No. 21-1557

In the
Supreme Court of the United States

DAYONTA MCCLINTON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Seventh Circuit

BRIEF OF 17 FORMER FEDERAL JUDGES AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE [1]

Amici are 17 former Article III judges who have devoted much of their professional lives to the criminal justice system and who maintain a continuing interest in restoring a system of justice that is fair both in practice and appearance. Collectively, they served roughly 300 years in the federal judiciary. Based on their experience as Article III judges, Amici submit this brief to emphasize the unfairness of the sentence in this case. The district court relied upon acquitted conduct to essentially quadruple the defendant's sentencing range, and its decision reflects a more widespread problem in the criminal justice system.

McClinton's sentence was justified by the district court in large measure by judge-found facts, determined by a preponderance of the evidence, and based on charges upon which McClinton was acquitted. McClinton was convicted of two charges, robbing a pharmacy of roughly $68 worth of merchandise and brandishing a firearm while doing so, which alone would have resulted in a recommended sentence of 57-71 months' imprisonment (total offense level 23). Pet. at 7-8. But the district judge increased that sentencing range more than four-fold by finding by a preponderance of the evidence that McClinton had subsequently robbed and murdered a coconspirator, charges upon which the jury had acquitted him. Reliance upon this acquitted conduct placed McClinton at the maximum total offense level 43, with a

[1] No counsel for a party authored this brief in whole or in part and no person other than Amici or their counsel made a monetary contribution to its preparation or submission. Counsel of record for both parties received the required notice of this brief and have provided their written consent. A full list of amici appears in the Appendix to this brief.

corresponding recommendation of life imprisonment, but the district judge varied downward to impose a sentence of 228 months' imprisonment. *Id.* at 8-9. In imposing the sentence, the district judge candidly acknowledged that his finding of murder was "the driving force in this sentence."[2] Even with this significant downward variance, McClinton's ultimate sentence was roughly three times higher based on the district court's consideration of acquitted conduct than it would have been based on the jury's verdict alone. These sorts of excessive sentences, driven by district courts' reliance upon acquitted conduct, are common.[3]

Amici believe that there is a simple and straightforward solution to this problem, consistent with this Court's line of cases that extends from *Apprendi v. New Jersey*, 530 U.S. 466 (2000). No alleged conduct upon which a jury has acquitted a defendant should

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[2] At the sentencing hearing, the district court explained: "Mr. McClinton's relevant conduct as a member of the conspiracy includes the murder of Malik Perry. . . . I would also note that the driving force in this sentence is not what he's been convicted of, actually. It's the relevant conduct." The judge later addressed the standard of review, explaining that "the sentence was being driven by the relevant conduct, that is, only by a preponderance of the evidence." App.42a, 45a.

[3] Recent petitions for certiorari challenging the use of acquitted conduct at sentencing reveal that the practice often results in substantially longer sentences. *See, e.g.*, Petitions for a Writ of Certiorari, *Allums v. United States*, No. 21-996, 2022 WL 135418 (quadrupling a sentence based on acquitted conduct); *Gaspar-Felipe v. United States*, No. 21-882, 2021 WL 5930606 (same); *Osby v. United States*, No. 20-1693, 2021 WL 2337153 (tripling a sentence); *Ludwikowski v. United States*, No. 19-1293, 2020 WL 2510293 (same); *Asaro v. United States*, No. 19-107, 2019 WL 3302460 (more than doubling a sentence); *Cabrera-Rangel v. United States*, No. 18-650, 2018 WL 6065310 (tripling a sentence).

be used to enhance the defendant's penalty for any crime.

INTRODUCTION AND SUMMARY OF ARGUMENT

Seven years ago, Justice Scalia, joined by Justices Thomas and Ginsburg, highlighted the need for this Court "to put an end to the unbroken string of cases disregarding the Sixth Amendment" by enhancing sentences based on acquitted conduct, proclaiming: "This has gone on long enough." *Jones v. United States*, 135 S. Ct. 8, 9 (2014) (dissenting from denial of *certiorari*). Four years ago, then-Judge Kavanaugh reiterated that "there are good reasons to be concerned about the use of acquitted conduct at sentencing, both as a matter of appearance and as a matter of fairness," and he implored the Supreme Court to "fix it." *United States v. Brown*, 892 F.3d 385, 415 (D.C. Cir. 2018) (dissenting in part).[4] Yet, as this petition

