

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Michael Hun Park

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

United States Court of Appeals Judge for the Second Circuit

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.

Consovoy McCarthy Park PLLC
745 Fifth Avenue, Suite 500
New York, New York 10151

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

1976; St. Paul, Minnesota

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.

1998 – 2001: Yale Law School; J.D., 2001

1994 – 1998: Princeton University; A.B. (*magna cum laude*), 1998

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.

2015 – present
Consovoy McCarthy Park PLLC
745 Fifth Avenue, Suite 500
New York, New York 10151
Partner

2015 – present
Antonin Scalia Law School
George Mason University
3301 Fairfax Drive
Arlington, Virginia 22201
Adjunct Professor

2009 – 2015
Dechert LLP
1095 Avenue of the Americas
New York, New York 10036
Partner (2012 – 2015)
Counsel (2009 – 2011)

2008 – 2009
Honorable Samuel A. Alito, Jr.
Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543
Law Clerk

2006 – 2008
Office of Legal Counsel
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Attorney-Adviser

2002 – 2006
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street
New York, New York 10007
Associate

2001 – 2002
Honorable Samuel A. Alito, Jr.
United States Court of Appeals for the Third Circuit
Frank R. Lautenberg U.S. Courthouse & Post Office Building
50 Walnut Street
Newark, New Jersey 07101
Law Clerk

Summer 2001
Wilmer, Cutler & Pickering

[now Wilmer Cutler Pickering Hale and Dorr LLP]
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Summer Associate

Summer 2000
Cravath, Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
Summer Associate

1999 – 2000
Professor Ian Ayers
Yale Law School
129 York Street
New Haven, Connecticut 08511
Research Assistant

Summer 1999
Kaye, Scholer, Fierman, Hayes & Handler
[now Arnold & Porter Kaye Scholer LLP]
601 Massachusetts Avenue, N.W.
Washington, D.C. 20001
Summer Associate

Other Affiliations (Uncompensated):

2015 – present
Supreme Court Historical Society
224 East Capitol Street, N.E.
Washington, D.C. 20003
Executive Committee (2017 – present)
Board of Trustees (2014 – present)

2012 – present
Operation Exodus Inner City
21 Wadsworth Avenue
New York, New York 10033
Board of Directors (Advisor since June 2018)

Summer 1999
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Summer Law Intern

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 have registered for the 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.

Super Lawyers, Top Rated General Litigation Attorney in New York, New York (2016 – 2017)

National Asian Pacific American Bar Association, Best Lawyers Under 40 (2013)

Managing Editor, *Yale Law Journal*

Finalist, Yale Law School Benjamin Cardozo Brief Writing Prize, Moot Court of Appeals

Degree from Princeton University conferred *magna cum laude*

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

Asian American Bar Association of New York
Judiciary Committee, Co-Chair (2014 – 2015)
Career Placement Committee, Co-Chair (2013 – 2015)

Korean American Lawyers Association of Greater New York

National Asian Pacific American Bar Association

New York City Bar Association

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.

New York, 2002

There have been no lapses 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.

Supreme Court of the United States, 2008
United States Court of Appeals for the Second Circuit, 2007
United States Court of Appeals for the Third Circuit, 2002
United States Court of Appeals for the Tenth Circuit, 2016
United States Court of Appeals for the Eleventh Circuit, 2004
United States District Court for the Eastern District of New York, 2003
United States District Court for the Southern District of New York, 2003

I am currently considered inactive in the United States Court of Appeals for the Third Circuit and the United States Court of Appeals for the Eleventh Circuit. I am aware of no other 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.

Federalist Society for Law and Public Policy Studies (2009 – present)
Executive Committee, Corporations, Securities, and Antitrust Practice Group
(2017 – present)

Operation Exodus Inner City (2002 – present)
Volunteer Mentor (2002 – 2006)
Board of Directors (2012 – 2018)
Advisor (2018 – present)

Securities Industry and Financial Markets Association (2010 – 2017)

Supreme Court Historical Society (2014 – present)
Board of Trustees (2014 – present)
Executive Committee (2017 – present)

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 in response to 11.a above currently discriminates 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.

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.

With Patrick Strawbridge, *A Look at Sales of Securities Acquired in Section 3(a)(10)*, Westlaw J. Secs. Litig. & Reg., Feb. 16, 2017. Copy supplied.

Court's 'No-Action' Clause Holding May Surprise Bond Issuers, N.Y.L.J., Sept. 8, 2014, at S8. Copy supplied.

