

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Kenneth Kiyul Lee

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

United States Circuit Judge for the Ninth 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.

Office: Jenner & Block LLP
 633 West 5th Street, Suite 3600
 Los Angeles, California 90071

Residence: Carlsbad, California

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

1975; Seoul, Republic of Korea.

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.

1997 – 2000, Harvard Law School; J.D., 2000

1993 – 1997, Cornell University; B.A., 1997

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.

2009 – present
Jenner & Block LLP
633 West 5th Street, Suite 3600

Los Angeles, California 90071
Partner

2010 – 2011
Pepperdine Law School
24255 Pacific Coast Highway
Malibu, California 90263
Adjunct Faculty Member

2006 – 2009
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500
Associate Counsel and Special Assistant to the President

2001 – 2006 (on leave Summer 2005)
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Associate

Summer 2005
Senate Judiciary Committee (Senator Arlen Specter)
United States Senate
Washington, D.C. 20510
Special Counsel

2000 – 2001
United States Court of Appeals Judge for the Fifth Circuit
8200 I-10 West
San Antonio, Texas 78203
Law Clerk to the Honorable Emilio M. Garza

Summer 2000
Latham & Watkins LLP
355 South Grand Avenue
Los Angeles, California 90071
Summer Associate

Summer 1999
Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
Summer Associate

Summer 1999
Munger, Tolles & Olson LLP
350 South Grand Avenue
Los Angeles, California 90071
Summer Associate

Summer 1998
Kirkland & Ellis LLP
333 South Hope Street
Los Angeles, California 90071
Summer Associate

Other Affiliations (uncompensated)

2010 – present
Center for Asian-Americans United for Self Empowerment (CAUSE)
260 South Los Robles Avenue
Pasadena, California 91101
Board Member and Legal Counsel

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

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

Most Influential Minority Attorneys, Los Angeles Business Journal (2018)

Super Lawyer, Southern California Super Lawyers (2018)

Up and Coming 100, Southern California Super Lawyers/Rising Stars (2015)

Rising Star, Southern California Super Lawyers (2013 – 2015)

Top 20 Under 40 Lawyers in California, Daily Journal (2014)

Jenner & Block Mentorship Award, as voted by Jenner & Block's associates (2014)

J.D. conferred *magna cum laude*, Harvard Law School (2000)

B.A. conferred *summa cum laude*, Cornell University (1997)

Clyde Duniway Prize (awarded to the top student graduating from the Government Department), Cornell University (1997)

Merrill Presidential Scholar (awarded to the top 1% of the graduating class), Cornell University (1997)

Phi Beta Kappa (1997)

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

American Bar Association (approximately 2001 – 2006)

California State Bar, Food Law Committee of Litigation Section (2015 – present)

Diversity & Inclusion Committee, Jenner & Block (2010 – present)

Korean American Bar Association (2017 – present)

Los Angeles County Bar Association (2010 – 2014)

Editorial Board Member, *Los Angeles Lawyer* (association's magazine) (2010 – 2012)

National Asian Pacific American Bar Association (2010 – present, intermittently)

Privacy & Consumer Protection Editorial Advisory Board, *Law360* (2014 – 2015).

10. **Bar and Court Admission:**

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

California, 2009

New York, 2002

There have been no lapses in membership.

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

To the best of my recollection, I have been admitted to the following courts:

Supreme Court of the United States, 2008
United States Court of Appeals for the Second Circuit, 2017
United States Court of Appeals for the Fifth Circuit, 2009
United States Court of Appeals for the Ninth Circuit, 2009
United States District Court for the Central District of California, 2009
United States District Court for the Eastern District of California, 2014
United States District Court for the Northern District of California, 2010
United States District Court for the Southern District of California, 2010
United States District Court for the Eastern District of New York, 2006
United States District Court for the Northern District of New York, 2017
United States District Court for the Southern District of New York, 2002

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Board Member and Legal Counsel, Center for Asian-Americans United for Self Empowerment (CAUSE) (2010 – present)

Federalist Society for Law and Public Policy Studies (1997 – present, intermittently)

Litigation Practice Group (approximately 2010 – present)

Civil Rights Practice Group (approximately 2001 – 2005)

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

To the best of my knowledge, none of the organizations listed in response to 11a above 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 practices.

