

MICHAEL T. KIRKPATRICK

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Employment

Public Citizen Litigation Group, Washington, DC 2004-2014, 2016-present
Attorney and Deputy General Counsel, 2016-present
Attorney, 2004-2014

Litigate public interest cases at all levels of the federal and state judiciaries, including the U.S. Supreme Court, with an emphasis on constitutional law, civil rights, class actions, administrative law, and open government. Advise parent organization on legal matters.

Georgetown University Law Center, Washington, DC 2007-present
Adjunct Professor of Law, 2007-2013, 2016-present

Teach course on ethics in public interest practice and mentor students in the Public Interest Law Scholar program.

Visiting Professor of Law and Director of Civil Rights Clinic, 2014-2016

Directed full-time student clinic engaged in complex civil rights and general public interest litigation, supervised and trained student attorneys and graduate teaching fellows, taught clinic seminar and other law school courses.

George Washington University Law School, Washington, DC Spring 2010
Professorial Lecturer in Law

Taught externship seminar on public interest lawyering.

U.S. Department of Justice, Civil Rights Division, Washington, DC 1995-2004
Senior Trial Attorney, Employment Litigation Section

Litigated pattern or practice and individual employment discrimination cases against state and local government employers on behalf of racial and ethnic minorities and women. Defended the constitutionality of federal affirmative action procurement programs.

Texas Rural Legal Aid, Inc., Weslaco, TX 1991-1995
Staff Attorney, Farm Worker Division

Litigated employment cases on behalf of migrant, transnational, and contingent workers, including class and collective actions. Bargained for striking workers during labor disputes. Counseled farm worker unions and community organizations.

Casework

U.S. Supreme Court

Wittman v. Personhuballah, 136 S. Ct. 1732 (2016) (holding that appellants lacked standing to challenge decision addressing the standard for proving an equal protection violation based on racial gerrymandering) (co-counsel for amicus Voting Rights Institute in support of appellees).

Spokeo, Inc. v. Robins, 136 S. Ct. 1540 (2016) (vacating decision below and remanding for further consideration of the injury-in-fact requirement for Article III standing, in case addressing the scope of consumer standing to pursue privacy-related violations of the Fair Credit Reporting Act) (counsel for amicus Information Privacy Law Scholars in support of respondent).

Heffernan v. City of Paterson, 136 S. Ct. 1412 (2016) (holding that the First Amendment protects public employees from retaliation based on an employer's mistaken belief that the employee had engaged in protected speech) (co-counsel for amicus National Association of Government Employees in support of petitioner).

King v. Burwell, 135 S. Ct. 2480 (2015) (holding that the Affordable Care Act authorizes tax credits for health insurance purchased from federally-established exchanges) (co-counsel for amicus American Thoracic Society in support of respondents).

Bank of America, N.A. v. Caulkett, 135 S. Ct. 1995 (2015) (holding that a debtor in a Chapter 7 bankruptcy proceeding may not void a junior mortgage lien under § 506 of the Bankruptcy Code even if the junior lien is wholly unsupported by any equity in the property) (co-counsel for amicus Adam J. Levitin in support of respondents).

Northwest, Inc. v. Ginsberg, 134 S. Ct. 1422 (2014) (holding that Airline Deregulation Act preempts state common-law claims including claims based on breach of the implied covenant of good faith and fair dealing) (co-counsel for respondent).

Jefferson County Board of Education v. Phillip C., 134 S. Ct. 64 (2013) (denying review of Eleventh Circuit's decision finding that a school district violated the Individuals with Disabilities Education Act by refusing to reimburse the parents of a disabled student for the cost of an independent educational evaluation of their child) (drafted respondent's brief in opposition).

Limited Liability Company v. Jane Doe, 133 S. Ct. 2796 (2013) (denying review of Puerto Rico Supreme Court's decision applying general contract law principles to determine that the parties had not agreed to arbitrate claims arising from an employment relationship) (drafted respondent's brief in opposition).

University of Texas Southwestern Medical Center v. Nassar, 133 S. Ct. 2517 (2013) (holding that Title VII retaliation claims must be proved according to traditional principles of but-for causation) (drafted respondent's brief in opposition and merits brief).

RBS Citizens, N.A. v. Ross, 133 S. Ct. 1722 (2013) (granting certiorari, vacating judgment, and remanding for further proceedings, in light of an intervening Supreme Court decision, in class action alleging violation of state wage and hour law) (co-counsel for respondent).

Richter v. Advance Auto Parts, Inc., No. 12-854 (petition dismissed pursuant to settlement Mar. 1, 2013) (seeking review of Eighth Circuit's decision that an employee must file a new or amended charge alleging retaliation before filing suit under Title VII's anti-retaliation provision even if the employer's act of retaliation is a result of the employee's filing of an earlier charge) (co-counsel for petitioner).

Solana Beach School District v. Ka.D., 133 S. Ct. 650 (2012) (denying review of Ninth Circuit's decision finding that a school district violated the Individuals with Disabilities Education Act by denying a disabled student a free appropriate public education in the least restrictive environment) (drafted respondent's brief in opposition).

Compton Unified School District v. Addison, 132 S. Ct. 996 (2012) (denying review of Ninth Circuit's decision that a parent may invoke the due process hearing procedures of the Individuals with Disabilities Education Act to assert a claim that a school district has violated the statute's child-find requirement) (co-counsel for respondent).

Garden Grove Unified School District v. C.B., 132 S. Ct. 500 (2011) (denying review of Ninth Circuit's decision that, under the Individuals with Disabilities Education Act, a school district that fails to provide a free appropriate public education to a disabled student can be required to reimburse a parent for the full cost of enrolling the student in a private program that provides many, but not all, of the special education services that the child needs) (drafted respondent's brief in opposition).

Best Western Encina Lodge & Suites v. D'Lil, 557 U.S. 929 (2009) (denying review of Ninth Circuit's decision that plaintiff had standing to maintain an Americans with Disabilities Act claim against a hotel, where plaintiff demonstrated an intent to return to the area where the hotel is located and a desire to stay at the hotel if it were made accessible) (drafted respondent's brief in opposition).

Flipping v. Reilly, 555 U.S. 1170 (2009) (denying review of Third Circuit's decision that a public employee's truthful trial testimony is citizen speech protected by the First Amendment) (drafted respondent's brief in opposition).