[4] *See also United States v. Bell*, 808 F.3d 926, 928 (D.C. Cir. 2015) (Kavanaugh, J., concurring in denial of rehearing *en banc*) (explaining that reliance upon acquitted conduct "seems a dubious infringement of the rights to due process and to a jury trial"); *United States v. Settles*, 530 F.3d 920, 923 (D.C. Cir. 2008) (Kavanaugh, J.) ("we understand why defendants find it unfair for district courts to rely on acquitted conduct when imposing a sentence"); *United States v. Henry*, 472 F.3d 910, 920 (D.C. Cir. 2007) (Kavanaugh, J., concurring) (explaining that it is an "oddity," given the *Apprendi* rule, that "courts are still using *acquitted* conduct to increase sentences beyond what the defendant otherwise could have received"). Similarly, then-Judge Gorsuch noted the *Jones* dissent, explaining, "[i]t is far from certain whether the Constitution allows" using acquitted conduct at sentencing. *United States v. Sabillon-Umana*, 772 F.3d 1328, 1331 (10th Cir. 2014) *see also United States v. Medley*, 34 F.4th 326, 336 (4th Cir. 2022) (noting "a growing number of critics of this practice"). Petitioner has extensively documented the

illustrates, the practice continues, although a split in the lower courts has emerged, restoring a meaningful jury trial right in at least some state courts. *See State v. Melvin*, 258 A.3d 1075, 1094 (N.J. 2021) (finding reliance upon acquitted conduct at sentencing violates the federal and New Jersey constitutions); *People v. Beck*, 939 N.W.2d 213, 225-26 (Mich. 2019) (adopting the "minority position" shared by the Supreme Courts of New Hampshire and North Carolina that reliance upon acquitted conduct at sentencing violates federal due process) (citing *State v. Marley*, 364 S.E.2d 133 (N.C. 1988), and *State v. Cote*, 530 A.2d 775 (N.H. 1987)). A similar split exists among federal district courts where some, like the district court, below rely upon acquitted conduct at sentencing, while other federal district courts refuse to do so. *See, e.g.*, *United States v. Mendoza*, No. 20-450, 2022 WL 894700, at *2 (2d Cir. Mar. 28, 2022) (summary order) (noting that the district judge "had 'problems' with 'the notion that acquitted conduct can be taken into account'" at sentencing and declined to do so). These splits warrant this Court stepping in to ensure that constitutional rights are respected uniformly across the country.

Not only is this case an ideal vehicle for restoring an even application of the Fifth and Sixth Amendments across this country, the Seventh Circuit specifically encouraged this Court to address this issue. The Seventh Circuit explained that although McClinton's constitutional challenge to enhancing his sentence based on acquitted conduct was foreclosed by "clear precedent, McClinton's contention is not frivolous." App.3a. Rather, the Seventh Circuit explained that McClinton "preserves for Supreme Court review

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widespread criticism by other members of the judiciary and scholars of sentencing based on acquitted conduct. Pet. at 13-15.

an argument that has garnered increasing support among many circuit court judges and Supreme Court Justices, who in dissenting and concurring opinions, have questioned the fairness and constitutionality of allowing courts to factor acquitted conduct into sentencing calculations." App.3a-4a. "But despite the long list of dissents and concurrences on the matter," the Seventh Circuit believed this Court's decision in *United States v. Watts*, 519 U.S. 148 (1997) (per curiam), was controlling and explained that, "[u]ntil such time as the Supreme Court alters its holding, we must follow its precedent." App.4a; *see also United States v. Karr*, No. 21-90219, 2022 WL 1499288, at *1 n.1 (5th Cir. May 12, 2022) (per curiam) ("Distinguished jurists have called *Watts* into question."). With the Courts of Appeals believing their hands are tied by this Court's decision in *Watts*, this Court's intervention is the only way the Framers' vision of the Fifth and Sixth Amendments can be restored.

Amici believe this case can be decided narrowly, in a simple and straightforward manner that would greatly restore the right to a jury trial to its constitutionally-intended status. This Court explained that *Apprendi* adopted a "bright-line rule" in response to "the need to give intelligible content to the right of jury trial." *Blakely v. Washington*, 542 U.S. 296, 305, 308 (2004). Giving "intelligible content" to the jury trial right meant in that setting: "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Id.* at 301 (quoting *Apprendi*, 530 U.S. at 490). That principle is controlling here.

