

**UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY**

**QUESTIONNAIRE FOR JUDICIAL NOMINEES**

**PUBLIC**

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

Bradley Nelson Garcia

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

United States Circuit Judge for the District of Columbia Circuit

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

United States Department of Justice, Office of Legal Counsel  
950 Pennsylvania Avenue, Northwest  
Washington, DC 20530

Residence: Bethesda, Maryland

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

1986; Gaithersburg, Maryland

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

2008 – 2011, Harvard Law School; J.D. (*magna cum laude*), 2011

2005 – 2008, The Johns Hopkins University; B.A., 2008

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.

2022 – present

United States Department of Justice, Office of Legal Counsel  
950 Pennsylvania Avenue, Northwest

Washington, DC 20530  
Deputy Assistant Attorney General

2013 – 2022  
O'Melveny & Myers LLP  
1625 Eye Street, Northwest  
Washington, DC 20006  
Partner (2021 – 2022)  
Counsel (2017 – 2020)  
Associate (2013 – 2017)

2012 – 2013  
Supreme Court of the United States  
One First Street, Northeast  
Washington, DC 20543  
Law Clerk to the Honorable Elena Kagan

2011 – 2012  
United States Court of Appeals for the District of Columbia Circuit  
333 Constitution Avenue, Northwest  
Washington, DC 20001  
Law Clerk to the Honorable Thomas B. Griffith

2009 – 2011  
Harvard Law School  
1563 Massachusetts Avenue  
Cambridge, Massachusetts 02138  
Research Assistant for Professor Jack Goldsmith

Summer 2010  
Covington & Burling, LLP  
850 Tenth Street, Northwest  
Washington, DC 20001  
Summer Associate

Summer 2009  
Federal Trade Commission  
600 Pennsylvania Avenue, Northwest  
Washington, DC 20580  
Law Clerk, Office of Chairman Jon Leibowitz

2009  
Harvard Law School  
1563 Massachusetts Avenue  
Cambridge, Massachusetts 02138  
Research Assistant for Professor Louis Kaplow

Summer 2008  
Proskauer Rose LLP  
1001 Pennsylvania Avenue, Northwest  
Washington, DC 20004  
Sponsors for Educational Opportunity (SEO) Law Fellow

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

I did not serve in the military. I registered for the selective service upon turning 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.

National Immigration Project, Impact in the Courts Award (2021) (as part of O'Melveny & Myers LLP team)

Bloomberg Law, Appellate Fresh Face (2021)

National Law Journal, DC Rising Star (2021)

Benchmark Litigation California, National Impact Case (2019) (as part of O'Melveny & Myers LLP team)

O'Melveny & Myers LLP, Warren Christopher Values Award (award for excellence, leadership, and citizenship) (2018)

Harvard Law School

Graduated *Magna Cum Laude* (2011)

Harvard Law Review, Editor & Alumni Chair (2009 – 2011)

Dean's Scholar in Appellate Advocacy, Criminal Procedure, Federal Courts, Law & the International Economy, Separation of Powers, and Theories About Law (2009 – 2011)

The Johns Hopkins University, Dean of Student Life Award (award for campus leadership) (2008)

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.

Federal Circuit Bar Association (2020 – present)

Georgetown University Law Center—Supreme Court Institute, Moot Court Judge (2015 – 2022)

Hispanic National Bar Association (2018 – present)

MacArthur Justice Center, Supreme Court & Appellate Advisory Board Member (2019 – 2022)

The Appellate Project, Law Student Mentor & Panelist (2020 – 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.

Maryland, 2011

District of Columbia, 2015

There have been no lapses in membership.

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

Supreme Court of the United States, 2017

United States Court of Appeals for the First Circuit, 2015

United States Court of Appeals for the Second Circuit, 2015

United States Court of Appeals for the Third Circuit, 2018

United States Court of Appeals for the Fourth Circuit, 2014

United States Court of Appeals for the Fifth Circuit, 2015. My membership became inactive in November 2020 per normal expiration under Fifth Circuit Rules, at a time when I did not have any active cases before the court. I was readmitted to the Fifth Circuit bar in December 2020.

United States Court of Appeals for the Sixth Circuit, 2018

United States Court of Appeals for the Eighth Circuit, 2019

United States Court of Appeals for the Ninth Circuit, 2016

United States Court of Appeals for the Tenth Circuit, 2015

United States Court of Appeals for the Eleventh Circuit, 2015

United States Court of Appeals for the District of Columbia Circuit, 2021

United States Court of Appeals for the Federal Circuit, 2015

United States District Court for the District of Columbia, 2020

Except as noted above, 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.

