

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

Gregg Jeffrey Costa

2. **Position**: State the position for which you have been nominated.

United States District Judge for the Southern District of Texas

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

United States Attorney's Office
Southern District of Texas
919 Milam
P.O. Box 61129
Houston, Texas 77208

Residence: Bellaire, Texas

4. **Birthplace**: State date and place of birth.

1972; Baltimore, Maryland

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1996 – 1999, University of Texas School of Law; J.D., 1999

1990 – 1994, Dartmouth College; B.A., 1994

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2005 – present
United States Attorney's Office
Southern District of Texas
919 Milam
P.O. Box 61129
Houston, Texas 77208
Assistant United States Attorney

2002 – 2005
Weil, Gotshal & Manges
700 Louisiana, Suite 1600
Houston, Texas 77002
Associate

Spring 2004 and 2005
University of Houston Law Center
100 Law Center
Houston, Texas 77204
Adjunct Professor

2001 – 2002
Hon. William H. Rehnquist
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543
Law Clerk

2000 – 2001
United States Department of Justice
Office of the Solicitor General
950 Pennsylvania Avenue, NW
Washington, DC 20530
Bristow Fellow

1999 – 2000
Hon. A. Raymond Randolph
United States Court of Appeals for the D.C. Circuit
333 Constitution Avenue, NW
Washington, DC 20001
Law Clerk

Summer 1999
United States Department of Justice
Antitrust Division
600 E Street, NW
Washington, DC 20530
Summer Law Intern

Summer 1998
Susman Godfrey
1000 Louisiana, Suite 5100
Houston, Texas 77002
Summer Associate

Summer 1998
Baron & Budd
3102 Oak Lawn Avenue # 100
Dallas, Texas 75219
Summer Associate

Summers 1997, 1998
Mayor, Day, Caldwell & Keeton (now defunct, merged with Andrews Kurth)
700 Louisiana, Suite 1900
Houston, Texas 77002
Summer Associate

Summer 1997
Carrington, Coleman, Sloman & Blumenthal
200 Crescent Court, Suite 1500
Dallas, Texas 75201
Summer Associate

July 1996
Sar-el Volunteers for Israel
No physical address
Volunteer, Air Force base near Be'er Sheva, Israel

1994 – 1996
East Sunflower Elementary School (placement through Teach for America)
212 East Claiborne Street
Sunflower, Mississippi 38778
Third and fourth grade teacher

Other affiliations (uncompensated):

1999 – present
Sunflower County Freedom Project
120 Delta Avenue
Sunflower, Mississippi 38778
Board Member, Secretary

2004 – 2006
Congregation Beth Yeshurun 100 Jewish Men
4525 Beechnut
Houston, Texas 77096
Board Member

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I registered for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

As Assistant United States Attorney:

Award from Immigration and Customs Enforcement for work on cases involving importation of counterfeit technology products from China (2010)
Houston Bar Association Bob Susman Scholarship (awarded annually to two prosecutors to fund attendance at ABA Annual White Collar Crime Conference) (2010)
Certificate of Appreciation from Director of the Secret Service for work on mortgage fraud prosecution (2009)
Certificate of Appreciation from Inspector General of the Department of Homeland Security for work on FEMA fraud cases (2008)

At University of Texas School of Law:

Graduated with highest honors (1999)
Vice Chancellor (ranked second in class after second year of law school) (1998)
Editor in Chief, *Texas Law Review*
Ellen Waters Olson Scholarship (three years full tuition) (1996)
One of two students selected by Dean to Task Force on the Future of the Law School
Elected Permanent Class Representative
First Place, Hutcheson First Year Moot Court Competition (Section 5, 1997)
First Place and Best Brief, Gibbs & Bruns Moot Court Competition (Fall 1997)

Dean's Achievement Award (top grade in class): Criminal Law; Constitutional Law II:
Free Speech; Constitutional Law II: Race & The Constitution; Labor Law;
Administrative Law; Professional Responsibility for Civil Litigators

At Dartmouth College:

Presidential citation for excellence in American government
Tucker Foundation Fellowship for semester spent working at parochial elementary school
in Jersey City, New Jersey

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association
Co-Chair, White Collar Crime Subcommittee, South Texas Chapter (2008 – present)

Federal Bar Association

State Bar of Texas

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Texas, 2000.

