

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Derrick Kahala Watson

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

United States District Judge for the District of Hawaii

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

United States Attorney's Office
District of Hawaii
300 Ala Moana Boulevard, Room 6-100
Honolulu, Hawaii 96850

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

1966; Honolulu, Hawaii

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

1988 – 1991, Harvard Law School; J.D., 1991
1984 – 1988, Harvard College; A.B. (*cum laude*), 1988

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2007 – present
United States Attorney's Office
District of Hawaii
300 Ala Moana Boulevard, Room 6-100
Honolulu, Hawaii 96850

Chief, Civil Division (2009 – present)
Assistant United States Attorney (2007 – 2009)

2000 – 2007
Farella Braun + Martel LLP
235 Montgomery Street
San Francisco, California 94104
Partner (2003 – 2007)
Special Counsel (2000 – 2002)

2000
McCutchen Doyle Brown & Enersen (now Bingham McCutchen)
Three Embarcadero Center
San Francisco, California 94111
Of Counsel

1995 – 2000
United States Attorney's Office
Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102
Deputy Chief, Civil Division (1999 – 2000)
Assistant United States Attorney (1995 – 1999)

Summer 1990, 1991 – 1995
Landels, Ripley & Diamond (firm no longer exists)
350 The Embarcadero
San Francisco, California 94105
Associate Attorney (1991 – 1995)
Summer Associate (Summer 1990)

1988 – 1991 (during school year only)
Kummel Library of the Geological Sciences
Harvard University
24 Oxford Street
Cambridge, Massachusetts 02138
Library Clerk

Summer 1989
Pettit & Martin (firm no longer exists)
601 13th Street, N.W.
Washington, D.C. 20005
Summer Associate

Other Affiliations (uncompensated):

2010 – present
Prince Kuhio Child Care Center/Rainbow School
300 Ala Moana Boulevard
Honolulu, Hawaii 96850
Member, Board of Directors (2010 – 2012)
Secretary (2012 – present)

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

1998 – 2006
United States Army Reserve, Captain, Judge Advocate General's Corps
Honorable Discharge

I registered for the selective service upon turning age 18.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Bronze Medal, United States Environmental Protection Agency (2010)

Certificate and Coin of Commendation, United States Customs & Border Protection, Field Operations (2010)

National Defense Service Ribbon (2004)

Army Commendation Ribbon (2000)

Army Achievement Ribbon (2000)

Army Service Ribbon (1999)

Director's Award for Superior Performance as an Assistant United States Attorney, United States Department of Justice (1999)

Award of Excellence, Department of Veterans Affairs, Office of Inspector General (1998)

Director's Award, United States Department of Health & Human Services, National Health Service Corps (1997)

Commendation, United States Army Litigation Division (1996)

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

American Bar Association (1991 – 1995; 2001 – 2007; 2012 – present)

Committee on Superfund and Natural Resource Damages Litigation, Section on Environment, Energy and Resources

Vice-Chair, Year in Review (2003 – 2006)

Newsletter Editor (2006)

Federal Bar Association (2001 – 2006; 2012 – present)

National Asian Pacific American Bar Association (2012 – present)

Native Hawaiian Bar Association (2012 – present)

San Francisco Bar Association (1991 – 1995; 2001 – 2007)

United States District Court for the District of Hawaii, Delegate (2012 – present)

10. **Bar and Court Admission:**

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

California, 1991

Hawaii, admission pending

There have been no lapses in membership.

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

Supreme Court of the United States, 2003

United States Court of Appeals for the Ninth Circuit, 1992

United States District Court for the Northern District of California, 1991

United States District Court for the Southern District of California, 1992

United States District Court for the Central District of California, 1992

United States District Court for the Eastern District of California, 1992

United States District Court for the District of Hawaii, 2007

Courts of the State of California, 1991

There have been no lapses in membership.

11. Memberships:

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

Hawaiian Civic Club of Honolulu (2012 – present)

Knights of Columbus (2006 – 2007)

Prince Kuhio Child Care Center/Rainbow School
Member, Board of Directors (2010 – 2012)
Secretary (2012 – present)

Waialae-Kahala Athletic Club (2011 – present)

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

To my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

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

American Bar Association, Section on Environment, Energy and Resources, Year in Review: Superfund and Natural Resource Damages Litigation (annually from 2003 – 2006). Copies supplied.

