

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Leon Schydlower

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

United States District Judge for the Western 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 District Court for the Western District of Texas
525 Magoffin Avenue, Fifth Floor
El Paso, Texas 79901

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

1971; Long Beach, California

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.

1993 – 1995, University of Texas School of Law; J.D., 1995

1989 – 1993, University of Texas at Austin; B.A., 1993

1989 (Summer), El Paso Community College (no degree received)

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

United States District Court, Western District of Texas – El Paso Division
525 Magoffin Avenue, Fifth Floor

El Paso, Texas 79901
United States Magistrate Judge

2002 – 2015
Leon Schydlower, Attorney at Law, PLLC
221 North Kansas Street, Suite 1103
El Paso, Texas 79901
Owner / Partner

2000 – 2002
Kemp Smith, P.C.
221 North Kansas Street, Suite 1900
El Paso, Texas 79901
Partner (2001 – 2002)
Associate (2000 – 2001)

1998 – 2000
United States Attorney's Office
District of Hawaii
300 Ala Moana Boulevard, Suite 6100
Honolulu, Hawaii 96850
Special Assistant United States Attorney

1997 – 1998
United States Navy Trial Service Office Pacific
850 Willamette Street
Pearl Harbor, Hawaii 96860
Military Prosecutor

1996 – 1997
United States Navy Legal Service Office Pacific
850 Willamette Street
Pearl Harbor, Hawaii 96860
Assistant Staff Judge Advocate

Fall 1995 – 1996
Travis County District Attorney's Office
411 West 11th Street
Austin, Texas 78701
Law clerk

Summer 1995
Texas Attorney General's Office
300 West 15th Street
Austin, Texas 78701
Law clerk

Summer 1994
Travis County Attorney's Office
314 West 11th Street
Austin, Texas 78701
Law clerk

1993
Texas House of Representatives
Texas Capitol
Austin, Texas 78701
Part-time student legislative assistant

Other Affiliations (United States Air Force Reserve):

2021 – present
35th Fighter Wing
Torii Building, Building 656
Misawa Air Base
Japan
Individual Mobilization Assistant to the Staff Judge Advocate

2017 – 2021
United States Air Force Judge Advocate General's School
150 Chennault Circle
Maxwell Air Force Base
Alabama 36112
Instructor of Law

2011 – 2017
49th Wing Judge Advocate
490 First Street, Building 29
Holloman Air Force Base
New Mexico 88330
Assistant Staff Judge Advocate

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.

2010 – present
United States Air Force Reserve
Lieutenant Colonel
I am presently serving and have not been discharged.

1996 – 2000
United States Navy
Lieutenant
I was honorably discharged.

2000 – 2004
United States Naval Reserve (Inactive Reserve)
Lieutenant
I was honorably discharged.

I registered for the Selective Service when I turned 18.

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.

United States Air Force – Meritorious Service Medal (2016, 2021)

El Paso Bar Association, Outstanding Young Lawyer of the Year (2006)

United States Navy – Navy Commendation Medal (2000)

United States Navy – Pearl Harbor Trial Service Office Pacific Junior Officer of the Quarter: 1998

Phi Beta Kappa, University of Texas (1993)

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.

El Paso Bar Association (2000 – present)

El Paso Young Lawyer's Association (2000 – 2008)
President (2003)

Fifth Circuit Committee on Criminal Pattern Jury Instructions, 2019 Edition

Federal Magistrate Judges Association (2015 – present)

Lawyer-Pilots Bar Association (approximately 2010 – 2015)

Texas Young Lawyer's Association (2000 – 2008)

United States District Court for the District of New Mexico Criminal Justice Act Committee (2007 – 2015)

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.

California, 2000
New Mexico, 2000
Texas, 1996

There have been no lapses in membership, but I have been on inactive status in California and New Mexico since approximately 2016.

- 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, 2003
United States Court of Appeals for the Ninth Circuit, 1999
United States Court of Appeals for the Tenth Circuit, 2004
Court of Appeals for the Armed Forces, 2000
United States District Court for the Central District of California, 2002
United States District Court for the Southern District of California, 2005
United States District Court for the District of New Mexico, 2003
United States District Court for the Northern District of Texas, 2001
United States District Court for the Western District of Texas, 2000

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.

Air Force Association (approximately 2016 – 2018)

Aircraft Owners and Pilot Association (2007 – 2022)

El Paso County Club (approximately 2000 – 2019)

El Paso Texas Exes (University of Texas Alumni Association) (2000 –

approximately 2010)
Board Member (2002 – 2005)

Hawaii Texas Exes (University of Texas Alumni Association) (approximately
1996 – 2000)
President (1997 – 1998)

Navy League of the United States (approximately 2016 –2018)

United States Soccer Federation (mid-2000s)

- 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 above organizations currently 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.

Book Note, 22 Am. J. Crim. L. (Winter 1995) (reviewing BRENT L. SMITH, TERRORISM IN AMERICA: PIPE BOMBS AND PIPE DREAMS (1994)). Copy supplied.

- 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.

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.

Based upon my recollection and a thorough review of my files and searches of publicly available databases and the Internet, I have identified the following responsive materials, but it is possible that there are a few that I have been unable to recall or identify.

October 10, 2023: Speaker, Common Pitfalls in Personal Injury Litigation Post-Removal to Federal Court, El Paso Bar Association Monthly Luncheon Meeting, El Paso, Texas. Presentation supplied.

May 24, 2023: Panelist, Law Day at Fort Bliss, Texas. I sat on a panel with two state court judges and a practicing attorney before a military legal audience to discuss pathways to the bench and best court practices. I have no notes, transcript or recording. The sponsoring organization was the Office of the Staff Judge Advocate, Building 113, Pershing Road, USAG Fort Bliss, Texas 79916.

April 3, 2023: Panelist, Roadways to the Bench, United States District Courthouse, Austin, Texas. I sat on a panel speaking to law students and lawyers about my experiences and path that led me to the bench. I have no notes, transcript, or recording. The address of the U.S. District Court is 501 West Fifth Street, Austin, Texas 78701.

2015 – 2020, various Sunday mornings: Speaker. I gave numerous speeches on Sunday mornings at Eastwood High School, El Paso, Texas, to West Texas and Southern New Mexico high school students and parents interested in the United States Air Force Academy. I spoke broadly about admission requirements, physical fitness requirements, and cadet life. I have no notes, transcripts, or recordings. The address of Eastwood High School is 2430 McRae Boulevard, El Paso, TX 79925.

January 22, 2016: Speaker, Naturalization Ceremony, United States District Court for the Western District of Texas. As part of my duties as a United States

Magistrate Judge, I spoke at a naturalization ceremony for new citizens. I have no notes, transcript, or recording. The address of the U.S. District Court is 525 Magoffin Avenue, El Paso, Texas 79901.

January 13, 2016: Speaker, Investiture as United States Magistrate Judge, United States Courthouse in El Paso, Texas. I thanked my family, friends, and colleagues for supporting me personally and professionally during my career. I have no notes, transcript, or recording. The address of the U.S. District Court is 525 Magoffin Avenue, El Paso, Texas 79901.

