

THOMAS HARDIMAN

Thomas Hardiman, currently a judge on the U.S. Court of Appeals for the Third Circuit, is on President Trump's shortlist for the U.S. Supreme Court.

WORKERS' AND CONSUMERS' RIGHTS

In 2015, Hardiman [sided against](#) nearly 1,800 truck drivers who were laid off and not paid approximately \$8 million they were owed due to the short notice. Under Hardiman's decision about the company's bankruptcy, which the Supreme Court later [reversed](#), banks and other lenders were paid first. [One person](#) from the company who had terminal cancer was unable to find replacement health insurance and passed away.

In another case, Hardiman [ruled](#) for Allstate after it fired 6,200 sales agents, offering to bring them back as independent contractors on the condition that they sign away their rights to existing claims against the company, including discrimination claims.

Hardiman, disagreeing with his colleagues in the majority, would have [held](#) that Philadelphia fire service paramedics were not covered by part of the Fair Labor Standards Act, and therefore were ineligible for overtime pay.

Hardiman has taken the position that it should be more difficult for everyday Americans — workers, consumers, middle-class Americans, and small business owners — to hold corporations and bad actors accountable. In 2018, Hardiman [announced](#) to a Federalist Society Convention: "If I were able to do something unilaterally, I would probably institute a new federal rule that said that all cases worth less than \$500,000 will be tried without any discovery." Such a rule would enable corporations and those who commit wrongdoing to hide critical evidence and deprive those with modest-dollar cases of their ability to argue their case in court, including individuals whose cases involve important rights.

LGBTQ RIGHTS

Hardiman [disagreed](#) with a Third Circuit panel decision that dismissed a lawsuit brought by the named [hate group](#) Alliance Defending Freedom, in which the group had argued that it was illegal for a Pennsylvania public school to have a policy allowing transgender students to use bathrooms consistent with their gender identity. The Supreme Court [refused](#) to consider the group's appeal, leaving the school's policy of respecting transgender students' gender identities in place.

REPRODUCTIVE RIGHTS

Trump has again and again reminded us that he will only put justices on the Supreme Court who pass his [litmus test](#) of [overturning *Roe v. Wade*](#). Trump said overturning *Roe* "will happen automatically . . . because I am putting pro-life justices on the court." Judge Hardiman indicated his willingness to curtail women's rights to reproductive health care when he issued a [ruling](#) that allowed a nonprofit organization to challenge the ACA's contraception coverage benefits.

CIVIL RIGHTS

Hardiman has worked to weaken critical legal protections for people of color. He [joined](#) a decision that held that families in public housing have no right to remain in their homes after the end of a lease term despite statutory language that residents "may elect to remain." As an attorney, Hardiman [argued](#) that a landlord who discriminated based on race did not act illegally when he refused to show an apartment to black applicants

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since the applicants' low credit scores (of which the landlord was unaware) would have prevented them from being approved for the apartment regardless of their race. The Third Circuit [disagreed](#), holding that racial discrimination itself is a harm under the Fair Housing Act.

CRIMINAL JUSTICE

In a Third Circuit case involving Newark police officers, Hardiman would have [prevented](#) a wrongfully incarcerated person from bringing a case alleging that the officers had a pattern of committing constitutional violations. Although the majority held that the claim of a pattern of unreasonable searches and seizures could continue to trial, Hardiman argued, among other things, that the plaintiff could not establish that the officers had established an illegal pattern of behavior because the plaintiff was Hispanic. Hardiman claimed that the city's consent decree prohibiting bias in police actions only addressed behaviors that disproportionately impact African Americans. The majority rejected Hardiman's argument when it noted that the decree "provides that police officers must 'operate without bias based on any demographic category.'"

Hardiman [joined](#) a dissent from a decision granting relief to a death row inmate who discovered that prosecutors had withheld exculpatory pieces of evidence during his trial. In another case, he [wrote](#) an opinion that "conclude[d] there was insufficient case law establishing a right to videotape police officers during a traffic stop to put a reasonably competent officer on 'fair notice' that seizing a camera or arresting an individual for videotaping police during the stop would violate the First Amendment."

IMMIGRANTS' RIGHTS

Hardiman [denied](#) a Russian immigrant's request for release from ICE detention, relying exclusively on unsubstantiated charges alleged by Russia. As the dissenting judge [explained](#), the Interpol "Red Notice" requested by Russia trumped up [fake criminal charges](#) against the detainee, and is a tool "misappropriated by the Russian government to punish political opponents who travel abroad." The dissent blasted Hardiman's opinion: "It is contrary to my concept of justice to hold in custody an individual who is the innocent victim of a rogue foreign government."

Hardiman joined an [opinion](#) that held that undocumented immigrants did not have the right to judicial review of deportation orders. As one law professor [wrote](#), because of this decision, some immigrants have a lesser right to judicial review of their detention and potential removal than terror suspects detained as enemy combatants at Guantanamo Bay.

GUN SAFETY

Hardiman [dissented](#) in a case in which the majority held that it was constitutional for New Jersey to require individuals to show they had a "justifiable need" before they could be issued a permit to carry a handgun in public.

Although Hardiman [rejected](#) a Second Amendment challenge to the law that bars felons from possessing firearms, he later [held](#) the law was unconstitutional as applied to two defendants convicted of nonviolent crimes. He wrote that only some violent felons should lose their right to bear arms, interpreting the Second Amendment extremely broadly. The majority [criticized](#) Hardiman's concurring opinion, explaining that his argument was unprecedented among other courts of appeals.