one foreign-born judge vote differently from panels with all U.S.-born judges on immigration cases? Although the existing literature affirms that minority panel effects are present, scholars have struggled to ascertain why. The next section covers theoretical expectations in an attempt to identify potential causal mechanisms that may be driving these effects on the federal bench.

Theoretical Expectations

In order to properly interpret my research, it is crucial to understand *why* previous studies find that panels with minority judges vote differently than those without. In this section, I discuss three theoretical explanations, which provide psychological insight into the impact of diversity on judicial decision-making. They help provide an account for why we might predict that panels with minority judges, specifically foreign-born judges, will vote more pro-appellant in immigration cases.

Norm of Consensus

Fischman (2011) states that due to the collaborative nature of appellate panels, judges do not always vote sincerely.²⁶ Rather, they conform to the norm of consensus in the federal judiciary by voting against their own views in favor of the views of the majority. Under this logic, the panel-

level effects of judicial diversity may be the result of nonminority judges believing that they will not be able to change the vote(s) of their minority co-panelist(s). Thus, they would side with their co-panelists in order to preserve unanimity and avoid the minority judge filing a dissent. This explanation reflects an endogenous effect because the outcome (vote) for one individual affects the outcomes of their co-panelists.²⁷ In this way, we expect that minority judges will shift the range for a consensus view and the presence of a minority judge who holds more pro-appellant attitudes will predictably increase the likelihood that the panel will hold pro-appellant.²⁸

Learning Through Exposure

Pursuant to previous literature on learning theories, I submit that as people learn about others' lived experiences, they adjust their own views to incorporate this new information. For example, one study showed that pro-White sentiments among White Americans decreased during and following the Black Lives Matter Movement in 2018, which the researchers posit was due to exposure to media content highlighting Black American stories about being targets of police brutality and racism.²⁹ In another study, researchers postulated that male judges with daughters vote more pro-feminist because prior to having children, they were unaware of women's issues and better understood those issues when they had a daughter who was experiencing them.³⁰ This logic theoretically extends to judicial appellate panels because the first-hand experiences of female judges, judges of color, and foreign-born judges can be shared with their white, male U.S.-born co-panelists during case deliberation.³¹ As a result of learning through exposure, this suggests that the co-panelists would adopt more pro-appellant attitudes in gender and racial discrimination cases, as well as immigration cases. African American D.C. Judge Harry Edwards affirmed this idea in 2002, stating that:

“If I bring unique perspectives to judicial problems — perspectives that are mine in whole or in part because I am Black — it is a good thing... because it is inevitable that judges' different professional and life experiences have some bearing on how they confront various problems that come before them. And in a judicial environment in which collegial deliberations are fostered, diversity among the judges makes for better-informed discussion.”³²

In the context of this study, the literature implies that foreign-born judges who have gone through the immigration courts would be able to expose U.S.-born judges to first-hand accounts of the immigrant experience and foster more positive attitudes towards immigrant appellants. For example, Carlos Bea, a Ninth Circuit judge who was born in Spain, told his story of immigrating to America and how he was nearly deported by an immigration court as a young college student. In a 2007 address to the Board of Immigration Appeals (BIA), he said:

“Every immigrant has a story. You see before you an immigrant who was once under an order of deportation... We are a nation of immigrants and the subject is a vital one for all of us. Every time an Albert Einstein invents a theory, an Arnold Schwarzenegger becomes a Governor, or a rookie Hispanic judge writes a dissent, I am reminded that immigrants aren't just a previous generation long gone, they are an ever-changing contribution to our society, which really is a melting pot.”³³

Moderation

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Lastly, it is possible that the presence of minority judges on appellate panels causes nonminority judges to moderate their anti-appellant views.³⁴ For example, a panel of three U.S.-born judges may bring up arguments or display attitudes that are anti-immigrant because either they believe that their U.S.-born co-panelists will agree with them or they believe that there will not be strong opposition associated with expressing their views. However, if an immigrant judge were on that same panel, we could expect that a judge who would otherwise express anti-immigration views might adjust their speech to not incur the social cost of offending a colleague. Studies of social psychology bolster this claim, finding that in the case of racial biases, White Americans use social tuning in interracial interactions by exhibiting less prejudice in the presence of Blacks than in the presence of other Whites.³⁵ Researchers postulate that this is because the participants shifted their behaviors in order to not appear biased to those around them. If a judge's anti-appellant views were moderated by the presence of a judge who shares an identity with the appellant, then we might expect them to concede the case and side with the minority judge.

