

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Sean Daniel Godwin Jordan

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

United States District Judge for the Eastern 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.

Jackson Walker L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701

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

1965; New York City, New York

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.

1991 – 1994, University of Texas School of Law; J.D., 1994

1987 – 1991, University of Texas at Austin; B.A., 1991

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.

2000 – 2004; 2015 – present
Jackson Walker L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
Partner (2002 – 2004; 2015 – present)

Associate (2000 – 2002)

2012 – 2015

Sutherland Asbill & Brennan LLP
(now Eversheds Sutherland LLP)
600 Congress Avenue, Suite 2000
Austin, Texas 78701
Partner

2004 – 2012

Office of the Attorney General of Texas
209 West 14th Street
Austin, Texas 78701
Principal Deputy Solicitor General (2008 – 2012)
Deputy Solicitor General (2006 – 2008)
Assistant Solicitor General (2004 – 2006)

1998 – 2000

Solar & Fernandes, L.L.P.
2800 Post Oak Boulevard, Suite 6400
Houston, Texas 77056
Associate

1997 – 1998

Beirne, Maynard & Parsons LLP
(now Akerman LLP)
1300 Post Oak Boulevard, Suite 2500
Houston, Texas 77056
Associate

1994 – 1997; Summer 1993; Summer 1992

Bell & Murphy, P.C.
1300 Post Oak Boulevard, Suite 2000
Houston, Texas 77056
Associate (1994 – 1997)
Summer Associate (1992, 1993)

Summer 1993

Strasburger & Price LLP
(now Clark Hill Strasburger PLC)
901 Main Street, Suite 6000
Dallas, Texas 75202
Summer Associate

Summer 1993

Haynes and Boone LLP

2323 Victory Avenue, Suite 700
Dallas, Texas, 75219
Summer Associate

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.

1983 – 1986
United States Army
E-4
Honorable Discharge

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.

Texas Super Lawyers/Texas Monthly – Super Lawyer, 2016, 2017, 2018

The Legal 500 United States – Recognized for Commercial Litigation, 2015

National Association of Attorneys General – Supreme Court Best Brief Award, 2007
Term

National Association of Attorneys General – Supreme Court Best Brief Award, 2004
Term

University of Texas School of Law – Graduated with honors, 1994

University of Texas at Austin
Graduated *summa cum laude*, 1991
Phi Beta Kappa, 1991

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.

Austin Bar Association (2000 – present)

Bar Association of the Fifth Federal Circuit (2017 – present)

Federal Bar Association (2013 – 2014)

Houston Bar Association (1994 – 2000)

Texas Bar Foundation (2014 – present)

10. **Bar and Court Admission:**

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

Texas, 1994

- 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 Supreme Court, 2004

United States Court of Appeals for the Fifth Circuit, 2002

United States Court of Appeals for the Second Circuit, 2012

United States Court of Appeals for the Ninth Circuit, 2012

United States Court of Appeals for the District of Columbia Circuit, 2012

United States Court of Appeals for the Federal Circuit, 2015

United States Court of Appeals for the Eighth Circuit, 2016

United States Court of Appeals for the Eleventh Circuit, 2017

United States Court of Appeals for the Tenth Circuit, 2018

United States District Court for the Southern District of Texas, 1995

United States District Court for the Eastern District of Texas, 1995

United States District Court for the Northern District of Texas, 2001

United States District Court for the Western District of Texas, 2001

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.

Austin Symphony, Knights of the Symphony (2013 – 2015)

Federalist Society for Law & Public Policy Studies (2016 – 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.

The Knights of the Symphony is a men's group that supports the Austin Symphony, although there is a corresponding organization for women. To the best of my knowledge, none of the other organizations listed 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.

Transparency is Key to Democratic System, Houston Chronicle, Oct. 4, 2012.
Copy supplied.

Jonathan F. Mitchell, *Stare Decisis and Constitutional Text*, 110 Mich. L. Rev. 1 (2011). 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.

May 10, 2018; Apr. 16, 2018: Speaker, Sovereign Immunity: Overview and Latest Developments, Texas Center for the Judiciary Spring Regional Conferences in Galveston, Texas. PowerPoint supplied.