Editor, American Bar Association, Section on Environment, Energy and Resources, Superfund and Natural Resource Damages Litigation Committee Newsletter, March 2006. Copy supplied.

D. Watson, *Ninth Circuit Holds That "Hybrid" RCRA Claims Are Not Subject To RCRA Notice Provisions*, 2004. Copy supplied.

D. Watson, *Ninth Circuit Adopts "Bright-Line" Statute Of Limitations Standard For CERCLA Remedial Cost Recovery Actions*, 2004. Copy supplied.

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

I have not prepared or contributed to the preparation of any such reports, memoranda or policy statements.

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

I have not prepared any such testimony, official statements or other communications.

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

January 26, 2007: I spoke on Natural Resource Damages Litigation Cause of Action Elements and Defenses as part of a Law Seminars International workshop on Natural Resource Damages in Hawaii and the Pacific. Materials supplied.

2000: In approximately 2000, I taught part of a writing class for Department of Justice paralegals at the National Advocacy Center in Columbia, South Carolina. I have no notes, transcript or recording. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

1999: In approximately 1999, I taught a moot court class at Castro Valley High School in Castro Valley, California. I have no notes, transcript or recording. The address of Castro Valley High School is 19400 Santa Maria Avenue, Castro Valley, California 94546.

1999: In approximately 1999, I spoke to a real estate industry group in the Bay Area on the Financial Institutions Reform, Recovery and Enforcement Act, and the government's civil penalty initiatives to combat consumer mortgage fraud. I have no notes, transcript or recording, and do not recall the name of the industry group to which I spoke.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Alan Boyle, *Atom-smasher Fears Spark Lawsuit*, msnbc.com, Mar. 28, 2008. Copy supplied.

Judge Sides with Coast Guard on Harbor Safety Zone, Associated Press, Oct. 6, 2007. Copy supplied.

Firm Hired for Superferry Study, Honolulu Advertiser, Oct. 6, 2007. Copy supplied.

Sharon Simonson, *Environmental Concerns Scuttle Sobrato's Deal to Buy Land*, Silicon Valley/San Jose Business Journal, Mar. 23, 2003. Copy supplied.

Angelica Pence, *Old Building, New Brew*, San Francisco Chronicle, June 15, 2002. Copy supplied.

Dennis J. Opatrny, *Over There*, The Recorder, Oct. 9, 2001. Copy supplied.

Lisa Davis, *School of Scandal*, SF Weekly, Oct. 29, 1997. Copy supplied.

Rick DelVecchio, *Laney College, Veterans Accused of GI Bill Fraud*, San Francisco Chronicle, July 4, 1996. Copy supplied.

Richard Liefer, *U.S. Targets 500 Veterans in \$5 Million GI Bill Fraud*, Chicago Tribune, June 30, 1996. Copy supplied.

Sandra Ann Harris, *Veterans Sought in G.I. Bill Scam*, United Press International, June 28, 1996. Copy supplied.

Associated Press, *Reneging East Bay Doctor Owes \$292,000*, Daily Journal, June 7, 1996. Copy supplied.

Wire Reports, *Court Orders Doctor to Pay Bill*, Oakland Tribune, June 7, 1996. Copy supplied.

Jim Herron Zamora, *Psychiatrist Owes U.S. \$292,000*, San Francisco Examiner, June 6, 1996. Copy supplied.

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

I have not held any judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

- i. Of these, approximately what percent were:

jury trials: _____%
bench trials: _____% [total 100%]

civil proceedings: _____%
criminal proceedings: _____% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

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

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

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

I have not held any public office. I have not been an unsuccessful candidate for an elective office, nor have I been an unsuccessful nominee for an appointed office.

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

I have not been a member of or held office in any political party or election committee. I have not held a position or played a role in a political campaign.

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

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

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

I did not serve as a clerk to a judge.