Cerqueira v. American Airlines, Inc., 555 U.S. 821 (2008) (denying review of First Circuit's decision that airlines are not liable for denial-of-service decisions motivated by a passenger's race unless there is direct evidence of discriminatory animus by the formal decisionmaker) (drafted petition for certiorari).

Edwards v. Kenyon, 552 U.S. 1038 (2007) (denying review of Eighth Circuit's decision affirming, by vote of an equally divided court, a district court order denying qualified immunity to a police officer in case alleging excessive force) (drafted respondent's brief in opposition).

Jones v. Flowers, 547 U.S. 220 (2006) (holding that due process requires the government to take further action to provide notice of an impending deprivation of property when the government learns that its initial effort has failed) (drafted petition, merits briefs, and argued).

London v. Fieldale Farms Corp., 546 U.S. 1034 (2005) (denying review of Eleventh Circuit's decision that Packers and Stockyards Act bars only those unfair practices that have an anticompetitive effect) (drafted petition for certiorari).

Dolan v. United States Postal Service, 546 U.S. 481 (2006) (holding that the postal exception to the Federal Tort Claims Act does not bar all claims for injuries caused by the negligence of government employees engaged in the delivery of mail) (drafted petitioner's merits briefs).

SSA Gulf, Inc. v. Magee, 544 U.S. 904 (2005) (denying review of Fifth Circuit's order denying mandamus to review district court's remand order in case removed pursuant to claim that Longshore and Harbor Workers' Compensation Act completely preempts all torts arising from maritime employment) (drafted respondent's brief in opposition).

Gutierrez v. United Foods, Inc., 511 U.S. 1142 (1994) (denying review of Fifth Circuit's decision that employees lack standing under § 301 of the Labor Management Relations Act to challenge employer's violation of the successors and assigns clause of collective bargaining agreement) (drafted petition for certiorari).

Federal Appellate Cases

Quintana v. City of Alexandria, No. 16-1630 (4th Cir.) (appeal of dismissal of one defendant in a case under the Family and Medical Leave Act) (co-counsel for appellant).

Wright v. Sumter County Board of Elections and Registration, No. 15-13628 (11th Cir. July 28, 2016) (reversing summary judgment for the defendant in a case brought under § 2 of the Voting Rights Act to challenge the dilution of African-American voting strength in Sumter County, Georgia) (co-counsel for amici Georgia NAACP and the Campaign Legal Center supporting appellants).

In Re: Randall Todd Royer, No. 16-855 (4th Cir. June 3, 2016) (holding that movant made a prima facie showing that a new rule of constitutional law announced in *Johnson v. United States* and held to apply retroactively to cases on collateral review by *Welch v. United States* may apply to his case, and granting authorization to file a successive 28 U.S.C. § 2255 motion) (co-counsel for movant).

Chiquita Brands International, Inc. v. United States Securities & Exchange Commission, 805 F.3d 289 (D.C. Cir. 2015) (holding that Freedom of Information Act Exemption 7(B) does not prevent an agency from releasing law enforcement records relevant to pending litigation and not yet available in discovery) (co-counsel for intervenor-appellee National Security Archive).

Price v. District of Columbia, 792 F.3d 112 (D.C. Cir. 2015) (holding that attorneys' fees under the fee-shifting provision of the Individuals with Disabilities Education Act must be based on

prevailing market rates even if the attorney for the prevailing parties in the underlying administrative actions was appointed under the Criminal Justice Act which caps attorneys' fees at a below-market rate) (lead counsel for amicus Council of Parent Attorneys and Advocates supporting appellants).

Roach v. T.L. Cannon Corp., 778 F.3d 401 (2d Cir. 2015) (vacating district court's denial of class certification in wage-and-hour case and holding that individualized damages determinations alone cannot preclude class certification under Rule 23(b)(3)) (co-counsel for appellants).

Texas RioGrande Legal Aid, Inc. v. Range, 594 Fed. Appx. 813 (5th Cir. 2014) (affirming district court's dismissal of preemption challenge to state law that conflicts with federal regulation on grounds that the regulation does not create a right enforceable under 42 U.S.C. § 1983 or the Supremacy Clause) (argued for appellants).

Mendoza v. Perez, 754 F.3d 1002 (D.C. Cir. 2014) (reversing district court's decision dismissing for lack of standing Administrative Procedure Act challenge to the Department of Labor's "special procedures" for employers seeking to use the H-2A program to hire temporary foreign workers for herder jobs, and holding that the challenged procedures were substantive legislative rules subject to notice-and-comment procedural requirements) (co-counsel for appellants).

Day v. Persels & Associates, LLC, 729 F.3d 1309 (11th Cir. 2013) (reversing district court's approval of class action settlement that provided no monetary relief to absent class members) (lead counsel for appellant).

Tellado v. IndyMac Mortgage Services, 707 F.3d 275 (3rd Cir. 2013) (reversing decision cancelling mortgage loan under Pennsylvania Unfair Trade Practices and Consumer Protection Law on ground that mortgagors received all documents related to refinancing transaction in English while all prior oral discussions had been conducted in Spanish, because Financial Institutions Reform, Recovery, and Enforcement Act precluded district court's subject-matter jurisdiction due to mortgagors' failure to exhaust administrative remedies) (co-counsel for appellees).

In Re: Katrina Canal Breaches Consolidated Litigation, 628 F.3d 185 (5th Cir. 2010) (reversing district court's certification of a limited fund mandatory class and approval of a settlement in a mass tort case because the settlement lacked procedures to ensure that class claimants would be treated equitably amongst themselves, and because the settling parties failed to show that the class members would receive some benefit in exchange for the release of their claims) (lead counsel for appellants).

Cerqueira v. American Airlines, Inc., 520 F.3d 1 (1st Cir. 2008) (reversing verdict for plaintiff in civil rights case challenging racial profiling by an airline and holding that airlines are not liable for denial-of-service decisions motivated by a passenger's race unless there is direct evidence of discriminatory animus by the formal decisionmaker), *reh'g and reh'g en banc denied*, 520 F.3d 20 (Torruella, J., and Lipez, J., dissenting from denial of reh'g en banc) (lead counsel for appellee).