Data and Methods

My data consists of a random sample of 200 immigration-related cases decided in the Ninth Circuit of the U.S. Court of Appeals between 2016-2020. Through Westlaw,³⁶ a legal research website, I conducted an advanced search request that narrowed down all Ninth Circuit cases with the date range from January 1st of 2016 to September 18th of 2020, which was the day that I began collecting my data. Having a date range from the last four years was of particular interest to me because of the political climate surrounding President Trump's immigration policy, as well as the shifting composition of the Ninth Circuit court to be more conservative.³⁷

I chose to only focus on immigration cases because the existing literature suggests that the impacts of minority representation on judicial outcomes is found most consistently in cases related to an area of law that is relevant to the judges' identities. Since the novel approach of my paper is examining foreign-born judges as minorities in the federal judiciary, I felt that immigration cases were most parallel to studies on female judges in sex discrimination cases or Black judges in racial discrimination cases. I decided to concentrate my research on cases only within the Ninth Circuit because its courts have such a large immigration caseload and a high rate of immigration into its states (Montana, Washington, Oregon, Idaho, Nevada, Arizona, Alaska, Hawaii, and California) compared to other circuits.³⁸ Using Westlaw, I further narrowed my search to cases that fall under the category of "Aliens, Immigration, and Citizenship." I manually excluded cases in which the U.S. government was one of the litigants. This left all of the cases included in my dataset with the two litigants being the case's immigrant appellant and one of the U.S. Attorneys General as the appellee. During my date range, the Attorneys General were William Barr, Jeff Sessions, Loretta Lynch, and Matthew Whitaker. After employing the exclusion criteria, there were 285 remaining cases, of which I used a random number generator to select 200 cases for analysis.

My dataset focused on panel-level judicial decisions, as opposed to the voting records of individual judges. This decision was made in part because, institutionally, the U.S. Court of Appeals has a norm of consensus in which all decisions must be made with approval of all three judges on a panel except in cases where one judge dissents. While it is possible to use dissents as a proxy for individual votes, my dataset included only 15 dissents out of 200 cases. Since each case has three votes — one per panelist — there were 15 dissents out of 600 votes, which was too small a sample to be able to perform comprehensive statistical analysis on. This would likely not have a strong impact on my research focus because, of the 15 dissent votes, I found only one case in which an immigrant judge dissented.^{39*}

Using Excel, I coded for 28 distinct variables. The outcome variable for my research purposes was the holding of each case, which I coded as a gradient based on how favorable the outcome was towards the immigrant appellant. In Court of Appeals cases, the panel may decide in favor of the immigrant appellant by affirming their petition to be reconsidered by the Board of Immigration Appeals (BIA), an independent administrative agency. In my codebook, a holding of (0) indicates that the appellant's petition was fully denied or denied in part and dismissed in part by the panel; a (1) indicates that the petition was granted in part and denied or dismissed in part; a (2) indicates that the petition was fully granted. I used this gradient as opposed to a binary variable in order to capture the nuance of the holdings and account for the large number of cases that were upheld in part and denied in part.

My key variable of interest was whether or not each judge on a panel was born in the U.S. (U.S.-born = 0; foreign-born = 1). To identify which judges were foreign-born and which were U.S.-born, I collected information directly from the Federal Judiciary Center (FJC), which provides publicly accessible bios that include the birthplace of every federal judge.⁴⁰ Further, FJC bios include data on the U.S. president that nominated each judge. I used the party of the nominating president as a proxy for the partisan affiliations of each judge (Republican = 0; Democrat = 1). I collected information on race/ethnicity (White = 0; Hispanic = 1; Asian = 2; Black = 3; Middle Eastern = 4; Native American = 5) and gender (Male = 0; Female = 1) based on my personal assessment of Google images and the surnames of each judge. Although the accuracy of my assessment may have limitations, this method is most often used for judicial research since federal judge's race and gender identities are not explicitly listed on any official websites.

