

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES

|                    |   |                          |
|--------------------|---|--------------------------|
| UNITED STATES,     | ) | APPELLANT’S MOTION TO    |
|                    | ) | SUPPLEMENT THE RECORD    |
| <i>Appellee,</i>   | ) |                          |
|                    | ) |                          |
| v.                 | ) |                          |
|                    | ) | Crim. App. Dkt. No.      |
| ROBERT B. BERGDAHL | ) | ARMY 20170582            |
| Sergeant (E-5)     | ) |                          |
| U.S. Army,         | ) | USCA Dkt. No. 19-0406/AR |
|                    | ) |                          |
| <i>Appellant.</i>  | ) | September 18, 2020       |

TO THE JUDGES OF THE UNITED STATES  
COURT OF APPEALS FOR THE ARMED FORCES:

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## **Introduction**

Pursuant to Rules 30 and 30A, Sergeant Bergdahl respectfully moves to file the attached documents in support of his petition for reconsideration. The attached documents were obtained under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, on September 15, 2020. We submit these supplemental matters because they concern a fact that, in conjunction with other matters previously addressed, would lead an objective observer, fully informed of all the facts and circumstances, to harbor a significant doubt about the fairness of the proceedings. *See United States v. Boyce*, 76 M.J. 242, 249 (C.A.A.F. 2017). If, as the Court indicated, the “intolerable strain” issue is a close one, the attached documents are the straw that breaks the camel’s back.

## **Facts**

1. The trial judge was Colonel Jeffery R. Nance. On January 12, 2016, in response to *voir dire* by the defense, he stated that he had a mandatory retirement date of November 2018 and was unaware of any matter which might be grounds for challenging him. R. at 13-14.

2. On October 16, 2017, Judge Nance accepted Sergeant Bergdahl’s pleas. R. at 1676.

3. Also on October 16, 2017, President Trump made remarks in the Rose Garden about Sergeant Bergdahl and this court-martial. His remarks ratified the many

disparaging comments he had made about Sergeant Bergdahl before the 2017 Inauguration. *See generally* Def. Video Exhibit.

4. New documents show that on that same day, October 16, 2017, Judge Nance applied for a position as an immigration judge at the Department of Justice's Executive Office of Immigration Review. His application package, which was not a public document, highlighted the fact that he was the "presiding judge in U.S. v. SGT Robert Bergdahl . . . [and] [s]uffice it to say, it has received significant national and international media attention and involves many complex issues." The sole writing sample Judge Nance submitted was his February 24, 2017 order denying the defense's first UCI motion concerning President Trump's comments against Sergeant Bergdahl.

5. The Department of Justice is an executive department. As such, it falls under the control and overall supervision of the President of the United States. The Executive Office of Immigration Review hires attorneys to serve as immigration judges. These hiring decisions are discretionary and appointments are personally made by the Attorney General. The Attorney General is a member of the Cabinet and advises the President on all matters arising under the laws of the United States, 28 U.S.C. § 511, including matters of military justice such as changes to the Manual for Courts-Martial, *see* Exec. Order No. 11,030; 28 C.F.R. § 0.25(b), and clemency

matters. See Margaret Colgate Love, *War Crimes, Pardons and the Attorney General*, LAWFARE, May 22, 2019.

6. On October 17, 2017, Sergeant Bergdahl filed a renewed motion to dismiss based on President Trump's Rose Garden ratification of his pre-Inauguration statements vilifying Sergeant Bergdahl. D APP 108.

7. Judge Nance conducted a mid-trial hearing on the renewed motion on October 23, 2017. In that hearing, trial counsel was afforded an opportunity to conduct further *voir dire* of the military judge. Judge Nance stated: "I'm what's referred to as a terminal Colonel, which means I'm not going anywhere but the retirement pastures. And that's in almost a year from now." Tr. at 1724. Regarding his susceptibility to outside influence, Judge Nance said: "So that's a long way of saying, 'No, no effect on me whatsoever.' I don't expect to go anywhere but back home as soon as the Army is done with me in a year." *Id.* He did not disclose that, only a week before, he had applied for a position with the Justice Department; that he had highlighted his role in Sergeant Bergdahl's case; or that he had made his earlier rejection of the defense's motion about President Trump's actions the centerpiece of his job application.

8. On October 30, 2017, Judge Nance denied the defense's renewed motion. JA 406. He found as a fact that while Sergeant Bergdahl had elected trial by judge alone, and that President Trump is the commander in chief over all of the military

including himself, “I [Judge Nance] have no hope for or ambition for promotion beyond my current rank. . . . I am completely unaffected by any opinions President Trump may have about SGT Bergdahl. . . . As far as I know, President Trump has never said anything about me as a military judge or otherwise.” JA 407 ¶ 2(i). He concluded that the government had met its evidentiary burden of proving beyond a reasonable doubt that President Trump’s statements did not create an intolerable strain on public confidence in the military justice system and that an objective, informed observer, fully informed of all the facts and circumstances, would not harbor a significant doubt about the fairness of the proceedings. JA 409 ¶ 6(c). In support of this conclusion, Judge Nance asserted that he was immune from any outside influence: “The evidence establishes beyond a reasonable doubt that I . . . hold no fear of any repercussions from anyone if they do not agree with my sentence in this case.” *Id.*

9. Judge Nance sentenced Sergeant Bergdahl on November 2, 2017 and authenticated the record on April 28, 2018.

10. Judge Nance never disclosed to the defense that he had applied for a position as an immigration judge; when he began thinking about becoming an immigration judge; when he began working on his application; the status of his candidacy; or any negotiations over his hiring, pay grade, prospective duty assignment, ultimate acceptance, or start date.

11. Sometime between October 16, 2017 and September 28, 2018 – the precise date is unknown to us – the Justice Department hired Judge Nance. A September 28, 2018 press release from the Justice Department’s Executive Office for Immigration Review listed new hires and stated in part, “Attorney General Jeff Sessions appointed Jeffery R. Nance to begin hearing cases in October 2018.”

12. Judge Nance retired from the Army in the rank of Colonel on November 1, 2018.

13. Sergeant Bergdahl’s counsel received the attached documents on September 15, 2020.

### **Argument**

Supplementation of the record is warranted because a pivotal portion of the Opinion of the Court relied on Judge Nance’s apparent independence and immunity from outside influence. The majority wrote:

Thus, an objective, disinterested observer would conclude that *rather than being swayed by outside forces, the military judge was notably impervious to them*. Indeed, it can be said that this result—whether one agrees with it or not—stands as a testament to the strength and *independence of the military justice system*. Therefore, assertions of an appearance of unlawful command influence are once again unavailing.

Maj. Op. at 23 (emphasis added). In light of the proffered documents, an objective observer apprised of all of the facts and circumstances would know – as neither counsel nor this Court knew until now – that in the middle of Sergeant Bergdahl’s

trial Judge Nance submitted a job application to President Trump’s Justice Department. What’s more, Judge Nance denied Sergeant Bergdahl’s UCI motion based on his assurance that he was immune from influence from President Trump or anybody else. These facts must be considered in determining whether the government had carried its “evidentiary burden” beyond a reasonable doubt on the apparent UCI claim.

Applying the same standard of imputation as the Court applied in its decision, the disinterested observer would know that a military judge should “disqualify himself or herself in any proceedings in which that military judge’s impartiality might reasonably be questioned,” R.C.M. 902(a), and that the military judge here failed to disclose material that could have led to that recusal. This imputed knowledge precludes a finding that the government carried its burden of proof beyond a reasonable doubt.

In *In re Al-Nashiri*, 921 F.3d 224, 234 (D.C. Cir. 2019), the U.S. Court of Appeals for the District of Columbia Circuit held that Military Commissions Rule 902(a), which mirrors R.C.M. 902(a), focuses “not on whether a military judge harbored actual bias, but rather on what ‘would appear to a reasonable person . . . knowing all the circumstances.’” (Quoting *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860-61 (1988)). Rule 902(e) permits a ground for disqualification to be waived, but only if it is preceded by a full disclosure on the record of the basis



for the disqualification.

In *Nashiri*, Judge Vance Spath,<sup>1</sup> an Air Force military judge assigned to preside over a military commission at Guantánamo Bay, Cuba, also applied for a job as an immigration judge. 921 F.3d at 227. He also applied while presiding over a high-profile case. *Id.* He did not disclose the fact of his application, much less its details, to the defense. *Id.* As here, the facts were only uncovered later through a FOIA request rather than affirmative disclosure. *Id.* Judge Spath's job application also emphasized the high-profile case that was presently before him, and also included as his writing sample an opinion from that case that was favorable to the government. *Id.* Judge Spath, like Judge Nance, also made numerous pre-trial rulings against the accused while his job application was in preparation or pending.<sup>2</sup> *Id.* at 228.

The District of Columbia Circuit had no hesitation in concluding that Judge Spath's conduct was of a nature to "undermine his apparent neutrality." *Id.* at 237.

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<sup>1</sup> In addition to Judge Spath, whose conduct prompted the D.C. Circuit to issue a writ of mandamus disqualifying him, two other military commission judges had to be replaced when their own pursuit of employment as immigration judges came to light.

<sup>2</sup> Here, Judge Nance ruled against Sergeant Bergdahl on numerous dispositive motions in the lead-up to trial including unreasonable multiplication of charges, D APP 94; the legal insufficiency of Charge I, D APPs 66, 98; the legal insufficiency of Charge II, D APP 65; disqualification of the convening authority, D APP 34; and lack of personal jurisdiction due to the unlawful involuntary extension of Sergeant Bergdahl's enlistment contract. D APP 97.

Here, as in *Nashiri*, “in his job application packet, [Judge Nance] chose to emphasize his role as the presiding judge over [this case] . . . and he even supplied an order from [this] case as his writing sample. [Judge Nance] thus affirmatively called the Justice Department’s attention to his handling of [this] case, making his performance as presiding judge a key point in his argument for employment.” *Id.* While Judge Nance “made sure to tell the Justice Department about his assignment to [this case], he was not so forthcoming to [Sergeant Bergdahl]. At no point . . . after submitting his application did [Judge Nance] disclose his efforts to secure employment with the Executive Office for Immigration Review. Indeed, perhaps most remarkably,” [Judge Nance] mused about his future retirement. *Id.* “Given this lack of candor, a reasonable observer might wonder whether the judge had done something worth concealing.” *Id.*

There are of course differences in the two cases. *Nashiri* obtained relief on a writ of mandamus; *Bergdahl* is here on direct appellate review. *Nashiri* involved a DOJ attorney who had appeared with the government; *Bergdahl* concerns influence on an individual court-martial by the President of the United States who oversees DOJ. Although neither judge disclosed his job application to the accused, Judge Spath’s emerged while he was still detailed to *Nashiri*, while Judge Nance’s remained secret until well after completion of the trial.