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

I have never practiced law alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1991 – 1995

Landels, Ripley & Diamond (firm no longer exists)
350 The Embarcadero
San Francisco, California 94105
Associate Attorney

1995 – 2000

United States Attorney's Office
Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102
Deputy Chief, Civil Division (1999 – 2000)
Assistant United States Attorney (1995 – 1999)

2000

McCutchen Doyle Brown & Enersen (now Bingham McCutchen)
Three Embarcadero Center
San Francisco, California 94111
Of Counsel

2000 – 2007
Farella Braun + Martel LLP
235 Montgomery Street
San Francisco, California 94104
Partner (2003 – 2007)
Special Counsel (2000 – 2002)

2007 – present
United States Attorney's Office
District of Hawaii
300 Ala Moana Boulevard, Room 6-100
Honolulu, Hawaii 96850
Chief, Civil Division (2009 – present)
Assistant United States Attorney (2007 – 2009)

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

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

My twenty-one years of law practice have been almost equally divided between large firm private practice and federal government service.

From 1991 to 1995, and then again from 2000 to 2007, I worked as an associate attorney, of counsel, special counsel and equity partner primarily at two San Francisco law firms, specializing in product liability, toxic tort and environmental cost recovery litigation. My responsibilities began with fact investigation, pleading, and case management, and eventually grew to discovery, motions and hearing practice, and trial. While I also occasionally counseled clients on compliance with state and federal environmental regulations, at least 95% of my work involved litigation, principally in federal court.

From 1995 to 2000, and then again from 2007 to present, I served, and am currently serving, as an Assistant United States Attorney, first in the Northern District of California, and now in the District of Hawaii. In both jurisdictions and over both time periods, my responsibilities have been largely the same: representing the United States, and its departments,

agencies and employees, in all manner of civil litigation, almost exclusively in federal court, at both the trial and appellate court levels. My caseload has been wide-ranging, involving claims under the Federal Tort Claims Act, employment discrimination and harassment actions under Title VII and the ADEA, individual capacity claims brought against government employees for alleged constitutional violations, programmatic challenges under the Administrative Procedure Act, and privacy and information claims under the Privacy Act and Freedom of Information Act, among many others.

As an Assistant United States Attorney, I have also held supervisory positions. From 1999 to 2000, I was one of two Deputy Chiefs in the Civil Division in the Northern District of California. In that role, in addition to maintaining my own defensive litigation caseload, I directly supervised the Financial Litigation Unit, the Environmental Unit, and the San Jose, California satellite office that collectively included eight other Assistant United States Attorneys, as well as numerous paralegals and staff. I was also the approving authority for all appellate briefs filed by the Civil Division in the United States Court of Appeals for the Ninth Circuit. From 2009 to present, I have been the Chief of the Civil Division in the District of Hawaii. In this capacity, I directly supervise four other Assistant United States Attorneys and seven staff members, including the office's Financial Litigation Unit. In addition to my administrative and supervisory responsibilities, I maintain a caseload that focuses on affirmative fraud investigations and prosecutions involving the False Claims Act, and defending tort claims brought under the Federal Tort Claims Act.

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

While in private practice (1991 – 1995; 2000 – 2007), I principally represented large companies, such as the General Electric Company and FMC Corporation, in product liability and environmental cost recovery litigation in federal court.

While in government service (1995 – 2000; 2007 – present), my only client has been the United States government, including its departments, agencies and employees, and I have specialized in defending tort and employment discrimination actions in federal court.

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

My practice has been almost exclusively litigation-based for the entirety of my legal career. At Landels, Ripley & Diamond, from 1991 to 1995, I appeared several times a month throughout the California state court system, even as a junior associate, as a result of an extremely active product liability docket. My court appearances increased when I became an Assistant United States Attorney. From 1995 to 2000, I generally appeared multiple times each week before the United States District Court for the Northern District of California, and occasionally before the United States Court of Appeals for the Ninth Circuit. From 2000 to 2007, when I returned to private practice, I infrequently appeared in court, and when I did, it was usually before one of the federal district courts in California. Since 2007, as an Assistant United States Attorney in the District of Hawaii, I usually appear in federal district court a few times per month, though my appearances have generally tapered since early 2009 when I became Chief of the Civil Division.

i. Indicate the percentage of your practice in:

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

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|------|
| 1. civil proceedings: | 100% |
| 2. criminal proceedings: | 0% |

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried six civil cases to verdict, judgment or final decision. I served as sole counsel in one, lead counsel in four, and second chair in one.

i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 17% |
| 2. non-jury: | 83% |

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases

were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Futi v. United States*, Civ. No. 08-00403, 2010 WL 2900328 (D. Haw. 2010) (Seabright, J.)