2010 – approximately 2016 (usually every April): Speaker, Federal Civil Motion Practice, United States District Courthouse, El Paso, Texas. I presented this topic annually to lawyers as part of a continuing legal education program. The most recent version of the presentation is supplied.

May 22, 2014: Speaker, Whither Minimum Mandatory Sentences in Federal Drug Cases? Texas Minority Attorney Continuing Legal Education program, United States District Courthouse, El Paso, Texas. Presentation supplied.

May 16, 2013: Panelist, Civil Trial Tips CLE, United States District Courthouse, El Paso, Texas. I sat on a panel during a Federal Bar Association Continuing Legal Education program to discuss federal court civil trial tips with a United States District Judge and another trial attorney. I have no notes, transcript, or recording. The address of the U.S. District Court is 525 Magoffin Avenue, El Paso, Texas 79901.

December 5, 2005: Speaker, Federal Sentencing Guidelines, Texas Young Lawyers Association online video series. Video available at <https://www.texasbarcle.com/CLÉ/AATYLAPlayer5.asp?IEventID=216&sTitle=Federal+Sentencing+Guidelines&sAuthor=Leon+++Schydlower>.

- 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.

Phillip Countryman, *Getting to Know the Honorable Leon Schydlower*, DICTA, Vol. 6, Iss. 2 (Winter 2019). Copy supplied.

Daniel Borunda, *Former Beaumont Army Medical Center Doctor Indicted in Fraud Scheme*, EL PASO TIMES (Feb. 7, 2014). Copy supplied.

Marty Schladen, *Public corruption: Chilo Madrid wants help with restitution*, EL PASO TIMES (Nov. 3, 2013). Copy supplied.

Marty Schladen, *Jury Finds Cirilo "Chilo" Madrid Guilty in Corruption Case*,

EL PASO TIMES (Dec. 14, 2012). Copy supplied.

Adriana M. Chavez, *Ex-FBI agent's appeal at risk*, EL PASO TIMES (May 30, 2012). Copy supplied.

Zahira Torres, *EPISD Paid New Beginnings of Texas \$3.2 Million in Contracts*, EL PASO TIMES (Apr. 27, 2012). Copy supplied.

Ashley Meeks, *Family of man who died in prison sues*, LAS CRUCES SUN-NEWS (Dec. 9, 2010). Copy supplied.

Adriana Gomez Licon, *Inmate's death focus of lawsuit*, EL PASO TIMES (Dec. 9, 2010). Copy supplied.

Adriana Gomez Licon, *ACLU suing over immigrant death in Texas*, EL PASO TIMES (Dec. 8, 2010). Copy supplied.

Jose Medina (Media Coordinator, ACLU Foundation of Texas), *ACLU Of Texas Sues on Behalf of Immigrant Inmate Who Died in Solitary Confinement in Pecos Prison*, ACLU Press Release (Dec. 8, 2010). Copy supplied.

Jim Mustian, *Court Tosses Life Sentence – Midland Man is Jailed Again on Lesser Charge*, ODESSA AMERICAN (July 3, 2010). Copy supplied.

Adriana M. Chavez, *William Josef Berkley, on Day Before Execution: 'I Didn't Kill Her,'* EL PASO TIMES (Apr. 22, 2010). Copy supplied.

Adriana M. Chavez, *Delay of William Josef Berkley's Thursday execution is sought*, EL PASO TIMES (Apr. 21, 2010). Copy supplied.

Jose L. Medina, *'Crosses' Plaintiff Found in Contempt*, LAS CRUCES SUN-NEWS (Oct. 27, 2006). Copy supplied.

Ex-supt. Owns Rap to Avoid Jail Time, THE FILIPINO REPORTER (Apr. 28, 2006). Copy supplied.

Gustavo Reveles Acosta, *Ex-Socorro Official Gets Probation for Failing to Report Gifts*, EL PASO TIMES (Apr. 11, 2006). Copy supplied.

Anita Davis, *Features: Pro Bono Work Is "Billable Hours For The Soul,"* 66 TEX. B. J. 994 (Dec. 2003). 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.

Since November 2015, I have served as a United States Magistrate Judge on the United States District Court for the Western District of Texas. I was selected for this position following a two-stage process. In the first stage, members of a merit selection committee comprised of lawyers and nonlawyers recommended five finalists from among the 77 applicants. In the second stage, the United States District Judges of the Western District of Texas made their final selection from the five finalists. My first term expired on November 30, 2023, and before its expiration the merit selection committee conducted a review and recommended that I be reappointed to a second term. The United States District Judges for the Western District of Texas thereafter voted to reappoint me to a second eight-year term which began December 1, 2023.

The United States District Court for the Western District of Texas is an Article III court of limited jurisdiction, and the jurisdiction of United States Magistrate Judges is governed by 28 U.S.C. § 636. For civil cases in which the parties have consented to the magistrate judge, I preside over every aspect of the case through final disposition, including trial. I handle civil cases referred by the presiding District Judge for full pretrial management, including entry of scheduling orders, the resolution of non-dispositive motions, and issuing reports and recommendations on dispositive motions. I may also be referred individual motions and matters for resolution in cases that have not been fully referred for pretrial management. In criminal cases, my duties involve conducting preliminary proceedings, including initial appearances, probable cause hearings, identity hearings, and detention hearings, as well as the issuance of criminal complaints, material witness complaints, search warrants, seizure warrants, pen registers, and trap and trace orders. I also handle referred motions or matters in criminal cases, and issue reports and recommendations as appropriate, including taking guilty pleas and conducting hearings on motions to suppress and petitions for violations of conditions of supervised release. When assigned, I also conduct jury selection for trial over which a District Judge will preside.

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

I have presided over one civil trial and five misdemeanor criminal trials. I have also presided over jury selection in two felony criminal cases by consent of the parties. Additionally, information from the court's case management/electronic case filing system reflects that I have been assigned as the presiding judge in 33 civil consent cases that have gone to verdict or judgment.

- i. Of these cases, approximately what percent were:

jury trials:	17%
bench trials:	83%

- ii. Of these cases, approximately what percent were:

civil proceedings:	17%
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criminal proceedings: 83%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list of citations.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of 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 (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *U.S. Department of Labor v. Five Star Automatic Fire Protection, LLC*, No. 3:16-cv-00282-LS, 2018 U.S. Dist. LEXIS 167522, 2018 WL 4691615 (W.D. Tex. Sept. 28, 2018) (liability), 2019 U.S. Dist. LEXIS 169841, 2019 WL 4765324 (W.D. Tex. Sept. 30, 2019) (damages), *aff'd*, 987 F.3d 436 (5th Cir. 2021), *reh'g denied*, 997 F.3d 1258 (5th Cir. 2021), *cert. denied*, 142 S. Ct. 1667 (2022).

Five Star is a company that installs fire prevention and sprinkler systems in commercial buildings. The Department of Labor alleged that Five Star violated the Fair Labor Standards Act because it did not pay certain employees for pre-shift and post-shift work, and improperly calculated overtime pay for certain employees. Five Star's employee recordkeeping was problematic, so *Anderson v. Mt. Clemens Pottery Company*, 328 U.S. 680 (1946), which provides an inference against employers whose records are inaccurate or inadequate, was at the fore. Following a bench trial, I found the defendant liable and awarded damages to the employees. The Fifth Circuit affirmed and the Supreme Court denied certiorari.