The standards for judicial disqualification hew closely to those for apparent

unlawful command influence. Because both turn on the appearance of fairness to a member of the general public, the reasoning in *Nashiri* can and should inform this Court's consideration of Sergeant Bergdahl's claim. Echoing this Court's reasoning, "Unbiased, impartial adjudicators are the cornerstone of any system of justice worthy of the label." *Nashiri*, 921 F.3d at 233-34. Echoing the standards for apparent UCI, *Nashiri* focused not on whether the military judge harbored actual bias, but rather how the issue would "appear to a reasonable person ... knowing all the circumstances." *Id.* at 234 (quoting *Liljeberg*, 486 U.S. at 860-61). *See also id.* at 864 ("[J]ustice must satisfy the appearance of fairness."). Finally, paralleling the "intolerable strain" test for apparent UCI, the court in *Nashiri* concluded that Judge Spath's conduct "cast an intolerable cloud of partiality over his subsequent judicial conduct. Al-Nashiri thus has a clear and indisputable right to relief." *Nashiri*, 921 F.3d at 237.

As in *Nashiri*, a reasonable person would question the impartiality of Judge Nance in *Bergdahl*. Judge Nance--

- denied a defense motion about a President who tarnished the accused,
- basing that denial on assurances that the judge could not be influenced,
- while applying for a job to work under that very President,
- in the midst of the accused's trial,
- though not disclosing the job application,


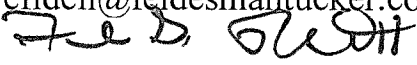
- which featured a writing sample in which he ruled for the government,
- about the same President's conduct
- towards the same accused
- in the same case.


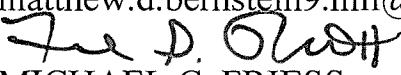
A reasonable person would also think that Judge Nance had concealed his hope for employment in the Executive Branch over which the President presides. Judge Nance bolstered his denial of the renewed UCI motion by claiming that as a retiring Colonel he was immune from influence. He stated that he was heading for "retirement pastures" and added, "I don't expect to go anywhere but back home as soon as the Army is done with me in a year." When he made those statements, the ink was barely dry on the job application he had filed only days before.

### Conclusion

For the foregoing reasons, the Court should permit the filing of the attached documents and consider them in connection with the petition for reconsideration.

Respectfully submitted,

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*Appellate Defense Counsel*

Certificate of Compliance with Rule 37(a)

This motion complies with the typeface and type style requirements of Rule 37(a).

A handwritten signature in black ink, appearing to read "F. D. Rosenblatt". The signature is stylized with a large, looped "F" and a cursive "R".

Franklin D. Rosenblatt

Certificate of Filing and Service

I certify that I filed and served the foregoing motion on September 18, 2020, by emailing copies thereof to the Clerk of the Court, the Government Appellate Division, and the *amici curiae*.

A handwritten signature in black ink, appearing to read "F. D. Rosenblatt". The signature is stylized with a large, looped "F" and a cursive "R".

Franklin D. Rosenblatt



**U.S. Department of Justice**  
Executive Office for Immigration Review  
*Office of the General Counsel*

5107 Leesburg Pike, Suite 2150  
Falls Church, Virginia 22041

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September 15, 2020

*Via E-mail at* [REDACTED]  
Franklin Rosenblatt  
[REDACTED]

Re: 2020-60055

Dear Mr. Rosenblatt:

This letter is in response to your Freedom of Information Act (FOIA) request dated August 27, 2020 to the Executive Office for Immigration Review (EOIR) in which you request records related to Immigration Judge Jeffrey Nance's application for employment at EOIR.

A search was conducted and records responsive to your request were located. With respect to your request for records related to a current federal employee, it is well-established that civilian federal employees who are not involved in law enforcement or sensitive occupations have no expectation of privacy with respect to the parts of their successful employment applications that show their qualifications for their positions. In that regard, we are granting partial access to records responsive to your request.

Certain information within the records is exempt from disclosure under the Freedom of Information Act pursuant to FOIA Exemption 6, 5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. *See* <http://www.justice.gov/oip/foiapost/2012foiapost9.html>.

You may contact the FOIA Officer or the EOIR FOIA Public Liaison by e-mail at [EOIR.FOIARequests@USDOJ.GOV](mailto:EOIR.FOIARequests@USDOJ.GOV) or by telephone number (703) 605-1297 for any further assistance and to discuss any aspect of your request. Please reference the FOIA control number. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College

Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at (202) 741-5770; toll free at (877) 684-6448; or facsimile at (202) 741-5769.

If you are not satisfied with the Executive Office for Immigration Review's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website:

<https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of this response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

**SHELLEY O'HARA**

Digitally signed by SHELLEY  
O'HARA  
Date: 2020.09.15 15:54:41 -04'00'

Shelley M. O'Hara  
Attorney Advisor (FOIA)



# Jeffery R. Nance

(b) (6)

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## **SUMMARY OF QUALIFICATIONS**

Highly accomplished judge/attorney with significant experience in the fields of criminal law, international/operational law, and employment law. An experienced litigator. Accustomed to working complex issues with multiple competing interests and making decisions in fast paced legal environments. Vast experience working with the federal interagency to achieve clients' objectives in a high-energy work environment. Experienced leader, manager, and teacher -- effective team member with strong interpersonal skills.

Top Secret clearance with SCI access.

## **PROFESSIONAL EXPERIENCE**

### **United States Army, Judge Advocate General's Corps (1988 - Present)**

#### **2nd Judicial Circuit, U.S. Army Trial Judiciary, Fort Bragg, NC (May 2016—Present)**

##### **Chief Circuit Judge**

- Perform duties comparable to those of a United States Federal District Court Judge.
- Preside over trials in General and Special Courts-Martial at various locations in the central United States and other places as required. Preside over death penalty and high profile cases as assigned – regardless of location.
- Supervise and rate five other military judges in the circuit.
- Ensure trials are conducted fairly, efficiently and in accordance with the law. Instruct jury members on the law applicable to each case. In trials without members, decide guilt or innocence and sentence if necessary.
- Supervise over 20 Military Magistrates in pre-trial confinement reviews and search authorization determinations.
- Provide regular training to dozens of trial and defense counsel.
- Serve as Editor In Chief of Military Judge's Benchbook -- a 1300 page, published legal tool for judges and litigators to use to prepare for trial and instruct the jury on the law. Supervise 6 other judges in this process

#### **3<sup>rd</sup> Judicial Circuit, U.S. Army Trial Judiciary, Fort Leavenworth, KS (May 2014—May 2016)**

##### **Chief Circuit Judge**

- Perform duties comparable to those of a United States Federal District Court Judge.
- Preside over trials in General and Special Courts-Martial at various locations in the central United States and other places as required. Preside over death penalty and high profile cases as assigned – regardless of location.
- Supervise and rate five other military judges in the circuit.
- Ensure trials are conducted fairly, efficiently and in accordance with the law. Instruct jury members on the law applicable to each case. In trials without members, decide guilt or innocence and sentence if necessary.
- Supervise 8-10 Military Magistrates in pre-trial confinement reviews and search authorization determinations.
- Provide regular training to dozens of trial and defense counsel.
- Serve as Editor In Chief of Military Judge's Benchbook -- a 1300 page, published legal tool for judges and litigators to use to prepare for trial and instruct the jury on the law. Supervise 5 other judges in this process.

**3<sup>rd</sup> Judicial Circuit, U.S. Army Trial Judiciary, Fort Leavenworth, KS (July 2011—May 2014)**

**Circuit Judge**

- Performed duties comparable to those of a United States Federal District Court Judge.
- Presided over trials in General and Special Courts-Martial at various locations in the central United States and other places as required. Presided over death penalty and high profile cases as assigned – regardless of location.
- Ensured trials are conducted fairly, efficiently and in accordance with the law. Instructed jury members on the law applicable to each case. In trials without members, decided guilt or innocence and sentence if necessary.
- Supervised 8-10 Military Magistrates in pre-trial confinement reviews and search authorization determinations.
- Provided regular training to dozens of trial and defense counsel.
- Editor of Military Judge's Benchbook -- a 1300 page, published legal tool for judges and litigators to use to prepare for trial and instruct the jury on the law. Supervised 5 other judges in this process.

**5th Judicial Circuit, U.S. Army Trial Judiciary, Vilseck, Germany (July 2008—July 2011)**

**Chief Circuit Judge**

- Performed duties comparable to those of a United States Federal District Court Judge.
- Presided over trials in General and Special Courts-Martial at various locations in the central United States and other places as required. Presided over high profile cases as assigned – regardless of location.
- Deployed to Iraq/Afghanistan and Kuwait to preside over courts-martial in theater of operations. Coordinated provision of judicial resources to entire CENTCOM and EUCOM AORs
- Supervised and rated three other military judges in the circuit.
- Ensured trials are conducted fairly, efficiently and in accordance with the law. Instructed jury members on the law applicable to each case. In trials without members, decided guilt or innocence and sentence if necessary.
- Supervised over 20 Military Magistrates located in six countries concerning pre-trial confinement reviews and search authorization determinations.
- Provided regular training to dozens of trial and defense counsel.

**4th Judicial Circuit, U.S. Army Trial Judiciary, Fort Bliss, TX (July 2005—July 2008)**

**Circuit Judge**

- Performed duties comparable to those of a United States Federal District Court Judge.
- Presided over trials in General and Special Courts-Martial at various locations in the western United States and other places as required.
- Ensured trials are conducted fairly, efficiently and in accordance with the law. Instructed jury members on the law applicable to each case. In trials without members, decided guilt or innocence and sentence if necessary.
- Supervised six Military Magistrates in pre-trial confinement reviews and search authorization determinations.
- Provided regular training to dozens of trial and defense counsel.

**U.S. Army Trial Defense Service, Fort Gordon, GA (July 2003—July 2005)**

**Regional Defense Counsel**

- Supervised, trained, and mentored 22 defense attorneys geographically dispersed in seven field offices in the Army's busiest region.
- Defended general officers and other high-profile accused soldiers for violations of the Uniform Code of Military Justice and other Army regulations and policies.
- Monitored travel budgets and defense counsel workloads.
- Organized training workshops for all defense counsel in entire U.S. Army Trial Defense Service (over 100 attorneys and paralegals).

**V Corps, Heidelberg, Heidelberg, Germany/Baghdad, Iraq (July 2001—July 2003)**

**Chief, Operational/International Law/Chief, Military Justice**

- Senior international and operational law advisor for high operations tempo, forward deployed, contingency Corps.
- Responsible for all operational law matters affecting V Corps and subordinate units.
- Deployed with Corps in this position for Operation Iraqi Freedom – dynamic high intensity contingency operation.
- Responsible for all operational law, law of war, targeting and Geneva/Hague Convention issues.
- Once in occupation phase of operation – developed, implemented and commanded the Judicial Reconstruction Assistance Team responsible for aiding Iraqi Ministry of Justice in reconstituting criminal courts in Iraq and beginning criminal trials.
- In Germany, supervised three attorneys, two paralegals and several local national employees in meeting the international and operational law needs of the Army in Germany.
- Liaised with German officials on jurisdiction, local national employment and SOFA issues.
- As Chief of Justice, responsible for all military justice issues affecting all soldiers assigned to the largest area jurisdiction in Germany. Trained, mentored and led five attorneys and numerous paralegals in four branch offices.

**U.S. Army Southern European Task Force (Airborne), Vicenza, Italy (July 1999—July 2001)****Deputy Staff Judge Advocate**

- Served as primary assistant to the Staff Judge Advocate in providing complete range of legal services to the Southern European Task Force (Airborne), a forward deployed contingency unit responsible for responding to various contingency operations within the EUCOM, CENTCOM and USAREUR areas of responsibility.
- Provided legal advice to the SETAF Commanding General and his staff.
- Responsible for day-to-day operations of the legal office.
- Lead, mentored and trained all military and civilian personnel within the office.
- Served as the Staff Judge Advocate for rear operations and when the SJA is absent.