Giving "intelligible content" to the jury trial right also requires a necessary bright-line rule that no

penalty for any crime should be enhanced based on alleged conduct that was *rejected* by the jury through an acquittal. Quite simply, no court can respect a jury's verdict by ignoring it. This Court should now make explicit what should be implicit in the *Apprendi* rule: No alleged conduct upon which a jury has acquitted a defendant can be used to enhance the defendant's penalty for any crime.

ARGUMENT

I. REVIEW WILL HELP TO ENSURE THAT SENTENCING COURTS RESPECT JURY FINDINGS

This Court has often remarked that "justice must satisfy the appearance of justice." *Marshall v. Jerrico*, 446 U.S. 238, 243 (1980) (quoting *Offutt v. United States*, 348 U.S. 11, 14 (1954)). Just as people attach significance to the fact of a jury's conviction, they expect a jury's acquittal to be a significant event as well. Where, as occurred in this case, a jury convicts a defendant on some counts and acquits the defendant on others, but the judge concludes the defendant is probably guilty of all those crimes and sentences the defendant as though he had been convicted of even the acquitted conduct—tripling his sentence—both the appearance and reality of justice suffer.

A. There is Little Historical or Constitutional Support for Relying on Acquitted Conduct

There is little historical support for sentencing courts relying upon acquitted conduct, as it is a relatively recent phenomenon. *See* Claire McCusker Murray, *Hard Cases Make Good Law: The Intellectual History of Prior Acquittal Sentencing*, 84 St. John's L. Rev. 1415, 1444, 1452 (2011) (explaining there was no

apparent sentencing based on acquitted conduct before 1970, and fewer than 10 cases addressed the issue prior to the enactment of the federal Sentencing Guidelines, but there were 93 cases in the decade that followed, and the practice continues). When our country was founded, the criminal code was far simpler, with relatively few offenses, and the public was well aware of the specific penalties that attached to a conviction. Thus, "[w]hile the judge formally imposed the sentence, the jury's judgment was often outcome-determinative." Judge Nancy Gertner, *Juries and Originalism: Giving "Intelligible Content" to the Right to a Jury Trial*, 71 Ohio St. L.J. 935, 937 (2010). In a very real sense, then, the jury's verdict literally dictated the sentence that would be imposed.

Still, every U.S. Court of Appeals has concluded that reliance upon acquitted conduct at sentencing is appropriate based solely on this Court's decision in *Watts*. Pet. at 18 n.2. That is remarkable weight to give a case that was GVRed and decided "without the benefit of oral argument or merits briefing," McCusker Murray, 84 St. John's L. Rev. at 1456, particularly because, as Justice Kennedy noted, "the case raises a question of recurrent importance in hundreds of sentencing proceedings in the federal criminal system," *Watts*, 519 U.S. at 170 (dissenting).

Since the Court's decision in *Watts* and the inappropriate weight it has been given, the issue is no longer percolating through the federal courts. Without the Court's guidance in this case, the practice will continue; acquitted conduct may come into play in criminal sentencings that take place almost every day in every federal courthouse, and the "unbroken string of cases disregarding the Sixth Amendment," as described by Justice Scalia, will continue to grow longer.

Jones, 135 S. Ct. at 9 (dissenting from denial of *certiorari*). This Court often accepts review "where the decision below is premised upon a prior Supreme Court opinion whose implications are in need of clarification." Stephen M. Shapiro et al., Supreme Court Practice 254 (10th ed. 2013). That is precisely the case here.

B. Giving Intelligible Content to the Jury's Role Requires the Sentencing Court To Respect Jury Findings

Trials matter because they have consequences, and those consequences are particularly serious for a criminal defendant who may face a sentence of incarceration or even death. The Founders knew that and, given their distrust of government, ensured that the people could serve as a check on the power of the government by requiring criminal trials be decided in a "public trial, by an impartial jury." U.S. Const. amend. VI. As *Apprendi* emphasized, the Sixth Amendment ensures that "*the truth of every accusation*" must be unanimously confirmed under the watchful eye of the public before a criminal defendant can be convicted and punished. 530 U.S. at 477 (emphasis in *Apprendi*) (quoting 4 William Blackstone, Commentaries on the Laws of England 343 (1769)).

This Court's decision in *Apprendi* and the cases that expanded upon its holding have provided a "substantial role for the twentieth century jury—namely, a role in sentencing offenders." Gertner, 71 Ohio St. L.J. at 935. Those cases provide that "under the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond

a reasonable doubt." *Jones v. United States*, 526 U.S. 227, 243 n.6 (1999).