Counsel for Plaintiff:

Mia F. Terrell
Sheryl L. Vieyra
U.S. Department of Labor
Office of the Solicitor
525 Griffin Street, Suite 501
Dallas, TX 75202
(972) 850-3100

Brian L. Hurt
Steptoe & Johnson PLLC
500 North Akard Street, Suite 3200
Dallas, TX 75201
(214) 251-8424

Counsel for Defendant:

Robert L. Blumenfeld
Mendel Blumenfeld LLP
5809 Acacia Circle
El Paso, TX 79912
(915) 587-7878

Michael T. Milligan
Attorney at Law
4171 North Mesa Street
Suite B-201
El Paso, TX 79902

2. *Villegas v. City of El Paso et al.*, No. 3:15-cv-00386-DCG-LS (W.D. Tex. June 17, 2019), *R. & R. adopted in part, rejected in part*, No. 3:15-cv-00386-DCG-LS (W.D. Tex. Sept. 20, 2019). Opinion supplied.

Mr. Villegas was convicted of capital murder in 1995 and sentenced to life imprisonment. The Texas Court of Criminal Appeals vacated the conviction in December 2013 after Mr. Villegas spent nearly twenty years in prison. A jury found Villegas not guilty during an October 2018 retrial. He sued the El Paso Police Department and all police officers he claims framed him for a murder he did not commit. After the police department and all 12 defendant officers moved to dismiss for failure to state a claim, I issued a report and recommendation regarding which claims were viable against which particular officers. Specifically, I found that Villegas sufficiently alleged claims against three officers for coercing a confession and for coercing other teenagers' false statements implicating Villegas in the murders. I also recommended that the plaintiff be allowed to replead his complaint within 30 days, in light of my analysis. The District Judge adopted my recommendation that some officers be outrightly dismissed from the lawsuit, that some nonviable claims be dismissed, and mooted my recommendations regarding other claims in light of my recommendation that the plaintiff be allowed to replead his lawsuit. This case is set for trial before Senior United States District Judge David C. Guaderrama in May 2024.

Counsel for Plaintiff:

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Quinn K. Rallins
Wallace Hilke
Alison R. Leff
Jon Loewy
Samuel Heppell

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Counsel for Defendant City of El Paso:

Karla M. Nieman
Evan D. Reed
Laura Gordon
Maria G. Martinez
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Counsel for Defendant Marquez:

James A. Martinez

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Counsel for Defendants Ortega and Armendariz:

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Cris Estrada
James O. Darnell, Jr.
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Counsel for Defendant Bellows:

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Windle Hood Norton Brittain & Jay LLP
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Counsel for Defendant Scagno:

Eduardo Miranda
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El Paso, TX 79903
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3. *Barnett v. Eckel Manufacturing Company, Inc., et al.*, No. 7:16-cv-00111-FM, 2017 WL 11037927 (W.D. Tex. Jan. 19, 2017).

Mr. Barnett sued his employer under the Family and Medical Leave Act (“FMLA”) and alleged that he was fired for taking excessive medical leave to treat a kidney stone condition. Two individual defendants, supervisors at the defendant company, filed a Rule 12(b)(6) motion to dismiss in which they argued that Mr. Barnett’s complaint insufficiently alleged that they were “employers” for FMLA purposes. I disagreed and recommended that the motion to dismiss be denied. The District Judge adopted my report and recommendation and the case

ultimately settled.

Counsel for Plaintiff:

Christine A. Hopkins
Tremain Artaza PLLC
4925 Greenville Avenue, Suite 200
Dallas, TX 75206
(469) 573-0297

Counsel for Defendants Eckel Manufacturing Company, Inc., Eckel Heat Treating Company, Jon Stuart, and Justin Eckel:

James W. Essman
Richard Layne Rouse
Shafer Davis O'Leary & Stoker
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Odessa, TX 79760-1552
(432) 332-0893

4. *Poe v. Bock*, No. 3:17-cv-00232-DCG-LS, 2018 WL 4677901 (W.D. Tex. June 11, 2018), *appeal dismissed*, 2018 WL 11451307 (5th Cir. Nov. 8, 2018).

Mr. Poe alleged in a civil RICO lawsuit that the defendants conspired to wrest ownership and control of multiple car dealerships from him after his father died. I recommended dismissal of the lawsuit because, for several reasons, Poe did not adequately plead a viable civil RICO claim. The District Judge adopted my report and recommendation and dismissed the case. The plaintiffs appealed the dismissal to the Fifth Circuit but ultimately moved to dismiss the appeal.

Counsel for Plaintiffs:

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Counsel for Defendants:

Francisco J. Ortega
Richard G. Munzinger (deceased)
Scott Hulse, PC
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Joseph L. Hood, Jr.
Windle Hood Alley Norton Brittain & Jay, LLP
Chase Tower
201 East Main Drive, Suite 1350
El Paso, TX 79901

5. *Valdez v. Allstate Texas Lloyd's*, No. 3:16-cv-00346-PRM-LS, 2016 WL 9414131 (W.D. Tex. Oct. 7, 2016).

The plaintiff in this insurance case sought to compel mediation pursuant to a Texas Insurance Code provision mandating same. The question before me was whether a state law can bind a federal court to order mediation in a diversity case. I found that the state law in question did not bind the federal court and denied the motion to compel mediation. The parties ultimately stipulated to the dismissal of the lawsuit.

Counsel for Plaintiff:

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McAllen, TX 78504
(956) 631-0745

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Cori Ann Harbour-Valdez
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Counsel for Defendant:

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(214) 775-0728

6. *Anderson v. 21st Mortgage Corp., et al.*, No. 7:15-cv-0200-KC-LS, 2016 WL 11582928 (W.D. Tex. Sept. 26, 2016), *adopted as modified*, 2017 WL 11037113 (W.D. Tex. Mar. 10, 2017).

Mr. Anderson asserted antitrust, defamation, and tortious interference with contract claims against the defendants, including his former employer, who sell mobile homes and make loans for such sales. He alleged he was fired after complaining about perceived financing improprieties with respect to mobile home sales. The mobile home seller filed a Rule 12(b)(6) motion to dismiss all claims. I recommended that the District Judge dismiss all claims, two with prejudice, and four without prejudice. The District Judge adopted my report and recommendation, except as to the basis for dismissing one of the claims, and dismissed the lawsuit. The parties ultimately settled the lawsuit.

Counsel for Plaintiff:

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(432) 460-9437

Holly B. Williams
Williams Law Firm, P.C.
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(432) 682-7800

Counsel for Defendant 21st Century Corporation:

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Ogletree Deakins Nash Smoak & Stewart, P.C.
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Counsel for Titan Factory Direct Homes, Inc.:

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7. *A.S. et al. v. Kermit Independent School District et al.*, No. 4:16-cv-00037-FM-LS (W.D. Tex. Jan. 3, 2017). Opinion supplied.

