

AFJ NOMINEE SNAPSHOT

JOHN CAMPBELL BARKER

U.S. District Court for the Eastern District of Texas

CONTENTS

INTRODUCTION,¹

BIOGRAPHY,¹

IMMIGRATION,²

ENVIRONMENT,⁴

REPRODUCTIVE RIGHTS,⁴

LGBTQ EQUALITY,⁵

VOTING RIGHTS,⁵

CRIMINAL JUSTICE,⁵

CONCLUSION,⁶

INTRODUCTION

On January 23, 2017, President Trump [nominated](#) John Campbell (“Cam”) Barker to the United States District Court for the Eastern District of Texas. Barker is nominated to the seat vacated by Judge Leonard Davis, who retired in May 2015.

Since 2015, Barker has served as the Deputy Solicitor General for Texas. In that role, Barker has fought immigrant rights and efforts to protect the environment; defended Texas’s discriminatory voter ID laws and unconstitutional restrictions on women’s access to an abortion; and defended businesses that discriminate against LGBTQ Americans. In addition, both as a [private attorney](#) and in [government](#), Barker challenged the Affordable Care Act.

Barker also [worked](#) on a highly [controversial](#) case in which Texas sought to retry a man with an intellectual disability who, after his murder conviction was overturned on appeal, spent 32 years in prison. And, Barker [defended](#) the state’s efforts to execute an African-American man based, in part, on a psychologist’s testimony that the defendant’s race made him statistically more likely to commit a violent crime.

Given that much of Barker’s work has been done in an official capacity in state government, some context is relevant here. In the past, Senate Republicans have made it clear that they believe individual judicial nominees are

responsible for the entirety of their records, regardless of whether their activities were carried out as government officials, as attorneys representing clients, in business, or in their personal capacity as private citizens. For example, in 2013, now-Senate Judiciary Chair Chuck Grassley [opposed](#) Caitlin Halligan’s nomination to the D.C. Circuit based on a brief she signed at the New York Solicitor’s Office, as follows: “Some of my colleagues have argued that we should not consider this aspect of [Caitlin] Halligan’s record, because at the time she was working as the Solicitor General of New York. But, no one forced Ms. Halligan to approve and sign this brief.” Applying that standard to Barker’s record leads to serious concerns about his commitment to upholding critical rights and legal protections.

Alliance for Justice opposes Barker’s confirmation.

BIOGRAPHY

Cam Barker was born in Louisiana in 1980.¹ He is currently 37 years old. He received his B.S. from Texas A&M University in 2002, and his J.D. from the University of Texas School of Law in 2005. As a law student, Barker wrote an [article](#) on the substantive due process clause limiting punitive damages in patent cases.²

After graduating, Barker clerked for two years, first for Judge John Walker on the Second Circuit Court of Appeals, and then with Judge William Bryson on the Court of

Appeals for the Federal Circuit. After clerking, Barker joined the U.S. Department of Justice, working as a trial attorney. In 2011, Barker joined Yetter Coleman LLP in Houston, Texas. There, he assisted in his [firm's representation](#) of protestors associated with the "Occupy" movement in the city of Austin, and successfully represented a Nepali immigrant's challenge of a denial of an application for asylum by the Board of Immigration Appeals.³

Since 2015, Barker has worked at the Office of the Attorney General of Texas as deputy solicitor general.

IMMIGRATION

Barker has been a go-to attorney in the Texas AG's office for immigration cases. He has fought to end legal protections for Dreamers ("DACA") and the parents of Dreamers ("DAPA"). He also supported Trump's discriminatory travel ban and the state's attempts to punish cities for refusing to discriminate against their citizens in policing. Below are several cases in which he participated:

I. BARKER WORKED TO INVALIDATE THE DACA AND DAPA PROGRAMS

- In his Senate Judiciary [Questionnaire](#), in reference to his work at the Texas Attorney General's office on the case responsible for blocking the DAPA program, [United States v. Texas](#), 136 S. Ct. 2271 (2016), Barker notes: "I assisted with the final phase of preliminary-injunction briefing in district court and with *all subsequent briefing and argument preparation*" (emphasis added).⁴ Barker's name appears on [Texas's briefs](#) before the Supreme Court and [before](#) the United States Court of Appeals for the Fifth Circuit. Ultimately, the Supreme Court upheld, 4-4, a nationwide [injunction](#) that Barker helped to attain with fellow Trump judicial nominee [Andy Oldham](#).
- In [In re United States](#), 138 S. Ct. 371 (2017), Barker signed an [amicus brief](#) supporting the Trump Administration's decision to end the DACA program. Barker's brief brags about Texas's role in previously blocking the DAPA program, and argues that DACA should be ended for the same reasons: "The State of Texas made very clear, in a publicly available [letter](#), that it and a coalition of States would sue to challenge DACA if the Executive Branch did not wind it down" (hyperlink added).⁵ In a section titled "Texas has consistently, clearly, and publicly explained for years how DACA is unlawful," Barker continued, "Texas's substantive explanation ... of DACA's illegality did not come out of the blue. It was based on Texas's victory, leading a 26-State coalition, in challenging the materially identical Expanded DACA and DAPA programs."⁶
- In [United States Department of Homeland Security v. Regents of the](#)

[University of California](#), 2018 U.S. LEXIS 1508 (Feb. 26, 2018), Barker signed another amicus brief supporting ending DACA. This litigation arose out of a ruling by a federal judge in California, [blocking](#) the federal government from ending the DACA program on January 9, 2018. The district court's order [required](#) the Department of Homeland Security (DHS) to resume accepting DACA renewal applications. Trump's Justice Department then appealed the district court's order to the Ninth Circuit. In an [amicus brief](#) on behalf of the state of Texas and multiple other states, Barker argues that DACA was an "unlawful" policy. Since the Supreme Court denied the petition on February 26, the case is currently pending before the Ninth Circuit.

- In [Brewer v. Arizona Dream Act Coalition](#), 2018 U.S. LEXIS 1723 (Mar. 19 2018), Barker defended an Arizona policy denying driver's licenses to DACA recipients. Barker appears on an [amicus brief](#) in support of the state of Arizona's policy. In March 2018, the Supreme Court rejected Texas's petition to overturn the court of appeals ruling in favor of the DACA recipients who challenged the Arizona law.

II. BARKER SUPPORTED PRESIDENT TRUMP'S DISCRIMINATORY TRAVEL BAN

- Barker supported early iterations of the travel ban, in [Trump v. International Refugee Assistance Project](#), 137 S. Ct. 2080 (2017). Barker is on Texas's [brief](#) in support of the petition for certiorari and the later [amicus brief](#) in support of the Trump Administration's position that the travel ban is constitutional.
- In [Trump v. Hawaii](#), 878 F. 3d 662 (9th Cir. 2017) Texas filed an [amicus brief](#), signed by Barker, in support of the federal government's request for the Supreme Court to stay a district court injunction of the travel ban last September. The case was argued before the Supreme Court on April 25th of this year.

III. BARKER DEFENDED DISCRIMINATORY POLICING:

- Barker [defended legislation](#) that banned "sanctuary cities" and allowed police to question an individual's immigration status at almost any time, including during a traffic stop. After a district court blocked the implementation of the bill, in [City of El Cenizo v. Texas](#), 264 F. Supp. 3d 744 (W.D. Tex. 2017), the court of appeals reversed and allowed all but one of the bill's provisions to go forward while the case is litigated. See [City of El Cenizo v. Texas](#), 2017 U.S. App. LEXIS 18696 (5th Cir. Sept. 25, 2017).

ENVIRONMENT

Barker sought to enjoin the [Clean Power Plan](#), EPA-issued policies that limited the dumping of unlimited amounts of carbon into the atmosphere and that sought to curb global warming.⁷

In [West Virginia v. EPA](#), 136 S. Ct. 1000 (2016), Barker and other members of the Texas Attorney General's office led a coalition of states – a group that included then-Attorney General of Oklahoma [Scott Pruitt](#) – to sue the EPA and stop the Clean Power Plan (CPP). The Supreme Court [stayed](#) the EPA's implementation of the CPP in February 2016 pending a ruling by the D.C. Circuit. Barker [argued](#) before the D.C. Circuit that the Clean Power Plan violated the Administrative Procedure Act.