With Malcolm S. Dorris and Hector Gonzalez, *DOJ Probes Subprime Auto-Lending Under FIRREA*, Dechert OnPoint, Aug. 11, 2014. Copy supplied.

With Gary J. Mennitt and Debra D. O'Gorman, *U.S. Supreme Court Curbs Extraterritorial Reach of the Alien Tort Statute*, Dechert OnPoint, Apr. 24, 2013. Copy supplied.

With Gary J. Mennitt and Debra D. O'Gorman, *The Impact of US Lawsuits Against Non-US Banks*, Law360, Dec. 13, 2012. Copy supplied.

With Thomas P. Vartanian, Patrick D. Dolan, Robert H. Ledig, Ralph R. Mazzeo, Scott C. Kessenick, and Kira N. Brereton, *Local Governments Consider Using Eminent Domain to Seize Underwater Mortgages*, ABA Sec. St. & Loc. Gov't L. News, Fall 2012. Copy supplied. Dechert LLP also published a substantively identical version of this article in July 2012.

With David M. Howard, *U.S. Supreme Court to Consider Honest Services Statute in Skilling Case*, Wall St. L., Dec. 2009. Copy supplied.

I served as Managing Editor of *The Yale Law Journal* from 2000 to 2001. In that capacity, I was involved in editing significant portions of Volume 110, Nos. 1-8, which is available online at: <https://www.yalelawjournal.org/issue>.

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.

None.

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.

March 2018: Letter re: Nomination of Andrew S. Oldham to be a United States Circuit Judge for the Fifth Circuit. Copy supplied.

November 9, 2005: Letter re: Nomination of Hon. Samuel A. Alito, Jr. to be an Associate Justice of the United States Supreme Court. Copy supplied.

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 18, 2016: Panelist, "What High Courts Are Saying About Diversity and Inclusion," Minority Corporate Counsel Association, 2016 Pathways to Diversity Conference. Washington, D.C. Slides supplied.

April 28, 2016: Panelist, "How Does Affirmative Action in University Admissions Affect Asians?," Austin Asian American Bar Association. Austin, Texas (I participated by video conference from New York, New York). Notes supplied.

September 17, 2015: Presenter, "Waters of the United States - Litigation Update," Federalist Society Teleforum Conference Call, Environmental Law & Property Rights and Litigation Practice Groups Podcast. Recording supplied.

October 2, 2014: Speaker, "Regulatory Investigations and Their Implications for Civil Litigation," Altria Client Services, Richmond, Virginia. Slides supplied.

April 30, 2014: Panelist, "What Every Lawyer Needs to Know About Recent Supreme Court Cases," Dechert LLP, New York, New York. I have no notes, slides, or recording. The presentation involved a review of recent Supreme Court cases. The address of Dechert LLP is 1095 Avenue of the Americas, New York, New York 10036.

September 21, 2013: Panelist, "Plenary Session on *Fisher v. University of Texas*," National Asian Pacific American Bar Association, Northeast Regional Conference; Asian American Bar Association of New York, Annual Fall Conference. New York, New York. Notes supplied.

November 19, 2012: Panelist, "What Every Lawyer Needs to Know About Recent Supreme Court Cases." Dechert LLP, New York, New York. Slides supplied.

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.

Brendan O'Connor, *Why is the Government Suddenly Cracking down on Wage Theft?*, Crain's N.Y. Bus., Dec. 14, 2015, at 8. Copy supplied.

Joaquin Botero, *Sigue Vigente el Mandato Estatal Para Salones de Uñas*, El Diario La Prensa (New York, N.Y.), Oct. 2, 2015. Copy supplied.

David Lat, *Prominent Young Partners Leave Biglaw for a High-Powered Boutique*, Above the Law, May 28, 2015. Copy supplied.

I appeared in a television advertisement in support of Judge Samuel A. Alito, Jr.'s confirmation to the Supreme Court that aired in November 2005. A press release including a transcript of the advertisement is 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 not held judicial office.

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 not held judicial office.

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 never been a candidate for or held any public 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.

I have never been a member of, held office in, or rendered service to any political party or election committee.

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 2001 to 2002, I served as a law clerk to the Honorable Samuel A. Alito, Jr., who was then Circuit Judge of the United States Court of Appeals for the Third Circuit.

From 2008 to 2009, I served as a law clerk to the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States.

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

I have never 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.