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.

Based on my search of my personal files, electronic/internet databases, and other sources, I have identified the following publications:

With Jerome L. Epstein and Jeremy M. Creelan, "Consumer Protection," *Business and Commercial Litigation in Federal Courts*, Thompson Reuters/American Bar Association Section on Litigation (4th ed. 2017). Copy supplied.

Questionable Classes: Recent Decisions in False Advertising Class Actions Have Shown Less Favor to Plaintiffs, Los Angeles Lawyer (published by the Los Angeles County Bar Association), Nov. 2013. Copy supplied.

State efforts to impose 'Amazon Tax' on Internet Vendors, Engage, July 2012. Copy supplied.

With Jerry Oshinsky, Lorelie Masters, and Cherylyn Briggs, *Fighting Phishing, Pharming, and Other Cyber-Attacks: Cover for High Tech Liabilities*, University Risk Management Insurance Association Journal (2010). Copy supplied.

Preparing for Congressional Investigations, The Recorder, Dec. 13, 2010. Copy supplied.

One Year and Waiting – The Nomination of Edward M. Chen, Huffington Post, Sept. 2, 2010. Copy supplied.

With Jerry Oshinsky, *California, Home of Wage and Hour Lawsuits*, Daily Journal, May 10, 2010. Copy supplied.

The 'Amazon Tax,' Too Good to Be True, Daily Journal, May 4, 2010. Copy supplied.

With Jerry Oshinsky, *Insurance Coverage for Cyber Crimes*, Daily Journal, Apr. 14, 2010. Copy supplied.

Obama Should Exercise the Pardon Power, Nat'l L.J., Apr. 12, 2010. Copy supplied.

Re-Nominating Rogan Could Help Heal the Partisan Rift, Daily Journal, Aug. 25, 2009. Article available at

https://jenner.com/system/assets/publications/492/original/Lee_LA_Daily_Journal_Aug_25_2009.pdf.

With Roger Clegg and George T. Conway III, *The Bullet and the Ballot? The Case for Felon Disenfranchisement Statutes*, 14 Am. U. J. Gender Soc. Pol'y & L. 1 (2006). Copy supplied.

Illegals vs. Legals, American Enterprise, Apr./May 2005. Copy supplied.

Repaying the Debt, VFW, Nov. 2003. Copy supplied.

Repaying the Debt, American Enterprise, July/Aug. 2003. Copy supplied.

The Supreme Court's Previous Dodge, American Enterprise, Apr./May 2003. Copy supplied.

Time to Fight Back: An Anti-Discrimination Campaign Waiting to Happen?, American Enterprise, Sept. 2002. Copy supplied.

Where Legal Activists Come From, American Enterprise, June 2001. Copy supplied.

Greed is Chic at Last, Weekly Standard, Feb. 14, 2000. Copy supplied.

Attorney-Client Privilege – Dead or Alive? A Post-Mortem Analysis of Swidler & Berlin v. United States, 118 S. Ct. 2081 (1998), 22 Harv. J.L. & Pub. Pol'y 735 (Spring 1999). Copy supplied.

Untruth in Academe, American Enterprise, May/June 1999. Copy supplied.

Huddled Masses, Muddled Laws, Praeger Publisher (1998). Copy supplied.

Hasta La Vista, The New Republic, Oct. 27, 1997. Copy supplied.

Free Speech at Cornell, Wash. Post, Sept. 17, 1997. Copy supplied.

Rebel Children, American Enterprise, Sept./Oct. 1997. Copy supplied.

GOP walks a tightrope with Asian-Americans, Orange Co. Register, July 29, 1997. Copy supplied.

Republicans, Drug Money, and You, Liberty, Mar. 1997. Copy supplied.

Let's Sell More U.S. Visas, American Enterprise, Mar./Apr. 1997. Copy supplied.

Shame on Dem, Cornell Rev., Oct. 7, 1996. Copy supplied.

Separate & Unequal, American Enterprise, Sept./Oct. 1996. Copy supplied.

Angry Yellow Men, The New Republic, Sept. 9, 1996. Copy supplied.

GOP Need Not Apply, Cornell Rev., Aug. 29, 1996. Copy supplied.

Where's the Diversity?, Cornell Rev., Sept. 28, 1995. Copy supplied.