Sharkey v. Food and Drug Administration, 250 Fed. Appx. 284 (11th Cir. 2007) (affirming district court decision in Freedom of Information Act case seeking records related to vaccine safety) (lead counsel for appellant).

Luessenhop v. Clinton County, New York, 466 F.3d 259 (2d Cir. 2006) (reversing district courts' dismissals for lack of subject matter jurisdiction and holding that Tax Injunction Act does not bar federal court challenges to the adequacy of tax foreclosure notices) (lead counsel for amicus Public Citizen supporting appellants).

Edmonds v. Department of Justice, 161 Fed. Appx. 6 (D.C. Cir. May 6, 2005) (affirming dismissal of whistleblower suit pursuant to state secrets privilege) (lead counsel for 14 public interest and 9/11 family groups as amici urging reinstatement of suit).

Citizens Awareness Network, Inc. v. United States, 391 F.3d 338 (1st Cir. 2004) (denying petition for review of Nuclear Regulatory Commission rule for reactor licensing proceedings) (lead counsel for petitioners).

Gutierrez v. United Foods, Inc., 11 F.3d 556 (5th Cir. 1994) (affirming district court's dismissal of action brought by 25 freezing plant workers under § 301 of the Labor Management Relations Act to challenge their former employer's breach of the successors and assigns clause of a collective bargaining agreement and holding that employees lack standing under § 301 to pursue such claims) (lead counsel for appellants).

State Supreme Court and Appellate Cases

Jenzabar, Inc. v. Long Bow Group, Inc., 977 N.E.2d 75 (Mass. App. Ct. 2012) (affirming summary judgment for defendant documentary film-maker on trademark claims challenging use of plaintiff company's name in the meta tags of pages of a film-related web site) (co-counsel for appellees).

Sidun v. Wayne County Treasurer, 751 N.W.2d 453 (Mich. 2008) (reversing decision of Court of Appeals and holding that methods employed by county treasurer to notify plaintiff of tax foreclosure proceedings did not satisfy due process) (co-counsel for appellant).

Jones v. Flowers, 283 S.W.3d 551 (Ark. 2008) (reversing Circuit Court's denial of attorney's fees and holding that taxpayer who brought successful due process challenge to tax foreclosure sale was entitled to fees under 42 U.S.C. § 1988) (co-counsel for appellant).

Griffin v. Bierman, 941 A.2d 475 (Md. 2008) (affirming Circuit Court and holding that notice of foreclosure complied with procedural due process) (co-counsel for appellant).

Higginbotham v. Bozeman, 1 So.3d 179 (Table) (Fla. App. 1 Dist. 2008) (affirming Circuit Court's decision in due process challenge to tax foreclosure) (lead counsel for amicus Public Citizen supporting appellant).

State System of Higher Education v. Association of Pennsylvania State College and University Faculties, No. 98-1079 (Pa. Commw. Ct. June 19, 1998) (petition for review of an arbitrator's award reinstating an employee terminated for sexual harassment) (drafted amicus brief for United States).

Federal District Court and State Trial Court Cases

Figgs v. Quitman County, Mississippi, No. 14-119 (N.D. Miss. June 16, 2016) (denying defendants' motion for attorneys' fees following the voluntary dismissal of a Voting Rights Act case) (co-counsel for plaintiffs' attorney).

Royer v. United States, No. 03-296 (E.D. Va. June 3, 2016) (motion under 28 U.S.C. § 2255 to vacate conviction and sentence under 18 U.S.C. § 924(c) as having been imposed in violation of the Constitution because § 924(c)(3)(B), which defines "crime of violence" for § 924(c)(1), is void for vagueness) (co-counsel for movant).

Quintana v. City of Alexandria, No. 15-1553 (E.D. Va. May 4, 2016) (judgment in favor of plaintiff against one defendant for violations of the Family and Medical Leave Act) (co-counsel for plaintiff).

Delaware Riverkeeper Network v. FERC, No. 16-416 (D.D.C. Mar. 2, 2016) (due process challenge to FERC's funding mechanism under a biased adjudicator theory) (co-counsel for plaintiffs).

Bowles v. Department of Veterans Affairs, No. 15-2213 (D.D.C. Feb. 26, 2016) (APA and Privacy Act challenge to agency delay in producing veterans' claims files, dismissed as moot following production of requested files) (lead counsel for plaintiffs).

Mencias v. Dailey, No. 15-2135 (D.D.C. Dec. 10, 2015) (42 U.S.C. § 1983 action against a police detective under Fourth and Fifth Amendment theories stemming from the seizure and retention of a work van and tools) (co-counsel for plaintiff).

Gonzales v. Marriott International, Inc., 142 F. Supp. 3d 961 (C.D. Cal. 2015) (denying defendants' motion to dismiss and holding that legal protections for lactating women under California's Fair Employment and Housing Act and the federal Pregnancy Discrimination Act apply regardless of surrogacy status, dismissed pursuant to settlement agreement) (co-counsel for plaintiff).

Tushnet v. United States Immigration and Customs Enforcement, No. 15-0907 (D.D.C. June 12, 2015) (FOIA case seeking records related to government policies regarding seizure of counterfeit goods) (lead counsel for plaintiff).

Pineda v. Neighbors' Consejo, Inc., No. 14-7196 (Super. Ct. D.C. June 3, 2015) (judgment in favor of plaintiff in action for unpaid wages, breach of contract, and promissory estoppel; judgment collected in full following filing of claim in bankruptcy court) (lead counsel for plaintiff and judgment creditor).

Adex Medical Staffing, LLC v. Gu, No. 14-7055 (Super. Ct. D.C. May 18, 2015) (breach of contract action by employer against former employee, and counterclaims by former employee under civil rights and wage payment statutes, dismissed pursuant to settlement agreement) (lead counsel for defendant/counter-claimant).

Mbow v. BUEI, LLC, No. 14-1683 (D.D.C. April 27, 2015) (overtime and retaliation case under the Fair Labor Standards Act, dismissed pursuant to settlement) (lead counsel for plaintiff).

New Orleans Workers' Center for Racial Justice v. United States Immigration and Customs Enforcement, No. 15-0431 (D.D.C. Mar. 25, 2015) (FOIA case seeking records related to community immigration enforcement programs) (co-counsel for plaintiffs).