A.S. was a fifth grader and through his parents sued his school principal, school superintendent, and his school district for a series of school disciplinary measures that he argued violated his Fourteenth Amendment substantive due process rights. I recommended that the plaintiff's complaint be dismissed primarily because A.S. did not sufficiently allege municipal liability and because A.S. failed to assert a viable constitutional cause of action. The District Judge adopted my report and recommendation and dismissed the lawsuit.

Counsel for Plaintiff:

John S. Klassen

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(432) 684-1111

Counsel for Defendant:

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(512) 854-9513

8. *Windmann v. Sun Life Assurance Co. of Canada*, No. 7:16-cv-00061-KC-LS, 2016 WL 11591768 (W.D. Tex. Dec. 15, 2016).

Ms. Windmann sued Sun Life when it denied her accidental death benefits after her husband died. Sun Life maintained that ERISA preempted Ms. Windmann's state law claims and moved to dismiss. I found that ERISA did indeed preempt all of Ms. Windmann's state law claims and recommended that they be dismissed. The parties settled after I issued my report and recommendation.

Counsel for Plaintiff:

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(361) 883-2200

Counsel for Defendant:

Claire Winniford Parson
Wilson Elser Moskowitz Edelman & Dicker LLP
909 Fannin Street, Suite 3300
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(713) 353-2000

9. *Mora v. Albertson's, L.L.C. et al.*, No. 3:15-cv-0071-LS, 2016 WL 11580767 (W.D. Tex. July 11, 2016).

Ms. Mora filed an ERISA suit against grocery store defendants for their alleged failure to provide her medical and wage benefits under a workplace injury benefit

plan. I denied the defendants' motion for summary judgment on the denial of medical benefits claim and granted their motion for summary judgment on the plaintiff's ERISA estoppel claim. The parties settled after I issued my opinion.

Counsel for Plaintiff:

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El Paso, TX 79912
(915) 308-1000

Counsel for Defendants:

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Kris Alderman
The Summerville Firm
1226 Ponce de Leon Avenue North East
Atlanta, GA 30306
(770) 635-0030

10. *Morris v. Sorenson et al.*, No. 7:16-cv-00071-DC, 2016 WL 11554094 (W.D. Tex. Nov. 9, 2016).

Ms. Morris sued Midland law enforcement officers for entering her home without a warrant and removing her to a police car. All three defendant officers filed motions to dismiss for failure to state a claim. I recommended against dismissal of the claim against the officer who made the warrantless entry and removal and recommended that the District Judge dismiss the claims against the other two officers. The District Judge adopted my report and recommendation. The plaintiff lost at jury trial, and her subsequent appeal was dismissed for her failure to prosecute it.

Plaintiff proceeded *pro se*

Counsel for Defendant Sorenson:

Jon Mark Hogg
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51st District Court
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Counsel for Defendants Arellano and Mancha:

Aaron Dorfner
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Midland, TX 79702
(432) 684-5782

- 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.

1. *U.S. Department of Labor v. Five Star Automatic Fire Protection, LLC*, No. 3:16-cv-00282-LS, 2018 WL 4691615 (W.D. Tex. Sept. 28, 2018) (liability), 2019 WL 4765324 (W.D. Tex. Sept. 30, 2019) (damages), *aff'd*, 987 F.3d 436 (5th Cir. 2021), *reh'g denied*, 997 F.3d 1258 (5th Cir. 2021), *cert. denied*, 142 S. Ct. 1667.

Counsel for Plaintiff:

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(972) 850-3100

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Michael T. Milligan
Attorney at Law
4171 North Mesa Street, Suite B-201

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2. *Villegas v. City of El Paso et al.*, No. 3:15-cv-00386-DCG-LS (W.D. Tex. June 17, 2019), *R. & R. adopted in part, rejected in part*, No. 3:15-cv-00386-DCG-LS (W.D. Tex. Sept. 20, 2019). Opinion previously supplied in response to Question 13c.

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Counsel for Defendant City of El Paso:
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Evan D. Reed
Laura Gordon
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Andres E. Almanzan
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Cris Estrada
James O. Darnell, Jr.
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(915) 545-4911

Counsel for Defendant Scagno:

Eduardo Miranda
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3. *Barnett v. Eckel Manufacturing Company, Inc., et al.*, No. 7:16-cv-00111-FM, 2017 WL 11037927 (W.D. Tex. Jan. 19, 2017).

Counsel for Plaintiff:

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James W. Essman
Richard Layne Rouse
Shafer Davis O'Leary & Stoker
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(432) 332-0893

4. *Poe v. Bock*, No. 3:17-cv-00232-DCG-LS, 2018 WL 4677901 (W.D. Tex. June 11, 2018).

Counsel for Plaintiffs:

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5. *Valdez v. Allstate Texas Lloyd's*, No. 3:16-cv-00346-PRM-LS, 2016 WL 9414131 (W.D. Tex. Oct. 7, 2016).

Counsel for Plaintiff:

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6. *Anderson v. 21st Mortgage Corp. et al.*, No. 7:15-cv-0200-KC-LS, 2016 WL 11582928 (W.D. Tex. Sept. 26, 2016).

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Counsel for Defendant 21st Century Corporation:

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Kyle B. Fonville
Warren Fonville, PLLC
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(682) 610-3030

7. *A.S. et al. v. Kermit Independent School District et al.*, No. 4:16-cv-00037-FM-LS (W.D. Tex. Jan. 3, 2017). Opinion previously supplied in response to Question 13c.

Counsel for Plaintiff:

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8. *Windmann v. Sun Life Assurance Co. of Canada*, No. 7:16-cv-00061-KC-LS, 2016 WL 11591768 (W.D. Tex. Dec. 15, 2016).

Counsel for Plaintiff:

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Counsel for Defendant:

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9. *Mora v. Albertson's, L.L.C. et al.*, No. 3:15-cv-0071-LS, 2016 WL 11580767
(W.D. Tex. July 11, 2016).

Counsel for Plaintiff:

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Counsel for Defendants

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10. *Morris v. Sorenson et al.*, No. 7:16-cv-00071-DC, 2016 WL 11554094 (W.D.
Tex. Nov. 9, 2016).

Plaintiff proceeded *pro se*

Counsel for Defendant Sorenson:

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Counsel for Defendants Arellano and Mancha:

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Midland, TX 79702
(432) 684-5782

- e. Provide a list of all cases in which certiorari was requested or granted.

U.S. Dep't of Labor v. Five Star Automatic Fire Protection, LLC, No. 3:16-cv-00282-LS, 2018 WL 4691615 (W.D. Tex. Sept. 28, 2018) (liability), 2019 WL 4765324 (W.D. Tex. Sept. 30, 2019) (damages), *aff'd*, 987 F.3d 436 (5th Cir. 2021), *reh'g denied*, 997 F.3d 1258 (5th Cir. 2021), *cert. denied*, 142 S. Ct. 1667 (2022).

Ysleta de Sur Pueblo v. Texas, No. 3:17-cv-179-PRM, *aff'd*, 955 F.3d 408 (5th Cir. 2020), *vacated and remanded*, 142 S. Ct. 1929 (2022).

- 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.