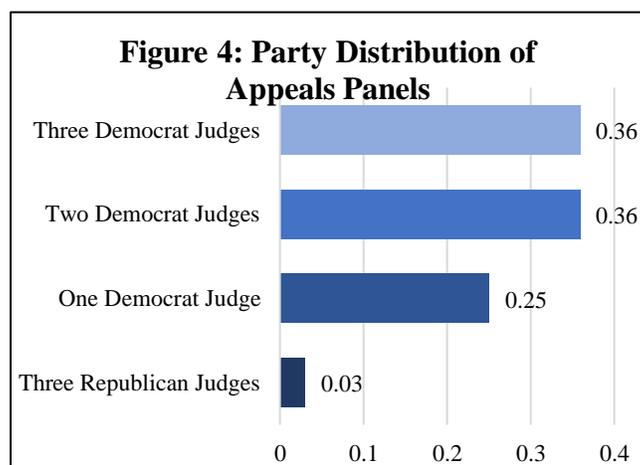
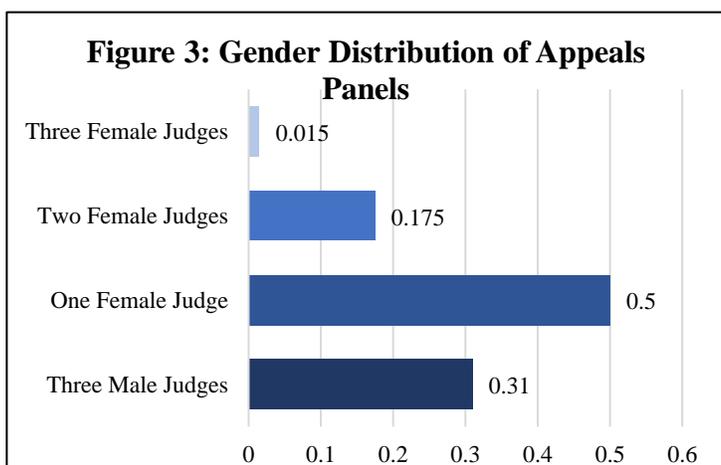
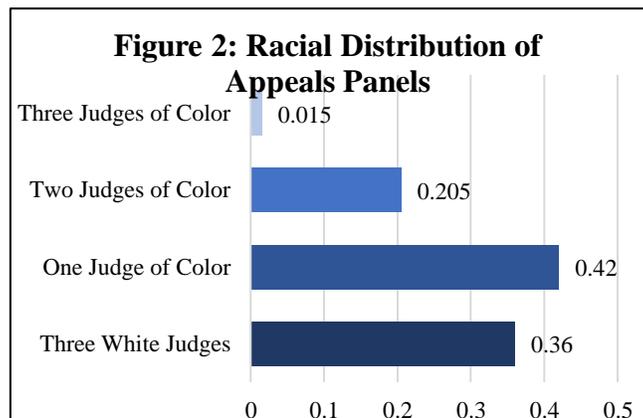
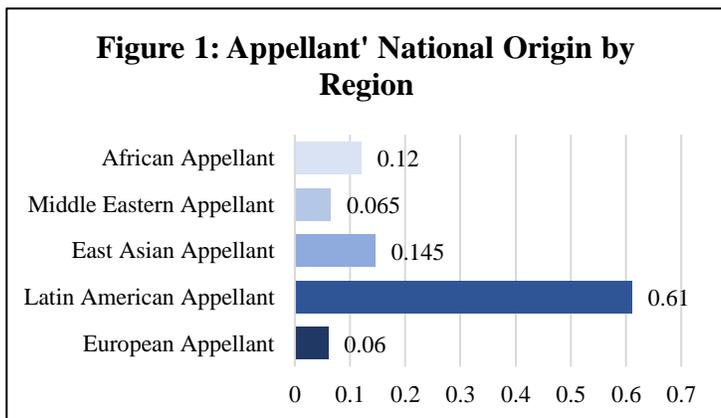
I also included a variable for the national origin of each immigrant appellant in my dataset. There is robust evidence that not all immigrants are treated or viewed the same — Americans have for decades viewed immigration from European countries more favorably, especially compared to immigration from Latin America and Asia.⁴¹ Even in the federal judiciary there are large disparities in rates of asylum petitions being granted depending on which country they are from.⁴² Westlaw includes the national origin of the appellant in its case reviews because they are relevant to the immigration case proceedings. Using this information, I created a variable to categorize appellants based on what region their country of origin is belongs to (Europe = 0; Latin America = 1; East Asia = 2; Middle East = 3; Africa = 4).