Kenwood Golf & Country Club (2021 – present)

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

To the best of my knowledge, the organization listed above does not currently discriminate on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies. It is my understanding that, more than 40 years prior to my joining, the organization listed above intentionally excluded African Americans from membership. That policy ended by at least 1977.

12. **Published Writings and Public Statements:**

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

With Darin Snyder, Amy Liang & Daniel Silverman, *Federal Circuit Continues to Clarify Venue Transfer Rules for IP Cases*, Recorder (Aug. 18, 2021) (reprinted in multiple outlets). Copy supplied.

With Suzanne Uhland & Christopher Martin, *Congress Holds Keys To Puerto Rico’s Comprehensive Relief*, Law360 (Mar. 24, 2016). Copy supplied.

With Jeffrey W. Kilduff & Meaghan VerGow, *A Look Back at Omnicare: The Supreme Court’s Ruling on Actionable Statements of Opinion*, Practising Law Institute (Nov. 2015). Copy supplied.

With Jeffrey W. Kilduff & Meaghan VerGow, *"The False, Honest Opinion": Is There Really Such a Thing? The Supreme Court's Coming Review of Omnicare v. Laborers, Practising Law Institute* (2014). Copy supplied.

*The Supreme Court – Leading Cases; Padilla v. Kentucky*, 124 Harv. L. Rev. 199 (2010). 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.

Joint Letter of Appellate Practitioners to the U.S. Senate Committee on Homeland Security & Governmental Affairs in Support of Loren L. AliKhan's Nomination to Serve as Associate Judge on the D.C. Court of Appeals (Nov. 29, 2021). Copy supplied.

Joint Letter of Supreme Court Practitioners to the U.S. Senate Committee on the Judiciary in Support of Elizabeth B. Prelogar's Nomination to Serve as Solicitor General of the United States (Sept. 3, 2021). Copy supplied.

Joint Letter of Former Law Clerks and others to the Chair of the Committee on Judicial Conduct and Disability, Director of the Federal Judicial Center, Director of the Administrative Office of the U.S. Courts, and Chief Justice Roberts Regarding Workplace Harassment Within the Federal Court System (Dec. 20, 2017). Copy supplied.

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

December 8, 2021: Award Recipient, 50th Anniversary Event, National Immigration Project (virtual). Notes supplied.

April 7, 2021: Panelist, Appealing for Change: Diversifying the Appellate Bar, American Constitution Society, Asian American Bar Association of Chicago, Hispanic Lawyers Association of Illinois, and Women's Bar Association of Illinois (virtual). Video available at <https://www.youtube.com/watch?v=fCqR0WAA1ok>.

October 13, 2020: Panelist, Appellate Advocacy, The Appellate Project (virtual). The panel spoke to Harvard Law School students about appellate practice. I have no notes, transcript, or recording. The address for The Appellate Project is 1835 Seventh Street, Northwest, Suite 194, Washington, DC 20001.

September 16, 2020: Panelist, Supreme Court Review CLE, Chubb Group (virtual). The panel discussed various recent Supreme Court decisions. I have no notes, transcript, or recording. The address for Chubb Group is 436 Walnut Street, Philadelphia, Pennsylvania 19106.

September 10, 2020: Speaker, Virtual Launch, The Appellate Project (virtual). Video available at [https://www.youtube.com/watch?v=81R2Tmk\\_Q1Q](https://www.youtube.com/watch?v=81R2Tmk_Q1Q).

July 22, 2020: Panelist, Supreme Court Review CLE, Google LLC (virtual). The panel discussed various recent Supreme Court decisions. I have no notes, transcript, or recording. The address for Google LLC is 1600 Amphitheatre Parkway, Mountain View, California 94043.

March 17, 2017: Panelist, Exceeding Expectations: Excellent Work Product, PracticePro DC Career Conference, Washington, DC. The panel offered advice to diverse law students interested in working at law firms. I have no notes, transcript, or recording. The address for PracticePro is 3385 Michelson Drive, Irvine, California 92612.

September 28, 2015: Panelist, Supreme Court Preview, Howard University School of Law, Washington, DC. The panel discussed the upcoming Supreme Court term. I have no notes, transcript, or recording. The address for the Howard University School of Law is 2900 Van Ness Street, Northwest, Washington, DC 20008.

October 11, 2014: Panelist, Federal Judicial Clerkships, Robert E. Wone Annual Judicial Clerkship & Internship Conference, Howard University School of Law, Washington, DC. The panel discussed the experience and benefits of federal judicial clerkships. I have no notes, transcript, or recording. The address for the Howard University School of Law is 2900 Van Ness Street, Northwest, Washington, DC 20008.