Arredondo v. Monetary Inquisition Group, LLC, No. 3:22-cv-00236-DCG-LS, 2022 WL 18911611 (W.D. Tex. Nov. 22, 2022), *R. & R. adopted in part, rejected in part*, 2023 WL 420922 (W.D. Tex. Jan. 26, 2023). Plaintiff sued defendant telemarketers for violations of the Telephone Consumer Protection Act. Plaintiff moved for a default judgment when the defendants failed to answer. I recommended that the District Judge deny Plaintiff's default judgment motion for want of sufficient service under federal and California law. I also recommended that the District Court vacate the Clerk's Office entry of default. The District Court found that service on one of the individual defendants was valid under California law and rejected my conclusion to the contrary. The District Court adopted the remainder of my recommendations, and ultimately dismissed the lawsuit because Plaintiff failed to prosecute it diligently and repeatedly violated court orders.

Muhammad v. Wiles, No. 3:19-cv-00051-KC-LS, 2019 WL 13301470 (W.D. Tex.

Mar. 5, 2019), *R. & R. adopted*, 2019 WL 13301701 (W.D. Tex. July 16, 2019), *rev'd and remanded*, 841 F. App'x 681 (5th Cir. 2021). Plaintiff, a *pro se* prisoner, sought injunctive relief to improve the kosher meals the jail served him. Prisoners must exhaust their administrative remedies in the jail before filing federal lawsuits about jail conditions, and Plaintiff filed a pleading confirming he had not exhausted his administrative remedies before filing suit. On this basis I recommended that the lawsuit be dismissed and the District Court adopted my recommendation. The Fifth Circuit reversed and remanded because it held that Plaintiff's pleading about failure to exhaust his administrative remedies was technically outside of his complaint. On remand, the District Court ultimately dismissed the lawsuit again on other grounds and it is now on appeal.

Rivas v. Greyhound Lines, Inc., No. 3:14-CV-166-DB-LS, 2017 WL 8890775 (W.D. Tex. Oct. 4, 2017), *R. & R. adopted in part*, 2018 WL 1896413 (W.D. Tex. Mar. 1, 2018). This lawsuit concerned a bus accident that occurred on a Mexican highway. The defendants filed motions to dismiss based on *forum non conveniens*, arguing that the lawsuit should be litigated in Mexico. I found that it made more sense to litigate the case in Mexico, that Mexico would be an "adequate" alternative forum, and that the private and public factors courts must analyze weighed in favor of the defendants' motions to dismiss. Nevertheless, I found that the defendants failed to meet their burden to show that Mexico was an "available" alternative forum because the defendants did not establish that the statute of limitations had not run in Mexico. Accordingly, I recommended denial of the defendants' motions to dismiss. The District Judge disagreed with my report and recommendation and found that the lawsuit would not be time-barred in Mexico, adopted the remainder of my findings, and dismissed the lawsuit on the defendants' motions.

Texas v. Ysleta Del Sur Pueblo, No. 3:17-cv-179-PRM-LS, 2018 WL 1663282 (W.D. Tex. Jan. 29, 2018), *R. & R. accepted in part and rejected in part*, 2018 WL 1566866 (Mar. 29, 2018), *aff'd*, 955 F.3d 408 (5th Cir. 2020), *vacated and remanded*, 142 S. Ct. 1929 (2022). Texas filed a lawsuit to stop a Native American tribe from operating slot machines and an unlicensed bingo operation in its casino. Texas sought a preliminary injunction to bar the use of the slot machines during the pendency of the lawsuit. I recommended that the District Court deny Texas's motion for a preliminary injunction because of concerns about whether the federal statute at issue, The Restoration Act, 25 U.S.C. § 1300, *et seq.*, authorized the requested injunctive relief. The District Court agreed with my recommendation that no preliminary injunction should issue, but disagreed with my concerns about whether the statute authorized the injunctive relief sought and whether federal subject matter jurisdiction was tenuous. The District Court ultimately granted the injunctive relief Texas sought, and the Fifth Circuit affirmed. The United States Supreme Court granted certiorari and vacated and remanded, holding that the Restoration Act did not provide for general state regulatory jurisdiction over tribal gaming. Instead, the Act banned on tribal lands only those gaming activities "prohibited" by Texas.

- 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.

In my eight years as a magistrate judge, I have issued more than 34,000 orders, reports and recommendations, opinions, and orders on motions. Most of these are routine, but approximately 100 rulings involved substantive factual or legal analysis. Of these rulings, approximately 80 are available on Lexis and/or Westlaw and the remaining orders are stored in the electronic case management system maintained by the United States District Court for the Western District of Texas.

- 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.

As a magistrate judge, I have not issued any significant opinions on state or federal constitutional issues.

- 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.

I have not sat by designation on any federal court of appeals.

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:

- 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.

I make recusal decisions in accordance with the Code of Conduct for United States Judges and 28 U.S.C. § 455, and I comply with the conflicts screening procedures of the United States District Court for the Western District of Texas. My recusal has been sought in only one case:

Muhammad v. Wiles, No. 3:19-cv-00367-KC (W.D. Tex.). A *pro se* prisoner plaintiff moved to recuse the assigned District Judge and me, the referral Magistrate Judge, and generally alleged that we were biased against him. The District Judge denied the motion and I had no input in the resolution of the motion.

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 was a candidate for, but not elected to, the Texas House of Representatives in 2006.

- 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.

None, other than my own campaign.

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;

I did not serve as a law clerk to a judge.

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

I was in private practice alone from 2002 to 2015, with a short stint as a member of Schydlower & Harbour, LLP, from approximately February 2007 to April 2007. The following were my addresses while in private practice.

210 North Campbell Street
El Paso, Texas 79901
Approximately 2002 to approximately 2007

303 Texas Avenue, Ninth Floor
El Paso, Texas 79901
Approximately 2007 to 2010

210 North Campbell Street
El Paso, Texas 79901
Approximately 2010 to approximately 2012

221 North Kansas Street, Suite 1103
El Paso, Texas 79901
Approximately 2012 to 2015

- 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;

1995 – 1996
Travis County District Attorney's Office
509 West 11th Street
Austin, Texas 78701
Law Clerk

1996 – 1997
United States Navy Legal Service Office Pacific
850 Willamette Street
Pearl Harbor, Hawaii 96860
Navy Assistant Staff Judge Advocate

1997 – 1998
United States Navy Trial Service Office Pacific
850 Willamette Street
Pearl Harbor, Hawaii 96860
Navy Prosecutor

1998 – 2000
United States Attorney's Office
District of Hawaii
300 Ala Moana Boulevard, Suite 6100
Honolulu, Hawaii 96850
Federal Prosecutor

2000 – 2002

Kemp Smith, P.C.
221 North Kansas Street, Suite 1700
El Paso, Texas 79901
Partner (2001 – 2002)
Associate (2000 – 2001)

2002 – 2015
Leon Schydlower, Attorney at Law, PLLC
221 North Kansas Street, Suite 1103
El Paso, Texas 79901
Owner / Partner

Spring 2007
Schydlower & Harbour, LLP (defunct)
Partner

2015 – present
United States Courthouse
525 Magoffin Avenue, Suite 551
El Paso, Texas 79901
United States Magistrate Judge

- 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 except in my capacity as a United States Magistrate Judge.

b. Describe:

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

I began my legal career as an Assistant Staff Judge Advocate in the United States Navy in Hawaii. From 1996 to 1997 I served as a Legal Assistance Attorney providing civil law services to military members and their families in the areas of divorce, child custody, wills and estate planning, and consumer law issues. From 1997 to 1998 I was a Navy prosecutor in Hawaii working on primarily sex crimes and child sex crimes. I prosecuted cases charging manslaughter, rape, drug offenses, and fraud. From 1998 to 2000 I was federal prosecutor in Hawaii handling FBI, DEA, ATF, NCIS, and Honolulu Police Department cases at the trial and appellate levels. I left government service in 2000.