After collecting this data, I used RStudio to create dummy variables to catalogue cases based on whether the presiding panel had one immigrant judge, two immigrant judges, or no immigrant judges, as well as the panels' number of female judges, judges of color, and Democrat judges. I then performed two logistic regression tests of panels' decisions in immigration cases. The U.S. Court of Appeals randomizes assignment of judges to cases, so randomization in my data can be assumed.⁴³

Before discussing my results, it is useful to address the descriptive statistics of my dataset. Figure 1 shows the distribution of regional origins among immigrant appellants. The majority of appellants came from Latin America (61%) with appellants from Europe being the least represented group (6%). Figures 2-4 show the distributions of judges' race, gender and party affiliation, respectively. The low representation of panels with three judges of color (1.5%), three female judges (1.5%), and three Republican judges (3%) is consistent with the makeup of judges in the Ninth Circuit, which is overwhelmingly made up of white male Democrats. Figures demonstrating panel composition are more useful to view in the context of my research than the composition of all judges included in my dataset, since my research interest is in panel-level

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effects. A more comprehensive empirical model for different panel composition combinations can be found in Appendix Table A1.

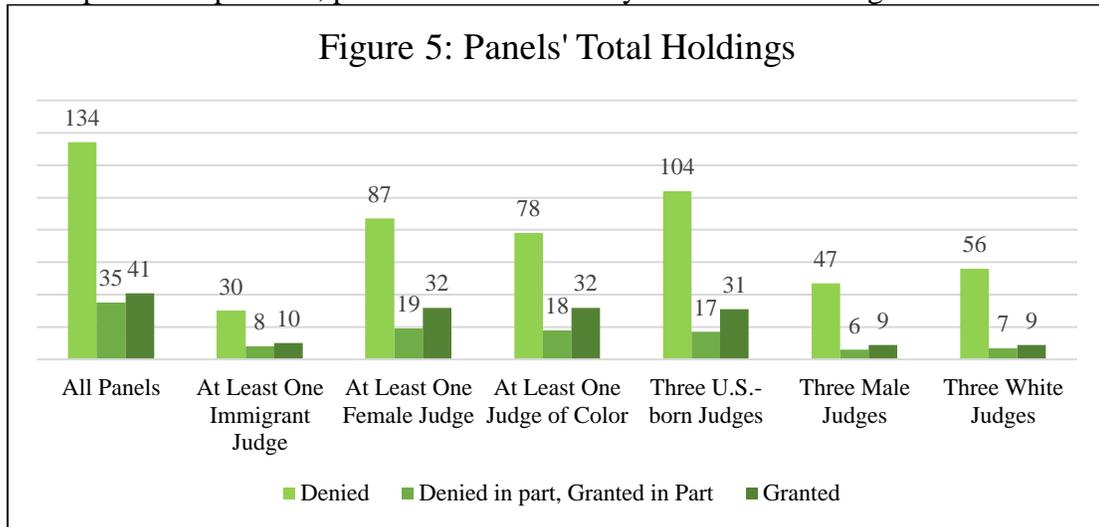


Additionally, I found that 24% of immigration cases had at least one foreign-born judge presiding. There were only 3 cases in which two foreign-born judges presided (1.5%) and none in which three foreign-born judges presided, which I did not include in my analysis or discussion due to the small sample size. Furthermore, my data includes 90 unique judges, 29 of whom are sitting members of the Ninth Circuit court and 61 of whom are members of other district courts that were randomly selected to preside in Ninth Circuit cases. This includes a total of 11 foreign-born judges in my dataset, 2 of whom currently serve on the Ninth Circuit and 2 of whom recently retired from the Ninth Circuit. All of the foreign-born judges in my dataset are now American citizens. Of the 11 immigrant judges: 5 were Hispanic, 2 were White, 2 were Asian, and 1 was Black; 5 were nominated by a Republican and 6 were nominated by a Democrat; 9 were men and 2 were women. Although there are more Democrat-appointed immigrant judges in my data, Republican-appointed immigrant judges presided over twice as many cases.

Results

To answer the central question of this paper — whether panels with at least one immigrant judge vote differently from panels with no immigrant judges — I report the voting records of panels based on the presence of minority judges. Figure 5 provides a graph of the raw data on total holdings that were fully granted, granted in part/denied in part, and fully denied among all panel-

types. Since I coded case outcomes on a gradient with 0 (appeal fully denied) being the most anti-immigrant and 2 (appeal fully granted) being the most pro-immigrant, this figure shows that regardless of panel composition, panels were more likely to vote anti-immigrant.