Wolfman v. United States Dept. of Justice, Executive Office for United States Attorneys, No. 14-1820 (D.D.C. Jan. 16, 2015) (FOIA case seeking records related to motions for summary affirmance filed by the U.S. Attorney's Office for the District of Columbia, dismissed pursuant to settlement) (co-counsel for plaintiff).

American Immigration Lawyers Association v. Executive Office for Immigration Review, 76 F. Supp. 3d 184 (D.D.C. 2014) (granting partial summary judgment for plaintiff in FOIA case seeking records related to complaints against immigration judges); 110 F. Supp. 3d 230 (D.D.C. 2015) (denying motion to enforce or clarify); *aff'd in part and rev'd in part*, No. 15-5201 (D.C. Cir. July 29, 2016) (co-counsel for plaintiff).

Crockett v. Hybano, No. 14-7109 (Super. Ct. D.C. Nov. 7, 2014) (action for unpaid wages, dismissed pursuant to settlement agreement) (co-counsel for plaintiff).

Public Citizen v. Food and Drug Administration, No. 14-751 (D.D.C. Nov. 7, 2014) (APA challenge to agency inaction on petition to revise warnings on proton pump inhibitor label, dismissed as moot following decision on petition) (co-counsel for plaintiff).

McCrae v. District of Columbia, No. 13-4758 (Super. Ct. D.C. Sept. 9, 2014) (granting summary judgment for plaintiffs in breach of contract action to enforce attorney fee provision of settlement agreements in cases where attorney was appointed under the Criminal Justice Act to represent indigent students in actions under the Individuals with Disabilities Education Act) (co-counsel for plaintiff).

Douglas v. District of Columbia, 67 F. Supp. 3d 36 (D.D.C. 2014) (granting petition for award of market-rate attorneys fees under the fee-shifting provision of the Individuals with Disabilities Education Act and rejecting argument that counsel's hourly rate is capped by the terms of the statute under which counsel was appointed) (co-counsel for plaintiff).

Hall v. District of Columbia, No. 13-8368 (Super. Ct. D.C. Aug. 11, 2014) (granting summary judgment for plaintiff in breach of contract action to enforce attorney fee provision of settlement agreements in cases where attorney was appointed under the Criminal Justice Act to represent

indigent students in actions under the Individuals with Disabilities Education Act) (co-counsel for plaintiff).

Price v. District of Columbia, 61 F. Supp. 3d 135 (D.D.C. 2014) (denying petition for award of market-based attorney fees under the fee-shifting provision of the Individuals with Disabilities Education Act where the attorney for the prevailing parties in the underlying administrative actions was appointed under the Criminal Justice Act); *rev'd* 792 F.3d 112 (D.C. Cir. 2015) (co-counsel for plaintiff).

Royer v. Federal Bureau of Prisons, Nos. 10-1196 and 10-1996 (D.D.C. July 15, 2014) (claims under the Privacy Act, Due Process Clause, and Administrative Procedure Act on behalf of federal prisoner classified as a terrorist inmate and subjected to harsh conditions of confinement based on false information, dismissed pursuant to settlement agreement providing plaintiff full relief) (lead counsel for plaintiff).

Houser v. Pritzker, 28 F. Supp. 3d 222 (S.D.N.Y. 2014) (granting class certification in Title VII class action challenging Census Bureau's use of arrest records to screen applicants for temporary jobs for the decennial census); 851 F. Supp. 2d 688 (S.D.N.Y. 2012) (denying motion to dismiss) (co-counsel for plaintiff class).

Day v. Persels & Associates, LLC, No. 10-2463 (M.D. Fla. Feb. 14, 2014) (denying approval of class action settlement) (lead counsel for objector).

Easterling v. Connecticut Department of Correction, No. 08-826 (D. Conn. Sept. 12, 2013) (judgment for plaintiff class pursuant to final approval of settlement providing over \$3 million and 28 priority-hire positions to class of 124 women rejected from consideration for entry-level Correction Officer jobs based on employer's use of discriminatory test); 278 F.R.D. 41 (D. Conn. 2011) (modifying class certification order in light of *Wal-Mart Stores, Inc. v. Dukes*); 783 F. Supp. 2d 323 (D. Conn. 2011) (granting summary judgment for plaintiffs on the issue of liability in Title VII action challenging use of physical fitness test that had disparate impact on women applicants); 265 F.R.D. 45 (D. Conn. 2010) (certifying class) (co-counsel for plaintiff class).

Mendoza v. Solis, 924 F. Supp. 2d 307 (D.D.C. 2013) (dismissing for lack of standing Administrative Procedure Act challenge to the Department of Labor's "special procedures" for employers seeking to use the H-2A program to hire temporary foreign workers for herder jobs); *rev'd* 754 F.3d 1002; *on remand Mendoza v. Perez*, 72 F. Supp. 3d 168 (ordering rulemaking) (lead counsel for plaintiffs).

Public Citizen v. Food and Drug Administration, No. 12-1461 (D.D.C. Nov. 27, 2012) (APA challenge to agency inaction on petition to withdraw marketing approval of Aricept 23, dismissed as moot following decision on petition) (lead counsel for plaintiff).

Cason v. Central Intelligence Agency, No. 11-01 (S.D.N.Y. Mar. 29, 2012) (summary judgment for defendant in FOIA case challenging CIA's use of Glomar response) (co-counsel for plaintiff).

Aziz v. AirTran Airways, Inc., No. 10-1995 (D.D.C. Jan. 17, 2012) (civil rights case challenging airline's denial of service to nine Muslim passengers, dismissed pursuant to confidential settlement agreement) (co-counsel for plaintiffs).

In re Petition of Kutler, 800 F. Supp. 2d 42 (D.D.C. 2011) (granting petition to unseal the transcript of President Nixon's grand jury testimony and certain associated materials of the Watergate Special Prosecution Force) (co-counsel for petitioner).

Wilson v. DirectBuy, Inc., 2011 WL 2050537 (D. Conn. May 16, 2011) (denying final approval of proposed class action settlement) (lead counsel for objector).

Jenzabar, Inc. v. Long Bow Group, Inc., 2010 WL 7877089 (Mass. Super. Ct. Dec. 7, 2010) (granting summary judgment to defendant documentary film-maker on trademark claims challenging use of plaintiff company's name in the meta tags of pages of a film-related web site) (co-counsel for defendants).