Why Maas Is Innocent, Cornell Rev., Sept. 15, 1995. Copy supplied.

Our Monotone Universities, American Enterprise, Sept./Oct. 1995. Copy supplied.

Cornell's New President, Cornell Rev., Aug. 30, 1995. Copy supplied.

Affirmative Action at the Bursar's Window, American Enterprise, May/June 1995. Copy supplied.

Sen. D'Amato v. Asians?, Cornell Rev., Apr. 27, 1995. Copy supplied.

Breaking Ranks, Heterodoxy, Feb. 1995. Copy supplied.

Prop. 187 and the Cornell Community, Cornell Rev., Nov. 28, 1994. Copy supplied.

Politically Correct Jim Crow at Cornell University, Heterodoxy, Oct. 1994. Copy supplied.

Gay Office Opens, Cornell Rev., Oct. 20, 1994. Copy supplied.

End Racist Policies!, Cornell Rev., Oct. 20, 1994. Copy supplied.

The End of Ujaama?, Cornell Rev., Sept. 29, 1994. Copy supplied.

The Making of a Quagmire, Heterodoxy, February 1994. Copy supplied.

And in Day Hall, Cornell Rev., Nov. 29, 1993. Copy supplied.

Teens Add to Piracy Problems, Los Angeles Times, Jan. 23, 1992. Copy supplied.

From sometime in 2010 to 2012, I helped edit certain articles in the *Los Angeles Lawyer*, but I cannot recall which specific articles I edited, except that I believe they involved business litigation issues. From sometime in fall 1994 to fall 1996, I helped edit articles for the *Cornell Review*, but I cannot recall which specific articles I edited.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

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

None.

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

Based on my search of my personal files, electronic/internet databases, and other sources, I have identified the following panels:

November 28, 2017: Panelist, "Better Arguments Project," co-sponsored by Aspen Institute's Citizenship and American Identity Project and Facing History and Ourselves, Seattle, Washington. I participated in a private panel group of people from widely divergent backgrounds and views to discuss ways to encourage and restore civil and respectful dialogue in discussing important issues of the day. This project is the brainchild of Eric Liu, a former speechwriter for President Clinton. I have no notes, transcript, or recording. The address of the Aspen Institute is 2300 N Street, N.W., Suite 700, Washington, D.C. 20037.

August 27, 2016: Speaker, Korean American Federation of Orange County. I gave a general talk to younger Korean-Americans about the importance of public service and the challenges and opportunities for Korean-Americans. I have no notes, transcript, or recording. The address of the Korean American Federation of Orange County is 9888 Garden Grove Boulevard, Garden Grove, California, 92844.

April 6, 2016: Panelist, "'All Natural' Class Certification Mock Argument." American Bar Association Annual Antitrust Meeting in Washington, D.C. Speaker. This was a mock oral argument about class certification of an "all natural" case involving GMO foods. I have no notes, transcript, or recording. The address of the American Bar Association is 1050 Connecticut Avenue, N.W., Suite 400, Washington, D.C., 20036.

Feb. 6, 2016: Panelist, "Understanding the Needs of Clients," Harvard Law School Asian-American and Pacific Islander Law School Association, Harvard Law School. I discussed meeting client expectations and the challenges of being an Asian-American attorney in private practice to a group of Asian-American law students. I have no notes, transcript, or recording. The address of Harvard Law School Asian-American and Pacific Islander Law School Association is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

July 24, 2015: Panelist, "Update on GMO/Natural Litigation," California State Bar Webinar. This was a conversation about developments in the law relating to GMO labeling cases. I have no notes, transcript, or recording. The address of the California State Bar is 180 Howard Street, San Francisco, California 94105.

May 14, 2015: Panelist, "Food Labeling: Genetically Modified Organisms." Federalist Society Podcast/Teleforum. This was a discussion about developments in the law relating to GMO labeling cases. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street, N.W., Suite 300, Washington, D.C. 20006.

April 1, 2013: Speaker, "Post-decision Podcast for *Comcast v. Behrend*," Federalist Society Litigation Practice Group Podcast. Prepared text supplied.