**1<sup>st</sup> Armored Division, Bad Kreuznach, Germany (June 1997—July 1999)****Chief, Military Justice**

- Responsible for the administration of military justice within the 1<sup>st</sup> Armored Division jurisdiction. Trained, mentored and lead four prosecutors and numerous paralegals and support staff.
- Advised commanders, the SJA, the DSJA, and law enforcement on all criminal law matters.
- Managed all criminal justice matters in three branch offices throughout the jurisdiction.

**U.S. Army Litigation Division, Arlington, Virginia (July 1994—June 1996)****Litigation Attorney**

- Defended Army and DOD officials in federal court against employment discrimination claims asserted by Army civilian employees.
- Investigated facts, researched legal and regulatory issues, prepared pleadings and appeared in federal court to defend the Army position.
- Coordinated with DOJ, DOD and Army General Counsel and local installation attorneys.
- Advised the Army Staff on civilian personnel issues.

**10<sup>th</sup> Area Support Group, Okinawa, Japan (July 1991—July 1994)****Chief, Operational/International Law/Chief, Military Justice**

- Performed duties of DSJA for a general court-martial jurisdiction. Oversaw general office legal operations. Acted as SJA when SJA is absent. Served as chief of criminal and administrative law. Lead and trained numerous paralegals and local national civilian employees in providing these legal services to the command.
- Advised all commanders on criminal and administrative law matters. Served as legal advisor to law enforcement personnel.

**101<sup>st</sup> Airborne Division (Air Assault), Fort Campbell, KY (Dec 1988—July 1991)****Defense Counsel/Claims Attorney**

- In initial assignment as JAG Officer served as claims attorney. Reviewed, adjudicated and paid personnel claims. Investigated and disposed of tort claims. Pursued delinquent claims under the Federal Medical Care Recovery Act.
- In second assignment of initial tour, zealously defended numerous soldiers at jury and bench trials, achieving several acquittals and dismissal of charges.

### **SIGNIFICANT MILITARY AWARDS**

- Legion of Merit (x2)
- Bronze Star Medal
- U.S. Army Meritorious Service Medal (x6)
- U.S. Army Commendation Medal (x3)
- U.S. Army Achievement Medal (x2)
- Iraq Campaign Medal (1<sup>st</sup> and 7<sup>th</sup> Phase)
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Overseas Service Ribbon (x5)
- Air Assault Badge

### **EDUCATION**

LL.M, Military Law (Criminal Law Emphasis), The U.S. Army Judge Advocate General's School and Legal Center, Charlottesville, VA (1997)

J.D., J. Reuben Clarke School of Law, Brigham Young University, Provo, UT (1988)

B.A., Political Science, Brigham Young University, Provo, UT (1985)

### **BAR ADMISSIONS**

District of Columbia 1990

Utah 1988

United States Supreme Court 1997

### **ACADEMIC SCHOLARSHIPS AND AWARDS**

- U.S. Army ROTC Full Academic Scholarship.
- Distinguished Honor Graduate, U.S. Army Air Assault School.
- Criminal Law Specialty award with LLM Graduation.
- Awarded Level 4 (highest) Criminal Law Special Skill Identifier.

### **PUBLICATIONS AND PRESENTATIONS**

- "A View from the Bench: Proper Use of Prior Statements." The Army Lawyer, July 2011.
- "A View from the Bench: So, You Want to be a Litigator?" The Army Lawyer, November 2009.
- "Representing the Army in Civilian Personnel Cases at the Administrative Level with a View Toward Court Litigation." The Army Lawyer, May 1995.
- Presenter: "Military Justice Practice, Procedures and Current Issues." J. Reuben Clark Law Society Annual Conference, Kansas City, MO, February 14, 2014.
- Presenter: "Military Judge's Benchbook," 58<sup>th</sup> Military Judge's Course, The Judge Advocate General's School, Charlottesville, VA, April 2015.
- Presenter: "Military Judge's Benchbook," 59<sup>th</sup> Military Judge's Course, The Judge Advocate General's School, Charlottesville, VA, April 2016.
- Senior Presenter, Senior Judge Panel Discussion, U.S. Army Trial Judiciary Sexual Assault Legal Issues Training, Fort Belvoir, VA, August 2016.
- Guest Lecturer: Special Victims Counsel Regional Training, Fort Bragg, NC, March 2017.

- Presenter: "Military Judge's Benchbook," 60<sup>th</sup> Military Judge's Course, The Judge Advocate General's School, Charlottesville, VA, April 2017.
- Evaluator: Guilty Plea Practical Exercise, 60<sup>th</sup> Military Judge's Course, The Judge Advocate General's School, Charlottesville, VA, May 2017.

### **COMMUNITY ACTIVITIES**

- Law Day activities in partnership with local schools.
- Volunteer service with community groups in four countries and eight states.
- Youth development and mentorship.

**QRFs for Immigration Judge Job Announcement Number: IJ-10045466-17-TW**

**Jeffery R. Nance – Applicant**

**16 October 2017**

1) Ability to demonstrate the appropriate temperament to serve as a judge.

I have served as a military judge for over 12 years. One of the primary requirements to be selected to serve as a military judge is judicial temperament. Of course, selecting someone to the bench who has never served on the bench before involves an evaluation of their temperament without actually seeing it but by looking at other aspects of their past performance. Once on the bench as a military judge, however, if a judge does not display proper judicial temperament, he or she is soon reassigned off the bench. I have had 12 annual performance evaluations since becoming a military judge. (b)(6)

(b)(6)

I have attached

one of those evaluations to my application packet. Furthermore, my reputation among my peers, superiors and the counsel who have practiced before me for over 12 years is of impeccable, patient, thoughtful and measured judicial temperament. I think it is the most important quality a judge should possess.

3) Substantial litigation experience, preferably in a high volume context.

In 28 years as an Army lawyer and judge I have spent all but three of those years in litigation – both criminal and civil. In 12 years as a military judge, I have presided over more than 500 cases at a rate of between 40 and 80 per year. The case volume is cyclical. Sometimes I would have a docket filled every week for months with contested trials, guilty pleas and motions hearings. This required that I prepare well in advance of trials and anticipate possible issue and be ready to resolve those accurately and timely. Often the contested trials would take an entire week or more. I have presided over complex and high- profile cases including capital litigation and high profile war crimes trials while maintaining my normal docket at the same time. For three years of this time, I deployed to Iraq and Afghanistan on a regular basis and presided over cases in those combat theaters. Prior to becoming a judge I served as a defense counsel and trial counsel and civil litigation attorney in numerous jurisdictions for a total of 9 years. During my two years as a defense counsel I tried 101 court-martial of various lengths and complexities. As a trial counsel I tried nearly 100 cases in three years including several murder, rape and aggravated assault trials. As a civil litigation attorney for two years, I represented the U.S. Army in Federal district court in approximately 65 law suits claiming employment discrimination. This litigation involved extensive motions practice, deposition taking and actual bench and jury trials (the law was changed to allow jury trials in Title 7 cases just before I was assigned to this position). In other supervisory litigation positions over a three year period I tried and supervised other attorneys in trying dozens of complex criminal trials all over the world – including in Iraq and Afghanistan.

4) Experience handling complex legal issues.

I was the presiding judge in U.S. v. Hatley and U.S. v. Mayo – both charged with murdering by execution, Iraqi civilians who they had illegally detained. These cases involved conspiracy, immunity issues, multiple co-accused, and significant international media attention. Additionally, there were no dead bodies ever found and the murders took place in a combat zone in Iraq. Thus, there were complex evidentiary issues, discovery issues, witness travel issues and international law issues (the trials were held in Germany, the home base of the accused's, rather than Iraq and the Germans did not want to allow the Iraqi witnesses into Germany for the trials.) I was also the presiding judge in the case of U.S. v. SSG Daniel Rosas -- a complex drug importation and distribution conspiracy involving several soldiers from a unit that deployed for 30 day periods to Columbia to help that government interdict the cocaine trade there. The 6 soldiers in the conspiracy were charged with executing a scheme to smuggle large quantities of cocaine into the US aboard military flights and then sell that cocaine to drug dealers in and around El Paso, Texas. This was a complex case with many evidentiary issues, international law issues, and much media attention. I presided over the trial of the leader of the conspiracy (Rosas) and several other members of the conspiracy. Additionally, I was the presiding judge in U.S. v. SSG Robert Bales – a case referred to a capital trial where the accused was found guilty of murdering 16 Afghani old men, women and children. There were four lawyers for each side, extensive motions practice, complex evidentiary issues, difficult jury empaneling concerns and worldwide media attention. In my estimation and that of my superiors, I presided over these cases with expert legal ability, superb judicial temperament and application of adroit and practical solutions to procedural, security and logistics concerns. Finally, more than 200 of the more than 500 cases I have presided over as a judge and fully half of the approximately 250 cases I tried as a defense counsel or prosecutor were sexual assault trials. These cases always involve tricky privilege, privacy and evidentiary issues. Added to that the increased attention these cases have received in the past 5+ years by the media and congress and the judge's duty to ensure a fair trial only becomes harder. Still, I have always been able to properly balance the rights of the accused, the victim and the interest of society to ensure that justice is done in every case. I am currently the presiding judge in U.S. v. SGT Robert Bergdahl. Because this is ongoing litigation, I cannot give details about the issues or parties involved. Suffice to say, it has received significant national and international media attention and involves many complex issues.

6) Knowledge of judicial practices and procedures.

Five years ago I was appointed to be the editor of the U.S. Army Military Judge's Benchbook. This is a 1300+ page published treatise designed to help military judges of all services apply up to date law and criminal procedure properly. As the editor, I am required to stay abreast of new developments in the statutory and case law that affects military practice and to write, propose and make changes to the Benchbook necessary to keep the Benchbook current with the law and help judges avoid error that might otherwise occur. In addition to making approximately 15 - 20 changes each year, I recently completed a cover to cover scrub of the entire Benchbook to correct deficiencies that have developed over the past 10+ years as the treatise has been updated. Naturally, all this work requires me to have expert knowledge of the judicial practices and procedures that apply to our practice. Furthermore, I have taught these practices and procedures to new and experienced judges from all services at our annual inter-service and bi-annual army training.





d. On 19 July 2016, Mr. Trump received the Republican Party nomination for President.

e. The last public comments about the accused or his case were made on or about 9 August 2016.

f. The campaign for President in 2016, as with most political campaigns, was often marked by incendiary campaign rhetoric, not only between the opposing parties, but within each party, as numerous candidates vied for their party's nomination. In over 512 days of campaigning where Mr. Trump participated in literally hundreds of speeches and public campaign events, Mr. Trump referred to the accused in 65 separate instances. Those 65 instances total over 46 hours of total speech time. References to the accused total 28 minutes of the 46 hours.<sup>1</sup>

g. On 8 November 2016<sup>2</sup>, Mr. Trump was elected the 45th President of the United States.