There has been no lapse in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Fifth Circuit, 2005
United States Court of Appeals for the Seventh Circuit, 2001
United States District Court for the Southern District of Texas, 2002

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which

you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Bellaire Little League (assistant baseball coach, 2010 – 2011)

Bellaire Recreation Center (youth soccer coach, 2008 – 2009)

Congregation Beth Yeshurun (2002 – present)
100 Jewish Men (Board Member, 2004 – 2006)

Houston Urban Debate League (2008 – 2009)

National Association of Assistant United States Attorneys (2009 – present)

Sunflower County Freedom Project (Board Member, 1999 – present)

Supreme Court Historical Society (2003 – present)

Teach for America (1994 - present)

United States Public Service Academy Task Force on Service Learning
Coordinator (2006 – 2007)

University of Texas School of Law, Reunion Committee (2004)

YMCA (youth soccer coach, 2006 – 2007)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above discriminates or previously discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Honest Services at Skilling's One Year Anniversary, Co-written with David Issak, Presented at State Bar of Texas 37th Annual Advanced Criminal Law Course: Federal Workshop, Houston, Texas, July 2011. Copy supplied.

Amazed and Inspired, Sunflower County Freedom Project Newsletter, Oct. 1, 2008. Copy supplied.

E-mail quoted in Peter King, *Saints' Slide Continues*, cnnsi.com, Sept. 25, 2007. Copy supplied.

Current Antitrust Issues in Patent Law, Co-written with David J. Healey and Ed Chin, Presented at 2004 Advanced Patent Law Institute, Austin, Oct. 2004. Copy supplied.

Are the Standards Changing for Standard-Setting? Antitrust Issues in Standard-Setting and High-Tech Cases, Presented at University of Texas School of Law Continuing Legal Education "Computer and Technology Law Institute," May 2004. Copy supplied.

2004 Update on Antitrust in High Tech and IP Cases, 2004, Advanced Patent Law Institute, San Antonio. I have been unable to locate a copy of this paper, but its content is similar to the two antitrust articles listed above.

John Marshall, the Sedition Act, and Free Speech in the Early Republic, 99 Tex. L. Rev. 1099 (1999). Copy supplied.

I also recall writing two articles in *The Dartmouth* during college. One of the articles supported Senator Bob Kerrey's campaign in the 1992 New Hampshire Presidential Primary. The other discussed the United States' support of Saddam Hussein during the Iran-Iraq conflict. I have not yet been able to find copies of these articles.

In October 1990, I wrote a letter to the editor for the Dallas Morning News relating to an off-campus publication at Dartmouth that had published a quotation from Mein Kampf. I have been unable to obtain a copy of the letter.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If

you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I served as coordinator for the United States Public Service Academy Task Force on Service Learning. The Academy released a report in February 2007 that summarized the work of my task force as well as that of seven others. A copy of the report is supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

July 19, 2011: *Honest Services at Skilling's One Year Anniversary*, State Bar of Texas 37th Annual Advanced Criminal Law Course: Federal Workshop, Houston, Texas (with David Issak). A copy of the PowerPoint we used at this presentation is supplied and the paper we presented is supplied in response to 12(a).

March 29, 2011: *Panel on Trying Counterfeit Trademark Cases*, Computer Hacking and Intellectual Property Coordinators' Conference, National Advocacy Center, Columbia, South Carolina. I have no notes, transcript or recording. The address of the NAC is 1620 Pendleton Street, Columbia, South Carolina 29201.

February 24, 2011: *Panel on Alumni Lawyers: Pursuing Justice Through a Career in Law*, Teach for America's "What Comes Next" Event for Houston Corps Members. I have no notes, transcript or recording. The address of Teach for America is 4669 Southwest Freeway, Suite 600, Houston, Texas 77027.

January 26, 2011: Alumni Speaker, Induction Ceremony for Chancellors Honor Society, University of Texas School of Law. I have no notes, transcript or recording, but law school coverage is supplied. The address of the university is 727 East Dean Keeton Street, Austin, Texas 78705.

October 14, 2010: *Issues in International Financial Fraud Investigations*, Financial Fraud Enforcement Coordinators Conference, National Advocacy Center, Columbia, South Carolina (with Paul Pelletier). We used a PowerPoint for this presentation, but because the materials are law enforcement sensitive they are not provided. The address of the NAC is 1620 Pendleton Street, Columbia, South Carolina 29201.