The D.C. Circuit stayed the case pending the EPA's reconsideration of the rule. On March 28, 2017, Trump signed an executive order that [reportedly](#) began the process of "withdrawing and rewriting" the Clean Power Plan. Accordingly, the EPA asked that the D.C. Circuit hold the case in abeyance during its process of eliminating the policy. Texas and its allies then filed a [supplemental brief](#), signed by Barker, supporting the EPA.

On October 10, 2017, Trump's EPA Administrator Scott Pruitt proposed the complete repeal of the CPP, and on the same day [asked for](#) an indefinite abeyance from the D.C. Circuit on the case. A coalition of states opposed to repealing the CPP have [requested](#) that

the D.C. Circuit deny the abeyance and have requested a decision on the merits.

REPRODUCTIVE RIGHTS

When Texas passed a series of provisions known as Targeted Regulation of Abortion Providers (or "TRAP") laws known as House Bill 2, Barker was a lead attorney [defending](#) the anti-choice laws, which the Supreme Court struck down as unconstitutional in [Whole Woman's Health v. Hellerstedt](#), 136 S. Ct. 2292 (2016). The Court found that the law had imposed undue burdens, including mandating hospital admitting privileges for abortion providers and requiring that clinics conform to the structural standards of ambulatory surgical centers.

Barker also signed an [amicus brief](#) on behalf of Texas and 19 other states in [Zubik v. Burwell](#), 136 S. Ct. 1557 (2016), supporting religious nonprofits' challenges to the Affordable Care Act's contraceptive mandate. In the brief, Barker argued that "safeguarding public health" and "assuring that women have equal access to health care services" are not "compelling governmental interests" that would justify the contraceptive mandate for religious nonprofits.⁸

Barker also signed briefs in other cases where religious nonprofits challenged the ACA contraception mandate, which were consolidated with *Zubik v. Burwell*. See [Little Sisters of the Poor v. Burwell](#), [Houston Baptist University](#), [East Baptist](#)

University v. Burwell. In May 2016, the Supreme Court issued a per curiam decision that vacated the lower court decisions and remanded the cases for further consideration.

LGBTQ EQUALITY

Barker signed Texas's amicus brief in support of Masterpiece Cakeshop, which had refused to sell a wedding cake to a same-sex couple. Barker argued that the discriminating business was exercising its First Amendment right by denying service to the same-sex couple. The case is currently pending before the Supreme Court.

In a similar case, *Arlene's Flowers, Inc. v. Washington*, 389 P.3d 543 (Wash. 2017), Barker is on Texas's amicus brief supporting a flower shop's discrimination against same-sex couples by refusing to sell flowers for a couple to use in a wedding. The Washington Supreme Court found for the same-sex couple.

VOTING RIGHTS

In *Veasey v. Abbott*, 796 F.3d 487 (5th Cir. 2015), Barker defended Texas's voter photo ID law, SB 5, and is on the petition for the writ and Texas's reply brief before the Supreme Court. A previous version of the same law, SB 14, had been struck down by the courts for intentionally discriminating against people of color

and unconstitutionally burdening the right to vote.

In August 2017, a district court found that the "revised" bill, SB 5, still had a discriminatory effect and intentionally discriminated against Latinos and African Americans. After Barker's office appealed the district court's decision, the Supreme Court denied Barker's petition for the writ to have the district court order reversed. Barker then remained on the case before the Fifth Circuit.

In April 2018, the Fifth Circuit reversed the district court's order. See *Veasey v. Abbott*, 2018 U.S. App. LEXIS 10833 (5th Cir. Apr. 27, 2018). In a vigorous dissent, Circuit Judge James Graves observed that, despite Texas's attempt to hide the discriminatory intent behind the law, "[a] hog in a silk waistcoat is still a hog."⁹ Judge Graves pointed out that SB 5 is merely the "adorned alter ego" of SB 14: "S.B. 14 is legislation borne [sic] out of a discriminatory purpose. Even if S.B. 5 were, as Texas and the majority both claim, ostensibly to remove or otherwise lessen the discriminatory impacts of S.B. 14, it still does not change the reason—the *discriminatory* reason—why the State enacted a voter ID law in the first place."¹⁰

CRIMINAL JUSTICE

In *Texas v. Hartfield*, Barker aided in attempting to retry Jerry Hartfield. Hartfield had an IQ of 51, and his murder

conviction had been overturned on appeal. Yet, even though he had not been convicted of a crime, he was not released; the fact that his conviction was overturned “was apparently never communicated to the prison system.”