True v. American Honda Motor Co., Inc., 2010 WL 707338 (C.D. Cal. Feb. 26, 2010) (denying final approval of proposed class action settlement) (lead counsel for objectors).

In re Katrina Canal Breaches Consolidated Litigation, 263 F.R.D. 340 (E.D. La. 2009) (certifying limited fund class and approving settlement in mass tort case against levee districts for damages resulting from levee failures following Hurricane Katrina) (lead counsel for objectors).

Public Citizen v. Food and Drug Administration, No. 08-1051 (D.D.C. July 14, 2009) (APA challenge to agency inaction on petition to withdraw marketing approval of propoxyphene, dismissed as moot following decision on petition) (lead counsel for plaintiff).

Rivera-Drew v. Department of Health and Human Services, No. 09-296 (D.D.C. Aug. 30, 2010) (FOIA case seeking documents filed by hospital system pursuant to a Corporate Integrity Agreement, dismissed pursuant to settlement) (lead counsel for plaintiff).

United Farm Workers v. Department of Labor, No. 07-2241 (D.D.C. Sept. 11, 2008) (FOIA case seeking documents related to guestworker program and challenging denial of fee waiver, dismissed pursuant to settlement) (lead counsel for plaintiffs).

Northwest Austin Municipal Utility District Number One v. Mukasey, 573 F. Supp. 2d 221 (D.D.C. 2008) (upholding constitutionality of Section 5 of the Voting Rights Act), *rev'd on other grounds*, *Northwest Austin Municipal Utility District Number One v. Holder*, 557 U.S. 193 (2009) (co-counsel for defendant-intervenors).

Public Citizen v. Food and Drug Administration, No. 08-0005 (D.D.C. July 25, 2008) (APA challenge to agency inaction on petition to enhance warnings regarding risk of tendon injury associated with use of fluoroquinolones, dismissed as moot following decision on petition) (lead counsel for plaintiff).

ACLU of Delaware v. Danberg, 2007 WL 901592 (Del. Super. Ct. Mar. 15, 2007) (Delaware FOIA case seeking records related to medical care in Delaware prisons, dismissed pursuant to settlement) (lead counsel for plaintiff).

Cerqueira v. American Airlines, Inc., 484 F. Supp. 2d 232 (D. Mass. 2007) (jury verdict for plaintiff following eight-day trial in civil rights case challenging racial profiling by an airline); 484 F. Supp. 2d 241 (D. Mass. 2007) (awarding attorneys' fees) (lead counsel for plaintiff).

ACORN v. FEMA, 463 F. Supp. 2d 26 (D.D.C. 2006) (granting preliminary injunction in favor of association of hurricane evacuees in due process challenge to the adequacy of notices of ineligibility for housing assistance benefits) (lead counsel for plaintiffs).

Howell v. United States Department of Justice, 2006 WL 890674 (D.D.C. Apr. 4, 2006) (granting summary judgment for defendant in FOIA case challenging prison's refusal to permit prisoner to possess a copy of his presentence report) (lead counsel for plaintiff).

Sharkey v. Food and Drug Administration, 2006 WL 508044 (M.D. Fla. Mar. 1, 2006) (granting summary judgment for defendants in FOIA case seeking records related to vaccine safety) (lead counsel for plaintiff).

Asociacion de Trabajadores Fronterizos v. Department of Labor, No. 04-400 (W.D. Tex. Dec. 30, 2005) (APA challenge to trade adjustment assistance program for dislocated workers who are limited English proficient, dismissed pursuant to settlement) (co-counsel for plaintiffs).

Public Citizen v. Food Safety and Inspection Service, No. 04-1749 (D.D.C. Nov. 13, 2005) (FOIA case seeking records related to agency's evaluation of equivalence of foreign meat and poultry regulatory systems, dismissed as moot following production of the records) (co-counsel for plaintiff).

Project On Government Oversight v. Ashcroft, 04-01032 (D.D.C. Mar. 9, 2005) (First Amendment challenge to the retroactive classification of information concerning a whistleblower's allegations of misconduct in an FBI translation unit, dismissed as moot) (lead counsel for plaintiff).

Public Citizen v. Office of Management and Budget, No. 04-1031 (D.D.C. Feb. 4, 2005) (FOIA case seeking fee waiver and records related to fuel economy standards, dismissed as moot following production of the records) (lead counsel for plaintiff).

Public Citizen v. Food and Drug Administration, No. 04-0411 (D.D.C. June 18, 2004) (APA challenge to agency inaction on petition to withdraw marketing approval of nefazadone, dismissed as moot following withdrawal by manufacturer) (lead counsel for plaintiff).

United States v. City of Garland, Texas, 2004 WL 741295 (N.D. Tex. Mar. 31, 2004) (verdict for defendant following ten-day bench trial in Title VII disparate impact case challenging discriminatory use of written cognitive tests to select police officers and firefighters); 124 F. Supp. 2d 442 (N.D. Tex. 2000) (holding that order requiring mayor and two city council

members to attend mediation session did not violate Texas Open Meetings Act) (lead counsel for plaintiff).

United States v. Delaware, 2004 WL 609331 (D. Del. Mar. 22, 2004) (verdict for plaintiff following six-day bench trial in Title VII disparate impact case challenging discriminatory use of a written cognitive test to select state troopers); 2003 WL 21183641 (D. Del. May 20, 2003) (granting partial summary judgment for plaintiff) (lead counsel for plaintiff).

United States v. City of Belleville, Illinois, No. 93-799 (S.D. Ill. Jan. 27, 2003) (contested relief proceedings to enforce consent decree in Title VII action alleging a pattern or practice of discrimination in hiring on the basis of race and sex) (co-counsel for plaintiff).

United States v. City of Canton, Mississippi, No. 96-0760 (S.D. Miss. Nov. 20, 1997) (jury verdict for defendant following four-day trial in case alleging sex discrimination in promotion) (lead counsel for plaintiff).

Safeco Insurance Company of America v. City of Whitehouse, Tennessee, No. 87-0883 (M.D. Tenn. Aug. 5, 1997) (judgment, following a four day combined bench and jury trial, that application of federal affirmative action procurement guideline did not violate the Constitution); *vacated* 191 F.3d 675 (6th Cir. 1999); *on remand* 133 F. Supp. 2d 621 (M.D. Tenn. 2000) (co-counsel for intervenor U.S. Environmental Protection Agency).