September 23, 2010: *Panel on Honest Services Law after Supreme Court Skilling Decision*, Federal Bar Association Southern District of Texas Chapter/ABA White Collar Crime Subcommittee, Houston, Texas. I have no notes, transcript or recording. The address of the FBA Southern District of Texas Chapter is 2726 Bissonnet #240-239, Houston, Texas 77005.

March 18, 2010: *Investigating and Prosecuting Complex Immigration Fraud Schemes*, Immigration Law Conference, National Advocacy Center (with ICE Agent Marcus Barton). We used a PowerPoint for this presentation, but because the materials are law enforcement sensitive they are not provided. The address of the NAC is 1620 Pendleton Street, Columbia, South Carolina 29201.

February 26, 2008: *Prosecuting Disaster Fraud Cases*, California Wildfires Disaster Fraud Conference, United States Attorney's Office for the Southern District of California (San Diego) (with Jonathan Rusch). We used a PowerPoint for this presentation, but because the materials are law enforcement sensitive they are not provided. The address for the U.S. Attorney's Office is 880 Front Street, Room 6293, San Diego, California 92101.

December 7, 2006: *Major Theft Cases: The Prosecutor's Perspective*, FBI Major Theft Conference, Houston, Texas. PowerPoint supplied.

May 21, 2004: *Are the Standards Changing for Standard-Setting? Antitrust Issues in Standard-Setting and High-Tech Cases*, Presented at University of Texas School of Law Continuing Legal Education "Computer and Technology Law Institute," Austin, Texas. A copy of the paper is supplied in response to 12(a).

2004: *Update on Antitrust in High Tech and IP Cases*, Advanced Patent Law Institute, San Antonio. I presented the paper noted in response to question 12a, which I have been unable to locate. The Advanced Patent Law Institute is sponsored by the University of Texas School of Law Office of Continuing Education, which is located at 727 East Dean Keeton Street, Austin, Texas 78705.

In addition to these specific talks I recall, I have participated in other Teach for America career panels for members interested in legal careers and have given talks to a number of summer law interns about judicial clerkships. I do not have records showing the dates of these talks.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

A number of articles have quoted statements I have made in court. The following are those articles I could find in which I spoke directly to a reporter.

Miriam Rozen, *A Zero-Tolerance Policy for Hurricane Disaster-Relief Fraud*, Texas Lawyer, Aug. 23, 2010. Copy supplied.

Darren Barbee, *Con Artist Given 10 Years in Prison, Ordered to Pay \$3.1 Million*, Fort Worth Star Telegram, May 13, 2010. Copy supplied.

Darren Barbee, *Houston-Area Woman Pleads Guilty in Swindling Case*, Fort Worth Star Telegram, Aug. 25, 2009. Copy supplied.

Darren Barbee, *Woman's Bail Revoked after Prosecutors Accuse Her of Continuing Fraud*, Fort Worth Star Telegram, June 16, 2009. Copy supplied.

Chris Vogel, *No Honest Players Among Human Smugglers*, Houston Press, Aug. 7, 2008. Copy supplied.

Staff, *Crime & Courts: Murder-for-Hire Case Spurs Arrest*, Houston Chronicle, Dec. 4, 2007. Copy supplied.

Rosanna Ruiz and Cindy George, *Brothers Behind Bogus Web Site Guilty*, Houston Chronicle, June 15, 2007. Copy supplied.

Cindy George, *3 Sentenced Over Storm Fraud*, Houston Chronicle, Mar. 31, 2007. Copy supplied.

Harvey Rice, *Life Term Possible on Gun Charge*, Houston Chronicle, Sept. 27, 2006. Copy supplied.

Laura Elder, *Flagship Operator Pleads Not Guilty*, Galveston Daily News, Mar. 9, 2006. Copy supplied.

On September 4, 2005, I was interviewed by Houston local television station KPRC the day after Chief Justice Rehnquist passed away. I have been unable to obtain a copy of the video.

Alumni News: Two Graduates Will Clerk at U.S. Supreme Court, Townes Hall Notes (UT Law Alumni Magazine), Fall 2000. Copy supplied.