January 31, 2013: Panelist, "Class Actions and the Food Industry." Federalist Society Litigation Practice Group Podcast/Teleforum. Panelist. This involved a discussion of legal developments relating to food labeling class action lawsuits. I have no notes, transcript, or recording. The address of Federalist Society is 1776 I Street, N.W., Suite 300, Washington, D.C. 20006.

December 7, 2012: Speaker, "*Comcast v. Behrend*, Post-Argument Podcast," Federalist Society Litigation Practice Group Podcast. Prepared text supplied.

August 2, 2012: Panelist, NextGen Project sponsored by Center for Asian Americans United for Self Empowerment, at the Jonathan Club in Los Angeles. I spoke to young Asian-Americans about the importance of public service. I have no notes, transcript, or recording. The address of CAUSE is 1605 West Olympic Boulevard, Suite 1027, Los Angeles, California 90015.

March 4, 2011: Moderator, "The Current State of LGBT Civil Rights" at UCLA Law School. Sponsored by UCLA OUTlaw. This was intended as an educational

as well as a recruiting event for LGBT law students, and I interviewed fellow Jenner & Block attorneys who have litigated LGBT civil rights cases. Prepared questions supplied.

March 3, 2011: Moderator, "The Current State of LGBT Civil Rights" at USC Law School. Sponsored by USC OUTlaw. This was intended as an educational as well as a recruiting event for LGBT law students, and I interviewed fellow Jenner & Block attorneys who have litigated LGBT civil rights cases. I used the same prepared questions as for the March 4 event.

Nov. 19, 2010: Panelist, "Corporations in Crisis: How to Mitigate Risk, Plan for the Problem, and Manage the Crisis." National Asian Pacific American Bar Association Annual Convention in Los Angeles. Power Point supplied.

September 22, 2010: Moderator, "The Constitutional Health of the 2010 Affordable Health Care for America Act," Federalist Society Los Angeles Lawyers Chapter at The California Club. I served as a moderator in a debate about the constitutional challenges to the Affordable Care Act. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street, N.W., Suite 300, Washington, D.C. 20006.

April 2008: Panelist, "Increasing Diversity on the Bench: Navigating the Judicial Nomination Process," 2008 D.C. Judicial and Bar Conference, Asian Pacific American Bar Association of the Greater Washington DC Area. I explained the federal judicial nomination process to Asian-American attorneys interested in becoming judges. I have no notes, transcript, or recording. The address of the National Asian Pacific American Bar Association is 1612 K Street, N.W., Suite 510, Washington, D.C. 20006.

- 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.

Candy and snack companies sued for packages with empty space instead of extra product, ABA Journal, Sept. 2018. Copy supplied.

Food & Beverage Group of the Year: Jenner & Block, Law360, Jan. 22, 2018. Copy supplied.

Road to Confirmation: Gorsuch Nomination Sets Stage for Partisan Showdown, Law360, Feb. 6, 2017. Copy supplied.

A Quintessential American Story, Super Lawyers/Rising Stars, 2015. Available at https://jenner.com/system/assets/assets/8789/original/Ken_20Lee_20Super_20Lawyers_20Cover_206_202015.pdf.

Top 20 Under 40 Attorneys in California, Daily Journal, Jan. 29, 2014. Available at https://jenner.com/system/assets/assets/7748/original/Ken_20Lee_20Daily_20Journal_202014.pdf.

Is This 36-Year-Old Veteran the Future of the GOP?, Nat'l J., Dec. 6, 2013.

Defense Bar Weighs in on Court Budget Cuts, Daily Journal, Dec. 19, 2012. Copy supplied.

Pardon Attorney Torpedoes Plea for Presidential Mercy, Toonari Post, May 17, 2012. Copy supplied.

Clarence Aaron was denied commutation, but Bush team wasn't told all the facts, Wash. Post, May 13, 2012. Copy supplied.

Presidential pardons: A lawmaker's support improves criminals' odds for mercy, Wash. Post, Dec. 4, 2011. Copy supplied.

A Racial Gap for Criminals Seeking Mercy, Wash. Post, Dec. 4, 2011. Copy supplied.

Former Associate White House Counsel Kenneth Lee Joins Jenner & Block's L.A. Office, PR Newswire, Sept. 11, 2009. Copy supplied.

Behind Korean District's Doors, Endless Toil for Next Generation, Orange Co. Register, Mar. 9, 1997. 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.