This Court explained that a "bright-line rule" is necessary "to give intelligible content to the right of jury trial." *Blakely*, 542 U.S. at 305, 308. As Justice Scalia explained, the Sixth Amendment jury trial guarantee "has no intelligible content unless it means that all the facts which must exist in order to subject the defendant to a legally prescribed punishment *must* be found by the jury." *Apprendi*, 530 U.S. at 499 (concurring) (emphasis in original). And the Court itself has confirmed: "The jury could not function as circuitbreaker in the State's machinery of justice if it were relegated to making a determination that the defendant at some point did something wrong, a mere preliminary to a judicial inquisition into the facts of the crime the State *actually* seeks to punish." *Blakely*, 542 U.S. at 306-07 (emphasis in original).

The jury's verdict is what validates the legitimacy of a sentence and must dictate the basis for the sentence. *See* Erica K. Beutler, *A Look at the Use of Acquitted Conduct in Sentencing*, 88 J. Crim. L. & Criminology 809, 843 (1998) ("When the legislature statutorily classifies specific conduct as criminal, it can only punish that behavior by recourse to the criminal justice system established by the Constitution. A conviction is a necessary prerequisite to punishment based on that conduct. While not always an accurate barometer of factual guilt, conviction symbolizes legal guilt, thereby legitimizing the government's authority to deprive a person of his life, liberty or property.").

By contrast, "when a jury acquit[s] a defendant based on that standard, one would have expected no additional criminal punishment would follow." *United States v. Pimental*, 367 F. Supp. 2d 143, 150

(D. Mass. 2005) (Gertner, J.) (quoting Judge Nancy Gertner, *Circumventing Juries, Undermining Justice: Lessons from Criminal Trials and Sentencing*, 32 Suffolk U. L. Rev. 419, 433 (1999)). Given that an acquittal is the *only* way for criminal defendants to legally vindicate themselves, those acquittals must be respected. *See* McCusker Murray, 84 St. John's L. Rev. at 1464. The "admission of prior acquittals in sentencing undermines the claim of the criminal justice system to be doing justice, and thus its broader legitimacy." *Id.* at 1463.

C. Enhancing Sentences Based on Acquitted Conduct Violates the Sixth Amendment

The respect afforded a jury verdict should be the same whether that verdict is guilty or an acquittal. "It makes absolutely no sense to conclude that the Sixth Amendment is violated whenever facts essential to sentencing have been determined by a judge rather than a jury, and *also* conclude that the fruits of the jury's efforts can be ignored with impunity by the judge in sentencing." *Pimental*, 367 F. Supp. 2d at 150 (citation omitted).

While similar problems arise when a sentencing judge considers uncharged conduct, the legal and legitimacy issues are different. Enhancing a defendant's sentence based on acquitted conduct is not only something that the jury's verdict "failed to authorize," it relies upon "facts of which the jury expressly disapproved." *Id.* at 152. "[C]onsider[ing] acquitted conduct trivializes 'legal guilt' or 'legal innocence,'" *id.*, resulting in the "judicial nullification of juries," Eang Ngov, *Judicial Nullification of Juries: Use of Acquitted Conduct at Sentencing*, 76 Tenn. L. Rev. 235, 273

(2009). The "intelligible content" of the jury's verdict is rendered hollow.

II. REVIEW IS NECESSARY TO PROTECT THE APPEARANCE OF JUSTICE AND LEGITIMACY OF THE COURTS

Sentencing based on acquitted conduct is defended through a legal sleight of hand: The judge is merely sentencing a defendant for the crime of conviction, and the sentence imposed is within "the statutory sentencing range for the offense of conviction alone." *United States v. Bell*, 808 F.3d 926, 927 (D.C. Cir. 2015) (Kavanaugh, J., concurring in denial of rehearing *en banc*). In other words, the sentencing judge is not sentencing the defendant for his acquitted conduct, but merely imposing a harsher sentence upon the crime of conviction because the judge determined (by a mere preponderance of the evidence) that the defendant is really guilty of the acquitted conduct too.

Notwithstanding the formal argument, the reality of the situation is obvious, especially in this case. McClinton was convicted of stealing $68 worth of goods and brandishing a weapon, but the judge also found by a preponderance of the evidence that he had committed a separate robbery and murder, even though the jury had acquitted him of those charges. Had the district judge confined the sentencing decision to the crime of conviction, McClinton would have faced a recommended sentencing range of 57-71 months. But by finding that McClinton had committed murder, despite the jury's acquittal on that charge, the district judge more than *tripled* the sentence by ordering McClinton imprisoned for 228 months. In a very real sense, this 228-month sentence is a sentence for murder, despite McClinton's

acquittal on that charge, and it yields a "perverse result." *See Watts*, 519 U.S. at 164 (Stevens, J., dissenting) (describing reliance upon acquitted conduct to elevate a sentencing guideline range from 15-21 months to 27-33 months as a "perverse result").