## **LAW AND ANALYSIS**

3. Unlawful Command Influence (UCI) is the "mortal enemy of military justice." *United States v. Thomas*, 22 MJ 388, 393 (C.M.A. 1986). Article 37, of the Uniform Code of Military Justice (UCMJ) was enacted by Congress to prohibit commanders and convening authorities from attempting to coerce, or by unauthorized means, influence the action of a court-martial, or any member thereof, in reaching the findings or sentence in any case. Article 37(a), UCMJ. UCI is the improper use, or perception of use, of superior authority to interfere with the court-martial process. See, Gilligan and Lederer, *COURT-MARTIAL PROCEDURE*, Volume 2 §18-28.00 (2d Ed. 1999).<sup>3</sup> UCI is most often exerted on members of any of the following

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<sup>1</sup> The government avers but offers no evidence that: "A Lexis Nexis search for "Trump" together with "Bergdahl" for the entire period of Mr. Trump's campaign, a total of 512 days, results in 1,506 references. By contrast, in the *fourteen days* prior to the election a search for "Trump" and "Benghazi" results in 1,496 hits. In the *four days* prior to the election a search for "Trump" and "Obamacare" results in 1,806 hits. Attempts to search for the latter two combinations beyond those short windows were unsuccessful, because they both resulted in more than 3,000 hits. Additionally, a simple Google search for "Trump" and "Bergdahl" results in approximately 560,000 hits. By contrast, a (Google) search for "Trump" and "Benghazi" results in 5,370,000 hits; "Trump" and "Mexico Wall" results in 17,200,000; "Trump" and "Obamacare" results in 26,300,000; and "Trump" and "China" results in 111,000,000." If true, these statistics would seem to indicate that SGT Bergdahl was not a significant part of Mr. Trump's campaign strategy.

<sup>2</sup> The election took place on 8 November 2016 but the election was not called for Mr. Trump until the early morning hours of 9 November.

<sup>3</sup> No authority convening a general, special, or summary court-martial, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercises of its or his functions in the conduct of the proceedings. No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case. Article 37(a), UCMJ, 10 U.S.C. § 837(a) (2012).

populations: (1) Subordinate commanders in the preferral or referral process, (2) Potential panel members for the trial, and (3) Potential witnesses testifying in the trial. It can be exerted by commanders as well as those acting with the “mantle of command authority” and can be intentional or inadvertent.

4. UCI can manifest in a multitude of different situations. See *United States v. Gore*, 60 MJ 178, 185 (C.A.A.F. 2004). Furthermore, “[t]he term ‘unlawful command influence’ has been used broadly in our jurisprudence to cover a multitude of situations in which superiors have unlawfully controlled the actions of subordinates in the exercise of their duties under the UCMJ.” *United States v. Hamilton*, 41 MJ 32, 36 (C.M.A. 1994). UCI can occur in one of two ways: either through 1) Actual UCI or 2) Apparent UCI. Thus, even if there is no actual UCI, there may still be apparent UCI. The military judge must take affirmative steps to ensure that both forms are eradicated from the court-martial in question. *United States v. Lewis*, 63 MJ 405, 416 (C.A.A.F. 2006). The “appearance of unlawful command influence is as devastating to the military as the actual manipulation of any given trial.” *Lewis*, 63 MJ at 407. The question of whether there is apparent UCI is determined “objectively.” *Id.* This objective test for apparent UCI is similar to the tests that are applied in determining questions of implied bias of court members or in reviewing challenges to military judges for an appearance of a conflict of interest. *Id.* The focus must be on the “perception of fairness in the military justice system as viewed through the eyes of a reasonable member of the public.” *Id.* The central question to ask is whether an “objective, disinterested observer fully informed of all the facts and circumstances would harbor a significant doubt about the fairness of the proceeding.” *Id.* In *United States v. Rockwood*, 52 MJ 98, 130 (C.A.A.F. 1999), the Court noted that “public criticism of military operations – including withering critiques of strategy, tactics, personnel policies, and human rights concerns – is inherent in a democracy.” The Court noted that the prohibition against UCI does not require senior military and civilian officials to refrain from addressing such concerns, though it does prohibit those “with the mantle of command authority from deliberately orchestrating pretrial publicity with the intent to influence the results in a particular case or a series of cases, as the pretrial publicity itself may constitute unlawful command influence. Even the perception that pretrial publicity has been engineered to achieve a prohibited end – regardless of the intent of those generating the media attention – may lead to the appearance of unlawful command influence.”

5. In *United States v. Biagase*, the U.S. Court of Appeals for the Armed Forces set forth the analytical framework to be applied to allegations of UCI. The Court placed the initial low burden on the defense to raise the issue by “some evidence.” *United States v. Biagase*, 50 MJ 143, 150 (C.A.A.F. 1999). To meet this “some evidence” standard of proof, the defense must show some facts which, if true, would constitute UCI, and it must show that such evidence has a “logical connection” to the court-martial at issue in terms of potential to cause unfairness in the proceedings. *United States v. Stoneman*, 57 MJ 35, 41 (C.A.A.F. 2002). Once the issue has been raised, the

burden then shifts to the government. To meet its burden, the government may show either that there was no UCI or that any UCI will not taint these particular proceedings. If the government elects to show that there was no UCI, then it may do so either by disproving the predicate facts on which the allegation of UCI is based or by persuading the Military Judge that the facts do not constitute UCI. The government may choose not to disprove the existence of UCI but prove that the UCI will not affect these specific proceedings. Whichever tactic the government chooses, the required quantum of proof is beyond a reasonable doubt. *Stoneman*, 57 MJ at 41 (citing *Biagase*, 50 MJ at 151).

6. Even if actual or apparent UCI is found to exist, the Military Judge “has broad discretion in crafting a remedy to remove the taint of unlawful command influence,” and such a remedy will not be reversed on appeal “so long as the decision remains within that range.” *United States v. Douglas*, 68 MJ 349, 354 (C.A.A.F. 2010). The Military Judge should attempt to take proactive, curative steps to remove the taint of UCI and, therefore, ensure a fair trial. *Id.* The CAAF has long recognized that, once UCI is raised “...it is incumbent on the military judge to act in the spirit of the UCMJ by avoiding even the appearance of evil in his courtroom and by establishing the confidence of the general public in the fairness of the court-martial proceedings.” *United States v. Gore*, 60 MJ 178, 186 (C.A.A.F. 2004) (citations omitted).

7. Closely related to UCI but requiring a different burden and quantum of proof is the doctrine of unfair pretrial publicity. Pretrial publicity is unfair if it denies an accused a fair trial in violation of his 5th and 6th Amendment rights. Unfair pretrial publicity requires the accused to demonstrate some actual identifiable prejudice attributable to said pretrial publicity. *Irwin v. Dowd*, 366 US 717 (1961); *United States v. Gray*, 51 MJ 1 (1999). As an exception to that rule, when pretrial publicity is so pervasive and unfair that it saturates the community and precludes an accused from having his trial heard by a trier of fact that is not so prejudiced against him that they cannot impartially hear the evidence and decide the case according to that evidence and applicable law, prejudice is presumed and there is no further need for the accused to show actual bias. *Skilling v. United States*, 561 U.S. 358 (2010); *Gray* at 28.

8. While similar in many ways, such as the nature and scope of the factual inquiry, the potential impact on the trial and the ways to address and remedy the problems, UCI and unfair pretrial publicity differ in one important way: UCI is unique because the command nature of the military makes interference or the appearance of interference with the criminal justice system particularly devastating and pernicious. Such concerns do not exist in federal criminal courts because neither juries nor judges are subject to the command authority of anyone in the executive branch prosecuting the case. In the military justice system, everyone – juries (panel members), judges, prosecutors, defense counsel, court reporters and the commanders who decide whether to send a case to trial – is a part of the Executive branch and ultimately answerable to the President of the United States – the Chief

Executive. This structure is necessary because military justice is as much a readiness issue as it is a justice issue; thus, it must stay a function of command. However, when that same command structure is abused to weight the scales against the accused, the system fails, the accused is deprived of important constitutional guarantees of fairness and the military justice system ceases to deliver justice.

9. Nevertheless, we do not have a traditional UCI construct here because, though Commander in Chief, the President is not "subject to this chapter." Furthermore, because this is the military and the alleged unlawful influencer is the President, we do not have a traditional unfair pretrial publicity issue either. Thus, the court will analyze both.

10. As said, even were he now "subject to this chapter<sup>4</sup>," when he made the referenced comments about the accused and his alleged offenses, he was only Candidate Trump and was not then in any way "subject to this chapter." Therefore, he could not commit actual UCI. Furthermore, the Court is not persuaded that even President Trump is able to commit actual UCI. The Court finds that he is no more "subject to this chapter" now than he was before he took the oath of office. He simply has no actual ability to control what happens in the trial of the accused. He cannot select the panel members, he has no authority to control witnesses, he does not supervise the trial or defense counsel and he does not make discrete decisions about trial or pretrial matters in this case. The closer question, and the question the whole defense UCI claim turns on, is: Do the President's statements about the accused made before he was elected President carry over with him into office such that they can and do constitute apparent UCI? On this point, the defense lately cites this Court to a recently issued Memorandum Opinion from The United States District Court for the Eastern District of Virginia --Tareq Aqel Mohammed Aziz, et al., v. Donald Trump. *Aziz v. Trump*, Civil No. 17-116 (E.D. Va. Feb. 13, 2017). In this civil case, the plaintiffs petitioned the federal district court for a preliminary injunction prohibiting enforcement of Executive Order (EO) 13,769, entitled "Protecting the Nation from Foreign Terrorist Entry into the United States." The plaintiffs claimed that the EO was overbroad and, by its plain reading, applied to legal permanent residents in violation of their 1st and 5th Amendment rights. In commenting on whether the President's pre-election statements about the subject of a "Muslim Ban" should be considered in deciding whether EO 13,769 should be read to apply to a particular religious group with legal status in the United States in spite of *post hoc* assurances by the administration that it did not, the District Court, paraphrasing the US Supreme Court in an unrelated case, stated, "Just as . . . the world is not made new every morning, a person is not made new simply by taking the oath of office." *Aziz* at 15. However, this comment was made regarding the propriety of limiting the temporal scope of the purpose inquiry in a 1st Amendment establishment of religion

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<sup>4</sup> Which, by a strict reading of Article 37 and Article 2, UCMJ, he is not. Furthermore, no case law of which the Court is aware, indicates that "subject to this chapter" includes the President, much less a private citizen candidate for President.

case. The Court does not find the analysis sufficiently analogous to be helpful to the resolution of the issue here.