Using the incidence of each holding across different panel-types, Table 1 shows that the mean holding in all cases was 0.535, which skews anti-immigrant appellant. Table 1 also demonstrates that panels with at least one minority judge voted more pro-immigrant than the average. The increase in mean holding for panels with at least one immigrant judge, which was my principal interest, is +0.048. By contrast, panels' mean vote with at least one female judge is +0.066 higher than the average and panels with at least one judge of color is highest at +0.106 higher than the average, meaning that the smallest difference in means was among panels with a foreign-born judge and the greatest difference in means was among panels with a racial minority judge.

Table 1: Panels with Minorities' Mean Holdings in Immigration Cases (2016-2020)

<i>All</i>	<i>At Least One Immigrant Judge</i>	<i>At Least One Female Judge</i>	<i>At Least One Judge of Color</i>
0.535	0.583	0.601	0.641

Table 2: Nonminority Panels' Mean Holdings in Immigration Cases (2016-2020)

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<i>All</i>	<i>Three U.S.-born Judges</i>	<i>Three Male Judges</i>	<i>Three White Judges</i>
0.535	0.5197	0.387	0.347

To examine the difference in means, I recreated Table 1 using the mean holdings of panels with all nonminority judges. Table 2 shows that panels with all nonminority judges had more anti-immigrant holdings than the average across characteristics. I found that panels with all U.S.-born judges had a decrease in mean holding of -0.0153 compared to the average, panels with all male judges had a decrease in mean holding of -0.148, and panels with all white judges had a decrease in mean holding of -0.188. Parallel to my findings in Table 1, this means that the smallest difference in mean holdings was among panels categorized by immigrant status while the greatest difference in mean holding was among panels categorized by race.

Next, I investigate whether these differences in panel voting behaviors can be interpreted as the causal effect of panels having minority representation. To do this, I fit two models that regressed panels' votes on multiple panel-level characteristics. Model 1 is a limited regression that only looks at whether panels had at least one minority judge based on gender, race, party affiliation, and foreign-born judges. Model 2 looks at the effects of having specific numbers of female judges, immigrant judges, judges of color, and Democrats presiding in panels. Table 3 shows the results of this logit analysis.

Model 1 demonstrates that having at least one female judge and at least one judge of color in immigration cases has panel effects on the case's holding. That is, panels with at least one racial or gender minority were both more likely to hold in favor of the immigrant appellant, making the panel effect of racial and gender minorities pro-immigrant. My principal interest was in the effects on holding of at least one foreign-born judge. Model 1 shows that panels with immigrant judges were slightly more likely to hold in favor of the immigrant appellant than panels with all U.S.-born judges, but not at a statistically significant level, so a causal relationship cannot be inferred. Model 2 reaffirms the finding that the presence of foreign-born judges does not have a causal panel effect in immigration cases, as well as the finding that panels with a judge of color are more likely to be pro-immigrant. I also find that panels with one Democrat and two Republicans decreases the likelihood of granting the petition, making these panels more anti-immigrant and signaling that ideology impacts panel outcomes.

In Appendix Table A2, I performed a logit analysis for the interaction effects between foreign-born judges and judges of color, Democrats, and females. This table again demonstrates panel effects for panels with at least one judge of color and at least one female judge, confirming my results in Table 3, but did not find any significant interaction effects, meaning that neither the race, gender, nor party of immigrant judges drove changes in their panels' holdings.

Finally, I did another logit analysis to determine whether the regional origin of the appellant made a difference in panels' voting behaviors. I did not find this to be the case because, as is shown in Appendix Table A3, there were no statistically significant results. This indicates that the region of the appellant did not have a causal effect on the holdings of their cases.