Apr. 3, 2017: Speaker, The Texas Pattern Jury Charge, Texas Center for the Judiciary's 2017 Civil Justice Conference in Austin, Texas. PowerPoint supplied.

Apr. 14, 2016: Speaker, Which Hat Are You Wearing: Protecting Attorney-Client Privilege As In-House Counsel, Association of Corporate Counsel Luncheon in Austin, Texas. PowerPoint supplied.

Oct. 24, 2013: Speaker, Recent Developments in Class Action Litigation: Wal-Mart and Beyond, 37th Annual Page Keeton Civil Litigation Seminar in Austin, Texas. Paper and PowerPoint supplied.

Oct. 14, 2013: Speaker, Sovereign Immunity: Overview and Latest Developments, Texas Center for the Judiciary's 2013 Civil Justice Conference in San Antonio, Texas. PowerPoint supplied.

Nov. 1, 2012: Speaker, What In-House Counsel Need to Know About Rule 202 and Pre-Suit Depositions in Texas, Texas Lawyer In-House Counsel Summit in Houston, Texas. Paper and PowerPoint supplied.

Oct. 25, 2012: Speaker, Pre-Suit Depositions Under Rule 202: A Survey of Hot Button Issues, 36th Annual Page Keeton Civil Litigation Seminar in Austin, Texas. Paper and PowerPoint supplied.

Sept. 10, 2012: Speaker, Class Actions After *Wal-Mart v. Dukes*: A New Ballgame, American Association of Public Welfare Attorneys' 45th Annual National Training and Continuing Education Conference in San Diego, California. PowerPoint supplied.

May 2012 (approximate): Panelist, Appellate Strategies: Insights on the Many Strategic Issues Facing an Appellate Advocate Before Putting Pen to Paper, National Association of Attorneys General Training and Research Institute's 2012 Appellate Practice Conference in Washington, D.C. I spoke with moderator Dan Schweitzer, Supreme Court counsel for the National Association of Attorneys General, as well as other panelists, about my experiences developing strategies on appeal while working in the Texas Solicitor General's Office. I have no notes, transcript, or recordings. The address for the National Association of Attorneys General is 1850 M St. N.W., 12th Floor, Washington, D.C. 20036.

July 21, 2011: Speaker, Sovereign Immunity and the UDJA – Recent Developments, 23rd Annual Advanced Suing and Defending Governmental Entities Course in Austin, Texas. Paper supplied.

July 25, 2009: Speaker, A Witches' Brew: How *Medellin v. Texas* Tested Every Aspect of Our Constitutional Structure, Teachers' Law School Conference in Austin, Texas. Paper supplied.

Apr. 2009 (approximate): Panelist, Advanced Litigation: Preemption Issues, Austin Bar Association Bench Bar Conference in Austin, Texas. I spoke with Austin lawyer Mike Slack and other panelists about recent Supreme Court decisions on preemption issues. I have no notes, transcript, or recordings. The address for the Austin Bar Association is 816 Congress Ave., Suite 700, Austin, Texas 78701.

July 2007 (approximate): Speaker, Public Displays in Texas – How Texas Has Fared in the Supreme Court, The Texas Lyceum 22nd Public Conference in Austin, Texas. I spoke at the Texas Lyceum conference on recent Establishment Clause cases decided by the Supreme Court, particularly *Van Orden v. Perry*, 545 U.S. 677 (2005). I have no notes, transcript, or recordings. The Texas Lyceum can be reached at info@texaslyceum.org.

- 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.

Mark Curriden, *Justice Willett and James Ho Nominated to Fifth Circuit*, Texas Lawbook, Sept. 28, 2017. Copy supplied. Reprinted in multiple outlets.

Members of Congress Ask Supreme Court to Hear Crucial Case Involving Rights of Conscience, PR Newswire, Feb. 10, 2016. Copy supplied.

Miriam Rozen, *Opposing Counsel About Ted Cruz: "He Wasn't a Jerk,"* Texas Lawyer, Feb. 8, 2016. Copy supplied.