Scholarship Opens Doors for Recipients, Townes Hall Notes (UT Law Alumni Magazine), Fall 1999. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never been a judge.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

- i. Of these, approximately what percent were:

jury trials:	_____ %
bench trials:	_____ % [total 100%]
civil proceedings:	_____ %
criminal proceedings:	_____ % [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have never been a judge.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public offices. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Dartmouth College Democrats (Acting President, Vice President, 1991 – 1992)

Volunteer, campus coordinator, Bob Kerrey for President campaign (New Hampshire Primary, 1991 – 1992)

Volunteer, Clinton for President and Dallas County Democratic Party Coordinated Campaign (Fall 1992)

Intern, Democratic National Committee (summer 1991)

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From August 1999 through July 2000, I served as a law clerk to Judge A. Raymond Randolph, United States Court of Appeals for the D.C. Circuit.

From July 2001 through July 2002, I served as a law clerk to Chief Justice William Rehnquist, Supreme Court of the United States.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

2000 – 2001

United States Department of Justice, Office of the Solicitor General
950 Pennsylvania Avenue, NW
Washington, DC 20530
Bristow Fellow

2002 – 2005

Weil, Gotshal & Manges
700 Louisiana, Suite 1600
Houston, Texas 77002
Associate

2005 – present
United States Attorney's Office
Southern District of Texas
919 Milam
P.O. Box 61129
Houston, Texas 77208
Assistant United States Attorney

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

As a Bristow Fellow, I authored numerous briefs in opposition to petitions for certiorari, recommended to the Solicitor General whether the United States should appeal adverse district court decisions, assisted permanent office attorneys with drafting Supreme Court merit briefs and preparing for oral arguments, and argued an appeal in the Seventh Circuit.

During summer 2002, I returned to Texas and joined the Houston office of Weil Gotshal as an associate. I had primary day-to-day responsibility for civil litigation matters including intellectual property litigation, class actions, international arbitration, bankruptcy litigation and general commercial disputes. I also worked on appellate matters and a number of pro bono cases.

In early 2005 I joined the Houston United States Attorney's Office as an Assistant United States Attorney. I have worked in the Major Offenders and Major Fraud sections of the office, investigating and prosecuting criminal matters in the following areas: mortgage fraud, investment fraud, securities fraud, government benefit fraud, public corruption, importation of counterfeit products, internet fraud, child pornography, human smuggling, hostage taking, postal crimes, and narcotics and firearms violations. I have also handled numerous appellate matters and argued six cases in the Fifth Circuit.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

When working in private practice at Weil Gotshal, the typical clients I represented were corporations involved in complex civil litigation. In pro bono matters I handled during that time, I represented a defendant in a criminal case and a nonprofit organization in constitutional litigation.

As an Assistant United States Attorney, I have represented the United States in criminal prosecutions.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

- i. Indicate the percentage of your practice in:

- 1. federal courts 90%
- 2. state courts of record: 10%
- 3. other courts:
- 4. administrative agencies:

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 25%
- 2. criminal proceedings: 75%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Seventeen (this includes two cases that were tried twice because the jury hung on some counts). I tried all of these cases since joining the United States Attorney's Office. Two prosecutors typically handle a trial and evenly split the witnesses and jury addresses. (I may have tried one or two cases to magistrate judges in cases from the misdemeanor civil violations bureau docket, but I do not recall the specific cases and did not include those cases in the number of trials listed here.)

- i. What percentage of these trials were:

- 1. jury: 100%
- 2. nonjury: 0%

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

As a Bristow Fellow in the Solicitor General's office, I drafted numerous responses to petitions for certiorari. The only one I recall by name is *United States v. Dusenberry*, 534 U.S. 161 (2002), because the Supreme Court granted the petition in that case. Copy supplied.

I also recall providing research and other assistance to permanent office attorneys for the merits briefs filed in the following cases: *Indianapolis v. Edmond*, 531 U.S. 32 (2000); *TraFFix Devices, Inc. v. Marketing Displays, Inc.*, 532 U.S. 23 (2001); *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001); and *Zadvydas v. Davis*, 533 U.S. 678 (2001).

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United States v. Stanford, et al.*, No. H-09-242 (S.D. Tex.); Judge David Hittner. Court of Appeals decisions relating to Stanford's pretrial detention are reported at 2011 WL 867057, 395 Fed. App'x 72, 367 Fed. App'x 507, and 341 Fed App'x 979.