11. The multitude of comments<sup>5</sup> made by Candidate Trump is troubling. Doubtless, they were made without consideration of their possible impact on the trial of the accused. However, they were clearly made to enflame the passions of the voting populace against his political opponent and in Mr. Trump's favor. Candidate Trump's comments were disturbing and disappointing; however, they do not rise to the level of "some evidence" required for the defense to meet its initial burden. Apparent UCI must still be UCI and the statements of a private citizen, even if running for President, cannot be unlawful command or influence. No reasonable member of the public, apprised of all the facts and circumstances and seeing campaign rhetoric for what it is, would believe that because Candidate Trump said those troubling things and is now President Trump, the accused has been or will be denied a fair trial. This is particularly true when we consider that no member of the venire has even been questioned to determine if they are even aware of these statements or, if aware, have been improperly influenced by them.<sup>6</sup> This is simply not a matter that can be ascertained at this point in the proceedings. Add to this the fact that President Trump has, thus far, made no statement about the accused or his court-martial and the unreasonableness of any public opinion that may exist that the accused cannot get a fair trial is even starker. This fact is also strong circumstantial evidence that his comments were nothing more than inflammatory campaign rhetoric. Certainly, partisans on either side of this case or on either side of the political divide in this country may have strongly held opinions about this case. But the reasonable member of the public the law is interested in does not live at the far ends of the political spectrum. No *reasonable* member of the public, apprised of all the facts and circumstances present here, would harbor a significant doubt about the fairness of the proceeding where the potential panel members have yet to be questioned about their knowledge of the statements by Mr. Trump or their bias on the matter. It could easily be that each and every panel member questioned in *voir dire* will honestly and convincingly say they have either never heard the comments or, having heard them, would not be prejudiced against the accused by them. We simply do not know. Because of that, the defense has failed to establish some facts which, if true, would constitute UCI or establish that such evidence has a "logical connection" to this court-martial in terms of potential to cause unfairness in the proceedings. *Stoneman*, at 41. However, after *voir dire*, if it appears the landscape on this issue has changed, the defense is free to renew its motion.

12. Assuming, for the sake of argument, that the defense has met their initial burden, the government must prove beyond a reasonable doubt that there was no UCI or that any UCI will not taint these particular proceedings. If the government elects to show

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<sup>5</sup> See paragraph 2c above.

<sup>6</sup> The defense does not allege or imply that any potential witness has been intimidated into not testifying by Mr. Trump's comments. Should such occur, the Court will reconsider its ruling on this matter.

that there was no UCI, then it may do so either by disproving the predicate facts on which the allegation of UCI is based or by persuading the Military Judge that the facts do not constitute UCI. The government may choose not to disprove the existence of UCI but prove that the UCI will not affect these specific proceedings. *Id.* Here, the government has not chosen to challenge the predicate facts -- the statements by Candidate Trump. Instead, the government has sought to persuade this court that the statements do not constitute UCI or, at least, cannot be said to constitute UCI until the members are subject to *voir dire*. The Court is persuaded that this is true.

13. As previously stated, Mr. Trump's statements made as a candidate for President of the United States cannot pull him under even the apparent UCI umbrella. It is simply not logical, meaning reasonable, to conclude that because he made those statements when he was running for office in a heated and contentious campaign, now that he is President, the accused cannot possibly receive a fair trial. The reasonable observer would know that his comments were typical campaign rhetoric designed to make his opponent look bad and win support for himself. Furthermore, this reasonable member of the public will have the opportunity to observe the *voir dire* process and hear the evidence in the case as well as the Court's instructions on the law and evidence. They will know that the accused is not charged with "treason" and that the death penalty is not authorized for either of his charged offenses. The Court will take special care to ensure that the comments by Mr. Trump do not invade this trial. After all that, the reasonable member of the public will have no doubt that the accused has received a fair trial, uninfluenced by Mr. Trump's comments. It would not be appropriate or prudent for the Court to decide that is not possible without determining if the eventual fact finders have been influenced and are unable to impartially hear the evidence and instructions and give the accused a fair trial.

14. Similarly, on the issue of unfair pretrial publicity, the defense has failed<sup>7</sup> to persuade the Court that there is, at this point, some actual identifiable prejudice attributable to Mr. Trump's comments. Again, the place that might occur is amongst the prospective panel members. However, we cannot make that determination until we have had a chance to inquire into their impartiality. And, the comments by Mr. Trump that might be considered pretrial publicity are not so pervasive and unfair as to saturate the community and prevent any trier of fact from being impartial. Mr. Trump's comments about the accused were a relative few out of thousands he made as he campaigned for election for nearly two years. They made up a very small percentage of all he said to get elected and were always couched in terms of the Obama administration, necessarily including Ms. Clinton, having made a "bad deal," which Mr. Trump said he would never make. His disparagement of the accused was designed to contrast what we gave (five "really bad guys") for what we got in return (one "deserter," "traitor," etc.). The name calling and characterization of the accused's actions were designed to make that contrast, and the contrast between Mr.

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<sup>7</sup> Indeed, though they do not do so affirmatively, it appears that they concede this issue, based upon the facts and arguments they offer on this issue.




Trump and his political opponents, as stark as possible. The accused was merely the foil for delivering that political message. All reasonable members of the public and potential panel members will know that was what he was doing and will not allow the rhetoric to affect their impartiality. The cases dealing with presumptive prejudice sufficient to establish a due process violation involve media saturation covering significant facts, evidence and opinions in a particular case as well as constant exposure to a limited and discrete jury pool. None of that exists here. The pool of prospective members in this case comes from all of FORSCOM with duty assignments all over the world. The media coverage in the form of Mr. Trump's comments has not been constant, confined to a geographic area or pervasive. And, Mr. Trump has said nothing about the accused or his case since August 2016. Under these facts, the Court cannot find a due process violation sufficient to make amelioration measures futile.

15. Still, the Court recognizes that this is an unusual case, perhaps unique in all the annals of military justice. On top of the obvious unique aspects, we have a man who eventually became President of the United States and Commander in Chief of all the armed forces making conclusive and disparaging comments, while campaigning for election, about a soldier facing potential court-martial for actions that had already captured the attention of the public. The Court recognizes the problematic potential created by these facts. Therefore, in order to vigilantly ensure a fair trial, the Court will require the parties to submit a member's questionnaire on these issues which will be provided to the members well in advance of trial and returned for review by the parties well prior to *voir dire*. The Court will also allow very liberal *voir dire* on this topic. These measures are not implemented as a remedy for UCI, as the Court finds none at this point. They are provided to ensure that a thorough process for vetting the panel members is in place to ensure that there has been no UCI and that the accused receives a fair trial. If, after that process is complete, the defense believes the legal landscape has changed on this matter, they are free to renew this motion.

#### RULING

16. Defense motion is DENIED.

  
JEFFERY R. NANCE  
COL, JA  
Military Judge





**U.S. Department of Justice**  
Executive Office for Immigration Review  
*Office of Policy*  
5107 Leesburg Pike  
Falls Church, Virginia 22041

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# NOTICE

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Sept. 28, 2018

## **Executive Office for Immigration Review Swears in 46 Immigration Judges**

### **Assistant Chief Immigration Judges**

#### **John R. Doolittle, II, Assistant Chief Immigration Judge, Houston Immigration Court**

Attorney General Jeff Sessions appointed John R. Doolittle, II, to begin supervisory immigration court duties and hearing cases in October 2018. He will oversee the Houston Immigration Court. Judge Doolittle earned a Bachelor of Science in 1989 from the University of Tampa, a Juris Doctor in 1994 from the Washburn University School of Law, and a Master of Science in 2014 from the U.S. Army War College. He recently retired as a colonel and judge advocate from the U.S. Army. From 2004 to 2017, he was judge advocate for the U.S. Army in the following locations: Fort Knox, Kentucky; Naval Air Station Pensacola, Florida; Parwan, Afghanistan; Fort Gillem, Georgia; and Fort McPherson, Georgia. From 2000 to 2004, he was a trial attorney/assistant chief counsel with Immigration and Customs Enforcement, Department of Homeland Security, in Atlanta. From 1998 to 2000, he was a trial attorney/assistant district counsel with Immigration and Naturalization Service, Department of Justice, in Harlingen, Texas. From 1994 to 1998, he was an active duty judge advocate with the U.S. Army at Fort Benning and Fort McPherson, Georgia. Judge Doolittle is a member of the State Bar of Georgia.

#### **Sirce E. Owen, Assistant Chief Immigration Judge, Atlanta Immigration Court**

Attorney General Jeff Sessions appointed Sirce E. Owen to begin supervisory immigration court duties and hearing cases in October 2018. She will oversee the following immigration courts: Atlanta, Charlotte, and Stewart. Judge Owen earned a Bachelor of Science in 1996 from Johns Hopkins University, a Master of Business Administration in 2002 from Georgia State University, and a Juris Doctor in 2005 from Georgia State University. From 2016 to 2018, she was a deputy chief counsel in the Office of Chief Counsel, Office of the Principal Legal Advisor, Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS), in Atlanta. From 2008 to 2016, she was an assistant chief counsel with ICE, DHS, in Atlanta. From 2005 to 2008, she was an associate attorney with Mozley, Finlayson & Loggins LLP, in Atlanta. Judge Owen is a member of the State Bar of Georgia.

## **Immigration Judges**

### **Janette L. Allen, Immigration Judge, Los Angeles Immigration Court**

Attorney General Jeff Sessions appointed Janette L. Allen to begin hearing cases in October 2018. Judge Allen earned a Bachelor of Arts in 2004 from Trinity University and a Juris Doctor in 2008 from American University. From 2016 to 2018, she served as senior litigation counsel for Office of Immigration Litigation, Civil Division, Department of Justice. From 2008 to 2016, she was a trial attorney with the same office, where she entered on duty as a law clerk in 2007 through the Attorney General's Honors Program. Judge Allen is a member of the Maryland State Bar.

### **Eric C. Bales, Immigration Judge, Fort Worth Immigration Adjudication Center**

Attorney General Jeff Sessions appointed Eric C. Bales to begin hearing cases in October 2018. Judge Bales earned a Bachelor of Arts in 1998 from Texas A&M University and a Juris Doctor in 2008 from the Ave Maria School of Law. From 2016 to 2018, he was an assistant chief counsel, Office of the Chief Counsel, Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS), in Dallas. From 2010 to 2016, he was an assistant chief counsel, Office of the Chief Counsel, ICE, DHS, in San Antonio, Texas. From 2008 to 2010, he was a general attorney with the Office of Associate Chief Counsel, Customs and Border Protection, DHS, in Miami. He has been a judge advocate with the Texas Army National Guard since 2014. Judge Bales is a member of the State Bar of Texas.

### **Audra R. Behné, Immigration Judge, Falls Church Immigration Adjudication Center**

Attorney General Jeff Sessions appointed Audra R. Behné to begin hearing cases in October 2018. Judge Behné earned a Bachelor of Arts in 1992 from California State University, Northridge, and a Juris Doctor in 1995 from the Southwestern University School of Law. From 2014 to 2018, she was senior pro bono coordinating attorney for Kids In Need of Defense in Los Angeles. From 2004 to 2018, she was an attorney in private practice. From 2001 to 2004, she was an associate attorney for Fragomen, Del Rey, Bernsen & Loewy, LLP, in Los Angeles. From 1996 to 2001, she was a senior attorney with Korenberg, Abramowitz & Feldun in Encino, California. Judge Behné is a member of the State Bar of California.

### **M. Audrey Carr, Immigration Judge, Bloomington Immigration Court**

Attorney General Jeff Sessions appointed M. Audrey Carr to begin hearing cases in October 2018. Judge Carr earned a Bachelor of Arts in 1986 from Earlham College, a Master of Business Administration in 1994 from Rensselaer Polytechnic Institute, and a Juris Doctor in 1997 from St. Mary's University School of Law. From 2009 to 2018, she was director of immigration and special programs with Legal Services NYC in New York. From 2007 to 2009, she was an attorney with the Westchester Hispanic Coalition in Mount Vernon, New York. From 2006 to 2007, she was an attorney in private practice in Carmel, New York. From 2000 to 2006, she was an attorney with the Michael H. Davis Law Office, P.A. in Minneapolis. From 1998 to 2000, she was a staff attorney with the Minnesota Advocates for Human Rights in Minneapolis. Judge Carr is a member of the New York State Bar.