Summer 1999
Kaye, Scholer, Fierman, Hayes & Handler
[now Arnold & Porter Kaye Scholer LLP]
601 Massachusetts Avenue, N.W.
Washington, D.C. 20001
Summer Associate

Summer 1999
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Summer Law Intern

Summer 2000
Cravath Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
Summer Associate

Summer 2001
Wilmer, Cutler & Pickering
[now Wilmer Cutler Pickering Hale and Dorr LLP]
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Summer Associate

2002 – 2006
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street
New York, New York 10007
Associate

2006 – 2008
Office of Legal Counsel
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Attorney-Adviser

2009 – 2015
Dechert LLP
1095 Avenue of the Americas
New York, New York 10036

Counsel (2009 – 2011); Partner (2012 – 2015)

2015 – present

Consovoy McCarthy Park PLLC

745 Fifth Avenue, Suite 500

New York, New York 10151

Partner

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 not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

In 2002, I joined the New York office of Wilmer, Cutler & Pickering as an associate, where I worked on a wide range of litigation matters. These included securities class actions, securities enforcement matters, and white collar matters.

In 2006, I joined the Office of Legal Counsel at the U.S. Department of Justice as an Attorney-Adviser. At the Office of Legal Counsel, I provided advice to the Attorney General, the White House Counsel, and other Executive Branch clients on a variety of legal matters, including constitutional questions, national security issues, and congressional investigations.

In 2009, I joined Dechert LLP in New York as Counsel and was promoted to Partner in 2012. At Dechert, I maintained a general litigation practice, assisting clients in a broad range of securities, criminal, and commercial matters before federal and state courts.

In 2015, I joined Consovoy McCarthy Park PLLC as a name partner in New York, where I currently work. My practice generally involves commercial and appellate litigation.

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

At Wilmer Hale, my typical clients included large financial institutions, Fortune 500 companies, and individuals.

While I was at the U.S. Department of Justice, my client was the United States.

At Dechert, I had a wide range of clients, including financial institutions, such as investment banks, hedge funds, and private equity firms, Fortune 500 companies, and individuals.

At Consovoy McCarthy Park, my clients include financial institutions, large and small companies, nonprofit organizations, and individuals.

The matters I have worked on throughout my career have involved a wide range of subject matter areas, including securities, commercial, administrative, criminal, and constitutional law.

- 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 estimate that approximately 90% of my law practice has involved litigation, with the remainder involving regulatory, transactional, and other matters. I did not appear in court during my tenure at the Department of Justice. As a partner at Dechert and Consovoy McCarthy Park, I have appeared in court several times per year in federal and state courts, mostly in New York.

- i. Indicate the percentage of your practice in:

- | | | |
|----|--------------------------|-----|
| 1. | federal courts: | 70% |
| 2. | state courts of record: | 15% |
| 3. | other courts: | 15% |
| 4. | administrative agencies: | 0% |

- ii. Indicate the percentage of your practice in:

- | | | |
|----|-----------------------|-----|
| 1. | civil proceedings: | 95% |
| 2. | criminal proceedings: | 5% |

- 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.

I have not tried cases to verdict, although I have provided legal support to trial teams.

- i. What percentage of these trials were:

- | | | |
|----|-----------|------|
| 1. | jury: | ___% |
| 2. | non-jury: | ___% |

- 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.

Merits Briefs:

No. 14-1468, *Birchfield v. North Dakota* (brief for respondent). Copy available at 2016 WL 1068982.

No. 14-1209, *Sturgeon v. Frost* (brief for petitioner; reply brief for petitioner). Copies available at 2018 WL 3830172 and 2018 WL 4960759.

No. 13-1339, *Spokeo, Inc. v. Robins* (brief for respondent). Copy available at 2015 WL 5169094.

No. 16-299, *National Ass'n of Mfrs. v. U.S. Dep't of Def.* (amicus brief for the Chamber of Commerce of the United States of America et al. supporting petitioner). Copy available at 2017 WL 1857363.

No. 15-290, *U.S. Army Corps of Eng'rs v. Hawkes Co., Inc.* (amicus brief for the Chamber of Commerce of the United States of America supporting respondent). Copy available at 2016 WL 860554.

No. 15-214, *Murr v. Wisconsin* (amicus brief for Cato Institute and Owners' Counsel of America supporting petitioner). Copy available at 2016 WL 1639712.

No. 15-1251, *NLRB v. SW General, Inc.* (amicus brief for the National Federation of Independent Business and the Buckeye Institute for Public Policy Solutions supporting respondent). Copy available at 2016 WL 5462523.

No. 11-393, 11-400, *National Federation of Independent Business v. Sibelius* (amicus brief for economists supporting petitioners). Copy available at 2012 WL 205855.