Associate Counsel and Special Assistant to the President (2006 – 2009). I was appointed to this position by President George W. Bush.

Special Counsel to the Senate Judiciary Committee (June 2005 – Sept. 2005). I was appointed to this position by Senator Arlen Specter.

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

None.

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 2000 to 2001, I served as a law clerk to the Honorable Emilio M. Garza, Circuit Judge of the United States Court of Appeals for the Fifth Circuit.

- 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.

2000
Latham & Watkins LLP
355 South Grand Avenue
Los Angeles, California 90071
Summer Associate

2001 – 2006 (on leave Summer 2005)
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Associate

2006 – 2009
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500
Associate Counsel and Special Assistant to the President

2009 – present
Jenner & Block LLP
633 West 5th Street, Suite 3600
Los Angeles, California 90071
Partner

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

I have not served as a mediator or arbitrator.

b. Describe:

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

I have a wide-ranging practice that focuses primarily on trial and appellate litigation in federal courts. I have provided advice and/or litigated cases involving class actions, insurance disputes, trade secrets, copyrights, breach of contract claims, bankruptcy proceedings, securities lawsuits, M&A disputes, tort lawsuits, and other complex commercial disputes. I have served as counsel for plaintiffs as well as defendants.

I also have a robust pro bono practice. I have represented numerous

indigent and incarcerated individuals who have alleged that the government had violated their constitutional rights. I also have represented many individuals seeking asylum or opposing removal.

Finally, I have been involved in several internal investigations involving potential criminal violations.

When I served as an Associate Counsel to the President, I provided advice on various constitutional, legal, and compliance issues.

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

From 2001 to 2006, I was an associate at Wachtell, Lipton, Rosen & Katz, where my clients included Fortune 500 companies and other entities. In my most significant case, I was a member of the trial and appellate team representing the leaseholder to the World Trade Center in a multibillion dollar insurance coverage dispute in the aftermath of September 11. I also defended financial and Fortune 500 companies in securities fraud lawsuits, merger disputes, arbitrations, and other complex commercial cases. I also participated in several confidential internal investigations involving financial companies and investment banks.

From 2006 to 2009, I served as an Associate Counsel to the President. I provided legal advice to senior White House officials on various issues, and also coordinated litigation strategy with the Department of Justice on cases of importance to the White House and/or implicated White House interests. Further, I helped defend the White House in various investigations.

From 2009 to the present as a partner at Jenner & Block, I've defended a wide variety of companies in consumer class action lawsuits and other complex disputes. I have also been involved in a wide variety of other matters representing both plaintiffs and defendants in trademark, trade secret, insurance, bankruptcy, and other matters. Further, I have been involved in several internal investigations.

Finally, I've always had an active pro bono practice, and have represented indigent and incarcerated individuals in numerous cases.

- 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 spent approximately 90 percent of my practice in litigation. As a partner at Jenner and Block, I appear in court frequently. During my tenure at the White

House Counsel's Office, I did not appear as counsel in court. As an associate at Wachtell, I occasionally appeared in court.

i. Indicate the percentage of your practice in:

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

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 90% |
| 2. criminal proceedings: | 10% |

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. I was chief trial counsel in four of them, and was associate counsel in one of them. I have also served as chief counsel in private arbitrations.

i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 60% |
| 2. non-jury: | 40% |

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 have been counsel in one case before the Supreme Court, which was at the certiorari stage. I was co-counsel of record for an *amicus curiae*, the City Bar of New York and the National Association of Criminal Defense Lawyers, in *Orbe v. True*, S. Ct. No. 03-6827, a capital punishment case. I have been unable to locate a copy of this brief.

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. *In re: Meruelo Maddux Properties, Inc.*, No. 11-CV-04124 (C.D. Cal.). Judge Victoria Kauffman.

In this commercial reorganization trial, I served as lead trial counsel on behalf of minority shareholders of Meruelo Maddux Properties, Inc., a publicly held company that at the time was the largest private landowner in downtown Los Angeles. The minority shareholders alleged that the two majority shareholders and founders of the company had breached their fiduciary duties, including using company funds for personal purposes. After several weeks of testimony, the court ousted the two majority shareholders and founders of the company, and gave control of the company to the minority shareholders. I gave the opening statement and closing argument; cross-examined witnesses; took depositions of the key witnesses; and drafted and revised briefs.