John Council, *Mexican States Can't Recover in BP Oil Spill*, Texas Lawyer, May 11, 2015. Copy supplied.

United States: Sutherland Adds Partner Lino Mendiola III, Continues Expansion of Energy and Environmental Practice in Texas, TendersInfo, Feb. 10, 2015. Copy supplied.

Matt Sharp, *Sutherland Scores Energy Pro From Andrews Kurth*, Law360, Feb. 10, 2015. Copy supplied.

Richard Wolf, *Court to Reopen Debate Over Executing Mentally Disabled*, USA Today/Gannett News Service, Mar. 1, 2014. Copy supplied.

John Council, *Texas Supreme Court to Ring in New Year with Two Arbitration Cases*, Texas Lawyer, Dec. 2, 2013. Copy supplied. Reprinted in multiple outlets.

Ross Ramsey, *Suing the State? You'll Need State's Permission*, Texas Tribune, June 25, 2012. Copy supplied.

Janet Elliott, *Sean Jordan Brings Appellate Experience to Sutherland*, Texas Lawbook, June 1, 2012. Copy supplied.

Sutherland Adds Former Texas Principal Deputy Solicitor General to Austin Office, PR Newswire, May 31, 2012. Copy supplied.

John Council, *Choose or Lose: Plaintiffs Forced to Target Only One Government Defendant in Med-Mal Suits*, Texas Lawyer, June 6, 2005. Copy supplied.

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

I have 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.

Deputy Solicitor General, 2006 – 2008. Appointed in 2006 by then-Attorney General Greg Abbott.

Principal Deputy Solicitor General, 2008 – 2012. Appointed in 2008 by then-Attorney General Greg Abbott.

- 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.

Member of Campaign Finance Committee for Cruz for Senate, 2012.

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 have not served as a clerk to a judge.

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

I have not practiced law 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.

1994 – 1997
Bell & Murphy, PC
1300 Post Oak Boulevard, Suite 2000
Houston, Texas 77056
Associate

1997 – 1998
Beirne, Maynard & Parsons LLP

(now Akerman LLP)
1300 Post Oak Boulevard, Suite 2500
Houston, Texas 77056
Associate

1998 – 2000
Solar & Fernandes, LLP
2800 Post Oak Boulevard, Suite 6400
Houston, Texas 77056
Associate

2000 – 2004
Jackson Walker LLP
100 Congress Avenue, Suite 1100
Austin, Texas 78701
Partner (2002 – 2004)
Associate (2000 – 2002)

2004 – 2012
Office of the Attorney General of Texas
209 West 14th Street
Austin, Texas 78701
Principal Deputy Solicitor General (2008 – 2012)
Deputy Solicitor General (2006 – 2008)
Assistant Solicitor General (2004 – 2006)

2012 – 2015
Sutherland Asbill & Brennan LLP
(now Eversheds Sutherland LLP)
600 Congress Avenue, Suite 2000
Austin, Texas 78701
Partner and Co-Chair of Appellate Practice Group

2015 – present
Jackson Walker LLP
100 Congress Avenue, Suite 1100
Austin, Texas 78701
Partner and Co-Chair of Appellate Practice Group

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

I have never served as a mediator or arbitrator 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 the first ten years of my legal career, between 1994 – 2004, I worked in private practice and primarily in trial court litigation. I handled numerous depositions, presented argument at many hearings, and acted as first-chair or second-chair counsel in several trials. I was also involved in a number of appellate matters.

Between 2004 – 2012, I was a government lawyer, serving with the Solicitor General's Office in the Office of the Attorney General of Texas. My practice was devoted nearly entirely to appellate litigation, including matters before the United States Supreme Court, the Supreme Court of Texas, federal circuit courts, and state intermediate appellate courts. I prepared briefs on behalf of the State of Texas, its agencies and officials, and also presented oral arguments before appellate courts. After I assumed the positions of Deputy Solicitor General and Principal Deputy Solicitor General, I also assisted in supervising the lawyers and staff of the Solicitor General's Office.