I served as lead counsel for the United States throughout the defense of this Federal Tort Claims Act case involving the alleged wrongful death of an infant detained along with his mother and traveling nurse by Customs and Border Protection (“CBP”) at the Honolulu International Airport. Through extensive fact and expert witness interviews and depositions, including those of the infant’s parents and health care providers in American Samoa and experts in Texas, Illinois and California, Plaintiffs first agreed to abandon their assertion that CBP failed to render emergency assistance when the infant initially went into respiratory distress. Then, after suggesting, drafting and implementing an extensive trial briefing protocol stipulated to in lieu of trial, I successfully argued that CBP’s actions at the Airport could not have been the cause of the infant’s death as a matter of Hawaii tort law. I took and defended nearly all of the more than twenty-five depositions, developed the litigation strategy and served as principal author of the United States’ trial briefs.

Co-Counsel: Gregory J. Martin, Department of Homeland Security, Customs and Border Protection, Office of Assistant Chief Counsel, 555 Battery Street, Suite 116, San Francisco, California 94111, (415) 782-9473.

Opposing Counsel: L. Richard Fried, Jr., Howard G. McPherson, Cronin Fried Sekiya Kekina & Fairbanks, 841 Bishop Street, Suite 600, Honolulu, Hawaii 96813, (808) 524-1433.

2. *Rouse v. United States Department of State*, Civ. No. 05-00620 (D. Haw.) (King, J.), *aff’d*, 567 F.3d 408 (9th Cir. 2008)

I served as lead appellate counsel for the government in defense of this Privacy Act suit initiated by a United States citizen arrested in the Philippines. Plaintiff asserted that the State Department’s failure to maintain accurate records of his arrest, inquiries and protests prevented third parties who requested copies of his

file from promptly securing his release. Plaintiff also complained that the State Department failed to itself secure his release because of inadequate diplomatic efforts. Affirming the district court, the Ninth Circuit determined that Plaintiff's claims were untimely, and that even if Plaintiff could show that the government failed to properly maintain his records, he could not show that that was the reason for his inability to secure an early release. Further, the Court concluded that the Privacy Act did not vest Plaintiff with a right to a particular level of diplomatic effort on his behalf. AUSA Lawrence L. Tong handled the case at the district court level, AUSA Tong and I co-wrote the government's appellate brief, and I both argued the matter before the Ninth Circuit and wrote the government's response to Plaintiff's petition for rehearing.

Co-Counsel: Lawrence L. Tong, Assistant United States Attorney, United States Attorney's Office, District of Hawaii, 300 Ala Moana Boulevard, Room 6-100, Honolulu, Hawaii 96850, (808) 440-9230.

Opposing Counsel: Kari E. Hong, Law Offices of Kari E. Hong, 1300 Clay Street, Suite 600, Oakland, California 94612, (510) 384-4524.

3. *Wong v. Bush*, Civ. No. 07-00484 (D. Haw.) (Gillmor, J.), *aff'd*, 542 F.3d 732 (9th Cir. 2008)

I served as lead government counsel throughout the defense of this action challenging the authority of the United States Coast Guard to enact protective "security zones" in proximity to the Hawaii Superferry. Plaintiffs alleged in particular that Coast Guard security zone regulations violated their First Amendment protest rights, including their right to physically blockade the Superferry from entering Nawiliwili Harbor on Kauai. Denying Plaintiffs' request for a temporary restraining order and for other injunctive relief, the district court held that Plaintiffs lacked standing, the Coast Guard had the authority to enact the challenged security zones and complied with both the Administrative Procedure Act and the National Environmental Policy Act ("NEPA") in doing so, and that the security zones did not violate Plaintiffs' First Amendment rights. Affirming all but the district court's ruling on standing, the Ninth Circuit determined that Title 50 authorized the Coast Guard to create the security zones at issue, which constituted proper time, place and manner restrictions on Plaintiffs' First Amendment rights, and that the Coast Guard's security zone regulations were enacted pursuant to a categorical exclusion, consistent with NEPA. I was the principal author of the government's briefs at both the district court and Ninth Circuit levels, which were written without the benefit of discovery, and I argued the matter on an emergent basis before the district court (there was no oral argument before the Ninth Circuit).