Co-counsel

Georgiana “Cristy” Rodiger
Rodiger Law Firm
2697 Tanoble Drive
Altadena, California 91001
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Opposing counsel

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(retired)

2. *Jacobs v. W.J. Sullivan, et al.* No. 5-CV-1625 (E.D. Cal.). Judge Stanley A. Boone.

In this Section 1983 trial, I served as lead trial counsel on behalf of an African-American inmate who alleged that he had been abused by state prison authorities in violation of his constitutional rights. After a week-long trial in September 2016, the jury returned a verdict in favor of my pro bono client against all nine defendants, awarding both compensatory and punitive damages. The parties ultimately entered into a global settlement involving the plaintiff’s other cases. I gave the closing argument, cross-examined several

fact and expert witnesses, and revised and drafted briefs. I am particularly proud of this pro bono case because we vindicated the constitutional rights of a pro bono client who faced long odds at trial in a forum that was not favorable towards him.

Opposing counsel

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3. *In re Hain Celestial Seasonings Products Consumer Litig.*, 8:13-CV-01757 (C.D. Cal.) Judge Andrew Guilford.

In the aftermath of a short seller's report that Hain Celestial's Celestial Seasonings tea allegedly had trace residue amounts of pesticide, several putative class action lawsuits were filed across the country, alleging that they were mislabeled as "100% natural." The lawsuits were consolidated in the Central District of California, where Judge Guilford first denied the motion for a Rule 23(b)(3) damages class and then later granted summary judgment on the remaining injunctive relief claims. As one of the lead defense counsel, I wrote the trial court and Rule 23(f) appellate briefs, deposed and defended the key witnesses, and argued the motions to dismiss and summary judgment.

Opposing counsel

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4. *Evangeline Red v. Kraft Foods*, 754 F. Supp. 2d 1137 (2010), 2011 WL 4599833, 2012 WL 8019257, *aff'd* 680 Fed. App'x 597 (9th Cir. 2017). Judge George Wu (C.D. Cal); Judges Richard C. Tallman, N. Randy Smith, Stephen J. Murphy III (9th Cir.).

The plaintiffs filed a putative class action lawsuit challenging over a dozen snacks produced by Kraft Foods in this false advertisement case, and sought several hundred million dollars in damages. I served as one of the lead counsel representing Kraft Foods, briefing the issues and arguing many of the motions. In litigation that spanned over several years and involved extensive motion practice, the court ultimately denied class certification. I argued several of the key motions, deposed witnesses, and drafted key trial court and appellate briefs. The Ninth Circuit affirmed.

Opposing counsel

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5. *SR International Business Ins. Co., et al. v. World Trade Center Properties LLC, et al.*, No. 01-CV-9291 (S.D.N.Y.), 345 F.3d 154 (2d Cir. 2003). Judge Michael Mukasey (S.D.N.Y.); Judges John M. Walker, Jr., Jose A. Cabranes, and Rosemary S. Pooler (2d Cir.).

As a young associate, I was a trial and appellate team member in a case representing the 99-year leaseholder of the World Trade Center in the aftermath of the September 11 attacks. The leaseholder sued almost two dozen insurance companies seeking approximately \$7 billion in insurance proceeds to help rebuild downtown New York. Our client ultimately recovered \$4.6 billion, which were used to help rebuild the Ground Zero area in downtown Manhattan. I helped second-chair the trial, deposed witnesses, and drafted portions of trial court and appellate briefs.

Lead co-counsel

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Opposing counsel for Lloyd's of London insurers

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6. *Manchouck v. Mondelez*, No. 13-CV-02148 2013 WL 5400285 (N.D. Cal. Sept. 26, 2013), *aff'd* 603 Fed. App'x 632 (9th Cir. May 18, 2015). Judge William Alsup (N.D. Cal.); Judges Diarmuid F. O'Scannlain, Sandra S. Ikuta and Larry A. Burns (9th Cir. panel).

This putative class action lawsuit challenged Nabisco Newtons, alleging that the packaging misled consumers about the fruit content of the product. The district court dismissed the lawsuit on the grounds that a reasonable consumer would not be misled, and the Ninth Circuit affirmed. I served as lead counsel, writing the trial court and appellate briefs and arguing the case. The Ninth Circuit opinion was decided on the briefs without oral argument.

