

AFJ NOMINEE REPORT

JULIUS

RICHARDSON



U.S. Court of Appeals for the Fourth Circuit

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INTRODUCTION

On May 7, 2018, President [Trump nominated](#) Julius “Jay” Ness Richardson to the Fourth Circuit Court of Appeals [seat](#) previously held by Judge Dennis W. Shedd. Richardson is a former clerk to U.S. Supreme Court Chief Justice William Rehnquist. He is currently 41 years old.

The Senate, consistent with its constitutional responsibilities, should carefully examine Richardson’s record before confirming him to a lifetime seat on the Fourth Circuit Court of Appeals.

BIOGRAPHY

Since 2009, Richardson has [served](#) as an assistant U.S. attorney for the District of South Carolina.¹ After clerking for Judge Richard Posner on the U.S. Court of Appeals for the Seventh Circuit and Chief Justice William Rehnquist on the U.S. Supreme Court, Richardson worked as an associate at Kellogg Hansen Todd Figel & Frederick PLLC. He received his J.D. in 2003 from the University of Chicago Law School and his B.S. from Vanderbilt University in 1999.

Like many of the Trump Administration’s judicial nominees, Richardson is a member of The Federalist Society, an outside group to which Trump has [delegated](#) important aspects of the judicial nomination process. Richardson joined last year.²

Richardson is currently a member of two private clubs with a history of [discrimination](#), the Forest Lake Club³ and the Palmetto Club.⁴

U.S. ATTORNEY’S OFFICE

During Richardson’s tenure at the U.S. Attorney’s Office for the District of South Carolina, he has [worked](#) on narcotics, violent crime, white collar crime, national security, public corruption, and civil rights cases.⁵

His cases included prosecuting MS-13 members in a 2011 murder-for-hire [case](#) and members of the Hell’s Angels Motorcycle Club in a 2013 Racketeering Influenced and Corrupt Organization Act (RICO) [case](#). Richardson also worked on a 2016 [case](#) in which a farm employing undocumented immigrants was required to pay a \$1 million fine and undergo four years of intensive supervision.

In 2015, Richardson helped [prosecute](#) a South Carolina sheriff who took bribes from friends in order to release their undocumented employees from the county jail. Richardson stated [publicly](#), “Instead of respecting the law, they were willing to do favors for people who are connected, but not those who are not connected. We certainly don’t think that’s a system that promotes respect for the law.”

Following the tragic June 2015 [shooting](#) at the Emanuel AME Church in Charleston, South Carolina, Richardson was part of the team of prosecutors and investigators who brought federal hate crime [charges](#).

During a September 2010 public appearance in his [personal](#) capacity,⁶ Richardson [participated](#) in a conversation about charging decisions, prosecutorial discretion, and mandatory minimums.⁷ Richardson spoke to concerns about law enforcement and the use of force.⁸

JUDICIAL PHILOSOPHY

In a 2017 commencement address, Richardson [described](#) Chief Justice Rehnquist as “a hero of [mine](#).”⁹ During the process that led to the confirmation of Justice Samuel Alito to the U.S. Supreme Court, Richardson signed a [letter](#) supporting Alito’s nomination that stated:

Judge Alito has a well-deserved reputation as an outstanding jurist. He is, in every sense of the term, a “judge’s judge.” His opinions are fair, thoughtful and rigorous. Those of us who have appeared before Judge Alito appreciate his preparation for argument, his temperament on the bench and the quality and incisiveness of the questions he asks. Those of us who

have worked with Judge Alito respect his legal skills, his integrity and his modesty. In short, Judge Alito has the attributes that we believe are essential to being an outstanding Supreme Court justice and therefore should be confirmed.

In 2006, Richardson signed a [letter](#) in support of a [highly controversial](#) nominee to the Fifth Circuit, Michael Wallace. Wallace had previously argued for getting rid of the Legal Services Corporation and was fiercely [opposed](#) by civil rights groups and African-American lawyers in Mississippi. Wallace earned the [extremely](#) rare distinction of being rated “[not qualified](#)” by the American Bar Association based on his temperament.¹⁰ While Richardson supported Wallace’s nomination, the nomination was ultimately [withdrawn](#).