United States v. City of Forney, Texas, No. 96-03146 (N.D. Tex. Mar. 24, 1997) (consent decree resolving Title VII action alleging discrimination on account of race) (lead counsel for plaintiff).

United States v. California University of Pennsylvania, No. 96-724 (W.D. Pa. Oct. 23, 1996) (consent decree resolving multiple claims of hostile work environment sexual harassment and retaliation) (lead counsel for plaintiff).

United States v. Borough of Glassboro, New Jersey, No. 95-01911 (D.N.J. June 19, 1996) (consent decree resolving Title VII action alleging discrimination on account of sex) (lead counsel for plaintiff).

United States v. City of El Monte, California, No. 91-6151 (C.D. Cal. May 27, 1992) (enforcement of consent decree in Title VII action alleging a pattern or practice of discrimination in hiring on the basis of race and national origin) (co-counsel for plaintiff).

Olguin v. Angelica Nurseries, Inc., No. 95-006 (S.D. Tex. Sept. 6, 1995) (breach of contract and Agricultural Worker Protection Act case by ten migrant farm workers against a Maryland nursery, dismissed pursuant to settlement) (lead counsel for plaintiffs).

Campos v. United Foods, Inc., No. 93-233 (S.D. Tex. Apr. 17, 1995) (breach of contract and Agricultural Worker Protection Act case by four migrant workers against a Tennessee frozen vegetable company, dismissed pursuant to settlement) (lead counsel for plaintiffs).

Zapata v. Grasmick, No. 94-113 (S.D. Tex. Jan. 4, 1995) (action by five migrant farm workers against a Colorado onion grower under the Agricultural Worker Protection Act, and Fair Labor Standards Act, dismissed pursuant to settlement) (lead counsel for plaintiffs).

Adame v. Holmes, No. 93-206 (S.D. Tex. Dec. 23, 1994) (breach of contract and Agricultural Worker Protection Act case by 34 migrant workers against a South Carolina peach grower, dismissed pursuant to settlement) (lead counsel for plaintiffs).

Avendano v. Ousley, No. 94-112 (S.D. Tex. Dec. 20, 1994) (action by six migrant farm workers against an Indiana grower under the Agricultural Worker Protection Act, Fair Labor Standards Act, and for breach of contract, dismissed pursuant to settlement) (lead counsel for plaintiffs).

Ousley v. Avendano, No. 94-157 (S.D. Tex. Sept. 16, 1994) (declaratory judgment action filed by grower in Indiana state court against migrant farm workers who sent demand letter, case removed to federal court, transferred to Texas, and dismissed) (lead counsel for defendants).

Moreno v. McDonald, No. 94-2610 (Tex., 332nd Dist. Ct. Aug. 30, 1994) (breach of contract action by three migrant workers against a Michigan pickle farmer) (lead counsel for plaintiffs).

Balderas v. Holmes, No. 94-024 (W.D. Tex. June 5, 1994) (action by 29 migrant farm workers against a South Carolina peach grower under the Agricultural Worker Protection Act, Fair Labor Standards Act, and for breach of contract, dismissed pursuant to settlement) (lead counsel for plaintiffs).

Escutia v. Bloomfield Big Burley Tobacco Warehouse, No. 93-180 (S.D. Tex. May 4, 1994) (action by five migrant farm workers against Kentucky tobacco farms and warehouses under the Agricultural Worker Protection Act, and Fair Labor Standards Act, dismissed pursuant to settlement) (lead counsel for plaintiffs).

Sosa v. Wailuku Agribusiness Co., No. 92-129 (S.D. Tex. Feb. 17, 1994) (action by 27 migrant farm workers against a Hawaii pineapple company under the Agricultural Worker Protection Act, Fair Labor Standards Act, Title VII, and common law, dismissed pursuant to settlement on the day of trial following grant of partial summary judgment for plaintiffs) (lead counsel for plaintiffs).

Vilches v. Pace Foods, Inc., No. 93-151 (S.D. Tex. Sept. 20, 1993) (class action under Agricultural Worker Protection Act, and collective action under Fair Labor Standards Act, brought by seven jalapeno harvesters against a food processor, settled for individual damages and class-wide consent agreement) (lead counsel for plaintiffs).

Gaona v. Barker, No. 93-1573 (Tex., 370th Dist. Ct. Sept. 20, 1993) (judgment for three migrant workers in breach of contract action against a Mississippi combine operator) (lead counsel for plaintiffs).

Former Employees of Sundor v. Department of Labor, No. 92-177 (Ct. Int'l Trade Apr. 7, 1993) (judicial review of administrative decision denying eligibility for trade adjustment assistance to

105 former employees of a juice plant, remanded to the agency for further investigation) (lead counsel for plaintiffs).

Regino v. Falak, No. 92-176 (S.D. Tex. Jan. 6, 1993) (action by eight migrant farm workers against a Michigan fruit grower under the Agricultural Worker Protection Act, dismissed pursuant to settlement) (lead counsel for plaintiffs).

Sanchez v. Salazar's Farms, Inc., No. 92-217 (S.D. Tex. Dec. 22, 1992) (action brought by striking jalapeno pickers under Agricultural Worker Protection Act, and Fair Labor Standards Act, dismissed as part of strike settlement) (lead counsel for plaintiffs).

Quintanilla v. Pioneer Hi-Bred International, Inc., No. 92-051 (S.D. Tex. consent agreement entered June 17, 1992) (class action for injunctive relief under disclosure and wage statement provisions of the Agricultural Worker Protection Act, with claims for damages by 22 individuals, settled for individual damages and class-wide consent agreement) (lead counsel for plaintiffs).

Sanchez v. Harnish, No. 91-229 (S.D. Tex. Apr. 21, 1992) (agreed judgment for 17 migrant farm workers in breach of contract and Agricultural Worker Protection Act case against an Indiana grower) (lead counsel for plaintiffs).

Strike Negotiations

Salazar's Farms, Inc., 221 Daily Lab. Rep. A-1 (BNA Nov. 16, 1992) (strike by 80 field workers against farm that employed them to pick and destem jalapenos, settled for wage increase of more than fifty percent and other concessions) (lead negotiator for striking workers).