May 2014 (specific date unknown): Panelist, Diversity in the Judiciary, Spring Minority Counsel Program, American Bar Association (ABA) Commission on Racial & Ethnic Diversity in the Profession, Washington, DC. The panel discussed diversity in the legal profession. I have no notes, transcript, or recording. The address for the ABA Commission on Racial & Ethnic Diversity in the Profession is 1050 Connecticut Avenue, Northwest, Suite 400, Washington, DC 20036.

October 19, 2013: Panelist, Federal Judicial Clerkships, Robert E. Wone Annual Judicial Clerkship & Internship Conference, University of the District of Columbia David A. Clarke School of Law, Washington, DC. The panel discussed the experience and benefits of federal judicial clerkships. I have no notes, transcript, or recording. The address for the University of the District of Columbia David A. Clarke School of Law is 4340 Connecticut Avenue, Northwest, Washington, DC 20008.

July 2013 (specific date unknown): Co-Presenter, Summer Law Institute, Hispanic National Bar Foundation, Washington, DC. Along with a co-clerk, I gave informal remarks at the U.S. Supreme Court to a group of high school students about being a lawyer and working at the Supreme Court. I have no notes, transcript, or recording. The address for the Hispanic National Bar Foundation is 1900 K Street, Northwest, Washington, DC 20006.

October 2011 (specific date unknown): Panelist, Federal Judicial Clerkships, Robert E. Wone Annual Judicial Clerkship & Internship Conference, Georgetown University Law Center, Washington, DC. The panel discussed the process of and best practices for applying for federal judicial clerkships. I have no notes, transcript, or recording. The address for the Georgetown University Law Center is 600 New Jersey Avenue, Northwest, Washington, DC 20001.

- 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.

*The 2021 NLJ Awards: Professional Excellence—DC Rising Stars*, Nat'l L.J. (Oct. 25, 2021). Copy supplied.

Jordan S. Rubin, *They've Got Next: Appellate Fresh Face Brad Garcia*, Bloomberg L. (Mar. 24, 2021). Copy supplied.

Alex Swoyer, *Supreme Court Grapples With Partisan Gerrymander Challenge*, Wash. Times (Mar. 28, 2018). Copy supplied.

*2018 – 2019 Pro Bono Program Review: Pro Bono Spotlight—Brad Garcia*, O'Melveny & Myers LLP (2018 – 2019). 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 cases, approximately what percent were:
- |               |      |
|---------------|------|
| jury trials:  | ___% |
| bench trials: | ___% |
- ii. Of these cases, approximately what percent were:
- |                       |      |
|-----------------------|------|
| civil proceedings:    | ___% |
| criminal proceedings: | ___% |
- 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 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).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues,

together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an “automatic” recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held judicial office.

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

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

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

I have not held any public office, and I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

I have not held any offices in or rendered services to any political party or

election committee. In 2016, I volunteered with an informal group of lawyers advising the Hillary Clinton presidential campaign on potential election challenges, and also assisted with vetting of potential members of a Clinton administration.

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

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

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

From 2011 to 2012, I served as a law clerk to the Honorable Thomas B. Griffith on the United States Court of Appeals for the District of Columbia Circuit.

From 2012 to 2013, I served as a law clerk to the Honorable Elena Kagan on the Supreme Court of the United States.

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

I have never 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;

2013 – 2022  
O'Melveny & Myers LLP  
1625 Eye Street, Northwest  
Washington, DC 20006  
Associate (2013 – 2017)  
Counsel (2017 – 2020)  
Partner (2021 – 2022)

2022 – present  
United States Department of Justice, Office of Legal Counsel  
950 Pennsylvania Avenue, Northwest  
Washington, DC 20530  
Deputy Assistant Attorney General

- 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.

After completing my clerkships in 2013, I joined the Supreme Court & Appellate Litigation practice group at O'Melveny & Myers LLP in Washington, DC. At the firm, my practice focused on Supreme Court and appellate litigation, but also involved substantial trial-level work. All told, I litigated at every level of the federal judicial system, in federal courts nationwide, and in many state courts, at all stages of litigation. I drafted dozens of briefs in federal and state appellate courts, and I delivered 13 appellate oral arguments. I also served as a moot court judge for countless cases, helping to prepare lawyers for their arguments. In addition, I worked on numerous cases in federal and state trial courts, briefing dispositive motions and other pre-trial matters, and taking and defending depositions. I also argued at least eight dispositive motions in federal and state trial courts. And I worked on trial teams, identifying and addressing potential issues for appeal, providing strategic input, arguing at charge conferences addressing jury instructions, and arguing motions during trial. My work at O'Melveny spanned a wide variety of subject matters, including administrative law, class actions, constitutional law, criminal law, ERISA, federal jurisdiction, insurance law, immigration law, patent law, and other complex litigation matters. My practice also involved managing teams of attorneys, reviewing and editing draft briefs, mentoring more junior attorneys, and managing or helping to manage client relationships.