**Julian Castaneda, Immigration Judge, Eloy Immigration Court**

Attorney General Jeff Sessions appointed Julian Castaneda to begin hearing cases in October 2018. Judge Castaneda earned a Bachelor of Arts in 1997 from the University of Texas at San Antonio and a Juris Doctor in 2005 from the University of South Dakota School of Law. From 2016 to 2018, he served as an assistant U.S. attorney at the U.S. Attorney's Office for the Southern District of Texas in Laredo, Texas. From 2014 to 2016, he was an assistant district attorney with the Starr County District Attorney's Office in Rio Grande City, Texas. From 2013 to 2014, he was an assistant county attorney in Starr County. From 2011 to 2012, he was an assistant district attorney with the Starr County District Attorney's Office in Rio Grande City, Texas. From 2008 to 2011, he was an assistant criminal district attorney in the Hildago County Office of the Criminal District Attorney in Edinburg, Texas. Judge Castaneda is a member of the State Bar of Texas.

**Hye Y. Chon, Immigration Judge, Los Angeles Immigration Court**

Attorney General Jeff Sessions appointed Hye Y. Chon to begin hearing cases in October 2018. Judge Chon earned a Bachelor of Arts in 1995 from the University of California, Los Angeles, and a Juris Doctor in 1999 from the University of California, Hastings College of the Law in San Francisco. From 2006 to 2018, she was an assistant chief counsel with Immigration and Customs Enforcement, Department of Homeland Security, in Los Angeles. From 2011 to 2012, she served as a special assistant U.S. attorney at the U.S. Attorney's Office for the Central District of California in Los Angeles. From 2002 to 2006, she was an attorney with the California Supreme Court in San Francisco. From 1999 to 2002, she was a deputy attorney general with the California Office of the Attorney General in Los Angeles. Judge Chon is a member of the State Bar of California.

**Grady A. Crooks, Immigration Judge, LaSalle Immigration Court**

Attorney General Jeff Sessions appointed Grady A. Crooks to begin hearing cases in October 2018. Judge Crooks earned a Bachelor of Science in 1996 from North Dakota State University, a Master of Arts in 1999 from The George Washington University, and a Juris Doctor in 2004 from the Rutgers University School of Law. In 2017, he served as an assistant U.S. attorney at the U.S. Attorney's Office for the Western District of Louisiana in Shreveport, Louisiana. From 2005 to 2016, he was an attorney for the U.S. Air Force in the following locations: Barksdale Air Force Base, Louisiana; Guantánamo Bay, Cuba; Hurlburt Field, Florida; International Security Assistance Force in Kabul, Afghanistan; Baghdad, Iraq; Tyndall Air Force Base, Florida; and Offutt Air Force Base, Nebraska. Judge Crooks is a member of the District of Columbia Bar.

**Samuel M. Factor, Immigration Judge, New York City Immigration Court**

Attorney General Jeff Sessions appointed Samuel M. Factor to begin hearing cases in October 2018. Judge Factor earned a Bachelor of Arts in 1995 and a Bachelor of Science in 2002, both from the City University of New York, College of Staten Island, and a Juris Doctor in 1998 from the Benjamin N. Cardozo School of Law. From 2010 to 2018, he was an administrative law judge with the Office of Temporary and Disability Assistance, State of New York, in Brooklyn. From 2007 to 2010, he was an agency attorney with the Department of Homeless Services, City of New York. Judge Factor is a member of the New York State Bar and District of Columbia Bar.

**Emily N. Farrar-Crockett, Immigration Judge, Falls Church Immigration Adjudication Center**

Attorney General Jeff Sessions appointed Emily N. Farrar-Crockett to begin hearing cases in October 2018. Judge Farrar-Crockett earned a Bachelor of Science in 1997 from Murray State University and a Juris Doctor in 2001 from Tulane Law School. From 2015 to 2018, she was an immigration attorney in private practice in Louisville, Kentucky. From 2013 to 2015, she was an associate immigration attorney with McClain DeWees, PLLC, in Louisville. From 2001 to 2013, she was an attorney with the Louisville Metro Public Defender Office. In the same office, concurrently from 2006 to 2013, she was the deputy division chief of the Juvenile Trial Division. Judge Farrar-Crockett is a member of the Kentucky Bar.

**Lorely Ramirez Fernandez, Immigration Judge, Otero Immigration Court**

Attorney General Jeff Sessions appointed Lorely Ramirez Fernandez to begin hearing cases in October 2018. Judge Fernandez earned a Bachelor in Business Administration in 2001 from Our Lady of the Lake University and a Juris Doctor in 2004 from the University of Houston Law Center. From 2007 to 2016, she was an assistant chief counsel, and from 2016 to 2018 a senior attorney, with the Office of the Principal Legal Advisor, Immigration Customs Enforcement, Department of Homeland Security, in El Paso, Texas. In 2007, she was a staff attorney with Las Americas Immigrant Advocacy Center in El Paso. From 2005 to 2007, she was an associate with Spector & Spector in El Paso. Judge Fernandez is a member of the Texas State Bar.

**Laura C. Figueroa, Immigration Judge, San Francisco Immigration Court**

Attorney General Jeff Sessions appointed Laura C. Figueroa to begin hearing cases in October 2018. Judge Figueroa earned a Bachelor of Arts in 2003 from the University of Texas at San Antonio and a Juris Doctor in 2007 from the Southern Methodist University Dedman School of Law. From 2017 to 2018, she was an immigration attorney in private practice. From 2013 to 2016, she was an attorney and partner with Figueroa & Jiménez, PLLC. From 2010 to 2013, she was an immigration attorney in private practice. From 2008 to 2010, she was an associate attorney with the Law Offices of Gerald M. Gonzales, P.C. All positions were in San Antonio, Texas. Judge Figueroa is a member of the Texas State Bar.

**Charles Neil Floyd, Immigration Judge, Tacoma Immigration Court**

Attorney General Jeff Sessions appointed Charles Neil Floyd to begin hearing cases in October 2018. Judge Floyd earned a Bachelor of Science in 1991 from Harding University and a Juris Doctor in 1997 from the University of Arkansas School of Law. From 2009 to 2018, he was an assistant chief counsel with Immigration Customs Enforcement, Department of Homeland Security, in Tacoma, Washington. From 2004 to 2009, he served as an assistant U.S. attorney at the U.S. Attorney's Office for the District of Columbia. From 1998 to 2004, he was a judge advocate with the U.S. Army in Fort Benning, Georgia and Joint Base Lewis-McChord near Tacoma, Washington. In 2016, he also deployed to Bagdad, Iraq. Judge Floyd is a member of the Arkansas Bar and the Washington State Bar.

**Leon J. Francis, Immigration Judge, Los Angeles Immigration Court**

Attorney General Jeff Sessions appointed Leon J. Francis to begin hearing cases in October 2018. Judge Francis earned a Bachelor of Arts in 1993 from Boise State University, a Juris Doctor in 1996 from Gonzaga University School of Law, and a Master of Laws in 2009 from the Judge Advocate General's Legal Center and School. From 1996 to 2018, he was a judge advocate with the U.S. Marine Corps in the following locations: Kaneohe, Hawaii; Camp Pendleton, California; Pentagon, Washington, D.C.; Camp Hansen, Okinawa, Japan; and Yuma, Arizona. He served as a military judge for the last six years of his military career. Judge Francis is a member of the Idaho State Bar.

**Steven B. Fuller, Immigration Judge, LaSalle Immigration Court**

Attorney General Jeff Sessions appointed Steven B. Fuller to begin hearing cases in October 2018. Judge Fuller earned a Bachelor of Arts in 1997 from Auburn University and a Juris Doctor in 2000 from Regent University School of Law. From 2016 to 2018, he was an assistant chief counsel with Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS) in Lumpkin, Georgia. From 2014 to 2016, he was an associate attorney with the Pearson Law Firm, P.C., in Belton, Texas. From 2009 to 2014, he was an assistant center counsel with the U.S. Army at Fort Hood, Texas. From 2008 to 2009, he was an assistant chief counsel with ICE, DHS, in Lumpkin, Georgia. From 2001 to 2008, he was an attorney with the U.S. Army Judge Advocate General's Corps in these locations: Fort Hood, Texas; Fort Benning, Georgia; and Tikrit, Iraq. Judge Fuller is a member of the Texas State Bar and the Kentucky Bar.

**Marni Guerrero, Immigration Judge, Los Angeles Immigration Court**

Attorney General Jeff Sessions appointed Marni Guerrero to begin hearing cases in October 2018. Judge Guerrero earned a Bachelor of Science in 1999 from Arizona State University, a Juris Doctor in 2003 from the Arizona State University Sandra Day O'Connor College of Law, and a Master of International Affairs in 2010 from the Columbia University School of International and Public Affairs. From 2017 to 2018, she was an assistant chief counsel with Immigration and Customs Enforcement, Department of Homeland Security. From 2013 to 2017, she was in private practice. From 2010 to 2013, she served as an assistant U.S. attorney at the U.S. Attorney's Office for the District of Arizona. From 2003 to 2008, she was an attorney with Roush, McCracken, Guerrero, Miller & Ortega in Arizona. Judge Guerrero is a member of the State Bar of Arizona.

**Monica Thompson Guidry, Immigration Judge, Fort Worth Immigration Adjudication Center**

Attorney General Jeff Sessions appointed Monica Thompson Guidry to begin hearing cases in October 2018. Judge Guidry earned a Bachelor of Science in 1984 and a Master of Arts degree in 1987 from Sam Houston State University. She earned a Juris Doctor in 1997 from South Texas College of Law. From 2009 to 2018, she was a deputy chief counsel with Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS), in Houston. From 2002 to 2009, she was an assistant district counsel and an assistant chief counsel with ICE, DHS, first in Los Angeles and later in Houston. From 2000 to 2002, she was an attorney and regulatory specialist with the Alfred Mann Institute at the University of Southern California in Los Angeles. From 1998 to 2000, she was an attorney with the U.S. Department of Labor in Kansas City, Missouri. Judge Guidry is a member of the State Bar of Texas.

**Brandon L. Hart, Immigration Judge, Fort Worth Immigration Adjudication Center**

Attorney General Jeff Sessions appointed Brandon L. Hart to begin hearing cases in October 2018. Judge Hart earned a Bachelor of Science in 1993 from Brigham Young University, a Juris Doctor in 1996 from the University of Utah, and a Master of Laws in 2007 from McGill University. From 1996 to 2018, he was a judge advocate with the U.S. Air Force, retiring as a colonel, in the following locations: Keesler Air Force Base, Mississippi; Kadena Air Base, Okinawa, Japan; Grand Forks Air Base, North Dakota; Offutt Air Force Base, Nebraska; Balad Air Base, Iraq; Yokota Air Base, Japan; Nellis Air Force Base, Nevada; Incirlik Air Base, Turkey; and Hickam Air Force Base, Hawaii. Judge Hart is a member of the Utah State Bar and the State Bar of Nevada.