From 2000 to 2002 I was an attorney at El Paso's oldest and largest law

firm practicing commercial litigation and medical malpractice defense. I was an associate from 2001 to 2002 and a partner there from 2001 to 2002.

From 2002 to 2015 I had a private practice of law with an emphasis on trial and appellate litigation in the areas of federal criminal defense, commercial litigation, and international business litigation. The court dockets reflect that I was counsel of record in 1,729 criminal and civil federal court cases in the Western District of Texas and the District of New Mexico. In most of these cases I represented those charged with federal crimes, a substantial portion of whom were indigent. The dockets for the United States Courts of Appeals for the Fifth, Ninth, and Tenth Circuits reflect that I was counsel of record in 133 federal criminal and civil appellate cases.

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

From 1996 to 1997, my clients were primarily military servicemembers and their family members. From 1998 to 2000, I represented the government as a military and federal prosecutor. From 2000 to 2002, I primarily represented hospitals, doctors, and nurses in medical malpractice cases, and businesses in commercial litigation. While in private practice from 2002 to 2015, I represented individuals and companies with an emphasis on trial and appellate litigation in the areas of federal criminal defense, commercial litigation, and international business litigation. A large portion of my practice was appellate and I argued numerous times before the Fifth and Tenth Circuit Courts of Appeal.

- 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 would estimate that 95 percent of my practice was in litigation and I appeared in court daily.

- i. Indicate the percentage of your practice in:
 - 1. federal courts: 85%
 - 2. state courts of record: 10%
 - 3. other courts: 5%
 - 4. administrative agencies: 0%
- ii. Indicate the percentage of your practice in:
 - 1. civil proceedings: 30%
 - 2. criminal proceedings: 70%

- 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 estimate that I tried approximately 30 jury trials to verdict between 1997 and 2015 in federal, state, and military courts, nearly all as sole or lead counsel.

- i. What percentage of these trials were:
- | | |
|--------------|------|
| 1. jury: | 100% |
| 2. non-jury: | 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.

The Supreme Court's docket reflects that I filed 22 petitions for writ of certiorari, one of which was granted. Because each was accompanied by a motion to proceed in forma pauperis, I have been unable to locate any of the filings, which I understand are not available online or in legal databases.

In *United States v. Guzman-Reyes*, 113 F. App'x 607 (5th Cir. 2004), *vacated and remanded*, 543 U.S. 1181 (2005), the Supreme Court granted the petition for writ of certiorari and remanded to the United States Court of Appeals for the Fifth Circuit to reconsider my indigent client's sentence in light of *United States v. Booker*, 543 U.S. 220 (2005). The Fifth Circuit reaffirmed his sentence on reconsideration. *United States v. Guzman-Reyes*, 162 F. App'x 281 (5th Cir. 2006).

The Supreme Court denied certiorari in the following cases:

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Castro-Gomez v. United States*, No. 15-6546 (Oct. 15, 2015).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Dupree v. United States*, No. 13-9732 (Apr. 7, 2014).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Shipley v. United States*, No. 13-9231 (Mar. 17, 2014).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Nieto v. United States*, No. 13-7659 (Dec. 2, 2013).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Benavidez v. United States*, No. 13-7499 (Nov. 18, 2013).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Barrow v. United States*, No. 13-10416 (Jun. 2, 2014).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Lopez v. United States*, No. 12-9156 (Mar. 5, 2013).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Jurado-Rincon v. United States*, No. 12-10600 (May 13, 2013).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Garcia v. United States*, No. 12-10456 (May 14, 2013).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Sedillo v. Hatch*, No. 11-8566 (Jan. 23, 2012).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Rosa v. Martinez*, No. 11-5582 (Jul. 25, 2011).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Varela v. United States*, No. 10-5577 (Feb. 16, 2010).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Berkley v. Thaler*, No. 08-10547 (May 19, 2009).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Weeden v. United States*, No. 07-6010 (Aug. 17, 2007).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Romero v. United States*, No. 07-5790 (Aug. 6, 2007).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Castro-Sanchez v. United States*, No. 07-5171 (Jul. 3, 2007).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Montano v. United States*, No. 07-5071 (Jun. 28, 2007).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Avila-Rodriguez v. United States*, No. 06-8751 (Jan. 3, 2007).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Cooksey v. United States*, No. 06-11657 (May 31, 2007).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Martinez v. United States*, No. 05-10597 (Aug. 17, 2007).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Rodriguez-Herrera v. United States*, No. 04-7939 (Dec. 30, 2004).

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. Song and Spondylos Consulting LLC et al.*, Cause No. 3:14-CR-00213-DB (W.D. Tex.).

I represented Dr. Song and her family's limited liability company, Spondylos Consulting, LLC, in a federal criminal healthcare fraud case. The government alleged that Dr. Song conspired with others (including her physician husband, also a named defendant) to receive bribes from a spinal implant hardware vendor in return for using that vendor's hardware during orthopedic surgeries at William Beaumont Army Medical Center in El Paso, Texas. I secured a dismissal of the charges against Dr. Song. Spondylos pled guilty pursuant to a plea agreement and was placed on probation for five years.

Dates of representation: 2014 – 2015

Judge: Senior United States District Judge David Briones

Counsel for the United States:

Debra Kanof
Anna Arreola
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(915) 534-6884

Counsel for Co-Defendant:

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Washington, DC 20001
(202) 689-2922

Counsel for Co-Defendant:

Mary Stillinger
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El Paso, TX 79902
(915) 775-0705

Counsel for Co-Defendant:

Gary J. Hill (Deceased)

Counsel for Co-Defendant:

Todd Maybrown
Allen, Hansen, Maybrown & Offenbecher
600 University Street, Suite 3020
Seattle, WA 98101
(206) 447-9681

Counsel for Co-Defendant

Felix Valenzuela
Valenzuela Law Firm
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(915) 209-2719

Counsel for Co-Defendant

Christopher Antcliff
221 North Kansas Street, Suite 609
El Paso, TX 79901
(915) 533-1221

2. *United States v. Shipley*, No. 3:09-CR-1867-DB, *aff'd*, 546 F. App'x 450 (5th Cir. 2013), *cert. denied*, 573 U.S. 933 (June 23, 2014).

I represented Mr. Shipley, an FBI agent who was convicted of illegally dealing firearms without a license, causing a firearms dealer to maintain false records, and making a false official statement. I did not represent Mr. Shipley during the jury trial but was hired to represent him at sentencing. After Mr. Shipley was sentenced to 24 months of imprisonment, I represented him on appeal. The Fifth Circuit affirmed his convictions and sentence, and the Supreme Court denied his petition for a writ of certiorari.