Nor should a defendant take any comfort that the statutory maximum will provide meaningful protection. Most federal crimes have a statutory maximum of at least five years, and many commonly-charged crimes carry much higher statutory maximums. For example, the mail and wire fraud statutes, 18 U.S.C. §§ 1341, 1343, carry 20-year and, in some cases, 30-year statutory maximums. These statutes are in liberal use by federal prosecutors. Prosecutors view these statutes as "our Stradivarius, our Colt 45, our Louisville Slugger, our Cuisinart—and our true love." *United States v. Weimert*, 819 F.3d 351, 356 (7th Cir. 2016) (quoting Jed S. Rakoff, *The Federal Mail Fraud Statute (Part I)*, 18 Duq. L. Rev. 771, 771 (1980)).

In any event, the maximum sentence that can constitutionally be imposed is not necessarily the statutory maximum; rather, post-mandatory Sentencing Guidelines, appellate courts "consider the substantive reasonableness of the sentence imposed." *Gall v. United States*, 552 U.S. 38, 51 (2007). Thus, unreasonable sentences are invalidated even when they are below the statutory maximum. *See, e.g.*, *United States v. Singh*, 877 F.3d 107, 116-17 (2d Cir. 2017); *United States v. Chandler*, 732 F.3d 434, 437, 440 (5th Cir. 2013); *United States v. Cruz-Valdivia*, 526 F. App'x 735, 737 (9th Cir. 2013); *United States v. Paul*, 561 F.3d 970, 973-75 (9th Cir. 2009) (per curiam). Moreover, addressing as-applied Sixth Amendment challenges, Justice Scalia claimed that this Court's jurisprudence leaves the door "open for a defendant to

demonstrate that his sentence, whether inside or outside the advisory Guidelines range, would not have been upheld but for the existence of a fact found by the sentencing judge and not by the jury." *Gall*, 552 U.S. at 60 (concurring); *see Rita v. United States*, 551 U.S. 338, 375 (2007) (Scalia, J., concurring in part and concurring in the judgment).

As Justice, then-Judge, Kavanaugh explained: "Allowing judges to rely on acquitted or uncharged conduct to impose higher sentences than they otherwise would impose seems a dubious infringement of the rights to due process and to a jury trial." *Bell*, 808 F.3d at 928 (concurring in denial of rehearing *en banc*). Justice Kavanaugh certainly raised the question that is presented to the Court here:

> If you have a right to have a jury find beyond a reasonable doubt the facts that make you guilty, and if you otherwise would receive, for example, a five-year sentence, why don't you have a right to have a jury find beyond a reasonable doubt the facts that increase that five-year sentence to, say, a 20-year sentence?

Id.

While Amici agree that this broader question should be answered by the Court holding that all fact-finding necessary to support a sentence be found by a jury beyond a reasonable doubt, this case can be resolved more narrowly: acquitted conduct should not be considered at sentencing precisely because it was rejected by a jury.

Amici agree with Judge Millett that "allowing a judge to dramatically increase a defendant's sentence based on jury-acquitted conduct is at war with the fundamental purpose of the Sixth Amendment's jury-

trial guarantee." *Id.* at 929 (concurring in denial of rehearing *en banc*). The reason is simple: "before depriving a defendant of liberty, the government must obtain permission from the defendant's fellow citizens, who must be persuaded themselves that the defendant committed each element of the charged crime beyond a reasonable doubt." *Id.* at 930. Thus,

> allowing judges to materially increase the length of imprisonment based on facts that were *submitted directly to and rejected by* the jury in the same criminal case is too deep of an incursion into the jury's constitutional role. "[W]hen a court considers acquitted conduct it is expressly considering facts that the jury verdict not only failed to authorize; it considers facts of which the jury expressly disapproved."

Id. (emphasis in original) (quoting *Pimental*, 367 F. Supp. 2d at 152). The judge is "directly second-guessing the jury," and that is "demeaning of[] the jury's verdict." Gertner, 32 Suffolk U. L. Rev. at 422.