I am co-lead counsel for the United States in the prosecution of Stanford, other Stanford Financial Group executives, and the former head of the Antiguan Financial Services Regulatory Commission. The indictment alleges that the defendants engaged in a \$7 billion investment fraud relating to the sale of certificate of deposits by Antiguan-based Stanford International Bank. I have been involved in all aspects of the case including witness interviews; briefing; arguing at hearings; and working with foreign governments to extradite a defendant, obtain evidence and freeze assets. The CFO of Stanford Financial Group pled guilty. The other defendants are awaiting trial.

Co-counsel:

Paul Pelletier (formerly Deputy Chief, Fraud Section, Department of Justice)
Mintz Levin
701 Pennsylvania Avenue, NW, Suite 700
Washington, DC 20004
(202) 434-7490

Jack Patrick
Department of Justice
Senior Litigation Counsel, Fraud Section
1400 New York Avenue, NW
Washington, DC 20005
(202) 514-9842

Opposing Counsel:

Counsel for defendant Stanford:
Ali Fazel
Scardino & Fazel
1004 Congress, Third Floor
Houston, TX 77002
(713) 229-9292

Robert Stephen Bennett
515 Louisiana, Suite 200
Houston, TX 77002
(713) 225-6000

Michael M. Essmyer
5111 Center Street
Houston, TX 77007
(713) 869-1155

Kent A. Schaffer
712 Main Street, 31st Floor
Houston, TX 77002
(713) 228-8500

Michael Sokolow
Office of the Federal Public Defender
440 Louisiana, Suite 1350
Houston, TX 77002
(713) 718-4600

Dick DeGuerin
1018 Preston Avenue, Seventh Floor
Houston, TX 77002
(713) 223-5959

Counsel for defendant Davis:
David Finn
2828 North Harwood, Suite 1950
Dallas, TX 75201
(214) 651-1121

Counsel for defendant Pendergest:
Dan Lamar Cogdell
Cogdell & Ardoin, LLC
1401 McKinney Street, Suite 1625
Houston, TX 77010
(713) 426-2244

Counsel for defendant Lopez:
Jack B. Zimmermann
Jim Lavine
770 South Post Oak Lane, Suite 620
Houston, TX 77056
(713) 552-0300

Counsel for defendant Kuhrt:
Richard B. Kuniansky
440 Louisiana, Suite 200
Houston, TX 77002
(713) 622-8333

2. *United States v. Barnes, et al.*, No. H-10-787 (S.D. Tex.); Judge Sim Lake.

This case involves an alleged \$80 million dollar kickback and international money laundering scheme relating to the shipment of oil from Venezuela to a Houston area refinery. Barnes, who was the Marine Chartering Manager for LyondellBassell's Houston refinery, pled guilty to receiving more than \$20 million in kickbacks from oil traders in exchange for agreeing to pay inflated prices for the shipping that the traders were arranging through companies they controlled. Two of the traders are scheduled for trial in November. The investigation in this case involved obtaining evidence from authorities in Switzerland, France and the British Virgin Islands. We have also obtained forfeiture of nearly \$20 million of the fraud proceeds.

Opposing Counsel:

Counsel for defendant Barnes:
Rusty Hardin
Derek Hollingsworth
1401 McKinney, Suite 2250
Houston, TX 77010
(713) 652-9000

Counsel for defendant Langley:
Wendell Odom
440 Louisiana, Suite 200
Houston, TX 77002
(713) 223-5575

Counsel for defendant Meltzer:
Bill McMurrey
Bracewell & Giuliani
1445 Ross Avenue
Dallas, TX 75202
(214) 758-1032

David Gerger
Gerger & Clarke (then Office of the Federal Public Defender)
1001 Fannin, Suite # 1950
Houston, TX 77002
(713) 224-4400

3. *United States v. Curtis, et al.*, No. H-08-323 (S.D. Tex.); Judge Nancy Atlas. The Court of Appeals decision affirming the convictions and sentences is available at 2011 WL 846703 (5th Cir. 2011).