No. 11-345, *Fisher v. Univ. of Texas at Austin* (amicus brief for current and former federal civil rights officials supporting petitioner). Copy available at 2012 WL 1980053.

Petitions for Certiorari:

No. 13-440, *Datta v. United States* (2013) (brief for petitioner). Copy available at 2013 WL 5555090.

No. 18-324, *Leone v. Maui County, Hawaii* (2018) (brief for petitioner). Copy supplied.

No. 17-1340, *Andersen v. Planned Parenthood of Kansas & Mid-Missouri* (2018) (brief for petitioner; reply brief for petitioner). Copies supplied.

No. 16-1137, *616 Croft Ave., LLC v. City of West Hollywood* (amicus brief for Cato

Institute et al. supporting petitioners). Copy supplied.

No. 15-330, *California Building Industry Ass'n v. City of San Jose* (amicus brief for Cato Institute and Reason Foundation supporting petitioner). Copy available at 2015 WL 6380980.

No. 13-1124, *Minority Television Project, Inc. v. FCC* (amicus brief for MiND: Media Independence et al. supporting petitioner). Copy available at 2014 WL 4948933.

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. *Chamber of Commerce of the United States v. EPA*, No. 16-5038 (10th Cir.).

This case involves a challenge to an EPA regulation broadening the definition of “Waters of the United States” (“WOTUS Rule”) under the Clean Water Act. I represent the Chamber of Commerce of the United States of America, National Federation of Independent Business, Portland Cement Association, State Chamber of Oklahoma, and Tulsa Regional Chamber, in their challenge to the WOTUS Rule, which we filed in the U.S. District Court for the Northern District of Oklahoma on July 8, 2015.

In February 2016, the district court (Eagan, J.) dismissed our case, along with a similar one brought by the State of Oklahoma, based on a decision of the Sixth Circuit that is currently on appeal before the Supreme Court of the United States. *See Oklahoma ex rel. Pruitt v. EPA*, No. 15-cv-381, 2016 WL 3189807 (N.D. Okla. Feb. 24, 2016). We appealed the dismissal to the Tenth Circuit, arguing that it has an independent obligation to determine its jurisdiction and that the district court erred by deferring to the Sixth Circuit because the district court has original jurisdiction over challenges to the WOTUS Rule under the Administrative Procedure Act and the Clean Water Act. The United States argued that the Tenth Circuit should defer to the Sixth Circuit’s decision that the case falls within the provisions of the Clean Water Act providing for original jurisdiction in the courts of appeals.

In January 2017, the Tenth Circuit (Lucero, Phillips, Moritz, JJ.) issued an order holding the case in abeyance pending the Supreme Court’s decision in *National Association of Manufacturers v.*

Department of Defense, No. 16-299. In January 2018, the Tenth Circuit reversed and remanded the case to the district court, which administratively closed the case on March 9, 2018 in light of pending rulemaking by the United States rescinding and replacing the WOTUS Rule.

I played a lead role in this litigation, developing case strategy, drafting legal papers, and arguing the appeal in the Tenth Circuit. I also coordinated with counsel for other parties in related cases challenging the WOTUS Rule across the country.

Co-counsel:

Mary E. Kindelt
McDonald, McCann, Metcalf & Carwile, LLP
15 East Fifth Street, Suite 1400
Tulsa, Oklahoma 74103
(918) 430-3706

Counsel for State of Oklahoma:

Mithun Mansinghani
Oklahoma Office of the Attorney General
313 Northeast 21st Street
Oklahoma City, Oklahoma 73105
(405) 521-3921

Counsel for the United States:

J. David Gunter II
U.S. Department of Justice
Environment & Natural Resources Division
Post Office Box 7415
Washington, D.C. 20044
(202) 514-3785

Amy J. Dona
U.S. Department of Justice
Environmental Defense Section
Post Office Box 7611
Washington, D.C. 20044
(202) 514-0223

2. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, No. 1:14-cv-14176-ADB (D. Mass. Filed Nov. 17, 2014).

This case involves a challenge to Harvard's undergraduate admissions policies under the Fourteenth Amendment to the U.S. Constitution and Title VI of the Civil Rights Act of 1964. I represent Plaintiff Students for Fair Admissions, Inc. ("SFFA"), which is a non-profit membership organization comprised of more than 20,000 students, parents, and others who believe that racial classifications and preferences in college admissions are unfair, unnecessary, and unconstitutional.