Dates of representation: 2010 – 2014

Trial Judge: Senior United States District Judge David Briones

Appellate Judges: Senior United States Circuit Judge James L. Dennis, Senior United States Circuit Judge Edith B. Clement, and United States Circuit Judge Leslie H.

Southwick

Counsel for the United States (Trial Court):

Gregory E. McDonald
Assistant United States Attorney
700 East San Antonio Street, Suite 200
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Counsel for the United States (Trial Court):

Michael R. Hardy
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(210) 384-7150

Counsel for the United States (Appellate Court):

Joseph H. Gay, Jr.
Assistant U.S. Attorney
601 North West Loop 410, Suite 600
San Antonio, TX 78216
(210) 384-7030

Counsel for Defendant (Jury Trial):

Marjorie Wilcox Jobe
442 Country Oaks Drive
El Paso, TX 79932
(915) 478-2325

Counsel for Defendant (Jury Trial):

Robert J. Perez
Attorney at Law
221 North Kansas Street, Suite 1103
El Paso, TX 79901
(915) 542-1222

3. *United States v. Holloway*, No 09-50114, 377 F. App'x 383 (5th Cir. 2010).

I was appointed to represent Mr. Holloway on appeal after a jury convicted him of conspiracy to possess with the intent to distribute crack cocaine for which he received a life sentence. After reviewing the pleadings and trial transcripts, I argued on appeal that the evidence was insufficient to sustain Mr. Holloway's conviction and life sentence. The Fifth Circuit agreed, and reversed the conviction and rendered a judgment of acquittal.

Dates of representation: 2009 – 2010

Judges: Senior United States Circuit Judge William L. Garwood (deceased); Senior United States Circuit Judge Jacques L. Wiener, Jr.; Senior United States Circuit Judge Fortunato Benavides (deceased).

Appellate Counsel for the United States:

Joseph H. Gay, Jr.
Diane D. Kirstein
Assistant United States Attorneys
601 North West Loop 410, Suite 600
San Antonio, TX 78216
(210) 384-7030

4. *United States v. Clark*, Cause No. 3:09-CR-2453-KC (W.D. Tex.).

Mr. Clark was a college student from Missouri who was caught on video delivering a bag containing 15 kilograms of cocaine. I was appointed to represent Mr. Clark at the trial court level. I requested specialized jury instructions using other circuits' law on venue and conspiracy, and the Court instructed the jury accordingly. After receiving these instructions and hearing my closing argument, the jury acquitted Mr. Clark of all charges after a five-day trial with three co-defendants, all of whom were convicted.

Dates of representation: 2009 – 2010

Judge: United States District Judge Kathleen Cardone

Counsel for the United States:

Carlos Hermosillo (retired)

Counsel for the United States:

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Counsel for Co-Defendant:

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Counsel for Co-Defendant:

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Counsel for Co-Defendant:

Robert Ramos
Attorney at Law
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(915) 545-1175

Counsel for Co-Defendant:

Kathleen S. Smith (deceased)

Counsel for Co-Defendant:

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Counsel for Co-Defendant:

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Attorney at Law
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Counsel for Co-Defendant:

John D. Gates (Inactive and no current contact information)

Counsel for Co-Defendant:

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Counsel for Co-Defendant:

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Jose Montes, Jr., P.C.
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Counsel for Co-Defendant:

Maria B. Ramirez
Law Office of Maria B. Ramirez
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(915) 544-6115

5. *Reed v. Wayans et al.*, No. 3:07-cv-00296-DB (W.D. Tex.).

I represented the owner of an El Paso comedy club owner in a breach of contract and defamation lawsuit against comedian Damon Wayans. The allegations in the case concerned Mr. Wayans' failure to perform all scheduled shows in June 2007 and his subsequent public statements about Mr. Reed and his business. After extensive written discovery and depositions, and multiple cross-motions for summary judgment, the case settled.

Dates of Representation: 2007 – 2009

Judge: Senior United States District Judge David Briones

Counsel for Defendant:

Mark C. Walker
Dickinson Wright
221 North Kansas Street, Suite 2000
El Paso, TX 79901
(915) 541-9300

Counsel for Defendant:

William A. Elias
1100 Montana, #102
El Paso, TX 79902
(915) 532-1907

6. *United States v. Flores*, No. 4:93-cr-00098-RAJ-3 (W.D. Tex.).

Mr. Flores was sentenced in 1993 to 240 months in prison following a marijuana conspiracy conviction. Fourteen years later, his family hired me to investigate whether anything could be done to lower the sentence because of Mr. Flores's advancing age and deteriorating medical condition. I was able to navigate limitations problems and in a quasi-habeas context secured Mr. Flores a sentencing reduction based on a claim of ineffective assistance of counsel during Mr. Flores's original 1993 sentencing. The parties did not dispute that Mr. Flores's original sentence was erroneous, and the Court granted the motion and released Mr. Flores after 14 years of incarceration.

Date of representation: 2007

Judge: Senior United States District Judge Robert Junell

Counsel for the United States:

Margaret F. Leachman
Assistant United States Attorney,
601 North West Loop 410, Suite 600
San Antonio, TX 78216
(210) 384-7122

Prior Counsel for Defendant:

Jose A. Chavez
The Chavez Law Firm
121 East 4th Street
Odessa, TX 79761
(432) 580-0303

Prior Counsel for Defendant:

Mary Stillinger
401 Boston Avenue

El Paso, TX 79902
(915) 775-0705

7. *Roberts v. Johnson*, No. 03-CV-00346-KC (W.D. Tex. May 24, 2004).

I represented Dr. Johnson in a medical malpractice case in which the plaintiff alleged that the failure to timely diagnose and treat cervical cord compression led to her quadriplegia. The case against Dr. Johnson was dismissed on my motion for want of personal jurisdiction and improper venue. The plaintiff settled with the United States, a co-defendant.

Date of Representation: 2004

Judge: United States District Judge Kathleen Cardone

Counsel for Plaintiff:

Walter L. Boyaki
4621 Pershing Drive
El Paso, TX 79903
(915) 566-8688.

Lead Counsel for Co-Defendant:

Clayton R. Diedrichs
Assistant United States Attorney
601 North West Loop 410, Suite 600
San Antonio, TX 78216
(210) 384-7310.

8. *United States v. Aguilar et al.*, No. 3:04-CR-02093-KC (W.D. Tex.).

I represented Dr. Aguilar, the Superintendent of the Socorro Independent School District, in a case alleging that he participated in a fraudulent scheme to bring teachers from the Philippines to the United States in violation of federal immigration laws. I was Dr. Aguilar's only counsel and prepared to defend him against all felony charges during the scheduled jury trial. On the eve of trial, the government dismissed all felony charges against Dr. Aguilar in exchange for his plea of guilty to a misdemeanor and a one-year term of probation.