Since 2012, I have returned to private practice, where my work has continued to focus primarily on appellate litigation in state and federal courts. I have served as the co-chair for the appellate practice group of two large law firms. I also maintain a limited trial court and arbitration practice, as well as undertaking various projects involving regulatory issues.

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

During my time in private practice, I have represented both plaintiffs and defendants, including large corporations, government entities, and individuals. In the first ten years of my legal career my practice was focused on trial court litigation. I handled all aspects of trial court litigation: filing pleadings, preparing and arguing motions, taking and defending depositions, engaging in written discovery, and trying cases. I handled a broad range of matters, including commercial litigation, personal injury cases, class actions, insurance coverage issues, and maritime matters. I also performed pro bono work, particularly handling family law cases for indigent clients.

In the last fourteen years, during my time as a government lawyer and since returning to private practice in 2012, my work has been primarily focused on appellate litigation. At the Office of the Texas Attorney

General, I represented the State of Texas, its agencies and officials. In private practice, I have represented commercial entities, including Fortune 500 companies, as well as government entities and individuals.

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

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 60% |
| 2. state courts of record: | 40% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 0% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 80% |
| 2. criminal proceedings: | 20% |

For the purpose of the foregoing breakdown, I included habeas corpus cases as "criminal proceedings" because they involve criminal-law issues. The writ of habeas corpus, however, is civil in nature. If habeas cases are counted as civil proceedings, the breakdown becomes 100% civil proceedings.

- 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 tried five cases to verdict, judgment, or final decision. In three of those cases I was chief counsel, in one I was sole counsel, and in another I was associate counsel.

- i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 80% |
| 2. non-jury: | 20% |

- 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.

I presented oral argument in *Jimenez v. Quarterman*, 555 U.S. 113 (2009).

I have been counsel of record for *amicus curiae* in 6 merits cases:

Oil States Energy Services, LLC v. Greene's Energy Group, LLC, 138 S. Ct. 1365 (2018)
Oneok, Inc. v. Learjet, Inc., 135 S. Ct. 1591 (2015)
Texas Dept. of Housing & Community Affairs v. Inclusive Communities Project, Inc., 135 S. Ct. 2507 (2015)
Elonis v. U.S., 135 S. Ct. 2001 (2015)
Hall v. Florida, 572 U.S. 701 (2014)
Coleman v. Court of Appeals of Maryland, 566 U.S. 30 (2012)

I have been supporting counsel (not counsel of record) in three merits cases:

Medellin v. Texas, 552 U.S. 491 (2008)
Smith v. Texas, 550 U.S. 297 (2007)
Medellin v. Dretke, 544 U.S. 660 (2005)

I have been supporting counsel (not counsel of record) in one original action in the United States Supreme Court:

States of Texas, et al. v. Leavitt, No. 135, Original (2006)

I have been supporting counsel (not counsel of record) for *amicus curiae* in 4 merits cases:

McDonald v. City of Chicago, 561 U.S. 742 (2010)
District of Columbia v. Heller, 554 U.S. 570 (2008)
Baze v. Rees, 553 U.S. 35 (2008)
Bates v. Dow Agrosciences LLC, 544 U.S. 431 (2005)

I have been counsel of record for *amicus curiae* in 4 certiorari-stage cases:

Kennedy v. Bremerton School District, No. 18-12 (August 2018)
Sterling v. United States, No. 16-1814 (February 2017)
Stormans, Inc. v. Wiesman, No. 15-862 (February 2016)
Thomas v. Lynch, No. 15-889 (February 2016)

I have supplied copies of all the briefs on which I appeared in the cases listed above, along with the transcript of my oral argument.

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. *Medellin v. Texas*, 552 U.S. 491 (2008).

The questions in this case were whether a judgment of the World Court is directly enforceable as domestic law in state court in the United States, and whether a President's memorandum could independently require states to provide review and reconsideration of criminal convictions without regard to state laws on criminal procedure. By a 6-3 vote, the Court held that a judgment of the World Court was not directly enforceable domestic law, and that the President's memorandum exceeded his constitutional authority. Chief Justice Roberts authored the opinion, which was joined by Justices Scalia, Thomas, Kennedy, and Alito, with Justice Stevens filing an opinion concurring in the judgment. Justice Breyer filed a dissenting opinion, which Justices Souter and Ginsburg joined. I served as second-chair counsel in this case, assisting in the preparation of the state's merits brief and in the preparation for oral argument.

