

Newsweek

Raymond Kethledge Would bring a nuanced immigration record to the Supreme Court

Alexandra Hutzler

July 8, 2018

One of the reported frontrunners considered by President Donald Trump as a possible replacement for retiring Supreme Court Justice Anthony Kennedy is a federal judge with a record of handling immigration cases.

Raymond Kethledge, 51, graduated from the University of Michigan Law School in 1993. Like fellow short-lister Brett Kavanaugh, Kethledge clerked for Kennedy after law school.

Kethledge also gained political experience when he worked as an aide to former Senator Spencer Abraham, a Republican and founder of the Federalist Society. Abraham was a pro-immigration advocate and his support for Arab-Americans earned him the reputation of terrorist sympathizer among conservative lawmakers. He lost his re-election campaign to Democrat Debbie Stabenow in 2000.

Kethledge is currently serving as a federal appellate judge on the U.S Court of Appeals for the Sixth Circuit, which covers Kentucky, Michigan, Ohio and Tennessee. He was appointed to the position by President George W. Bush in 2008 and in his decade on the court has written decisions in over 120 immigration cases, according to a report by the *National Review*.

"You can attack the results on some of these cases from either the left or the right, but I reviewed them and I think he's right about every single one," Ilya Shapiro, a senior fellow in constitutional studies at the libertarian Cato Institute, told *Newsweek*.

In Van Don Nguyen v. Holder, a 2009 case involving an immigrant who was being threatened with deportation for committing grand theft auto, Judge Kethledge joined an opinion that sided with the immigrant. Under Supreme Court precedent, Kethledge stated, grand theft auto is a nonviolent crime and therefore grounds for deportation were not applicable.

That ruling sparked criticism from conservatives who questioned his stance on hardline immigration and strong borders.

Kethledge also reversed a deportation order of a CRIMINAL ALIEN who had lied about a drug conviction and been convicted of grand theft auto, which Kethledge argued was not an aggravated felony. *Van Don Nguyen v. Holder*, 571 F.3d 524

In another immigration case, though, Judge Kethledge delivered a harsher sentence to an immigrant who had lived in the United States since he was 14-years-old but let his visa expire and continued to reside in the country.

Jaime Esquivel Mora had crossed the southern border from Mexico alone and started working at a construction company, eventually becoming a foreman. Mora was married to a U.S. citizen and had three American children. In his written opinion, Judge Kethledge had said that "if Jaime Esquivel Mora were a citizen, we would call him a model one." But Kethledge ultimately ruled in favor of the government and denied Mora's request for review.

In his confirmation hearing to the circuit court in 2008, Kethledge said that he would make sure that the "values that I would be enforcing if I were a judge are not just my values, that I am not striking something down simply because I don't like it. That is a countermajoritarian aspect of our system of Government. I would start with the text."

But those who would pigeonhole Kethledge as a very conservative textualist may want to think again, said Muzaffar Chishti, director of Migration Policy Institute's office at New York University.

Before these immigration cases reached Kethledge's docket, they were first ruled on by the Immigration Board of Appeals (IBA), which is an agency within the Department of Justice. Chishti added that in over 90 percent of his decisions, Kethledge upheld the initial ruling by the IBA.

"Most of the rulings he has issued have been in the Obama administration, who is responsible for running those government agencies," Chishti told *Newsweek*. "So you could really argue that he was serving and saving the Obama administration through those decisions."

It's that irony, Chishti noted, that makes it difficult to predict how Kethledge would act if appointed to the Supreme Court.

Immigration continues to be a hot-button issue as the White House's "zero tolerance" policy and subsequent family separations have sparked public outrage. But Shapiro advises that Kethledge's experience with those kinds of cases will not guarantee him a spot on the high court.

"It's going to come down to Trump's gut," Shapiro said. "His advisors have given him a solid list and it's going to come down to which one he likes best."