Opposing counsel

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7. *In re Clorox Consumer Litig.*, No. 12-CV-00280 (N.D. Cal.), 894 F. Supp. 2d 1224 (2012) and 301 F.R.D. 436 (2014). Judge Samuel Conti (now deceased).

In this putative class action case, the plaintiffs alleged that Fresh Step cat litter television ads misled consumers about the efficacy of its odor-fighting capabilities. As one of the lead counsel for Clorox, I helped defeat class certification after extensive motion practice. I deposed and defended key

witnesses, drafted the dispositive briefs, and appeared before the Court.

Opposing counsel (for lead plaintiff)

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8. *Edward Simon v. Healthways, Inc.*, No. 14-CV-08022, 2015 WL 10015953 (C.D. Cal.). Judge Beverly O'Connell (now deceased).

The plaintiff filed a Telephone Consumer Protection Act (TCPA) lawsuit against Healthways, a healthcare company, alleging that he did not consent to receiving faxes related to a HIPAA-complaint email service. I was retained as new lead counsel by Healthways midway through the case, and helped defeat class certification. I argued the class certification motion, deposed witnesses, and drafted the key briefs.

Opposing counsel

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9. *Leigh Randolph v. Smucker*, No. 13-CV-80581, 303 F.R.D. 679 (Dec. 22, 2014 S.D. Fla). Judge Beth Bloom.

The plaintiff alleged that Crisco Oils were mislabeled as "100% natural" because they allegedly contained GMO ingredients. I served as one of the lead counsel, and defeated class certification in December 2014, the first of its kind in "all-natural"/GMO space. I drafted key briefs and deposed the

witnesses. The case was decided on the briefs.

Opposing counsel

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10. *Janet Hood v. WholeSoy & Co.*, No. 12-CV-5550, 2013 WL 3553979 (N.D. Cal.). Judge Yvonne Gonzalez Rogers.

The plaintiff sued WholeSoy & Co., a small organic soy yogurt company, for allegedly violating FDA labeling regulations. As lead counsel, I convinced the Court to dismiss the case and defer to the FDA under the primary jurisdiction doctrine. I wrote the key briefs and oversaw the case. The case was decided on the briefs.

Opposing counsel

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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 addition to the litigation matters discussed elsewhere in this questionnaire, I have been involved in several internal investigations, almost all of which are non-public. The public one was the internal investigation into General Motors' actions and practices relating to the ignition switch issues in some of its cars. I interviewed witnesses and assisted in the final report that was presented to the company's leadership. I have also been involved in other internal investigations in the finance and real estate industry, but they are confidential.

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 taught as an adjunct faculty at Pepperdine Law School during the 2010 – 2011 academic year. I taught a class on Complex Litigation and Class Actions. Syllabus supplied.

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

I expect my firm, Jenner & Block, to provide my capital and share of the profits earned as of the month of my expected resignation, if and when I resign from the partnership.

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).

When my nomination is formally submitted to the Senate and I file my Financial Disclosure Report, I will supplement this Questionnaire with a copy of that Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

I am not aware of any such potential conflicts of interest. No member of my immediate family or other close family member is a lawyer. The vast majority of my investments are in mutual funds, not individual companies. For a period of time, I expect to recuse myself from any matters involving my current firm. I

would also recuse myself in any matter in which, during my time in private practice, either I or a lawyer with whom I was then practicing had participated. See 28 U.S.C. § 455(b)(2).

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

If confirmed, I would evaluate any potential conflicts of interest under the standards set forth in 28 U.S.C. § 455 and Canon 3C of the Code of Conduct for United States Judges, both of which address the question whether federal judges must disqualify themselves due to conflicts. In considering those rules, I would further consult any judicial decisions or Judicial Conference opinions applying the rules to particular cases or 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 devoted hundreds of hours to pro bono matters because access to justice is personally very important to me.

My commitment to pro bono comes from my father, who was my hero. Although he was not a lawyer, he marveled at the American legal system and was fascinated by it. He would always tell me that, unlike the legal system in our native homeland, the laws in the United States were transparent, fair, and equal for everyone. Since my father passed away several years ago, I have given substantial thought to what my father believed in and how he lived his life — and how I can honor him. I believe providing pro bono services to those who cannot afford it honors my father's faith in our legal system as the most fair and equal in the world.