**Alice Song Hartye, Immigration Judge, York Immigration Court**

Attorney General Jeff Sessions appointed Alice Song Hartye to begin hearing cases in October 2018. Judge Hartye earned a Bachelor of Arts in 2000 from Dickinson College and a Juris Doctor in 2005 from the Pennsylvania State University. From 2006 to 2018, she was an assistant chief counsel with Immigration and Customs Enforcement, Department of Homeland Security in York, Pennsylvania and Phoenix. From 2014 to 2015 and 2012 to 2013, she served as a special assistant U.S. attorney at the U.S. Attorney's Office for the Middle District of Pennsylvania in Harrisburg, Pennsylvania. From 2005 to 2006, she was a judicial law clerk, entering on duty through the Attorney General's Honors Program, with immigration courts in Dallas and El Paso, Texas. Judge Hartye is a member of the Pennsylvania Bar.

**Richard C. Jacobs, Immigration Judge, Fort Worth Immigration Adjudication Center**

Attorney General Jeff Sessions appointed Richard C. Jacobs to begin hearing cases in October 2018. Judge Jacobs earned a Bachelor of Arts in 1992 from Sonoma State University, a Master of Arts degree in 1994 from San Francisco State University, and a Juris Doctor in 2000 from the University of Miami School of Law. From 2008 to 2018, he was assistant chief counsel and then deputy chief counsel with the Immigration and Customs Enforcement, Department of Homeland Security, in Miami and Orlando. From 2010 to 2012, this service included being a special assistant U.S. attorney at the U.S. Attorney's Office for the Southern District of Florida. From 2000 to 2008, he was an assistant state attorney with the Eleventh Judicial Circuit, State Attorney's Office, in Miami. Judge Jacobs is a member of The Florida Bar.

**Jaime Jasso, Immigration Judge, Imperial Immigration Court**

Attorney General Jeff Sessions appointed Jaime Jasso to begin hearing cases in October 2018. Judge Jasso earned a Bachelor of Arts in 1995 from Stanford University and a Juris Doctor in 1998 from Whittier Law School. From 2001 to 2018, he was an attorney in private practice. From 1999 to 2000, he was an associate attorney and then a managing attorney for the Pasadena Legal Center in Pasadena, California. Judge Jasso is a member of the State Bar of California.

**Carlos R. Juelle, Immigration Judge, Los Angeles Immigration Court**

Attorney General Jeff Sessions appointed Carlos R. Juelle to begin hearing cases in October 2018. Judge Juelle earned a Bachelor of Arts in 1989 from the University of California, Los Angeles, and a Juris Doctor in 1996 from Pepperdine University School of Law. From 2002 to 2018, he was a managing partner with Herrera & Juelle, LLP, in Downey, California. From 1997 to 2000, he was an attorney with Stein Shostak Shostak & O'Hara in Los Angeles. Judge Juelle is a member of the State Bar of California.

**Brent H. Landis, Immigration Judge, LaSalle Immigration Court**

Attorney General Jeff Sessions appointed Brent H. Landis to begin hearing cases in October 2018. Judge Landis earned a Bachelor of Science in 1982 from Metropolitan State University and a Juris Doctor in 1985 from DePaul University. From 2000 to 2018, he was a senior attorney with Immigration and Customs Enforcement, Department of Homeland Security, in Phoenix. From 1989 to 2011, he was an attorney with the Judge Advocate General's Corps, U.S. Air Force in the following locations: Luke Air Force Base, Arizona; Air Reserve Personnel Center, Colorado; Washington, D.C.; Holloman Air Force Base, New Mexico; and Vandenberg Air Force Base, California. From 1986 to 1987, he was a staff attorney with Levine, Shifrin & Associates in Schaumburg, Illinois. Judge Landis is a member of the Illinois State Bar and Colorado State Bar.

**Joseph T. Leonard, Immigration Judge, Fort Worth Immigration Adjudication Center**

Attorney General Jeff Sessions appointed Joseph T. Leonard to begin hearing cases in October 2018. Judge Leonard earned a Bachelor of Arts in 1999 from Texas A&M University and a Juris Doctor in 2002 from the University of Texas School of Law. From 2008 to 2018, he served as an assistant U.S. attorney at the U.S. Attorney's Office for the Southern District of Texas, first in Brownsville and later in McAllen. From 2005 to 2008, he was an assistant district attorney in Hidalgo County, Texas. In 2005, he was an attorney in private practice. From 2003 to 2005, he was an assistant county attorney in Williamson County, Texas. From 2002 to 2003, he was an associate with Fitzbaugh & Elliott, P.C., in Houston. Judge Leonard is a member of the State Bar of Texas.

**Hugo R. Martinez, Immigration Judge, Fort Worth Immigration Adjudication Center**

Attorney General Jeff Sessions appointed Hugo R. Martinez to begin hearing cases in October 2018. Judge Martinez earned a Bachelor of Arts in 2001 from Texas Wesleyan University and a Juris Doctor in 2004 from Texas A&M University School of Law. From 2010 to 2018, he served as an assistant U.S. attorney at the U.S. Attorney's Office for the Southern District of Texas in Corpus Christi, Texas. From 2005 to 2010 he was assistant district attorney for the Tarrant County District Attorney's Office in Fort Worth, Texas. In 2004, he was a law clerk with the Reina, Bates & Kowaski Immigration Law Group in Dallas. Judge Martinez is a member of the State Bar of Texas.

Judge Martinez is a member of the State Bar of Texas.

**Nicholas A. Martz, Immigration Judge, Los Angeles Immigration Court**

Attorney General Jeff Sessions appointed Nicholas A. Martz to begin hearing cases in October 2018. Judge Martz earned a Bachelor of Arts in 1998 from Boston College, a Juris Doctor in 2007 from Florida State University, and a Master of Laws degree in 2012 from the U.S. Army Judge Advocate General's Legal Center and School. He served in the Marine Corps as a Judge Advocate from 2007 to 2018 and as a Marine officer from 1998 to 2018. Judge Martz is a member of The Florida Bar and the Washington State Bar.

**Todd A. Masters, Immigration Judge, Boston Immigration Court**

Attorney General Jeff Sessions appointed Todd A. Masters to begin hearing cases in October 2018. Judge Masters earned a Bachelor of Science in 1992 from the U.S. Naval Academy, a Master of Arts degree in 1993 from the University of Maryland at College Park, and a Juris Doctor in 2005 from Boston College Law School. From 2008 to 2018, he served as an assistant chief counsel and deputy chief counsel for the Office of Chief Counsel, Immigration and Customs Enforcement, Department of Homeland Security, in Boston. From 2005 to 2008, he served as an assistant district attorney for the Suffolk County District Attorney's Office, also in Boston. From 1992 to 2002, he served in the U.S. Navy. Judge Masters is a member of the Massachusetts Bar.



**Jennifer A. May, Immigration Judge, Fort Worth Immigration Adjudication Center**

Attorney General Jeff Sessions appointed Jennifer A. May to begin hearing cases in October 2018. Judge May earned a Bachelor of Arts in 1992 from William Jewell College and a Juris Doctor in 1996 from the University of Missouri-Kansas City School of Law. From 2006 to 2018, she served as an assistant chief counsel for Immigration and Customs Enforcement, Department of Homeland Security, in Kansas City, Missouri. From 1999 to 2006, she was an assistant prosecuting attorney for the Clay County Prosecutor's Office, Family Support Division, in Liberty, Missouri. From 1996 to 1999, she was an assistant prosecuting attorney for the Lafayette County Prosecutor's Office in Lexington, Missouri. Judge May is a member of the Kansas Bar and Missouri Bar.

**Paul A. McCloskey, Immigration Judge, Arlington Immigration Court**

Attorney General Jeff Sessions appointed Paul A. McCloskey to begin hearing cases in October 2018. Judge McCloskey earned a Bachelor of Science in 1996 from Towson State University and a Juris Doctor in 1999 from the University of Maryland School of Law. From 2002 to 2018, he served in several positions with the Office of the Principal Legal Advisor, Immigration and Customs Enforcement, Department of Homeland Security, in Washington, D.C. From 2016 to 2018, he was an associate deputy principal legal advisor for Field Legal Operations. From 2014 to 2016, he was deputy chief of the Criminal Law Section. From 2010 to 2014 he was an associate legal advisor in the Criminal Law Section. From 2008 to 2010, he was an associate legal advisor in the Enforcement Law Division, serving on a detail as a trial attorney in the Domestic Security Section, Criminal Division, Department of Justice. From 2002 to 2008, he was an assistant chief counsel in Baltimore and New Orleans. From 2001 to 2002, he was a senior immigration officer in the Office of Congressional Relations with the former Immigration and Naturalization Service (INS) in Washington, D.C. From 1999 to 2001, he was a presidential management intern with INS in Washington, D.C. Judge McCloskey is a member of the Maryland State Bar.

**Francisco Mendez, Immigration Judge, Arlington Immigration Court**

Attorney General Jeff Sessions appointed Francisco Mendez to begin hearing cases in October 2018. Judge Mendez earned a Bachelor of Arts in 1992 from Fordham University and a Juris Doctor in 1995 from Fordham Law School. From 2011 to 2018, he was an administrative judge for the Defense Office of Hearings and Appeals, Department of Defense (DOD), in Arlington, Virginia. From 2003 to 2011, he was a trial attorney for DOD, also in Arlington. From 1996 to 2016, he served as a judge advocate in the U.S. Air Force, six years on active duty and 14 years in the reserves. Judge Mendez is a member of the New York State Bar.

**Abby L. Meyer, Immigration Judge, Omaha Immigration Court**

Attorney General Jeff Sessions appointed Abby L. Meyer to begin hearing cases in October 2018. Judge Meyer earned a Bachelor of Arts in 2004 from Simpson College and a Juris Doctor in 2007 from the University of Nebraska College of Law. From 2010 to 2018, she served as an assistant chief counsel for Immigration and Customs Enforcement, Department of Homeland Security (DHS), in Atlanta and in Omaha, Nebraska. From 2007 to 2010, she was an immigration services officer for U.S. Citizenship and Immigration Services, DHS, in Fairfax, Virginia. Judge Meyer is a member of the Virginia State Bar.

**Jeffrey S. Miller, Immigration Judge, Los Angeles Immigration Court**

Attorney General Jeff Sessions appointed Jeffrey S. Miller to begin hearing cases in October 2018. Judge Miller earned a Bachelor of Science in 1996 from Berry College and a Juris Doctor in 2006 from Florida Coastal School of Law. From 2010 to 2018, he served as an assistant U.S. attorney at the U.S. Attorney's Office for the Southern District of Texas in Corpus Christi, Texas. From 2008 to 2010, as a member of the U.S. Coast Guard Judge Advocate General Corps, he served as a special assistant U.S. attorney at the U.S. Attorney's Office for the Middle District of Florida in Tampa, Florida. From 2006 to 2008, he served as an assistant state attorney in Jacksonville, Florida. From 2005 to present, he continues to serve in the U.S. Coast Guard Reserves Legal Services Command in Alameda, California. Judge Miller is a member of The Florida State Bar.