SFFA filed this suit in the U.S. District Court for the District of Massachusetts (Burroughs, J.) in November 2014. After several years of discovery, trial began on October 15, 2018. As one of the lead attorneys for SFFA, I have been involved in various aspects of the case, including formulating legal strategy, taking and defending depositions, and briefing motions relating to discovery and other issues.

Co-counsel:

Paul M. Sanford
Burns & Levinson LLP
One Citizens Plaza, Suite 1100
Providence, Rhode Island 02903
(401) 831-5309

Benjamin C. Caldwell
[Formerly with Burns & Levinson LLP]
Fresenius Medical Care North America
920 Winter Street
Waltham, Massachusetts 02451
(781) 402-9000

Counsel for Defendant:

Felicia H. Ellsworth
Andrew S. Dulberg
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, Massachusetts 02109
(617) 526-6000

3. *S&R Dev. Estates, LLC v. Town of Greenburgh*, No. 7:16-cv-08043-CS (S.D.N.Y. Filed Oct. 14, 2016).

In this case, Plaintiff S&R Development Estates, LLC (“S&R”) alleges that Defendants have prevented it from developing affordable housing for over a decade in violation of the Fair Housing Act and the U.S. Constitution. I represent S&R, which is a real-estate developer that purchased property in the Edgemont section of the Town of Greenburgh, New York, in 2006.

S&R filed this suit in the U.S. District Court for the Southern District of New York on October 14, 2016. On September 18, 2017, the district court (Seibel, J.) issued a bench ruling largely denying Defendants’ motions to dismiss S&R’s amended complaint.

Since then, the case has been in discovery (Davison, M.J.), which is ongoing. I have played a lead role in this litigation, developing case strategy, drafting legal papers, and arguing motions before both Judge Seibel and Magistrate Judge Davison.

Co-counsel:

James W. Glatthaar
Bleakley Platt & Schmidt, LLP
One North Lexington Avenue
White Plains, New York 10601
(914) 287-6159

Counsel for Defendant:

Jerry A. Cuomo
Landman Corsi Ballaine & Ford P.C.
One Gateway Center, 4th Floor
Newark, New Jersey 07102
(973) 623-2700

4. *Otoe-Missouria Tribe of Indians v. N.Y. State Dep't of Fin. Servs.*, 769 F.3d 105 (2d Cir. 2014).

This case involved questions about state enforcement of consumer protection laws against online lending businesses operated by Indian Tribes. I represented two federally recognized Indian Tribes in Oklahoma and Michigan (the “Tribes”), along with companies owned by the Tribes and the Tribes’ internal regulatory bodies, who brought this action to establish their right to market and sell short-term, high-interest loans to New York residents over the Internet. Plaintiffs sought to enjoin the New York State Department of Financial Services (“DFS”) from bringing enforcement actions or interfering with their lending activities.

In August 2013, DFS sent dozens of cease-and-desist letters to stop out-of-state lenders, including Plaintiffs, from extending “payday” loans to New York residents on terms that allegedly violated New York’s usury laws. Later that month, we brought an action seeking to enjoin DFS from interfering with Plaintiffs’ consumer lending business. We argued that DFS’s attempts to regulate tribal online lending businesses had improperly projected its regulations over the Internet and onto reservations in violation of Native Americans’ tribal sovereignty and the Indian Commerce Clause of the U.S. Constitution.

The U.S. District Court for the Southern District of New York (Sullivan, J.) denied our motion for a preliminary injunction and held that Plaintiffs had not offered sufficient proof that the loans were made on Native American soil and thus fell outside New York’s regulatory domain. *Otoe-Missouria Tribe of Indians v. New York State Dep't of Fin. Servs.*, 974 F. Supp. 2d 353 (S.D.N.Y. 2013). We appealed to the Second Circuit, which affirmed the district court’s denial of a preliminary injunction. 769 F.3d 105 (2d Cir. 2014) (Sack, Lynch, Lohier, JJ.).

My role in this matter included drafting the legal papers, both at the trial and appellate levels, developing legal strategy, assisting lead counsel in preparing for argument, and working with Plaintiffs and local counsel to understand tribal business operations.

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5. *SEC v. Adondakis*, No. 12-cv-0409 (S.D.N.Y. Filed Jan. 18, 2012).

I represented Level Global Investors, L.P. and its principal David Ganek in a multi-faceted matter, which involved an internal investigation, the above-captioned SEC enforcement action, and the criminal prosecution of Level Global co-founder Anthony Chiasson by the U.S. Attorney's Office for the Southern District of New York.