Co-Counsel: Lawrence L. Tong, Assistant United States Attorney, United States Attorney's Office, District of Hawaii, 300 Ala Moana Boulevard, Room 6-100, Honolulu, Hawaii 96850, (808) 440-9230.

Opposing Counsel: Lanny Sinkin, 118 Broadway, Suite 621, San Antonio, Texas 78205, (210) 354-0236.

4. *Panoke v. United States Army Military Police Brigade, Hawaii*, Civ. No. 05-00432, 2007 WL 2790750 (D. Haw. 2007) (Seabright, J.), *aff'd*, 307 Fed. Appx. 54 (9th Cir. 2009)

I served as sole government counsel before both the district court and the Ninth Circuit in defense of this discrimination, retaliation and hostile work environment action brought pursuant to Title VII and the Age Discrimination in Employment Act ("ADEA"). Plaintiff claimed that his military police supervisors discriminated against him by sending derogatory information to the Army's Central Clearance Facility ("CCF"), which resulted in the revocation of Plaintiff's security clearance and his inability to remain employed by the Army. Plaintiff also contended that the Army failed to promote him in violation of an administrative settlement of his Equal Employment Opportunity ("EEO") claims. The district court granted the government's motion for summary judgment, holding that some of Plaintiff's claims had been administratively settled and had therefore been satisfied, Plaintiff could not challenge the information provided to CCF, even on discrimination grounds, because security clearance determinations and related claims are non-justiciable, Plaintiff lacked evidence showing that he was treated differently than similarly situated individuals, Plaintiff lacked evidence causally linking allegedly adverse employment actions to the filing of his EEO claims, and the workplace actions Plaintiff complained of were not sufficiently pervasive or severe enough to alter the terms and conditions of his employment. The Ninth Circuit affirmed, holding that courts are not permitted to interfere with the Army's security clearance process and that "a review of the circumstances surrounding a security clearance is tantamount to a review of the security clearance itself." The Court also determined that the promotion Plaintiff claimed was not afforded to him in violation of an administrative EEO settlement was only supported by parol evidence, which the Court could not consider.

Opposing Counsel: Elbridge W. Smith, Smith Himmelman, 745 Fort Street, Suite 311, Honolulu, Hawaii 96813, (808) 523-5050.

5. *Otay Land Company v. UE Limited, L.P.*, Civ. No. 03-2488, 440 F. Supp. 2d 1152 (S.D. Cal. 2006) (Benitez, J.), *aff'd in part, vacated in part*, 338 Fed. Appx. 689 (9th Cir. 2009)

This case involved the remediation of a former trap and skeet shooting range in Otay Valley, San Diego, near the Mexican border. We represented the Plaintiffs, the current owners of the property, against the Defendants, the prior owners and operators of both the property and the shooting range, with regard to a remediation plan whose implementation was expected to exceed \$12 million. After hundreds of pages of summary judgment briefs filed by Defendants, the

Court entered judgment against Plaintiffs, but on theories that none of the Defendants advanced. These included that the shooting range was not a “facility” within the meaning of the Comprehensive Environmental Response Compensation and Liability Act and that used munitions were not “solid waste” within the meaning of the Resource Conservation and Recovery Act. The Ninth Circuit affirmed, but on grounds not discussed by the district court. Instead, the Ninth Circuit held that Plaintiffs’ claims were not ripe because Plaintiffs had not yet expended most of their planned remediation costs, and no government agency had yet required remediation. I took and defended more than thirty fact and expert witness depositions, developed the testimony of more than eight expert witnesses and authored the principal briefs before the district court and the opening appellant’s brief before the Ninth Circuit. Nearly ten years after filing, the matter is still pending, albeit in California state court.

Co-Counsel: James A. Bruen, Farella Braun + Martel LLP, 235 Montgomery Street, San Francisco, California 94104, (415) 954-4400; Robert D. Shoecraft, Shoecraft Burton LLP, 1230 Columbia Street, Suite 1140, San Diego, California 92101, (619) 794-2280.