**Dion A. Morwood, Immigration Judge, San Francisco Immigration Court**

Attorney General Jeff Sessions appointed Dion A. Morwood to begin hearing cases in October 2018. Judge Morwood earned a Bachelor of Arts in 2000 from Utah State University and a Juris Doctor in 2008 from Brigham Young University. From 2014 to 2018, he served as deputy chief counsel with the Office of the Principal Legal Advisor (OPLA), Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS) in Adelanto, California. From 2009 to 2014, he served as an assistant chief counsel with OPLA, ICE, DHS, in Adelanto, California and Florence, Arizona. From 2008 to 2009, he served as a judicial law clerk and attorney advisor with the Executive Office for Immigration Review, Department of Justice, entering on duty through the Attorney General's Honors Program. From 1997 to 2004, he served in the Utah Army National Guard. Judge Morwood is a member of the Utah State Bar.

**Jeffery R. Nance, Immigration Judge, Stewart Immigration Court**

Attorney General Jeff Sessions appointed Jeffery R. Nance to begin hearing cases in October 2018. Judge Nance earned a Bachelor of Arts in 1985 from Brigham Young University, a Juris Doctor from the J. Reuben Clarke School of Law, also at Brigham Young University, in 1988, and a Master of Laws degree in 1997 from the Judge Advocate General's Legal Center and School. From 1998 to 2018, he was an attorney, circuit judge, and chief circuit judge with the U.S. Army in the following locations: Fort Bragg, North Carolina; Fort Leavenworth, Kansas; Vilseck, Germany; Fort Bliss, Texas; Fort Gordon, Georgia; Heidelberg, Germany; Baghdad, Iraq; Vicenza, Italy; Bad Kreuznach, Germany; Okinawa, Japan; and Fort Campbell, Kentucky. Judge Nance is a member of the District of Columbia Bar and Utah State Bar.

**Brian T. Palmer, Immigration Judge, New York Immigration Court**

Attorney General Jeff Sessions appointed Brian T. Palmer to begin hearing cases in October 2018. Judge Palmer earned a Bachelor of Arts in 1982 from the Brockport State University of New York, a Juris Doctor in 1986 from the Western New England College School of Law, and a Masters of Law in 1992 from The Judge Advocate General's Legal Center and School. From 1987 to 2018, he served as an attorney, judge, and commanding officer in the U.S. Marine Corps in the following locations: Washington, D.C.; Camp Lejeune, North Carolina; Parris Island, South Carolina; Norfolk, Virginia; Okinawa, Japan; Stuttgart, Germany; Kaneohe Bay, Hawaii; and Cherry Point, North Carolina. Additionally, he served in combat zone deployments to Saudi Arabia, Kuwait, Kosovo, and Afghanistan. From 1986 to 1987, he was a private practice associate attorney in East Hartford, Connecticut. Judge Palmer is a member of the Connecticut Bar, Hawaii Bar, and the District of Columbia Bar.

**Sebastian T. Patti, Immigration Judge, Los Angeles Immigration Court**

Attorney General Jeff Sessions appointed Sebastian T. Patti to begin hearing cases in October 2018. Judge Patti earned a Bachelor of Arts in 1975 from Duke University and a Juris Doctor in 1978 from the University of Kansas School of Law. From 2011 to 2018, he was presiding judge with the Domestic Violence Division, Circuit Court of Cook County, Illinois. From 2010 to 2011, he was a judge with the Chancery Division, Circuit Court of Cook County. From 2009 to 2010, he was a judge with the Illinois Appellate Court in Chicago. From 1998 to 2009, he was a supervising judge with the Housing Section, Circuit Court of Cook County. From 1995 to 1998, he was a judge with the Circuit Court of Cook County. From 1979 to 1995, he was a regional counsel for the U.S. Environmental Protection Agency in Chicago. Judge Patti is a member of the Kansas Bar and the Illinois State Bar.

**Anne Kristina Perry, Immigration Judge, Los Angeles Immigration Court**

Attorney General Jeff Sessions appointed Anne Kristina Perry to begin hearing cases in October 2018. Judge Perry earned a Bachelor of Arts in 1978 from the University of California, Los Angeles, and a Juris Doctor in 1981 from the Loyola Law School. From 1991 to 2018, she served as an assistant U.S. attorney at the U.S. Attorney's Office for the Southern District of California in San Diego. From 2007 to 2018, she also served as a volunteer judge pro tempore for the San Diego Superior Court. From 1987 to 1991, she served as an assistant U.S. attorney at the U.S. Attorney's Office for the District of Nevada. From 1983 to 1987, she was a deputy attorney general with the State of Nevada. From 1982 to 1983, she was a deputy district attorney in Clark County, Nevada. Judge Perry is a member of the Nevada State Bar and the State Bar of California.

**Arya S. Ranasinghe, Immigration Judge, Newark Immigration Court**

Attorney General Jeff Sessions appointed Arya S. Ranasinghe to begin hearing cases in October 2018. Judge Ranasinghe earned a Bachelor of Arts in 2002 from the State University of New York at Stony Brook and a Juris Doctor in 2006 from the Touro College Jacob D. Fuchsberg Law Center. From 2008 to 2018, she served as an assistant chief counsel for the Office of Chief Counsel, Immigration and Customs Enforcement, Department of Homeland Security, in Newark, New Jersey. From 2007 to 2008, she was an associate attorney at Christophe & Associates, P.C. in New York City. Judge Ranasinghe is a member of the New Jersey State Bar and the New York State Bar.

**Anita L. Simons, Immigration Judge, Los Angeles Immigration Court**

Attorney General Jeff Sessions appointed Anita L. Simons to begin hearing cases in October 2018. Judge Simons earned dual Bachelor of Arts degrees in 1999 from the University of Arizona and a Juris Doctor in 2005 from the University of Arizona James E. Rogers College of Law. From 2013 to 2018, she served as an administrative law judge with the Executive Hearing Office, Arizona Department of Transportation. From 2007 to 2013, she was a deputy county attorney with the Criminal Division, Pima County Attorney's Office, in Arizona. Judge Simons is a member of the State Bar of Arizona.

**Vance H. Spath, Immigration Judge, Arlington Immigration Court**

Attorney General Jeff Sessions appointed Vance H. Spath to begin hearing cases in October 2018. Judge Spath earned a Bachelor of Arts in 1987 from Virginia Wesleyan University, a Juris Doctor in 1991 from Quinnipiac University, and a Master of Laws in 2001 from the Judge Advocate General's Legal Center and School. From 1993 to 2018, he was an attorney and judge with the U.S. Air Force in the following locations: Joint Base Andrews, Maryland; Kadena Air Base, Japan; Travis Air Force Base, California; F.E. Warren Air Force Base, Wyoming; Bolling Air Force Base, Maryland; Shriever Air Force Base, Colorado; Randolph Air Force Base, Colorado; Wright-Patterson Air Force Base, Ohio; Randolph Air Force Base, Texas; and Ramstein Air Force Base, Germany. Judge Spath is a member of the New York State Bar.

**Oshea Denise Spencer, Immigration Judge, New York City Immigration Court**

Attorney General Jeff Sessions appointed Oshea Denise Spencer to begin hearing cases in October 2018. Judge Spencer earned a Bachelor of Arts in 1994 from the University of Texas and a Juris Doctor in 1997 from the University of Texas at Austin School of Law. In 2018, she was an attorney for the Public Utility Commission of Texas in Austin. From 2005 to 2018, she was an associate municipal court judge in Baytown, Texas. From 2003 to 2013, she was an assistant district attorney in Richmond, Texas. From 2000 to 2002, she was director of scholarship management for NACME, Inc. in New York. From 1997 to 2000, she was an assistant district attorney in Bronx, New York. Judge Spencer is a member of the New York State Bar and the State Bar of Texas.

**Shadee M. Star, Immigration Judge, San Francisco Immigration Court**

Attorney General Jeff Sessions appointed Shadee M. Star to begin hearing cases in October 2018. Judge Star earned a Bachelor of Arts in 1996 from California State University, Fullerton, and a Juris Doctor in 1999 from Stetson University College of Law. From 2010 to 2018, she was a senior attorney for Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS) in Los Angeles. From 2003 to 2010, she was an assistant chief counsel for ICE, DHS, also in Los Angeles. From 2000 to 2003, she was an attorney with the Law Office of Machiavelli W. Chao in Irvine, California. Judge Star is a member of the State Bar of California.

**Brock E. Taylor, Immigration Judge, Otero Immigration Court**

Attorney General Jeff Sessions appointed Brock E. Taylor to begin hearing cases in October 2018. Judge Taylor earned a Bachelor of Arts in 2001 from Brigham Young University, a Master of Public Policy degree in 2005 from Duke University, and a Juris Doctor in 2005 from Harvard Law School. From 2012 to 2018, he served as an assistant U.S. attorney at the U.S. Attorney's Office for the District of New Mexico. From 2010 to 2012, he was an attorney-advisor for the National Security Division, DOJ. From 2009 to 2010, he was a law clerk for the Honorable Eugene E. Siler, Jr., Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit in London, Kentucky. From 2008 to 2009, he was a law clerk for the Honorable Robert C. Brack, District Judge for the U.S. District Court for the District of New Mexico. From 2005 to 2008, he was an analyst with the Central Intelligence Agency. Judge Taylor is a member of the District of Columbia Bar.

**Cassie A. Thogersen, Immigration Judge, LaSalle Immigration Court**

Attorney General Jeff Sessions appointed Cassie A. Thogersen to begin hearing cases in October 2018. Judge Thogersen earned a Bachelor of Arts in 1993 from Southeastern Louisiana University, a Master of Social Work in 1996 from Washington University, and a Juris Doctor in 1999 from the University of Wisconsin Law School. From 2014 to 2018, she served as deputy chief counsel, and from 2008 to 2014 as an assistant chief counsel, in the Office of Chief Counsel, Immigration and Customs Enforcement, Department of Homeland Security in Oakdale, Louisiana. From 2001 to 2008, she served as a senior attorney advisor in the Office of General Counsel, Department of Health and Human Services (HHS) in Rockville, Maryland. This experience included, in 2006, a detail as a special assistant U.S. attorney at the U.S. Attorney's Office for the District of Columbia. From 1999 to 2001, she was a policy analyst in the Division of Regulatory and Legal Affairs, Indian Health Service, HHS, in Rockville, Maryland. Judge Thogersen is a member of the Louisiana State Bar.

**Cynthia Shepherd Torg, Immigration Judge, Arlington Immigration Court**

Attorney General Jeff Sessions appointed Cynthia Shepherd Torg to begin hearing cases in October 2018. Judge Torg earned a Bachelor of Arts in 1989 from the University of Virginia and a Juris Doctor in 1992 from the University of Virginia School of Law. From 1998 to 2018, she was a senior trial attorney for the Organized Crime and Gang Section, Criminal Division, Department of Justice (DOJ), in Washington, D.C. From 2004 to 2008, she was chief counsel, Human Smuggling and Trafficking Center, Criminal Division, DOJ, in Washington, D.C. From 1993 to 1998, she was an assistant commonwealth's attorney in Virginia Beach, Virginia. From 1992 to 1993, she clerked for the Honorable Tommy E. Miller, U.S. District Court in the Eastern District of Virginia in Norfolk. Judge Torg is a member of the Virginia State Bar.

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