Reliance upon acquitted conduct at sentencing undermines the legitimacy of the criminal justice system. That was aptly illustrated by an angry juror who wrote a district court upon learning that the prosecution was seeking an increased sentence based on acquitted conduct:

> It seems to me a tragedy that one is asked to serve on a jury, serves, but then finds their work may not be given the credit it deserves. We, the jury, all took our charge seriously. We virtually gave up our private lives to devote our time to the cause of justice . . . . What does it say to our contribution as jurors when we

> see our verdicts, in my personal view, not given their proper weight. It appears to me that these defendants are being sentenced not on the charges for which they have been found guilty but on the charges for which the District Attorney's office would have liked them to have been found guilty.

United States v. Canania, 532 F.3d 764, 778 n.4 (8th Cir. 2008) (Bright, J., concurring) (quoting juror's letter to a federal district court judge). That letter undoubtedly captures the sentiment of most people who discover this practice. Not surprisingly, defendants and sentencing courts have similarly described this reliance upon acquitted conduct as "Kafkaesque." Judge Nancy Gertner, *Against These Guidelines*, 87 UMKC L. Rev. 49, 55 n.33 (2018). That perception—grounded in reality—will persist until this Court puts an end to the practice of allowing acquitted conduct to be considered at sentencing.

The time has come for this Court to reject this practice, definitively, once and for all.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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AUGUST 10, 2022

APPENDIX

LIST OF SIGNATORIES

Judge Mark W. Bennett (Ret.)—District Judge (1994–2015, Chief Judge 2000–2007), Senior Judge (2015–2019), U.S. District Court for the Northern District of Iowa; Magistrate Judge (1991–94), U.S. District Court for the Southern District of Iowa

Judge Dennis M. Cavanaugh (Ret.)—District Judge (2000–2014), U.S. District Court for the District of New Jersey; Magistrate Judge (1993–2000), U.S. District Court for the District of New Jersey

Judge Christopher F. Droney (Ret.)—Circuit Judge (2011–2019), Senior Judge (2019–2020), U.S. Court of Appeals for the Second Circuit; District Judge (1997–2011), U.S. District Court for the District of Connecticut

Judge Jeremy D. Fogel (Ret.)—District Judge (1998–2014), Senior Judge (2014–2018), U.S. District Court for the Northern District of California

Judge W. Royal Furgeson, Jr. (Ret.)—District Judge (1994–2008), Senior Judge (2008–2013), U.S. District Court for the Western District of Texas

Judge Nancy Gertner (Ret.)—District Judge (1994–2011), Senior Judge (2011), U.S. District Court for the District of Massachusetts

Judge John Gleeson (Ret.)—District Judge (1994–2016), U.S. District Court for the Eastern District of New York

Judge Richard A. Holwell (Ret.)—District Judge (2003–2012), U.S. District Court for the Southern District of New York

Judge Barbara S. Jones (Ret.)—District Judge (1995–2012), Senior Judge (2012–2013), U.S. District Court for the Southern District of New York

Judge Timothy K. Lewis (Ret.)—Circuit Judge (1992–1999), U.S. Court of Appeals for the Third Circuit; District Judge (1991–1992), U.S. District Court for the Western District of Pennsylvania

Judge Beverly B. Martin (Ret.)—Circuit Judge (2010–2021), U.S. Court of Appeals for the Eleventh Circuit; District Judge (2000–2010), U.S. District Court for the Northern District of Georgia

Judge A. Howard Matz (Ret.)—District Judge (1998–2011), Senior Judge (2011–2013), U.S. District Court for the Central District of California

Judge Stephen M. Orlofsky (Ret.)—District Judge (1996–2003), Magistrate Judge (1976–1980), U.S. District Court for the District of New Jersey

Judge Shira A. Scheindlin (Ret.)—District Judge (1994–2011), Senior Judge (2011–2016), U.S. District Court for the Southern District of New York; Magistrate Judge (1982–1986), U.S. District Court for the Eastern District of New York

Judge Kevin H. Sharp (Ret.)—District Judge (2011–2017, Chief Judge 2014–2017), U.S. District Court for the Middle District of Tennessee

Judge Thomas I. Vanaskie (Ret.)—Circuit Judge (2010–2018), Senior Judge (2018–2019), U.S. Court of Appeals for the Third Circuit; District Judge (1994–2010, Chief Judge 1999–2006), U.S. District Court for the Middle District of Pennsylvania

Judge T. John Ward (Ret.)—District Judge (1999–2011), U.S. District Court for the Eastern District of Texas