In February 2022, I joined the Office of Legal Counsel at the United States Department of Justice as a Deputy Assistant Attorney General. In that capacity, I have worked on a wide range of matters involving federal constitutional, statutory, and regulatory law.

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

In private practice, most of my clients were companies or nonprofit organizations, though I also represented individuals in both trial court and appellate matters. As described above, my practice was largely that of a generalist specializing in brief-writing and oral advocacy in complex litigation matters, although over time I developed subject matter expertise in certain areas, including administrative law, constitutional law, criminal law, and ERISA.

As a lawyer at the Department of Justice, my clients are the United States and federal government agencies, and I provide legal advice on matters involving federal constitutional, statutory, and regulatory law.

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

My work in private practice was almost exclusively in litigation, and I appeared in court frequently, with the frequency of my court appearances increasing over the course of my career. I presented 13 appellate arguments in: the Supreme Court of the United States; the United States Courts of Appeals for the First Circuit, Third Circuit, Fourth Circuit (three times), Ninth Circuit, Eleventh Circuit (twice), and Federal Circuit (twice); the California Court of Appeal; and the Maryland Court of Appeals. I also briefed and presented argument in support of numerous dispositive and pre-trial motions in federal and state trial courts, and I have served as counsel in three federal jury trials.

My work at the Department of Justice Office of Legal Counsel is advisory in nature.

- i. Indicate the percentage of your practice in:

1. federal courts:	85%
2. state courts of record:	15%
3. other courts:	0%
4. administrative agencies:	0%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	85%
2. criminal proceedings:	15%

- 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.

As an appellate specialist, the majority of my practice was before appellate courts, but I also tried three jury trials to verdict, judgment, or final decision. In each, I served as associate counsel focusing on preserving and addressing potential appellate issues, jury instruction disputes, and briefing and/or arguing key motions before, during, and after trial.

- 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.

Argued Case:

*United States v. Palomar-Santiago*, 141 S. Ct. 1615 (2021) (transcript supplied; brief of respondent, 2021 WL 1178409; brief in opposition, 2020 WL 7315822).

Briefed Merits-Stage Cases:

*Concepcion v. United States*, No. 20-1650 (amicus curiae brief of Due Process Institute et al. in support of petitioner, 2021 WL 5507293).

*June Med. Servs. LLC v. Russo*, 140 S. Ct. 2103 (2020) (response and reply brief for petitioners, 2020 WL 373291; brief for petitioners, 2019 WL 6341152).

*Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020) (brief for respondents, 2020 WL 1478589).

*N.Y. State Rifle & Pistol Ass'n, Inc. v. City of New York*, 140 S. Ct. 1525 (2020) (reply in support of suggestion of mootness, 2019 WL 3801430; brief of respondents, 2019 WL 3713689; suggestion of mootness, 2019 WL 3451573).

*Rucho v. Common Cause*, 139 S. Ct. 2484 (2019) (amicus curiae brief of Brennan Center for Justice at New York University School of Law in support of appellees, 2019 WL 1125805).

*United States v. Sims*, 139 S. Ct. 399 (2018) (brief for respondent, 2018 WL 3913908).

*Pereira v. Sessions*, 138 S. Ct. 2105 (2018) (amicus curiae brief of American Immigration Lawyers Association and Immigrant Defense Project in support of petitioner, 2018 WL 1156646; amicus curiae brief of American Immigration Lawyers Association in support of petition for a writ of certiorari, 2017 WL 4918302).

*China Agritech v. Resh*, 138 S. Ct. 1800 (2018) (reply brief for petitioner, 2018 WL 1378627; brief for petitioner, 2018 WL 557079).

*Gill v. Whitford*, 138 S. Ct. 1916 (2018) (amicus curiae brief of Brennan Center for Justice at New York University School of Law in support of appellees, 2017 WL 4311106).

*Evenwel v. Abbott*, 578 U.S. 54 (2016) (amicus curiae brief of NAACP Legal Defense & Educational Fund, Inc. in support of appellees, 2015 WL 5675833).

Briefed Certiorari-Stage Cases:

*CBX Resources, LLC v. ACE Am. Ins. Co.*, No. 20-478 (brief in opposition, 2021 WL 186300) (cert. denied).