In November 2010, the FBI raided the office of Level Global, along with two other hedge funds, as part of an insider trading investigation. In January 2012, the SEC charged Level Global, along with another hedge fund and seven individuals, with involvement in a \$78 million insider trading scheme. The SEC's complaint alleged various violations of federal securities laws. *See SEC v. Adondakis*, No. 12-cv-0409 (S.D.N.Y. Filed Jan. 18, 2012). The U.S. Attorney's Office for the Southern District of New York also brought criminal charges against the same seven individuals.

In December 2012, Chiasson was tried and convicted of securities fraud by the U.S. District Court for the Southern District of New York (Sullivan, J.). In April 2013, Level Global agreed to pay \$21.5 million in disgorgement and penalties to settle the SEC investigation without admitting or denying the SEC's allegations. *See SEC v. Adondakis*, No. 12-cv-0409, Final Judgment as to Defendant Level Global Investors, L.P. (S.D.N.Y. May 31, 2013) (Baer, J.).

Chiasson's conviction was overturned in December 2014 by the Second Circuit. *Newman v. United States*, 773 F.3d 438 (2d Cir. 2014) (Winter, Parker, Hall, JJ.). In October 2015, after I left Dechert, the Supreme Court denied the government's petition for certiorari. 136 S. Ct. 242 (2015). In January 2016, the SEC agreed to return the settlement paid by Level Global.

As counsel for Level Global, I worked with co-counsel on an internal investigation; I advised it

and its founder in connection with the government's prosecution of Chiasson and subsequent appeals; and I was involved in negotiating its settlement with the SEC.

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6. *United States v. Deutsche Bank AG*, No. 11 Civ. 2976 (S.D.N.Y. Filed May 3, 2011) (LAK).

I represented Deutsche Bank AG, MortgageIT, Inc. (which Deutsche Bank acquired in 2007), and two other Deutsche Bank subsidiaries in a civil mortgage fraud lawsuit brought by the U.S. Attorney's Office for the Southern District of New York in the U.S. District Court for the

Southern District of New York (Kaplan, J.). The government sought over \$1 billion in treble damages and civil penalties under the False Claims Act for false certifications made to the U.S. Department of Housing and Urban Development (“HUD”) in connection with the residential mortgage origination practices of MortgageIT.

In May 2011, the government filed a complaint alleging that MortgageIT had falsely certified compliance with HUD requirements for more than 3,100 mortgages, totaling \$386 million, on which the Federal Housing Administration paid insurance claims. In July 2011, we moved to dismiss the complaint on various grounds, including failure to state direct or derivative claims against Deutsche Bank; failure to plead a false claim for payment, materiality, loss causation, or scienter under False Claims Act; failure to plead fraud with particularity; and the statute of limitations. The government voluntarily withdrew its complaint and filed an amended complaint in August 2011, which we again moved to dismiss. Following oral argument in December 2011, the government sought leave to file a second amended complaint, but never did so because the case settled in May 2012, with Defendants agreeing to pay \$202 million.

I played a lead role in drafting the motions to dismiss and in discussions with the government. This was one of several financial crisis cases brought by the government against Wall Street banks based on an implied certification theory of liability under the False Claims Act.

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7. *Kumiva Grp., LLC v. Garda USA Inc.*, No. 650386/08, 2015 NY Slip Op. 31388(U) (N.Y. Sup. Ct. N.Y. Cty. July 24, 2015), *aff’d*, 146 A.D.3d 504 (1st Dep’t 2017).

This was a complex commercial case in the Commercial Division of the New York Supreme Court in New York County. The case arose from the 2007 sale of ATI Systems International, Inc. (“ATI”), a family-owned armored car and cash handling company, to a larger Canadian company, Garda USA Inc. (“Garda”), for \$342 million. I represented Plaintiff Kumiva Group, LLC (“Kumiva”), the ATI entity surviving the merger, and Cross-Claim Defendants Richard Irvin, the former CEO of ATI, and Robert Irvin, the principal owner of ATI (the “Irvins”).

Kumiva filed a complaint against Garda in 2008, seeking various amounts owed by Garda under the merger agreement. Garda cross-claimed against Kumiva and the Irvins, alleging that it had been fraudulently induced to overpay for ATI based on misrepresentations about the company's health.

In 2010, Justice Barbara Kapnick granted Kumiva's motion to dismiss certain of Garda's counterclaims, but allowed the fraud claim to proceed. Justice Saliann Scarpulla took over the case after Justice Kapnick was appointed to the Appellate Division in January 2014. In July 2015, after I had left Dechert, Justice Scarpulla granted Kumiva's motion for summary judgment dismissing all of Garda's counterclaims and ordered Garda to pay \$10.5 million plus interest. In early 2017, the Appellate Division, First Department, upheld this decision on appeal.