Opposing Counsel: Mark J. Dillon, Stephen F. Tee, Gatzke Dillon & Ballance, 2762 Gateway Road, Carlsbad, California 92009, (760) 431-9501; R. Anthony Mahavier, Law Offices of R. Anthony Mahavier, 2550 Fifth Avenue, Ninth Floor, San Diego, California 92103, (619) 233-3760; John J. Freni, Law Offices of John J. Freni, 600 West Broadway, Suite 2800, San Diego, California 92101, (619) 557-9128; Alice Seebach, Seebach & Seebach, 633 West Fifth Street, Suite 5410, Los Angeles, California 90071, (213) 553-7900; Walter B. Hill, Booth Mitchel & Strange LLP, 701 South Parker, Orange, California 92868, (714) 480-8500; Thomas L. Van Wyngarden, Pillsbury Winthrop Shaw Pittman LLP, 725 South Figueroa Street, 28th Floor, Los Angeles, California 90017, (213) 488-7100.

6. *SIV, LLC v. FMC Corporation*, Civ. No. 02-02606, 223 F. Supp. 2d 1059 (N.D. Cal. 2002) (Ware, J.)

This action involved an attempt by Plaintiff, a large Silicon Valley real estate developer, to renege on a land purchase agreement based on the notion that disclosed contamination on the property was not remediated to the degree required by the purchase and sales agreement. I successfully briefed and argued the motion dismissing the developer’s action and compelling him to participate in arbitration, which facilitated the negotiated resolution of the dispute on confidential terms favorable to the Defendant seller. I also served as lead negotiator for the seller.

Co-Counsel: James A. Bruen, Farella Braun + Martel LLP, 235 Montgomery Street, San Francisco, California 94104, (415) 954-4400.

Opposing Counsel: Jeffrey S. Lawson, Silicon Valley Law Group, 25 Metro Drive, 6th Floor, San Jose, California 95110, (408) 573-5700.

7. *FMC Corporation v. Weir Floway, Inc.*, Civ. No. 00-05295 (E.D. Cal.) (Wanger, J.)

This action involved the remediation of FMC's former pesticide formulation facility in Fresno, California. It involved a complex investigation of the historical practices of numerous adjoining businesses over the course of more than sixty years, complex soil and groundwater modeling designed to map the spread of contaminants over time, and the use of photogrammetry experts to identify property features that might have contributed to the contamination. I led Plaintiff's investigation team, including the use of several private investigators, developed the interrelated testimony of more than a dozen expert witnesses, took and defended more than twenty-five fact and expert witness depositions, and created the Powerpoint presentation for an intermittent four-month-long mediation that ultimately led to a multi-million dollar settlement favorable to Plaintiff.

Co-Counsel: James A. Bruen, Robert L. Hines, James H. Colopy, Farella Braun + Martel LLP, 235 Montgomery Street, San Francisco, California 94104, (415) 954-4400; Stephen Cornwell, Cornwell & Sample LLP, 7045 Fruit Avenue, Fresno, California 93711, (559) 431-3142.

Opposing Counsel: Mark E. Elliott, Pillsbury Winthrop Shaw Pittman, 725 South Figueroa Street, Suite 2800, Los Angeles, California 90017, (213) 488-7100; Stephen Holzer, Lewitt Hackman, 16633 Ventura Boulevard, 11th Floor, Encino, California 91436, (818) 907-3299; Kevin P. Holewinski, Jones Day, 51 Louisiana Avenue, N.W., Washington, D.C. 20001, (202) 879-3797; John F. Barg, Barg Coffin Lewis LLP, 350 California Street, 22nd Floor, San Francisco, California 94104, (415) 228-5400.

8. *Hell's Angels Motorcycle Corp. v. County of Monterey*, Civ. No. 99-1513, 89 F. Supp. 2d 1144 (N.D. Cal. 2000) (Walker, J.), *aff'd*, 360 F.3d 930 (9th Cir. 2004).