*El Paso County v. Trump*, No. 20-298 (supplemental brief for petitioners, 2020 WL 7345512; reply brief for petitioners, 2020 WL 7029243; petition for a writ of certiorari before judgment, 2020 WL 5411254) (cert. denied).

*Knights v. United States*, No. 21-198 (reply brief for petitioner, 2021 WL 5585787; petition for a writ of certiorari, 2021 WL 3565361) (cert. denied).

*Croft v. United States*, No. 21-197 (petition for a writ of certiorari, 2021 WL 3885347) (cert. denied).

*Sample v. United States*, No. 18-759 (reply brief for petitioner, 2019 WL 1418529; petition for a writ of certiorari, 2018 WL 6600843) (cert. denied).

*Lester v. United States*, No. 17-1366 (petition for a writ of certiorari before judgment, 2018 WL 1556991) (cert. denied).

*EVE-USA, Inc. v. Mentor Graphics Corp.*, No. 17-804 (brief in opposition, 2018 WL 1394196) (petition dismissed voluntarily).

*Coachella Valley Water Dist. v. Agua Caliente Band of Cahuilla Indians*, No. 17-40 (supplemental brief for petitioners, 2017 WL 5171480; reply brief for petitioners, 2017 WL 4948089; petition for a writ of certiorari, 2017 WL 2876294) (cert. denied).

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. Palomar-Santiago*, 141 S. Ct. 1615 (2021).

From 2020 to 2021, I served as lead Supreme Court counsel for Mr. Palomar-Santiago, arguing the case before the Supreme Court and co-authoring Mr. Palomar-Santiago's merits- and certiorari-stage briefing. In 1998, the government removed Mr. Palomar-Santiago, a lawful permanent resident, from the United States for a prior driving-under-the-influence (DUI) conviction that the Immigration and Nationality Service deemed an aggravated felony supporting removal. In 2004, the Supreme Court held that DUI is not an aggravated felony, meaning Mr. Palomar-Santiago never should have been removed from the country. Mr. Palomar-Santiago was later charged with reentry after removal under 18 U.S.C. § 1326, and he challenged the charge on the ground that the statute does not permit a noncitizen to be criminally prosecuted on the basis of a substantively invalid removal order like his. The district court agreed and dismissed the indictment, and the Ninth Circuit affirmed. The Supreme Court reversed, concluding that the statute foreclosed the particular argument at issue.

Co-Counsel:

Jeffrey L. Fisher  
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(650) 473-2600

Grace E. Leeper  
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1625 Eye Street, Northwest  
Washington, DC 20006  
(202) 383-5300

Anna O. Mohan (formerly with O'Melveny & Myers LLP)  
United States Department of Justice, Civil Division, Appellate Staff  
950 Pennsylvania Avenue, Northwest  
Washington, DC 20530  
(202) 514-3511

Rene L. Valladares  
Cristen C. Thayer  
Aarin E. Kevorkian  
Ellesse Henderson  
Office of the Federal Public Defender for the District of Nevada  
411 East Bonneville Avenue, Suite 250  
Las Vegas, NV 89101  
(702) 388-6577

Opposing Counsel:

Elizabeth B. Prelogar  
Erica L. Ross  
United States Department of Justice, Office of the Solicitor General  
950 Pennsylvania Avenue, Northwest  
Washington, DC 20530  
(202) 514-2217

2. *Carr v. Inch*, No. 2:14-cv-00001 (S.D. Ind.) (Magnus-Stinson, J. and Dinsmore, M.J.).

From 2013 to 2021, I represented the plaintiffs in this Religious Freedom Restoration Act (RFRA) suit against the Federal Bureau of Prisons. The plaintiffs were four Muslim inmates seeking the provision of religiously appropriate meals. The litigation spanned many years and involved numerous discovery disputes, hearings, motions, and depositions, many of which I handled personally. I also helped manage the team of attorneys working on the matter. The suit ended with a court-ordered settlement favorable to the plaintiffs, and the district court determined that the plaintiffs were prevailing parties and entitled to an award of attorney's fees. *Carr v. Inch*, No. 2:14-cv-00001, 2021 WL 3774288 (S.D. Ind. Aug. 31, 2021).

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3. *In re Samsung Electronics Co., Ltd.*, 2 F.4th 1371 (Fed. Cir. 2021) (Lourie, Dyk, Reyna, JJ.).