After being illegally imprisoned for 32 years, Barker and the Texas Attorney General’s office nevertheless sought to have Hartfield retried. Eventually, the Texas Court of Appeals ordered that Hartfield be set free, asserting that his Sixth Amendment right to a speedy trial was violated. The court said, “The State’s negligence in this case created a criminal justice nightmare for Hartfield and the system at-large, as he sat in the custody of the Texas Department of Criminal Justice for thirty-two years without a conviction.” Barker unsuccessfully fought against Hartfield’s release at the Fifth Circuit and before the Texas Court of Criminal Appeals.¹¹ Later, Barker petitioned the Supreme Court for review and also was on Texas’s reply brief. The Supreme Court denied Texas’s petition and Mr. Hartfield was released.

In *Buck v. Davis*, 137 S. Ct. 759 (2017), Barker represented Texas in an attempt to execute an African-American defendant, Duane Buck, after a psychologist on the stand claimed that the defendant’s race made him statistically more likely to commit a violent crime. The Supreme Court found that the district court had been mistaken in its ruling that the psychologist’s testimony had not had an impact on the jury’s decision to sentence Buck to death. The majority 6-2 opinion, written by Chief Justice Roberts, reasoned, “When a jury

hears expert testimony that expressly makes a defendant’s race directly pertinent on the question of life or death, the impact of that evidence cannot be measured simply by how much air time it received at trial or how many pages it occupied in the record. Some toxins can be deadly in small doses.”¹²

CONCLUSION

Barker’s record raises questions about his commitment to upholding the rights of immigrants, women, LGBTQ communities, people of color, and the accused. Alliance for Justice opposes his confirmation.

ENDNOTES

- 1 Sen. Comm. on the Judiciary, 115th Cong., John Campbell Barker Questionnaire for Judicial Nominees, 1, available at <https://www.afj.org/wp-content/uploads/2018/05/J.-Campbell-Barker-SJQ-PUBLIC-OCR.pdf>.
- 2 J. Cam Barker, *Grossly Excessive Penalties in the Battle Against Illegal File Sharing*, 83 TEX. L. REV. 525 (2004), available at <https://www.afj.org/wp-content/uploads/2018/05/Substantive-Due-Process-Clause-Note.pdf>.
- 3 Sen. Comm. on the Judiciary, 115th Cong., John Campbell Barker Questionnaire for Judicial Nominees, 34.
- 4 Sen. Comm. on the Judiciary, 115th Cong., John Campbell Barker Questionnaire for Judicial Nominees, 23.
- 5 Amicus Curiae Brief Supporting Petitioners at 13, *In re United States of America*, 138 S. Ct. 371 (2017), available at https://www.supremecourt.gov/DocketPDF/17/17-801/23751/20171213160859056_17-801%20tsac%20State%20of%20Texas.pdf.
- 6 *Id.* at 16.
- 7 Sen. Comm. on the Judiciary, 115th Cong., John Campbell Barker Questionnaire for Judicial Nominees, 29.
- 8 Amici Curiae Brief Supporting Petitioners at 15, *Zubik v. Burwell*, 136 S. Ct. 1557 (2016), available at <http://www.scotusblog.com/wp-content/uploads/2016/01/20-States-LSP-Amicus.pdf>.
- 9 *Veasey v. Abbott*, 2018 U.S. App. LEXIS 10833, at *35 (Apr. 27 2018 5th Cir.).
- 10 *Id.* at 64.
- 11 Sen. Comm. on the Judiciary, 115th Cong., John Campbell Barker Questionnaire for Judicial Nominees, 28.
- 12 *Buck v. Davis*, 137 S. Ct. 759, 777 (2017).