This case involved nine defendants charged with conspiring to commit mortgage fraud in the Montrose neighborhood of Houston. The organizer of the scheme, Curtis, used his supposed investment company CLC Holdings to receive large profits from the sale of homes in which straw buyers were used to pay inflated amounts for the home. Some of the loan applicants used childrens' social security numbers, which were purchased from a Houston "credit repair" business. Eight of the defendants, including two mortgage brokers and the owner of the credit repair business, pled guilty and were sentenced to various terms of imprisonment. Curtis went to trial and a jury convicted him of conspiracy, wire fraud, and aggravated identity theft. Judge Atlas sentenced Curtis to twelve years in prison. I worked with the Secret Service in investigating the case, presented the case to the grand jury, negotiated the plea agreements of the eight defendants who pled guilty, and, along with a colleague, tried the case against Curtis.

Trial co-counsel:
Ryan McConnell
Haynes & Boone
1221 McKinney, Suite 2100
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For defendant Nguyen:
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4. *United States v. Ashoor*, No. H-09-307 (S.D. Tex.); Judge David Hittner. The Court of Appeals decision affirming the conviction is reported at 2011 WL 1659780 (5th Cir. 2011).

The defendant, who had a company that serviced government contracts, imported counterfeit Cisco products from China which he intended to supply to the Marine Corps in Iraq. After a hung jury resulted in a mistrial of the first trial, a jury convicted the defendant of trafficking in goods with counterfeit trademarks, and he was sentenced to a fifty-one month prison term. I worked with ICE in the initial stages of this investigation, another AUSA completed the investigation and obtained an indictment in the case, and I then tried the case with the other AUSA.

Trial co-counsel:
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Counsel for Ashoor:
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5. *United States v. Stephens and Stephens*, H-06-242 (S.D. Tex.); Judge David Hittner. The Court of Appeals decision affirming the convictions and sentences is reported at 571 F.3d 401 (5th Cir. 2009).

I managed the investigation and prosecution of these two defendants charged with creating a fraudulent Salvation Army website shortly after Hurricane Katrina struck the Gulf Coast, which falsely purported to collect donations for hurricane victims. Hundreds of individuals across the country donated to the website before it was shut down. To

disguise their involvement with the website, the brothers used stolen identities, including Social Security numbers, to register the various PayPal accounts they used to collect money donated through the website. A jury convicted both defendants of conspiracy, wire fraud and aggravated identity theft. One defendant received a sentence of 111 months and the other received a sentence of 105 months.

Co-counsel:

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Opposing Counsel:

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Counsel for defendant B. Stephens:

Jimmy Ardoin

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6. *United States v. Trevino, et al.*, H-07-664 (S.D. Tex.); Judge Randy Crane.

This public corruption case involved tens of thousands of dollars paid in bribes to the City Manager and Director of Parks and Recreation for the City of Mission, Texas. The contractors paid the bribes in exchange for favorable treatment in the awarding of contracts for debris and sludge removal, the construction of a skateboard park, expansion of a city pool and the painting of a downtown parking lot. The case arose from a longstanding FBI undercover investigation in the Rio Grande Valley which another AUSA oversaw. I handled the prosecution of the two public officials and two contractors charged in this case. All four defendants pled guilty. The two public officials and one of the contractors were sentenced to various prison terms; the other contractor received a sentence of probation based on his cooperation.

Opposing Counsel:

Counsel for defendant I. Trevino:

Jack Wolfe (deceased)

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CJ Quintanilla, III

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Counsel for defendant Cavazos:

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7. *United States v. Spezia*, H-07-31 (S.D. Tex.); Judge Ewing Werlein, Jr.

The defendant was associated with a human smuggling organization in Houston. A meeting was arranged at a gas station at which the smugglers planned to seek payment from the brother of one of the Mexican nationals who had been brought from the border to Houston. Upon learning that the brother did not have the smuggling fee, the defendant and others kidnapped him at gun point and took him to a motel room in the Houston area. Over the next few days, the defendant and his associates called relatives of the hostage and demanded payment of the smuggling fee, which they kept increasing. During the calls, the defendant tortured the hostage by, among other things, burning his forearms with an iron and hammering his toenails. The jury convicted the defendant of conspiracy, alien smuggling, and hostage taking. The defendant was sentenced to a 25-year prison term. Another AUSA investigated and charged the case. I joined him to prepare and try the case and then I handled the sentencing hearing.