Dates of representation: 2004 – 2006

Judge: United States District Judge Kathleen Cardone

Counsel for the United States:

J. Brandy Gardes (deceased)

Counsel for Co-Defendant:

Miguel Torres
525 Magoffin Avenue, Seventh Floor
El Paso, TX 79901
(915) 534-6732

Counsel for Co-Defendant:

Ray Velarde
1216 Montana Avenue
El Paso, TX 79902
(915) 532-6003

Counsel for Co-Defendant:

Ronald F. Ederer
The Law Office of Ron F. Ederer
15345 Caravel Drive
Corpus Christi, TX 78418
(210) 573-3566

Counsel for Co-Defendant:

Mary Stillinger
401 Boston Avenue
El Paso, TX 79902
(915) 775-0705

9. *Marks v. Conde Nast Publications, Inc.*, No. 3:02-cv-00374-KC (W.D. Tex.).

I represented Ms. Marks in a defamation action against the publisher of Glamour magazine. The lawsuit alleged that Glamour magazine used a photograph of Marks from decades earlier and without her permission, which created the false impression that Ms. Marks was involved in criminal activity. Ms. Marks was never involved in the crimes alleged, and indeed was a victim herself. The case involved an interesting legal question about whether a photograph alone, decades old, could constitute libel when its publication cast the plaintiff in a negative light and caused her to lose her job. After extensive written discovery, a summary judgment motion, and full preparations for jury trial, the case settled before trial.

Date of representation: 2002 – 2003

Judge: United States District Judge Kathleen Cardone

Counsel for Defendant:

Richard G. Munzinger (deceased)

10. *United States v. Shorts*, No. 1:99-cr-00148-SOM (D. Haw.), *aff'd*, 7 F. App'x 732 (9th Cir. 2001).

When I was at the United States Attorney's Office in Hawaii, I led the prosecution of Mr. Shorts for conspiracy to possess with the intent to distribute, and possession with the intent to distribute, crack cocaine. Mr. Shorts transported the crack cocaine to Hawaii from Spokane, Washington, on a commercial flight and the DEA seized it in a Waikiki hotel room. I was sole counsel at the jury trial and the jury found Mr. Shorts guilty, resulting in a 168-month sentence. Mr. Shorts' co-defendants both pled guilty and received 120-month sentences. The Ninth Circuit affirmed Mr. Shorts' conviction. I handled only Mr. Shorts' jury trial, not his appeal.

Date of Representation: 1999

Judge: Senior United States District Judge Susan Oki Mollway

Counsel for Defendant:

Rustam A. Barbee
Attorney at Law
P.O. Box 1547
Kaneohe, HI 96744
(808) 524-4406

Counsel for Defendant:

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Counsel for Co-Defendant:

Alexander Silvert (retired)

Counsel for Co-Defendant:

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Bervar & Jones
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Counsel for Co-Defendant:

Richard D. Gronna

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Counsel for Co-Defendant:
Lane Y. Takahashi (Inactive)

Counsel for Co-Defendant:
Sarah Courageous
850 Willamette Street
Pearl Harbor, HI 96860
(808) 473-1391

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.)

As a United States Magistrate Judge, I have served on the Fifth Circuit Committee on Criminal Pattern Jury Instructions. Moreover, while a lawyer in private practice, I served on the District of New Mexico Criminal Justice Act Committee for several years, from approximately 2007 to approximately 2015. In that position I represented the interests of private attorneys in New Mexico who were appointed to represent indigent federal criminal defendants during official court administrative meetings. I also mentored and taught new attorneys representing indigent federal criminal defendants.

My legal career before I took the bench was almost exclusively trial and appellate litigation in federal, state, and military courts. After leaving the Navy and the United States Attorney's Office in Honolulu, I appeared daily in federal court both in the Western District of Texas and the District of New Mexico. My civil cases were in the areas of medical malpractice defense, employment, and commercial litigation. My criminal cases while in private practice involved white collar crime, firearms, narcotics, and immigration cases. A vast majority of my criminal defense practice was as appointed counsel for indigent defendants. Finally, a large portion of my private practice was as appellate counsel. The court dockets for the United States Courts of Appeals for the Fifth, Ninth, and Tenth Circuits reflect that I was counsel of record in 133 federal criminal and civil appellate cases.

From 2017 to 2021, I was an instructor at the United States Air Force Judge Advocate General's School where I taught one to two-week trial advocacy courses to new Air Force lawyers. I taught multiple times during the Judge Advocate Staff Officer Courses and the Trial and Defense Advocacy Courses. The trial advocacy classes I taught and the

practical exercises I led concerned opening statement and closing arguments, direct and cross examination techniques, impeachment, motions practice, evidence, and sentencing arguments. I continue to teach in these areas as a member of the Air Force TRIALS team, of which I have been a member since approximately 2017. The TRIALS team, made up of Air Force JAG reservists who are seasoned trial lawyers, travels to various Air Force bases to conduct intensive trial advocacy instruction for Air Force trial lawyers.

I have never engaged in lobbying activities 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.

From 2017 to 2021, I was an instructor at the United States Air Force Judge Advocate General's School where I taught one to two-week trial advocacy courses to new Air Force lawyers. I taught multiple times during the Judge Advocate Staff Officer Courses and the Trial and Defense Advocacy Courses. The trial advocacy classes I taught and the practical exercises I led concerned opening statement and closing arguments, direct and cross examination techniques, impeachment, motions practice, evidence, and sentencing arguments. I continue to teach in these areas as a member of the Air Force TRIALS team, of which I have been a member since approximately 2017. The TRIALS team, made up of Air Force JAG reservists who are seasoned trial lawyers, travels to various Air Force bases to conduct intensive trial advocacy instruction for Air Force trial lawyers. I do not have the syllabi for these courses, nor the Air Force's permission to obtain and disclose them. They are similar, however, to the syllabi that law schools and other private sector entities use for basic, advanced, and intensive trial advocacy instruction.

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.

None.

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, I will file my Financial Disclosure Report and 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 would continue to follow the Code of Conduct for United States Judges, 28 U.S.C. § 455, and any other relevant ethical laws, rules, or canons. I would also recuse from any case involving any former clients that I represented as an attorney and from any case involving a party to which I was adverse in any matter I handled as an attorney. Finally, I would recuse from any case involving a business or entity employing my wife.

- 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 would continue to evaluate and resolve any potential conflict of interest by applying the Code of Conduct for United States Judges, 28 U.S.C. § 455, and any other relevant ethical laws, rules, or canons.

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.

As a United States Magistrate Judge from November 2015 to present, I have been unable to take on direct pro bono representations. From 2002 through 2015, however, I deliberately set aside a large portion of my private practice to represent indigent criminal defendants in federal and state trial and appellate courts. Indeed, I have represented several hundred such indigent criminal defendants, some all the way to the United States Supreme Court. I also recruited, trained, and mentored dozens of lawyers to join me in this endeavor. I estimate that almost 50 percent of my private practice was devoted to service in this regard.

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 June 20, 2023, I submitted an application to Senators John Cornyn and Ted Cruz regarding a position on the United States District Court for the Western District of Texas. On August 25, 2023, I interviewed with the Federal Judiciary Evaluation Committee established by Senators Cornyn and Cruz. I interviewed with Senator Cruz on September 27, 2023, and with Senator Cornyn on September 28, 2023. On October 24, 2023, I interviewed with attorneys from the White House Counsel's Office. Since October 27, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 19, 2023, the President announced his intent to nominate me.

- 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.