Table 3: Logit Analysis of Panels' Voting

<i>Panel Composition</i>	Model 1		Model 2	
	<i>Coefficient</i> <i>t</i>	<i>SE</i>	<i>Coefficient</i>	<i>SE</i>
Intercept	-1.205	0.909	-1.304	0.929
At Least One Foreign-Born Judge	0.021	0.374	0.523	0.435
At Least One Female Judge	0.625*	0.355	—	—
One Female Judge (And Two Male Judges)	—	—	0.591	0.374
Two Female Judges (And One Male Judge)	—	—	0.147	0.507
At Least One Judge of Color	0.816**	0.361	—	—
One Judges of Color (And Two White Judges)	—	—	0.878*	0.406
Two Judges of Color (And One White Judge)	—	—	0.234	0.517
At Least One Democrat Judge	-0.52	0.918	—	—
One Democrat Judge (And Two Republican Judges)	—	—	-2.15**	1.086
Two Democrat Judges (And One Republican Judge)	—	—	-0.017	0.953
All Democrat Judges	—	—	0.526	0.964

N = 200

** denotes $p < 0.05$, * denotes $p < 0.1$

Discussion

Despite the theoretical expectation that foreign-born judges would affect panel-level decisions, my research did not substantiate this assertion. On the contrary, based on my data, the presence of foreign-born judges on panels had no significant pro-immigrant effect on the holdings of U.S. Court of Appeals immigration cases. Specifically, although mean holdings were more pro-immigrant among panels with foreign-born judges compared to all U.S.-born panels, the difference in means could not be interpreted as causal (Table 3). Even though this finding is categorized as null, as pointed out in previous literature, it is imperative that null findings be highlighted.⁴⁴ In this study, my null result contributes to our understanding of the influence of minorities in the federal judiciary by suggesting that immigrant judges do not introduce pro-appellant preference in immigration cases.

While this paper's central focus was on foreign-born judges, I also replicated previous findings by testing whether gender and race contribute to panel effects. My results show that racial and gender minorities do have panel effects on immigration holdings. In particular, I found that female judges increased the likelihood that panels would vote pro-immigrant, which is consistent with previous findings.⁴⁵ However, regarding race, the finding that judges of color also increased the likelihood of a panel holding pro-immigrant is not consistent with the findings of Williams and Law (2012), which found that panels with racial minorities were more anti-immigrant.⁴⁶ This discrepancy could be due to a number of methodological differences including the sample size and different date ranges, which I discuss further in my limitations section.

Taken together, my results suggest that the identity of being foreign-born influences judges during voting and deliberation differently than do racial and/or gender identities. This could be explained by findings in the literature indicating that immigrants, especially those who have become naturalized in their host countries, may tend to hold anti-immigration views.⁴⁷ In the process of acquiring citizenship, immigrants acculturate, increasing their nationalist sentiments.⁴⁸ As a result, these naturalized citizens report higher than expected anti-immigration attitudes and favor restrictive immigration policies. Thus, although we expect that shared experiences would lead naturalized immigrants to have favorable attitudes towards immigration, research shows that acculturation into the host country produces more critical views on immigration.⁴⁹

Another potential explanation for my null result hinges on the idea that foreign-born judges may feel they are under more scrutiny during immigration cases, so they conform their views to the majority opinion.⁵⁰ Furthermore, immigrant judges may also want to avoid being tokenized for their identity, which could compel them to not be as vocal as they might otherwise have been during deliberations for immigration cases.⁵¹ Thus, perceived notions about immigrant judges may alter their behavior during deliberation, making them less likely to share pro-immigrant sentiments and in turn reducing their panel effects in the Court of Appeals.

Finally, immigrant judges may have different voting patterns than female judges and judges of color due to selection bias, or "systematic differences in how the considered populations were put together."⁵² As demonstrated in Appendix Table A2, I did not find any interaction effects between holdings of panels with at least one immigrant and race, gender, or party affiliation, which suggests that these factors are not driving my null result. However, in using the party of the President that nominated each judge as a proxy for judge ideology, I did not fully capture their political attitudes towards immigration. Further, the fact that all of the foreign-born judges have become U.S. citizens and have received a high enough level of education to become a federal judge suggests that the immigrant judges in the Court of Appeals are not wholly representative of all U.S. immigrants, which may account for the discrepancy in their theoretically expected behaviors.

A comprehensive interpretation of my null result takes into account that the sample of immigrant judges in the Court of Appeals may (1) have anti-immigrant views independent of their political party, (2) are less insistent in immigration cases to avoid scrutiny, and/or (3) have experiences with immigration not representative of the average U.S. immigrant. While I believe all of these frameworks could in part explain why immigrant judges do not cause panel effects, this requires further research.