Co-counsel:

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8. *United States v. Huang and Liu*, H-05-392 (S.D. Tex.); Judge David Hittner. The Court of Appeals decision affirming Liu's conviction and sentence is reported at 288 Fed. App'x 193 (5th Cir. 2008).

A Houston lawyer and her legal assistant were charged with engaging in a complex visa fraud scheme. The fraud involved, among other things, intracompany transfer visas, which allow a foreign citizen to work in the United States as an executive at a foreign company's American subsidiary and can serve as a basis for permanent residence status. Chinese nationals paid large sums, up to \$60,000 each, to obtain such visas under fraudulent pretenses. The defendants created legal documents, such as stock certificates and Board of Director minutes, falsely showing that Chinese companies had purchased American subsidiaries, which they submitted to support the fraudulent visa applications. Defendant Huang, the attorney, was convicted of conspiracy and four counts of visa fraud and sentenced to fifty-one months in prison. Defendant Liu was convicted of one count of visa fraud, acquitted on the other counts, and sentenced to eighteen months in prison. This case was reassigned to me after it was charged. I then prepared and tried the case with another AUSA, handled the sentencing hearings, and argued Liu's appeal.

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Opposing Counsel:

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Counsel for defendant Liu:
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9. *Canatxx Energy Ventures, Inc. v. General Electric Capital Corp.*, Case No. H-09-4425 (S.D. Tex.); Judge Kenneth Hoyt. The Fifth Circuit decision reversing the judgment and rendering judgment in favor of GE Capital is at 2008 WL 4601691 (5th Cir. 2008).

My firm represented GE Capital in this lawsuit concerning the termination of a power plant project. Canatxx was the project developer and signed a Dissolution Agreement with GE Power Systems in which the parties agreed to terminate the joint venture to build power plants. Canatxx then filed suit against GE Capital, which was a financial advisor on the project, raising state-law claims of breach of fiduciary duty, unfair competition fraud, and civil conspiracy. During the time I was involved in the case, I drafted the motions, argued at a court hearing, and managed discovery, including attending depositions in London. After I left my firm, another firm was hired to try the case. A jury returned a verdict of favor of Canatxx, but the Fifth Circuit reversed and rendered judgment in favor of GE Capital based on its holding that the Dissolution Agreement also applied to affiliates of GE Power Systems, which included GE Capital.

Lead counsel:
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Opposing counsel:
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10. *Pataki v. Assembly and Silver v. Pataki*, 824 N.E.2d 898 (N.Y. Ct. App. 2005).

My firm represented the speaker of the New York assembly in litigation against Governor Pataki related to disputes over the budget process in New York. The case involved questions concerning whether the New York Constitution allowed the legislature to amend certain legislation proposed by the Governor and whether the Governor could exercise the line-item veto with respect to those bills. The two related cases reached the New York Court of Appeals, which ruled 5-2 in favor of the Governor. I had significant involvement in crafting the arguments and drafting the briefs in both the intermediate appellate courts and in the New York Court of Appeals.

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18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

While an associate at Weil Gotshal, in addition to the litigation I handled, I was involved in one antitrust counseling matter.

As an Assistant United States Attorney, in addition to prosecuting cases, I have served as the Deputy International Affairs Coordinator for the United States Attorney's Office. In that capacity I help coordinate incoming and outgoing requests for foreign evidence gathering under Mutual Legal Assistance Treaties with numerous countries. In addition to this oversight role, I have personally handled such requests on behalf of the governments of Malaysia, Turkey, Colombia, Lithuania, Greece, France, the United Kingdom, Trinidad and Tobago, Ireland, Norway and Brazil. I also handle and provide guidance to other AUSAs on extradition matters.

I also served as the Hurricane Fraud Coordinator for the Southern District of Texas, a position created in 2005 after Hurricanes Katrina and Rita. I coordinated a multi-agency task force that investigated fraud cases relating to the Hurricanes Katrina, Rita and Ike. Our office prosecuted more than 100 individuals for fraud relating to the hurricanes, including government-benefit fraud, identity theft offenses, charitable fraud, and investment fraud.

In addition, the Deputy Attorney General appointed the First Assistant United States Attorney and me to serve as special prosecutors in a public corruption matter arising out of another district in which the local U.S. Attorney's Office had a conflict.