In 2021, I served as lead counsel to Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., LG Electronics Inc., and LG Electronics USA in their successful pursuit of a writ of mandamus from the Federal Circuit in this matter. The plaintiffs sued our clients for patent infringement in the Western District of Texas, and our clients moved to transfer the case to the Northern District of California, emphasizing that that district was more convenient for the many third-party witnesses relevant to the suit and that there

were no potential witnesses in the Western District of Texas. The plaintiffs argued that they could not have brought the suit in California, as is required to transfer the case, because just before filing suit one of the plaintiffs assigned to the other a right to sue for patent infringement only in certain parts of Texas. The district court credited that argument, and also held that a transfer was not warranted in any event. Our clients filed a petition for a writ of mandamus in the Federal Circuit, which the court granted. The Federal Circuit ruled that the plaintiffs' pre-filing attempts to "manipulate venue" were not binding, and ordered the cases transferred to the Northern District of California.

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4. *Profectus LLC v. Google LLC*, No. 6:20-cv-00101 (W.D. Tex.) (Albright, J.).

In 2021, I served as counsel to Google LLC in this patent infringement matter. The plaintiff sued Google, alleging that certain of Google's products infringed one of the plaintiff's patents. Google argued that its products did not infringe the patent, and that the patent was invalid. Before trial, I assisted with briefing and presented oral argument on a summary judgment motion. At trial in October 2021, I provided input on key legal issues, focusing on preserving potential issues for post-trial and appellate review. I also had principal responsibility for the jury instructions, argued the charge conference, and argued Google's motion for judgment as a matter of law. The jury found for Google, concluding that the patent was not infringed and was also invalid. I also served a similar role in another patent trial for Google and YouTube LLC in November 2021. *VideoShare LLC v. Google LLC*, No. 6:19-cv-00663 (W.D. Tex.) (Albright, J.).

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5. *In re Fidelity ERISA Fee Litig.*, 990 F.3d 50 (1st Cir. 2021) (Kayatta, Barron, Smith (by designation), JJ.); No. 19-10335, 2020 WL 759542 (D. Mass. Feb. 14, 2020) (Sorokin, J.).

From 2019 to 2021, I represented Fidelity Management Trust Company and related entities (collectively, Fidelity) in this complex and high-stakes Employee Retirement Income Security Act (ERISA) matter. The plaintiff retirement plan participants filed a

putative class action against Fidelity under ERISA. The plaintiffs challenged certain “infrastructure fees” Fidelity had negotiated with providers of mutual funds that Fidelity makes available to retirement plans on Fidelity’s investment platform. Those fees were not charged to retirement plan participants, and any indirect impact on participants would have been disclosed in advance via the mutual funds’ publicly disclosed fees. I led the briefing on Fidelity’s motion to dismiss and then handled the oral argument in the district court. The district court granted Fidelity’s motion to dismiss, concluding that ERISA did not affect Fidelity’s ability to negotiate the infrastructure fees with mutual fund providers. On appeal to the First Circuit, I again led Fidelity’s briefing and argued the case, and the First Circuit affirmed the district court’s judgment.

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6. *AGIS Software Dev., LLC v. Google LLC*, 835 F. App’x 607 (Fed. Cir. 2021) (Dyk, Bryson, O’Malley, JJ.); *AGIS Software Dev., LLC v. Google LLC*, 835 F. App’x 606 (Fed. Cir. 2021) (Dyk, Bryson, O’Malley, JJ.).

From 2020 to 2021, I served as lead counsel for Google LLC in these two patent cases before the Federal Circuit. In each case, Google challenged the validity of a patent owned by AGIS Software Development LLC (AGIS), and the Patent Trial and Appeal Board (PTAB) ruled that the patent was invalid. AGIS then appealed. The appeals primarily concerned whether the subject matter claimed by the patents at issue was obvious in light of other existing patents, and the appeals involved many fact-specific questions and an extensive appellate record. I led Google’s responsive briefing in the Federal Circuit and then presented oral argument in both appeals, which were argued on

the same day. The Federal Circuit summarily affirmed the PTAB's rulings in Google's favor.

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7. *Dooley v. Wetzel*, 957 F.3d 366 (3d Cir. 2020) (Jordan, Scirica, Rendell, JJ.).

From 2019 to 2020, I served as counsel to Mr. Dooley in this prisoner litigation appeal. Mr. Dooley filed a *pro se* complaint in Pennsylvania state court alleging that Pennsylvania state prison officials were violating his Eighth Amendment rights through deliberate indifference to his serious medical needs. After the defendants removed the case to federal court, the district court determined that the complaint was frivolous and dismissed the suit. The district court also decided *sua sponte* that the dismissal qualified as a "strike" under the Prison Litigation Reform Act (PLRA) and would therefore count against Mr. Dooley in future litigation pursuant to the PLRA's three-strikes rule, which limits inmates' ability to bring civil suits concerning the conditions of their confinement. Mr. Dooley appealed to the Third Circuit. The appeal concerned not only the merits of Mr. Dooley's Eighth Amendment claim, but also two important questions concerning the proper application of the PLRA: (1) whether district courts have any statutory or constitutional authority to prospectively determine whether a dismissal should count as a "strike" in the future, and (2) whether a suit filed in state court but removed to federal court can ever qualify as a strike under the PLRA three-strikes provision, which assesses strikes only for suits "brought" by a prisoner "in a court of the United States." 28 U.S.C. § 1915(g). The Third Circuit unanimously ruled for Mr. Dooley across the board, holding that he had adequately pleaded his Eighth Amendment claim, that the district