Santa Sarita, Inc., 6 Daily Lab. Rep. A-4 (BNA Jan. 9, 1992) (strike by 175 packing shed workers, settled for change in pay system from piece rate to hourly rate resulting in sixty percent increase in worker earnings and improved working conditions) (lead negotiator for striking workers).

Rio Grande Valley Sugar Growers, Inc., 229 Daily Lab. Rep. A-12 (BNA Nov. 27, 1991) (five-day strike by 120 truck drivers and 245 field workers against a sugar mill, settled for wage increases and other concessions valued at more \$560,000 per season) (lead negotiator for striking workers).

Presentations at Academic and Educational Seminars

Georgetown University Law Center, Public Interest Fellows Program, "Pursuing a Career in Public Interest Law," Washington, DC, March 2016.

Catholic University of America, Columbus School of Law, Symposium on The Intersection of Civil Rights and Civil Procedure, "The Federal Rules as Interpreted through Case Law," Washington, DC, January 2016.

American Bar Association, Administrative Law Conference, “After Rule-Making: Administrative Adjudication,” Washington, DC, October 2015.

American University Washington College of Law, “Pursuing a Career in Public Interest Law,” Washington, DC, February 2009, October 2013, September 2015.

American University Washington College of Law, “Public Interest Practice: Perspectives from the Field,” Washington, DC, March 2015.

National Consumer Law Center, Experienced FDCPA Litigators’ Meeting, “Ethical Issues: Individual and Class Action Retainer Agreements, Attorneys’ Fees, Incentive Awards, and Settlements,” Washington, DC, March 2015.

Low Wage Worker Legal Network, “Using the Administrative Procedure Act to Advance Workers’ Rights,” Portland, OR, January 2015.

PILnet International Fellowship, “Clinical Legal Education in the United States,” Washington, DC, January 2015.

George Washington University Law School, The Tension Between Academic Freedom and State Open Records Laws, “Why the Federal FOIA Does Not Fit the Problem,” and “The Rationales for Disclosure and Withholding,” Washington, DC, April 2014.

Cardozo School of Law, Winter Seminar on Lawyering in Washington, DC, “Public Interest Lawyering,” Washington, DC, January 2012, January 2013, January 2014.

General Services Administration, Federal Advisory Committee Act Management Training Course, “The Public Interest Perspective,” Washington, DC, March 2005, May 2005, August 2005, March 2006, June 2006, August 2006, March 2007, June 2007, November 2007, May 2008, August 2008, December 2008, March 2009, June 2009, March 2010, May 2010, November 2010, March 2011, June 2011, November 2011, March 2012, May 2012, June 2012, August 2012, November 2012, March 2013, November 2013, June 2014.

National Employment Lawyers Association, Preventing Wage Theft: A Guide to Litigating Cases Involving Wages, Hours and Work, “Ethical Considerations In Representing Workers In Wage and Hour Actions,” Chicago, IL, March 2013.

Catholic University of America, Columbus School of Law, “Ethical Issues in Externships,” Washington, DC, February 2008, March 2010, March 2012, March 2013.

Impact Fund, 10th Annual Class Action Conference, “Litigating Disparate Impact Testing Cases: Opportunities After *Dukes*,” Berkeley, CA, March 2012.

Georgetown University Law Center, Institute for Public Representation, “Ethics in Public Interest Law,” Washington, DC, October 2011, February 2012.

George Washington University Law School, Student Bar Association, “Public Interest Lawyering: An Introduction,” Washington, DC, January 2012.

General Services Administration, 2011 Federal Advisory Committee Act Training Conference, “Transparency and Public Participation in Advisory Committee Meetings,” Washington, DC, September 2011.

Fordham Law School, Symposium on Official and Municipal Liability for Constitutional and Intentional Torts, “The Repudiation of *Saucier v. Katz* and Its Consequences in The Courts,” New York, NY, April 2011.

George Washington University Law School, National Lawyers Guild, “Progressive Lawyering Career Panel: Successful Attorneys Discuss Working in the Law Without Compromising Their Ethics,” Washington, DC, February 2011.

U.S. Department of State, International Visitor Leadership Program, “The Role of NGOs in Promoting Government Transparency and Accountability,” Washington, DC, September 2010.

Texas RioGrande Legal Aid, Attorney’s Fees Basics for Legal Aid Attorneys, “Ethics and Attorney’s Fees,” “Nuts and Bolts of Seeking Court Awarded Attorney’s Fees,” and “Common Issues in Attorney’s Fees Litigation,” San Antonio, TX, March 2010.

Georgetown University Law Center, Institute for Public Representation, “The Client Interview,” Washington, DC, September 2009.

U.S. Department of Housing and Urban Development, Manufactured Housing Consensus Committee, “MHCC and the Federal Advisory Committee Community,” Arlington, VA, July 2009.

University of Texas School of Law, Recovering Unpaid Wages for Low-Income Workers, “Ethical Issues in Wage Recovery Practice,” Austin, TX, June 2009.

Jack Kent Cooke Foundation, Advanced Mentorship Program, “An Introduction to Public Interest Law,” and “An Introduction to Constitutional Law,” Yale University, New Haven, CT, June 2008.

American University Washington College of Law, First Annual Public Interest Alumni Dinner, Keynote Speech: “Public Interest Law—Where We’ve Been and Where We’re Going,” Washington, DC, February 2008.

General Services Administration, Federal Advisory Committee Act Training Conference, “Encouraging Public Participation in Advisory Committee Meetings,” Washington, DC, December 2007.

Georgetown University Law Center, Government Accountability Seminar, “Holding the Government Accountable for Failures in Disaster Preparedness and Response,” Washington, DC, October 2007.

Georgetown University Law Center, National Lawyers Guild, Law Student Disorientation, “Radical Lawyering in a Corporate Law Environment,” Washington, DC, September 2007.

The Texas Lyceum, 22nd Public Conference: Separation of Church and State, “Public Interest Litigation,” Austin, TX, July 2007.

National Lawyers Guild, Mid-Atlantic Regional Convention, “Strategies for Pursuing Social Justice in an Era of Economic Globalization,” Washington, DC, March 2006.
Harvard Law School, Office of Public Interest Advising, “A Career in Public Interest Law,” Cambridge, MA, January 2006.