I have not performed any lobbying activities.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

During the spring semesters of 2004 and 2005, I taught Federal Jurisdiction as an adjunct professor at the University of Houston Law Center. A copy of my 2005 syllabus is supplied.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no such plans.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, I would not hear cases brought by the United States Attorney's Office in which I had any participation as an AUSA. I would not preside over any cases involving the company that employs my wife. I also would not preside over cases involving the few companies in which my wife and I own stock.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I would follow the recusal statutes and the Code of Conduct for United States Judges, as well as other legal authority, in resolving any potential conflicts of interest. I would also consult with colleagues and with ethics officials from the Administrative Office of U.S. Courts.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

In 2003, I assisted the NAACP Legal Defense Fund in representing Timothy Towery, who was serving an 18-year sentence as one of the 38 individuals convicted as part of the Tulia drug sting. We prepared a motion for habeas corpus relief arguing that Towery's conviction should be overturned based on the ineffective assistance of his counsel who persuaded him to plead guilty. This involved investigating the case against Towery, researching the relevant legal issues and drafting the motion. On August 23, 2003, Governor Rick Perry pardoned our client and the other Tulia defendants.

In 2004, I assisted the Lawyers' Committee for Civil Rights Under Law in litigation involving two events that infringed on the voting rights of Prairie View A&M students in Waller County, Texas. One case was filed against the District Attorney who had warned college students that they were not allowed to vote in Waller County despite longstanding law (reflected in both case law and opinions from the state attorney general) that college students in Texas may choose to vote either where they attend school or where their parents reside.

The second case challenged Waller County's failure to seek approval under the preclearance provisions of Section 5 of the Voting Rights Act for attempts to reduce the number of hours that were available for early voting at the polling place closest to the Prairie View campus (the 2004 primary election took place during the school's spring break, making early voting the primary vehicle for student voting). After filing complaints seeking temporary restraining orders and preliminary injunctions against both practices, the defendants quickly settled and agreed to alter the challenged practices.

In Fall 2004, I assisted the Lawyers' Committee for Civil Rights Under Law in their nonpartisan voter protection project during the 2004 general election. We attended training on possible voting rights issues and manned a Houston phone bank on Election Day with a ready-response legal team.

While an associate at Weil Gotshal, I occasionally participated in the Houston Bar Association's Legal Lines program in which citizens could call a phone bank and receive assistance with general legal problems.

In addition to working on these legal matters, I am a co-founder and current board member of the Sunflower County Freedom Project, a nonprofit educational enrichment program created by Teach for America alumni in the Mississippi Delta county where I taught from 1994 to 1996. The program, which has been in existence for more than ten years, provides rigorous after-school and summer programs that prepare students from one of the nation's poorest regions for college. Graduates of the program have attended college at prominent institutions including the University of North Carolina, LSU, Berea College, and Mississippi State.

26. Selection Process:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In May 2009, I was contacted by one of the co-chairs of the Judicial Selection Committee that Representative Al Green established to recommend candidates for Houston-area judicial vacancies. The chair inquired whether I would be interested in being considered by the committee, which was then interviewing applicants for the vacancy created when Judge Samuel Kent resigned. I agreed to interview with the committee. I first met with four members and later with the entire committee. After that, I met with Representative Al Green. In June 2009, the chairs of the committee notified me that I was the committee's recommended candidate. Shortly after receiving that notification, however, I learned that the Fifth Circuit Judicial Council had decided to move the open judgeship to south Texas.

In July 2010, a chair of the same committee contacted me to discuss whether I was interested in the vacancy created by Judge John Rainey taking senior status. The chair stated that I remained the committee's recommended candidate. I stated that I remained interested and was asked to submit information to the Texas Democratic delegation through Representative Doggett's office, which I did.

In February 2011, I submitted an application to Senator Hutchison's and Senator Cornyn's Federal Judicial Evaluation Committee. I interviewed with the committee in May 2011.

Since April 21, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 24, 2011, I interviewed with

attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC.

On July 12, 2011, I met with Senators Hutchison and Cornyn and members of their staff in Washington. On July 23, 2011, I met with Representative Sheila Jackson Lee in Houston.

On September 8, 2011, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No

AFFIDAVIT

I, Gregg Costa, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

9/8/11
(DATE)

Gregg Costa
(NAME)

Gwendolyn D. Braxton
(NOTARY)