Among the pro bono cases I have handled over the past few years include:

1. *Jacobs v. Alexander, et al.* (E.D. Cal.): I served as lead trial counsel representing an African-American client who alleged abuse by state correctional officers. After a week-long trial in federal court in Fresno, the jury ruled for my pro bono client and awarded him compensatory and punitive damages.
2. *Rendon-Rendon v. Holder* (9th Cir.): I helped represent Mr. Rendon, who arrived to the U.S. as a teenager from Mexico without proper documentation and was subject to removal. We argued that the Board of Immigration Appeals had not properly considered all the evidence.
3. *Cooper v. Ramos* (9th Cir.): I represented an African-American death row inmate in a high-profile Ninth Circuit appeal asking for additional DNA testing in light of

credible allegations of racial bias and potential planted evidence. This case was recently profiled by Nicholas Kristof of the *New York Times*.

4. *Azer v. Holder* (9th Cir.): I helped represent an Egyptian Coptic Christian seeking asylum based on religious persecution.
5. *Pryor v. Deutsche Bank* (Cal. Ct. App.): I represented an indigent individual whose house was being foreclosed.
6. *Taylor v. Lemus, et al.* (C.D. Cal.): I served as lead trial counsel in a federal trial representing an African-American individual who alleged that he was beaten by police officers after a traffic stop.
7. *Mendoza v. CDCR* (E.D. Cal.): I represented an inmate who alleged mistreatment in prison; the case settled with a monetary payment to Mr. Mendoza.
8. *Li v. Holder* (9th Cir.): I represented a Chinese national seeking asylum.
9. *Simon v. Henning* (C.D. Cal.): I represented an inmate who practices a variant of the Jewish faith and alleged that he was denied the right to celebrate Passover. The case settled with the prison authorities agreeing to make certain accommodations to our client.
10. *Bachuber v. City and County of Denver* (D. Col.): I represented a state senate candidate who alleged that Denver's signage ordinance violated the First Amendment. The local government had charged my client with violating the ordinance, which included a potential jail sentence. The parties settled with Denver agreeing to change its ordinance and paying a portion of the legal fees.
11. *Vergara v. State of California* (Cal. Ct. App. and Cal. Supreme Court): I submitted amicus briefs on behalf of Oakland Alliance of Black Educators, Los Angeles Urban League, and other organizations in an educational rights case involving educational opportunities for minority schoolchildren in California.
12. Confidential international environmental law matter: Most recently, I have been providing advice to a non-profit group committed to protecting the environment across the world on a confidential matter.

In addition to providing pro bono legal work, I have volunteered in non-legal roles in the communities where I have lived.

For example, when I practiced in New York as a young attorney, I volunteered as a coach at Harlem RBI (now called DREAM), a wonderful organization that provides baseball, after-school, and educational programs for underprivileged youths in East Harlem and South Bronx. Through my volunteer efforts at Harlem RBI, I was fortunate to mentor dozens of amazing kids.

And now in Los Angeles, where I practice and live, I've become involved in the Asian-American community, and have served as a board member of CAUSE, a non-partisan group that encourages civic involvement in the Asian-American community.

I have also long been committed to mentoring people, especially young persons of color, because it has been my experience that minority students (and lawyers) sometimes are not provided adequate guidance. So, for example, I asked my alma mater to match me with minority high school students who are entering college so that I can provide advice and guidance over an extended period of time. One of these "mentees" has become a lifelong friend.

26. Selection Process:

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

In early 2017, a lawyer from the White House Counsel's Office contacted me to ask if I had an interest in a judicial position. On June 14, 2017, I interviewed with attorneys from the White House Counsel's Office and the Office of Legal Policy at 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 at the Department of Justice. I interviewed with members of Senator Feinstein's Judicial Advisory Commission in November 30, 2017, and with Senator Harris's Judicial Advisory Commission on March 14, 2018. On October 10, 2018, the White House announced that the President intended to nominate me, and on November 13, 2017, the President submitted my nomination to the Senate. On January 3, 2019, the Senate returned my nomination under Rule XXXI. On January 30, 2019, the President announced his intent to renominate me.

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

No.