I was involved in this case from 2010 until 2015, taking and defending depositions, briefing and arguing motions, working with experts, and drafting legal papers. I left Dechert before the court granted our motion for summary judgment, which was later affirmed by the First Department on appeal.

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8. *Thom v. Holder*, No. 09-2651 (3d Cir. 2010).

This was an immigration case involving a question about the application of the REAL ID Act of 2005. I represented Appellant Rickford Thom, who sought judicial relief from a final order of removal from the United States. We argued that deportation would be improper because Thom is an American citizen.

The government sought to deport Thom because he had been convicted on several non-violent criminal drug offenses under New Jersey law. An Immigration Judge had ordered Thom to be removed from the United States, which the Board of Immigration Appeals affirmed. Thom filed a belated habeas petition, which the U.S. District Court for the District of New Jersey denied under the REAL ID Act, which provides a 30-day window to appeal an order of removal.

On Thom's appeal from this decision, the Third Circuit appointed Dechert as *pro bono* counsel to represent Thom, who had been representing himself throughout the immigration proceedings.

We argued that the REAL ID Act unconstitutionally would deny Thom judicial review of his claim of U.S. citizenship because it suspended the writ of habeas corpus without providing an adequate or effective substitute remedy to those facing imminent deportation. The government argued that the district court had correctly dismissed Thom's petition and that Third Circuit precedent held that the REAL ID Act eliminated district courts' habeas jurisdiction over removal orders.

As lead counsel for Thom, I argued his appeal in the Third Circuit (McKee, Rendell, Sloviter, JJ.) in November 2010. Following oral argument, the Court took the unusual step of urging the government to reopen Thom's immigration proceedings, which it agreed to do. I subsequently represented Thom in seeking cancellation of removal and applying for a certificate of citizenship in immigration proceedings until I left Dechert in 2015.

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Current contact information unavailable

9. *DeBenedictis v. Merrill Lynch & Co.*, 492 F.3d 209 (3d Cir. 2007).

This was a securities class action alleging that Merrill Lynch and various affiliates had failed to disclose certain information about the fees associated with mutual fund share classes. In January 2004, Plaintiff DeBenedictis brought a class action under the Securities Act of 1933 in the U.S. District Court for the District of New Jersey (Linares, J.). The complaint alleged that the registration statements for Merrill Lynch's mutual funds misled investors by failing to disclose that Class B shares were never a rational investment choice for them and that Merrill brokers received larger commissions on sales of such shares.

I represented Defendants, who moved to dismiss the complaint on a number of grounds, including the statute of limitations. The district court granted the motion to dismiss, finding that various news articles and press releases, along with disclosures about fees in the registration statements, constituted "storm warnings" that had put DeBenedictis on inquiry notice of his claims over two years before he brought suit. In June 2007, after I had left WilmerHale, the Third Circuit (Scirica, Fuentes, Alarcon, JJ.) affirmed the decision of the district court that DeBenedictis's claims were time-barred.

As the lead associate for Defendants in this case, I had primary responsibility for drafting the legal briefs before the District of New Jersey and the Third Circuit.

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10. *Xpedior Creditor Trust v. Credit Suisse First Boston (USA), Inc.*, 399 F. Supp. 2d 375 (S.D.N.Y. 2005).

This was a putative securities class action challenging the IPO underwriting and allocation practices of investment banks during the dot-com bubble. I represented Defendant Credit Suisse First Boston (USA), Inc., the successor-in-interest to Donaldson, Lufkin & Jenrette Securities Corporation (“DLJ”), which served as the lead underwriter for the initial public offering in 1999 of Xpedior, Inc.—an e-business consulting and design firm.

In 2002, Plaintiff Xpedior Creditor Trust filed a complaint alleging that DLJ had breached the underwriting agreement by intentionally underpricing the IPOs of issuers of companies like Xpedior that experienced a “pop” in their stock prices following their IPOs. Plaintiff alleged that DLJ allocated shares to its favored customers instead of to the public, required purchasers to pay more than the price listed in the prospectus, and received greater compensation than the listed spread by receiving extra payments from investors in return for allocations of IPOs.

In August 2005, after several years of litigation, the U.S. District Court for the Southern District of New York (Scheindlin, J.) granted in part Plaintiff’s motion for summary judgment and granted leave for Plaintiff to amend the complaint to drop its class claims. The case settled shortly thereafter.