This action presented difficult Fourth Amendment issues associated with the sharing of materials lawfully seized by County law enforcement with federal law enforcement pursuant to a federal administrative subpoena. The district court determined that while a property owner is entitled to notice and a pre-enforcement opportunity to review the propriety of such a subpoena, the novelty of the question at the time afforded the federal actors with qualified immunity because Plaintiff's rights were probably not clearly established. Together with AUSA Scott Nonaka, I was co-lead counsel for the individually named federal defendants. AUSA Nonaka and I both interviewed witnesses and drafted portions of the government's motion to dismiss. After I returned to private practice, the Ninth Circuit affirmed the district court's approval of qualified immunity, holding

that Plaintiff had a “substantially reduced” reasonable expectation of privacy in the materials subpoenaed by the federal government because the materials had already been lawfully seized by County officials. Because of this insubstantial privacy interest, Plaintiff was not entitled to notice or an opportunity to contest the subpoena, and therefore no Fourth Amendment claim could be sustained.

Co-Counsel: Scott T. Nonaka (former AUSA), O’Melveny & Myers, Meiji Yasuda Seimei Building, 11th Floor, 2-1-1, Marunouchi, Chiyoda-ku, Tokyo 100-0005, Japan, +81-3-5293-2700.

Opposing Counsel: Fritz Clapp, P.O. Box 2517, Beverly Hills, California 90213, (888) 292-5784.

9. *United States v. Powers*, Civ. No. 94-3401, 1996 WL 376651 (N.D. Cal. 1996) (Hamilton, J.)

This action involved a psychiatrist’s attempt to renege on her public service obligation to an underserved geographic area after the Department of Health and Human Services (“HHS”) paid for her medical school education under the National Health Service Corps Scholarship Program. Defendant claimed that she could only carry out her service obligation in the Bay Area (which was not a designated area of need) because that was where her support network existed. The court granted the United States’ motion for summary judgment and required the psychiatrist to repay triple the amount of education funds she received, plus interest. The matter was settled post-judgment with the Defendant agreeing to serve, and subsequently serving, an area in the Midwest in need of psychiatry services, as identified by HHS. I took and defended several depositions before drafting and arguing the government’s summary judgment motion, and subsequently negotiated Defendant’s service obligation on behalf of HHS.

Opposing Counsel: Henry G. Wykowski, Wykowski & Associates, 235 Montgomery Street, Suite 657, San Francisco, California 94104, (415) 788-4545.

10. *Buritica v. United States*, Civ. No. 95-3354, 8 F. Supp. 2d 1188 (N.D. Cal. 1998) (Walker, J.)

This action involved *Bivens* and Federal Tort Claims Act claims arising out of an incident at the San Francisco International Airport in which United States Customs inspectors detained Plaintiff because they suspected her of serving as a “mule” by smuggling balloons containing drugs in her stomach. When radiology scans were suspicious but inconclusive, Plaintiff was forced to consume a gallon of laxatives in a hospital setting and had her bowel movements monitored for a period of twenty-four hours, after which nothing was discovered. Following dispositive motions and a jury trial, Plaintiff was awarded \$451,002. I second-chaired the trial and was principally responsible for two of the five *Bivens*

Defendants, one of whom was the only one exonerated, and the other of whom was found liable for \$2 in compensatory damages.

Co-Counsel: Gail Killefer (former AUSA), United States District Court for the Central District of California, ADR Program, 312 North Spring Street, Los Angeles, California 90012, (213) 894-2993.

Opposing Counsel: Gregory M. Fox, Bertrand Fox & Elliot, 2749 Hyde Street, San Francisco, California 94109, (415) 353-0999; David A. Levy, San Mateo County Counsel's Office, 400 County Center, 6th Floor, Redwood City, California 94063, (650) 363-4756; Richard K. Wilson, Ropers Majeski, 1001 Marshall Street, Redwood City, California 94063, (415) 364-8200; Barry Marsh, Hinshaw Draa Marsh, 12901 Saratoga Avenue, Saratoga, California 95070, (408) 861-6500.

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As an Assistant United States Attorney, I have participated in numerous fraud investigations that were resolved short of litigation. Some have resulted in significant settlement recoveries, while others have resulted in declined civil prosecutions. The following are representative of these efforts:

- a. In 1996, in a parallel prosecution with the Criminal Division, I brought civil fraud charges against dozens of former veterans, who enrolled in, but did not attend, speech classes at Laney College in Oakland, California, recovering via settlement nearly \$2.5 million in G.I. Bill education funds on behalf of the Department of Veterans Affairs.
- b. From 1996 through 1999, I brought numerous residential mortgage fraud charges under the United States Department of Justice's FIRREA (the Financial Institutions Reform, Recovery, and Enforcement Act) fast-track initiative. Though the monetary recovery in these collective cases was modest (just under \$1 million), the initiative was an important deterrent in an industry rampant with misrepresentation.
- c. In 2009, I brought Medicare fraud charges against two Maui cardiologists, which resulted in modest civil settlements of several hundred thousand dollars. In addition, the resolutions included extensive Department of Health and Human Services-supervised corporate integrity agreements designed to improve training, education and ultimately patient care.