Co-Counsel

Senator Ted Cruz
[Then Solicitor General of Texas]
Russell Senate Office Building 404
Washington, D.C. 20510
202-224-5922

Kristofer S. Monson
Office of the Attorney General of Texas
209 West 14th Street
Austin, Texas 78711
512-936-1700

Adam W. Aston
[Then at Office of the Attorney General of Texas]
Jackson Walker LLP
100 Congress Avenue, Suite 1100
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512-236-2056

Daniel L. Geyser
[Then at Office of the Attorney General of Texas]
Geyser, PC
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Dallas, Texas 75206
214-800-2660

Counsel for Jose Medellín

Donald Francis Donovan
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022
212-909-6000

2. *Jimenez v. Quarterman*, 555 U.S. 113 (2009).

I argued this case as counsel of record before the United States Supreme Court. The question was whether the one-year time limitation for a state prisoner to file a federal habeas corpus petition under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) could be postponed by a state court's decision during collateral review to grant a defendant the right to file an out-of-time direct appeal. In a unanimous decision written by Justice Thomas, the Court held that, when a state court grants a criminal defendant the right to file an out-of-time direct appeal during state collateral review, the date on which the judgment becomes final under the AEDPA is extended to reflect the conclusion of the out-of-time direct appeal, or the expiration of the time for seeking review of that appeal. I authored the merits brief and argued the case on behalf of the State of Texas, by and through the Executive Director of the Texas Department of Criminal Justice.

Co-Counsel

Rance Craft
Office of the Attorney General of Texas
209 West 14th Street
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512-936-1700

Adam W. Aston
[Then at Office of the Attorney General of Texas]
Jackson Walker LLP
100 Congress Avenue, Suite 1100
Austin, Texas 78701
512-236-2056

Counsel for Carlos Jimenez

Thomas C. Goldstein
Goldstein & Russell, PC
7475 Wisconsin Avenue, Suite 850
Bethesda, Maryland 20814

3. *M.D. ex rel. Stukenberg v. Perry*, 675 F.3d 832 (5th Cir. 2012).

In this case, a federal district court certified an injunctive class under Rule 23(b)(2) consisting of the approximately 12,000 foster-care children in Texas's Permanent Managing Conservatorship (PMC). The Named Plaintiffs sought declaratory and injunctive relief for the proposed class concerning alleged systemic deficiencies in Texas's administration of the PMC. The district court certified the requested Rule 23(b)(2) class. We successfully overturned the class certification order on appeal. The Fifth Circuit agreed with the state's position that the district court failed to properly apply the requirements of Rule 23(a) and Rule 23(b)(2), and the certification order was vacated. Judge Garza authored the opinion, which was joined by Judges Clement and Southwick. I served as lead counsel for the State of Texas, authoring our briefing and presenting oral argument.

Co-Counsel

Joseph D. Hughes
Office of the Attorney General of Texas
209 West 14th Street
Austin, Texas 78711
512-936-1700

James P. Sullivan
[Then at Office of the Attorney General of Texas]
Deputy General Counsel
Office of the General Counsel for Governor Greg Abbott
P.O. Box 12428
Austin, Texas 78711
512-463-2000

Counsel for Plaintiffs

R. Paul Yetter
Yetter Coleman LLP
909 Fannin, Suite 3600
Houston, Texas 77010
713-632-8000

Marcia Robinson Lowry
Children's Rights
330 Seventh Avenue, Fourth Floor
New York, New York 10001
212-683-2210

4. *Asgeirsson v. Abbott*, 696 F.3d 454 (5th Cir. 2012).