Limitations & Future Directions

The external validity of my research is limited in view of a small sample size (N=200). With a limited sample size, my dataset only included 15 dissents out of 600 total votes, which is insufficient to properly analyze individual-level differences in voting. Further, my dataset included only one case in which an immigrant judge dissented, so it cannot be used as a proxy for foreign-born individual votes. Previous papers with larger databases were able to determine individual effects of race and gender, among other variables, because their data included more dissents. As a result of being unable to compare individual voting patterns, my research is unable to untangle the causal mechanisms driving panel effects. Data on individual voting trends from foreign-born judges compared to U.S.-born judges would have allowed me to determine whether judges' votes were endogenously affecting panel outcomes. Future research should focus on strategies to uncover casual mechanisms by constructing a larger dataset containing more dissent cases.

It is also important to note that in this paper I used the terms "immigrant judge" and "foreign-born judge" interchangeably. However, the immigrant experience is highly nuanced and simply looking at birthplace is not a direct determinant of the personal experiences had by foreign-born judges. In addition, there is a dearth of information on the paths to citizenship taken by the immigrant judges in my dataset, so the nuance of their experiences was not captured in my research. Thus, grouping all foreign-born judges together may be an oversimplification. In order to increase internal validity and uncover new findings in future studies, researchers should include more comprehensive variables regarding judges' backgrounds and upbringings (e.g., at what age the judge immigrated to the U.S., whether their immigration case was ever appealed, whether they encountered other barriers to citizenship, the number of family members who are also immigrants, etc.).

Conclusion

Despite the limitations of my research, this study advances our understanding on the effects of a neglected form of minority representation in the federal judiciary. With the recent emphasis on immigration policy and voting patterns of minority judges, it is imperative to continue this line of research into panel-level effects of U.S. Court of Appeals cases. The finding that the presence of immigrant judges has no effect on the holding of an immigrant appellant importantly contradicts notions that immigrant judges cannot be objective in immigration cases. However, the panel effects of race and gender that were found in this research should not be taken to mean that minority judges are less objective than nonminority judges. Rather, these judges bring a unique and useful perspective to panels, making them an essential fixture of the federal bench.

Appendix Table A1: Descriptive Statistics

<i>Variable</i>	<i>Mean</i>	<i>Min</i>	<i>Max</i>
Race			
Hispanic Defendant	0.61	0	1
All White Judges	0.36	0	1
One Judge of Color (And Two White Judges)	0.42	0	1
Two Judges of Color (And One White Judge)	0.20 5	0	1
All Judges of Color	0.01 5	0	1
Immigration			
At Least One Foreign-Born Judge	0.24	0	1
Gender			
All Male Judges	0.31	0	1
One Female Judge (And Two Male Judges)	0.5	0	1
Two Female Judges (And One Male Judge)	0.17 5	0	1
All Female Judges	0.01 5	0	1
Party Affiliation			
All Republican Judges	0.03	0	1
One Democrat Judge (And Two Republican Judges)	0.25	0	1
Two Democrat Judges (And One Republican Judge)	0.36	0	1
All Democrat Judges	0.36	0	1

Holding	0.53	0	2
	5		

N = 200

<i>Variable</i>	<i>Coefficient</i>
At Least One Immigrant Judge	0.384 (0.726)
At Least One Judge of Color	0.25* (0.133)
At Least One Democrat Judge	0.378 (0.476)
At Least One Female Judge	0.239* (0.144)
Immigrant × Judge of Color	0.413 (0.459)
Immigrant × Democrat	-0.711 (0.703)
Immigrant × Female	-0.139 (0.296)

Appendix Table A2: Logit Analysis of Panel Characteristics' Interaction Effects

<i>Variable</i>	<i>Coefficient</i>
At Least One Immigrant Judge	0.384 (0.726)
At Least One Judge of Color	0.25* (0.133)
At Least One Democrat Judge	0.378 (0.476)
At Least One Female Judge	0.239* (0.144)
Immigrant ´ Judge of Color	0.413 (0.459)
Immigrant ´ Democrat	-0.711 (0.703)
Immigrant ´ Female	-0.139 (0.296)

Appendix Table A3: Logit Analysis of Regional Differences in Appeals Court Decisions

<i>Region of Appellant</i>	<i>Coefficient</i>	<i>SE</i>	<i>p-value</i>
European	-0.336	0.585	0.565
Latin American	-0.418	0.616	0.497

East Asian	-0.012	0.696	0.986
Middle Eastern	0.49	0.807	0.543
African	-1.609	0.851	0.058

Endnotes

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