- d. In 2010, in conjunction with the Naval Criminal Investigative Service (NCIS), I investigated a morale, welfare and recreation contractor which provided, among other things, certified lifeguard services on the island of Diego Garcia and under whose supervision a soldier died while swimming in a pool in the middle of the day. While evidence called into question the validity of the certifications provided by the contractor, we declined and transferred the matter to the United States Attorney's Office for the Northern District of Texas due to False Claims Act venue concerns.

While serving as a reservist for eight years in the Judge Advocate General's Corps, United States Army, I participated in several unit mobilization events, assisting mobilizing soldiers with their legal affairs, such as through the preparation of wills and powers of attorney, and through the provision of general legal advice. I also provided general legal assistance to active duty soldiers at Fort Irwin, National Training Center, California and Fort Lewis, Washington during annual training activations.

I have never performed lobbying activities or registered as a lobbyist.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any such course.

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

None.

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

I have no plans, commitments, or agreements to pursue outside employment, with or without compensation.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items

exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

If confirmed, I would recuse myself from all civil cases handled by the United States Attorney's Office for the District of Hawaii, by another component of the United States Department of Justice, or by a United States department or agency with litigating authority independent of the United States Department of Justice, which were filed before my appointment and in which I had either direct involvement, or supervisory or oversight responsibility.

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

If confirmed, I will fully comply with 28 U.S.C. Sections 144 and 455, the Code of Conduct for United States Judges, and any other applicable conflicts rules.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

While in private practice, I spent hundreds of hours representing pro bono clients. For instance, together with one of my partners, we supervised a team of attorneys and paralegals who brought human trafficking, common law tort, and wage and hour claims on behalf of two Mexican nationals against a chain of Bay Area taquerias. After extensive discovery, much of which was done in Spanish, we recovered significant sums for both plaintiffs and their families. In addition, I participated on another pro bono team that partnered with the San Francisco Lawyer's Committee for Civil Rights ("LCCR") to successfully challenge the Hanford Union High School District's electoral system, which had prevented the election of a Hispanic member for decades despite Hispanics constituting the majority of residents in the District. Further, I did intake work on a

monthly basis at LCCR, eventually supervising the intake work for which our law firm was responsible. Through this effort, I handled a variety of matters for pro bono clients, most commonly those with landlord-tenant and credit problems. I have not provided pro bono services since returning to government service, as it is my understanding that the Department of Justice does not generally approve the outside practice of law by Assistant United States Attorneys, even on a pro bono basis.

26. Selection Process:

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

On March 28, 2012, I submitted my application to the Hawaii Federal Judicial Selection Commission established by Hawaii Senators Daniel K. Inouye and Daniel K. Akaka. On May 23, 2012, I interviewed with the nine members of the Commission. On May 25, 2012, I was notified that I was one of three persons whose names had been sent to Senator Inouye and Senator Akaka for further proceedings. On May 29, 2012, I interviewed with Senator Inouye, Senator Akaka and their respective chiefs of staff.

On July 3, 2012, the White House Counsel's Office requested by email a complete copy of my application to the Commission, which I provided that same day. On July 12, 2012, I interviewed by telephone with the White House Counsel's Office. On August 7, 2012, I was notified by the White House Counsel's Office that I would be advancing for further vetting, and have been in contact with officials from the Office of Legal Policy at the Department of Justice since August 8, 2012. On September 20, 2012, I interviewed with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On November 14, 2012, the President submitted my nomination to the Senate.


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

No.

AFFIDAVIT

I, Derrick Kahala Watson, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

November 15, 2012
(DATE)


(NAME)

Spencerita Gerald
(NOTARY)

My Commission Expires Nov. 30, 2012