This case involved a First Amendment challenge to a provision of the Texas Open Meetings Act (TOMA). Plaintiffs, who were local government officials, sued seeking a declaration that Section 551.144 of the TOMA, which prevents a member of a governmental body from knowingly circumventing, or aiding in circumventing, the TOMA's requirement that meetings of governmental bodies to consider public issues and policy must be conducted in public, violates the First Amendment. The district court ruled in favor of the State, rejecting the local officials' constitutional challenge. The Fifth Circuit agreed, holding that the TOMA is content-neutral and is not unconstitutionally overbroad or vague. Judge Smith authored the opinion, which was joined by Judges Garza and Southwick. I served as lead counsel for the State of Texas before the Fifth Circuit in this matter, authoring our briefing and presenting oral argument. I did not have co-counsel.

Counsel for Local Officials

Dick Deguerin
1018 Preston Avenue, 7th Floor
Houston, Texas 77002
713-223-5959

5. *Univ. of Tex. at El Paso v. Herrera*, 322 S.W.3d 192 (Tex. 2010).

This case under the Family and Medical Leave Act (FMLA) raised two immunity issues: (1) did Congress validly abrogate Texas's sovereign immunity under the FMLA's "self-care" provision; and if not (2) did the University of Texas at El Paso (UTEP) waive the State's immunity through a single sentence in its Handbook of Operating Procedures? In a unanimous opinion authored by Justice Willett, the Texas Supreme Court agreed with UTEP on both issues, holding that UTEP's immunity was neither validly abrogated nor voluntarily waived, and that the court of appeals had erred in affirming the trial court's denial of UTEP's plea to the jurisdiction. I represented UTEP before the Texas Supreme Court, authoring UTEP's briefing and presenting oral argument. I did not have co-counsel.

Counsel for Alfredo Herrera

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6. *Leach v. Texas Tech Univ.*, 335 S.W.3d 386 (Tex. App.—Amarillo 2011, pet. denied)

This case involved a lawsuit filed by Mike Leach against Texas Tech University after he was terminated as the University's head football coach. Leach brought a breach-of-

contract claim, and the University asserted that Leach's claim was barred by sovereign immunity. The trial court refused to dismiss Leach's claim on the ground that the University had "waived its immunity from suit ... by and through its conduct." On appeal, the University successfully overturned the trial court's ruling. The court of appeals confirmed that only the Texas Legislature can waive sovereign immunity, and therefore Leach's breach-of-contract claim was barred. Chief Justice Quinn authored the opinion, which was joined by Justices Campbell and Pirtle. I served as lead counsel for the University on appeal, authoring the University's briefing and presenting oral argument.

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7. *Jennings v. Owens*, 602 F.3d 652 (5th Cir. 2010)

In this case, the Fifth Circuit held that the Due Process Clause does not require that inmates who have already been convicted of a sex crime must be provided additional process by the state before sex-offender classification and conditions may be imposed on their parole. Judge King authored the opinion, which was joined by Judges Barksdale and Elrod. I served as lead counsel for the state on appeal, authoring the state's briefing and presenting oral argument.

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8. *White Buffalo Ventures, LLC v. Univ. of Tex. at Austin*, 420 F.3d 366 (5th Cir. 2005).

In this case of first impression, the Fifth Circuit considered whether the preemption provision of the federal anti-“spam” statute, the CAN-SPAM Act, preempted the University of Texas at Austin’s anti-solicitation policy. The case also raised the question whether the University’s use of its anti-solicitation policy to block a marketer’s unsolicited e-mails, which had drawn complaints from students, was a permissible regulation of commercial speech. The Fifth Circuit held that the CAN-SPAM Act did not preempt the University’s anti-solicitation policy, and that the policy was a permissible regulation of commercial speech. Judge Smith authored the opinion, which was joined by Judges Davis and DeMoss. I represented the University before the Fifth Circuit, authoring the University’s briefing and presenting oral argument. I did not have co-counsel.

Counsel for White Buffalo Ventures, LLC:

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9. *Clark v. Strayhorn*, 184 S.W.3d 906 (Tex. App.—Austin 2006, pet. denied)

In this Takings Clause case, Plaintiffs alleged that the Texas Comptroller’s failure to pay interest when returning unclaimed property was an unconstitutional taking. The district court dismissed the suit. On appeal, the Austin Court of Appeals affirmed, holding that

Texas's Unclaimed Property Act does not create a trust relationship that would require the Comptroller to pay interest to owners, and that, once property is presumed abandoned, the state's lawful use of that property for its own benefit cannot be an unconstitutional taking. Justice Smith authored the opinion, which was joined by Justices Pemberton and Waldrop. I served as lead counsel for the Comptroller on appeal, authoring the Comptroller's briefing and presenting oral argument.