As one of the associates on the team for this case, I was heavily involved in drafting the legal

briefs and in conducting all aspects of discovery.

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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.)

Between 2006 and 2008, I served in the Office of Legal Counsel at the U.S. Department of Justice. As an Attorney-Adviser, my work included drafting opinions, advising members of the Executive Branch on a wide range of legal issues, assisting with litigation projects, and identifying legal infirmities in proposed bills and regulations.

Since 2015, I have been an instructor for the Supreme Court Clinic at the Antonin Scalia Law School at George Mason University, which provides *pro bono* legal representation before the United States Supreme Court. In that capacity, I have taught Supreme Court practice and worked with law students to identify cases of interest, research legal issues, and draft Supreme Court briefs on behalf of parties and amici at both the certiorari and merits stages.

I have never acted or registered as a lobbyist.

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.

Since 2015, I have been one of the instructors for the Supreme Court Clinic at the Antonin Scalia Law School at George Mason University, which provides *pro bono* legal representation before

the United States Supreme Court. The instructors work with law students in the year-long clinic to identify cases of interest, research legal issues, and draft Supreme Court briefs on behalf of parties and amici at both the certiorari and merits stages. Syllabus 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.

If confirmed, I expect to receive the return of my capital contribution to Consovoy McCarthy Park PLLC. My capital account is presently approximately \$100,000.

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.

If confirmed, I currently have no plans, commitments, or agreements to pursue outside employment.

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).

When my nomination is formally submitted to the Senate and I file my Financial Disclosure Report, I will supplement this Questionnaire with a copy of that 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 will recuse in any litigation in which I have ever played a role. For a period of time, I anticipate recusing in all cases where my current firm, Consovoy McCarthy Park PLLC, represents a party. I will evaluate any other real or potential conflict, or relationship that could give rise to appearance of conflict, on a case-by-case

basis and determine appropriate action with the advice of parties and their counsel including recusal where necessary.

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

If confirmed, I will carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

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.

Pro bono activities have been an important part of my career. Since 2015, I have provided *pro bono* legal representation through the Supreme Court Clinic at the Antonin Scalia Law School. That work has included working with law students to prepare amicus briefs for nonprofit organizations in cases before the Supreme Court at both the certiorari and merits stages. *See, e.g., 616 Croft Ave., LLC v. City of West Hollywood*, No. 16-1137 (2017); *Cal. Bldg. Indus. Ass'n v. City of San Jose*, No. 15-330 (2015); *Murr v. Wisconsin*, No. 15-214 (2017). These matters typically require several days to several weeks of work.

I was also active in *pro bono* matters when I was at Dechert. I performed at least 50 hours of *pro bono* work every full year I was at the firm (2010 through 2014). Among other matters, I worked on two *pro bono* amicus briefs in cases before the Supreme Court. In *Minority Television Project, Inc. v. FCC*, No. 13-1124 (2014), I prepared an amicus brief on behalf of a group of small public television stations supporting a petition for certiorari in a challenge to a prohibition on commercial advertising in public broadcasts. And in *Fisher v. University of Texas at Austin*, No. 11-345 (2012), I prepared an amicus brief on behalf of current and former federal civil rights officials that emphasized the importance of considering race-neutral alternatives to race-based affirmative action in college admissions.

In *Thom v. Holder*, No. 09-2651 (3d Cir. 2010), I represented an indigent prisoner seeking relief from an order of removal from the United States. I worked over 200 hours representing Mr. Thom in 2010 and 2011 in connection with a Third Circuit appeal and appearances in Immigration Court.

Finally, I have provided several dozen hours of *pro bono* counsel to charitable organizations, including Operation Exodus Inner City, which mentors Latino youth in New York City.

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.

On March 31, 2017, I received a telephone call from the White House Counsel's Office about vacancies on the Second Circuit. On April 20, 2017, I interviewed with attorneys from the White House Counsel's Office and the U.S. Department of Justice, Office of Legal Policy at the Executive Office Building in Washington, D.C. On July 5, 2017, I received a telephone call from the Office of Legal Policy advising that my name would be submitted to Senators Schumer and Gillibrand as a possible nominee for the Second Circuit.

On November 21, 2017, I was asked by the White House Counsel's Office to complete paperwork for an FBI background check.

On June 27, 2018, I interviewed with Senator Schumer and several of his aides.

On October 10, 2018, I was notified by the White House Counsel's Office of my nomination.

Throughout this time, I have been in periodic contact with individuals from the White House Counsel's Office and the Office of Legal Policy.

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.