court should not have prospectively ruled on whether its dismissal should count as a “strike,” and that suits like Mr. Dooley’s filed in state court should not qualify as strikes under the statute in any event. As lead appellate counsel for Mr. Dooley, I co-authored his appeal briefs, and I successfully argued the case before the Third Circuit.

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8. *Lester v. Flournoy*, 909 F.3d 708 (4th Cir. 2018) (Duncan, Keenan, Diaz, JJ.).

From 2015 to 2019, I represented Mr. Lester in this Fourth Circuit appeal concerning his motion for postconviction relief under 28 U.S.C. § 2255. Mr. Lester was sentenced in 2004 to almost 22 years in prison following his conviction for possession with intent to distribute 15 grams of crack cocaine. Mr. Lester received that sentence because the district court deemed his prior conviction for walkaway escape a “crime of violence,” and, on that basis, designated Mr. Lester a career offender under the then-mandatory sentencing guidelines. Later decisions made clear that Mr. Lester never should have been designated a career offender, but the Fourth Circuit had not resolved the question of whether individuals may file a petition for habeas corpus to challenge their sentences in those circumstances. The case was pending before the Fourth Circuit for several years, over the course of which I led a team of attorneys that filed many briefs—including appeal briefs in the ordinary course, a supplemental round of briefing, a second motion for postconviction relief, and a petition for a writ of certiorari in the Supreme Court—on behalf of Mr. Lester. In 2018, I argued the case in the Fourth Circuit, and the panel decided in favor of Mr. Lester. Thereafter, Mr. Lester was resentenced to time served and released.

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9. *ACE Am. Ins. Co. v. Wattles Co.*, 930 F.3d 1240 (11th Cir. 2019) (Carnes, Anderson, Carnes, JJ.).

From 2017 to 2019, I served as appellate counsel for ACE American Insurance Company (ACE) in this Eleventh Circuit appeal concerning an insurance coverage dispute. The dispute arose from damage to an industrial warehouse caused by sulfuric acid mist generated in the process of battery formation. The district court had granted summary judgment against ACE, and O'Melveny was retained to handle the appeal. There were several issues in the appeal concerning the proper interpretation of the insurance contract. The panel focused on a complex issue of first impression, namely whether a provision promising coverage for liabilities "incurred in those countries in which a Napoleonic or other civil or commercial code applies" should cover liabilities incurred in common-law countries like the United States. The Eleventh Circuit agreed with ACE's argument that the provision does not apply to liability arising in the United States, reversed the district court, and directed the entry of judgment for ACE. I was the primary drafter of ACE's opening and reply briefs, and I successfully argued the case before the Eleventh Circuit.

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10. *United States v. Swaby*, 855 F.3d 233 (4th Cir. 2017) (Gregory, Wynn, Thacker, JJ.).

I was appointed by the Fourth Circuit to represent Mr. Swaby in this criminal appeal with immigration consequences. Mr. Swaby is a citizen of Jamaica and had been a lawful permanent resident of the United States since 2001. In 2013, Mr. Swaby entered into a plea agreement to resolve certain criminal charges against him, after his attorney assured him that deportation was at most a risk, not a certainty. In fact, Mr. Swaby's plea made him automatically deportable. Mr. Swaby filed a motion for postconviction relief, arguing that he had received ineffective assistance of counsel in violation of the Sixth Amendment. The district court denied that motion, and I was appointed to represent Mr. Swaby in his appeal. From 2016 to 2017, I served as lead appellate counsel for Mr. Swaby. In that capacity, I led a team that briefed the case, and I successfully argued the matter before the Fourth Circuit. The Fourth Circuit reversed the district court and vacated Mr. Swaby's conviction, agreeing with Mr. Swaby that—under the Sixth Amendment and the Supreme Court's decision in *Padilla v. Kentucky*, 559 U.S. 356 (2010)—he was entitled to know that he was pleading guilty to a crime that would render him automatically deportable.

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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.)