National Employment Lawyers Association, Impact Litigation: Representing Workers in Class, Collective, and Multiple Plaintiff Actions, “Employment Testing: Trends and Tactics,” Cambridge, MA, October 2005.

Society for Industrial and Organizational Psychology, Annual Conference, “Cut Scores in Employment Discrimination Cases: Where We Are Today,” Los Angeles, CA, April 2005.

Society for Industrial and Organizational Psychology, Annual Conference, “Retrospective Research in Complex Organizations for Legal Defensibility,” Los Angeles, CA, April 2005.

NAACP Legal Defense and Educational Fund, Civil Rights Training Institute, “Practical Issues in Litigating Entry Into the Workforce: Challenging Artificial Barriers Using the Disparate Impact Theory,” Warrenton, VA, October 2004.

Department of Justice, Civil Rights Division, “Lessons Learned: Litigation Strategies for Complex Disparate Impact Cases,” Washington, DC, January 2004.

Department of Justice, Civil Rights Division, New Lawyer Training, “Trial Strategies for Title VII Cases,” Washington, DC, March 2003.

American Immigration Lawyers Association, DC Chapter, “Employment Law for Immigration Lawyers: The Employment Rights of Undocumented Workers After *Hoffman Plastic Compounds, Inc. v. NLRB*,” Washington, DC, September 2002.

Department of Justice, Civil Rights Division, New Lawyer Training, “Discovery Techniques for Title VII Cases,” Washington, DC, March 2001.

American University Washington College of Law, Office of Career Services, “Opportunities in Public Interest Law,” Washington, DC, November 1999.

American University Washington College of Law, Admitted Applicants Day, "Preparing for a Career in Public Interest Law," Washington, DC, April 1999.

Department of Justice, Civil Rights Division, New Lawyer Training, "Investigating the Employment Practices of State and Local Governments," Washington, DC, March 1999.

National Lawyers Guild, National Convention, "The Globalization of Labor," Detroit, MI, October 1998.

U.S. Information Agency, International Visitor Program, "Civil Rights Litigation in the United States," Washington, DC, June 1998.

American University Washington College of Law, Law and Government Society, "Working for Federal Government Agencies," Washington, DC, January 1998.

American University Washington College of Law, Pro Bono Day, "Alumni Experiences in Public Interest Law," Washington, DC, April 1996.

Midwest Migrant Health Project, "An Introduction to Farm Worker Rights Under the Agricultural Worker Protection Act and the Fair Labor Standards Act," Mercedes, TX, March 1995.

Agricultural Employers Mediation Conference, "Special Issues in Agricultural Employment," South Padre Island, TX, February 1995.

National Association for Public Interest Law, National Conference, "Representing Rural Communities," Washington, DC, October 1994.

Texas Rural Legal Aid, Migrant Advocates Annual Meeting, "Long Arm Jurisdiction After *Aviles v. Kunkle*," South Padre Island, TX, June 1994.

National Migrant Legal Services Conference, "Taking the Employer's Deposition," Ft. Worth, TX, March, 1994.

National Lawyers Guild, Tex-Oma Regional Conference, "Post-NAFTA Agenda: A look at the Proposed Labor Side Agreement," San Antonio, TX, January 1994.

Eastern Stream Migrant Advocates Meeting, "Discovery Issues in Joint Employment Cases," Charleston, SC, November 1993.

National Association for Public Interest Law, National Conference, "Fulfilling the Need: Working in Rural Areas," Washington, DC, October 1993.

National Lawyers Guild, Tex-Oma Regional Conference, "Protecting Farm Worker Rights," Austin, TX, February, 1992.

Houston Refugee Pro Bono Project, Representation in Deportation and Asylum Proceedings, “Political Asylum In Canada,” Houston, TX, February 1988, July 1988.

Public Service

AUWCL Public Interest Alumni Advisory Board July 2013-present
Appointed by the Dean to advise the law school on increasing opportunities for students committed to public interest law.

National Lawyers Guild
Litigation Fund Board of Directors 2012-present
DC Chapter Executive Board 1996-2007
DC Chapter Co-Chair 2002-2005
National Executive Committee and Regional Vice President 1996-1998

District of Columbia Occupational Safety and Health Board Apr. 2014-Apr. 2015
Appointed by the Mayor and confirmed by the Council to represent the public labor sector.

Jack Kent Cooke Foundation, Law and Policy Mentor June 2008-July 2009
Guided high-achieving and under-privileged high school students in development of individual projects related to law and policy. Taught one-week intensive course on constitutional law. Lectured on law and policy topics and participated in interdisciplinary discussions with mentors from other fields.

Harvard Law School, Wasserstein Public Interest Fellow Sept. 2007-May 2008
Advised students on careers in public interest law.

American Bar Association, Government Fellow Feb. 2000-Sept. 2002
Represented the public law perspective at meetings of the Equal Employment Opportunity Committee, Section of Labor and Employment Law.

Education

American University Washington College of Law, Washington, DC
J.D., *cum laude*, May 1991

Texas Christian University, Fort Worth, TX
B.A., Political Science, May 1987

Awards

Peter M. Cicchino Award for Outstanding Advocacy in the Public Interest 2008

U.S. Department of Justice Special Achievement Award Annually 1996-2002

AUWCL Dean’s Award for Professional Responsibility, Outstanding Clinical Student 1991

Publications And Testimony

Avoiding Permanent Limbo: Qualified Immunity and The Elaboration of Constitutional Rights From Saucier to Camreta (and Beyond), with Joshua Matz, 80 Fordham Law Review 643 (2011).

Title VI Disparate Impact Claims Would Not Harm National Security—A Response to Paul Taylor, with Margaret Kwoka, 46 Harvard Journal on Legislation 503 (2009).

Statement to the Senate Homeland Security and Governmental Affairs Committee, Disaster Recovery Subcommittee, December 16, 2008 (describing relief obtained by hurricane evacuees pursuant to the preliminary injunction entered in *ACORN v. FEMA*, 463 F. Supp. 2d 26 (D.D.C. 2006)).

Employment Testing: Trends and Tactics, 10 Employee Rights and Employment Policy Journal 623 (2006).

Bar Memberships

U.S. Supreme Court; U.S. Court of Appeals for the D.C., First, Fourth, Fifth, and Eleventh Circuits; U.S. District Court for the District of Columbia; District of Columbia; Texas (inactive).