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10. *In re Deepwater Horizon*, 784 F.3d 1019 (5th Cir. 2015).

This case arose out of the April 2010 blowout aboard the mobile offshore drilling unit *Deepwater Horizon* in the Gulf of Mexico, and the resulting oil spill. Three Mexican states brought actions in tort under maritime law against several defendants, including my client, Transocean, the owner of the *Deepwater Horizon*. The district court granted summary judgment, dismissing the Mexican states' claims on the ground that they did not have a sufficient proprietary interest in the damaged property, applying the U.S. Supreme Court's decision in *Robins Dry Dock & Repair v. Flint*, which precludes recovery for economic loss absent a proprietary interest in the physically damaged property. The Fifth Circuit agreed, affirming the district court's determination that the Mexican federal government, rather than the states, was the true owner of the damaged property. Chief Judge Stewart authored the opinion, which was joined by Judges Jones and Higginson. I served as lead counsel for Transocean before the Fifth Circuit, authoring Transocean's brief and presenting oral argument.

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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.)

As a litigator in private practice and government service, my most significant matters have involved litigation in federal and state court, as well as before arbitral bodies. When I served in the Office of the Attorney General of Texas, I also advised state agencies and officials on various legal and regulatory issues.

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.

I have never taught my own course.

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.

No.

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

See attached Financial Disclosure Report.

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

See attached Statement of Net Worth.

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 where I have played a role. For a period of time, I anticipate recusing in all cases where my current firm, Jackson Walker LLP, represents a party. I will also recuse in any case where Ana Jordan, my wife and a practicing attorney, represents any 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.

I have always endeavored to fulfill the standard discussed in Canon 2, consistent with my other obligations. Notably, I was precluded from *pro bono* representation while at the Texas Attorney General’s Office from 2004 to 2012. In private practice I have handled a number of *pro bono* cases, particularly in the area of family law for indigent clients.

As an appellate litigator, I have also done *pro bono* work before the United States Supreme Court and other appellate courts. For example, in *Elonis v. United States*, 135 S. Ct. 2001 (2015), I represented the Student Press Law Center, the Electronic Frontier Foundation, and PEN American Center as *amici curiae* arguing that the Court should hold that a negligence standard should not be applied to cases arising under 18 U.S.C. § 875(c), a statute that criminalizes communications containing a threat to injure another person. In *Thomas v. Lynch*, No. 15-889 (2016), I represented Congresswoman Eddie Bernice Johnson and Congressman Filemon Vela as *amici curiae* arguing that the Supreme Court should grant certiorari to decide whether the Citizenship Clause of the Fourteenth Amendment confers United States citizenship upon an individual born in a United States military base overseas at which the individual’s father, a United States citizen, was serving on active duty. In *Oil States Energy Services, LLC v. Greene’s Energy Group, LLC*, 138 S. Ct. 1365 (2018), I represented 27 law professors as *amici curiae* arguing that *inter partes* review—an adversarial process used by the Patent and Trademark Office to analyze the validity of existing patents—violates the Constitution by extinguishing private property rights through a non-Article III forum without a jury.

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 February 28, 2018, I submitted an application to the offices of Senator Cornyn and Senator Cruz, expressing my interest in vacancies in the federal district courts of Texas, including the vacancy in the Eastern District of Texas. On April 5, 2018, I interviewed with the Federal Judicial Evaluation Committee in Houston, Texas. On May 16, 2018, I interviewed with Senator Cornyn in his office in Washington, D.C. On May 17, 2018, I interviewed with Senator Cruz in Washington, D.C. On August 3, 2018, I interviewed with attorneys from the White House Counsel’s Office and the Office of Legal Policy of the Department

of Justice. Since that time, I have been in contact with officials 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.