In private practice, the overwhelming majority of my work was in litigation, and I litigated numerous cases in a wide range of courts involving a wide range of subject matters, including both civil and criminal cases. In one significant matter that did not progress to trial, I helped lead a team of O'Melveny attorneys in a suit against the Federal Bureau of Prisons, successfully seeking fair treatment and the provision of religiously appropriate meals under the Religious Freedom Restoration Act for four practicing Muslims in federal custody. That matter involved numerous hearings, motions, and depositions, many of which I handled personally. In addition to my litigation work, I also represented a client in connection with administrative action proposed by the National Oceanic Atmospheric Administration, and I represented a media and entertainment company in arbitration. Further, I pursued various leadership and mentorship activities while in private practice. At O'Melveny, I served as a member of the Washington, DC office's employment committee for several years, twice led the office's summer associate program, and served on the firm's associate and counsel advisory committee. I also participated in events and mentorship programs with The Appellate Project, which aims to increase minority representation in appellate practice.

As Deputy Assistant Attorney General in the Office of Legal Counsel at the United States Department of Justice, my practice has consisted of advising and counseling the President and executive branch agencies on complex legal questions. I have worked on a wide range of issues involving federal constitutional, statutory, and regulatory law.

I have not performed any lobbying activities, and I am not and have never been 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 not taught any courses.

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.

I have no anticipated receipts, expected future benefits, or arrangements to be compensated in the future for any financial or business interest.

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

If confirmed, I have no plans, commitments, or agreements to pursue any outside employment during judicial service.

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, potential conflicts of interest could be presented in matters being litigated before me by lawyers from my former employer, O'Melveny & Myers LLP, or my current employer, the United States Department of Justice. I am not aware of any other person, party, category of litigation, or financial arrangement that is likely to present a potential conflict of interest when I first assume the position to which I have been nominated. I would evaluate and resolve any potential conflicts of interest by applying the rules and standards in 28 U.S.C. § 455, the Code of Conduct for United States Judges, the Published Advisory Opinions issued by the Committee on Codes of Conduct of the Judicial Conference of the United States, and any relevant judicial decisions and opinions that address what constitutes a conflict or the appearance of a conflict. I would

also consult with ethics counsel or an ethics officer if one is available to the court, as well as with colleagues on the bench, as needed and appropriate.

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

I would evaluate and resolve any potential conflicts of interest by applying the rules and standards in 28 U.S.C. § 455, the Code of Conduct for United States Judges, the Published Advisory Opinions issued by the Committee on Codes of Conduct of the Judicial Conference of the United States, and any relevant judicial decisions and opinions that address what constitutes a conflict or the appearance of a conflict. I would also consult with ethics counsel or an ethics officer if one is available to the court, as well as with colleagues on the bench, as needed and appropriate.

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.

Throughout my career, I have demonstrated a commitment to serving the disadvantaged and engaging in other forms of public service. Since February 2022, I have served as Deputy Assistant Attorney General in the Office of Legal Counsel at the United States Department of Justice, where I work to protect and defend the U.S. Constitution and uphold the rule of law. In private practice, a significant portion of my practice—approximately 25 percent of my time or 500 hours per year—was devoted to pro bono work. That work was wide-ranging, but focused on constitutional law, criminal law, and immigration law. As to constitutional law, I co-drafted Supreme Court and federal court of appeals briefing in cases touching upon numerous constitutional provisions. I also devoted substantial efforts to representing criminal defendants and incarcerated individuals to ensure the fair and equitable application of the country's criminal laws. Most prominently, in 2021 I was lead counsel and argued in the U.S. Supreme Court on behalf of the respondent in *United States v. Palomar-Santiago*, 141 S. Ct. 1615 (2021), a criminal case involving the scope of the crime of reentry after removal codified at 18 U.S.C. § 1326. And, among many other pro bono representations, I was appointed by the Fourth Circuit to argue three criminal cases either on behalf of indigent clients or as amicus to the court, and I prevailed each time.

I have sought to provide public service in other ways, as well. For instance, I previously served as a member of the MacArthur Justice Center's Supreme Court & Appellate Advisory Board, where I offered strategic advice and helped the Center obtain representation for appeals on behalf of individuals in the criminal justice system. And I have volunteered many hours over the years as a moot court judge with the Supreme Court Institute at Georgetown University Law Center, helping prepare lawyers for their

oral arguments before the Supreme Court in all manner of cases and no matter the lawyers' positions or clients.

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 December 27, 2021, I expressed to the White House Counsel's Office my interest in being considered for a federal appellate judgeship. On April 22, 2022, I interviewed with attorneys from the White House Counsel's Office. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 15, 2022, my nomination was submitted to the Senate.

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

No.