In a September 2010 [appearance](#) where Richardson was speaking in his personal capacity,¹¹ he described his views on the Supreme Court and constitutional analysis as follows:

One of the **great inventions**, really of the last 20 years at the Supreme Court has been that when they talk about the Constitution, unlike what they did before then, they now actually look at what the Constitution itself says.¹² (emphasis added)

Later on in that [speech](#), Richardson provides insight into his views on the standards of review that courts use to

assess whether government actions pass constitutional muster. While he made his remarks through the lens of a firearms case in the Seventh Circuit, his comments raise questions about his thinking on important legal standards:

And again, analogizing back to the First Amendment just like Justice Scalia had done, he looked at—there’s really three choices in the First Amendment context—there’s rational basis, there’s strict scrutiny, and then there’s intermediate scrutiny. **I don’t think anybody really knows what those mean. I mean, I don’t think the Supreme Court does, and I certainly don’t.** And I imagine most of us sort of don’t have a full understanding of what the difference [sic] between them are¹³. . . . So then the court is left with the question, Judge Easterbrook is left with the question, is it intermediate scrutiny or strict scrutiny? Again, I’ll sort of sidetrack here to talk a little bit about those. **In the end, I don’t think it matters one bit. I think the analysis is the same, and I don’t think it impacts any regulation. I think the court is going to get where it wants to get whether it’s strict scrutiny or intermediate scrutiny.**¹⁴ (emphases added)

In law school, Richardson won an award for a [paper](#) on the [Confederate Constitution](#). His paper does not appear to be publicly available.

SELECTION PROCESS

In a 2005 press [interview](#), Richardson “said he has no plans to put on the robe.” Following the election of Donald Trump, and before any announced vacancies in the Fourth Circuit, Richardson notes in his Senate Judiciary Committee [Questionnaire](#), that his selection process began as follows: “In informal discussions with friends in the Spring of 2017, I indicated that I would be interested in being considered should a vacancy occur on the Court of Appeals for the Fourth Circuit.”¹⁵ Richardson interviewed with the Trump Administration in June 2017,¹⁶ and it was later [announced](#) that Judge Shedd, to whose seat Richardson is nominated, would [take](#) senior status on January 30, 2018.

When [discussing](#) a Senate Judiciary Committee hearing on gun safety in his September 2010 appearance, Richardson stated, “The Senate is holding a hearing, and **they hold all these hearings and I’m not sure they mean a whole lot**, but they’re holding a hearing addressing what we need to be doing about firearm regulation going forward.”¹⁷ (emphasis added).

GUN SAFETY

In September 2010, Richardson [lectured](#) and [participated](#) in a panel discussion during a “Gun Rights and Laws CLE” on the “Second Amendment After *Heller* and *McDonald*.” Richardson made clear that he was speaking in his [personal](#) capacity¹⁸ – and not on behalf of the federal government.

In his [remarks](#), Richardson appeared to speak approvingly of the majority’s holding in *District of Columbia v. Heller* and disapprovingly of Justice John Paul Stevens’s dissent.¹⁹ However, Richardson also noted that the Second Amendment does not establish an absolute right.²⁰ When discussing enforcement of federal firearms laws, Richardson [acknowledged](#) that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) cannot pursue every case based on its available resources.²¹

Richardson’s remarks covered a wide range of additional [topics](#), including: concealed carry of firearms; open carry of firearms; limits on types of firearms; possible limits on gun and knife shows; regulation of ammunition; states’ rights; reciprocity of firearm laws across state lines; international treaties; stand your ground laws; felon in possession cases; the Environmental Protection Agency’s (EPA) [efforts](#) to [limit](#) the use of lead ammunition in wildlife refuges; and the legality of waiting periods for firearm purchases,²² which Richardson compared to the legality of waiting periods for abortion services.

CONCLUSION

The Senate, consistent with its constitutional responsibilities, should carefully examine Richardson’s record before confirming him to a lifetime seat on the Fourth Circuit Court of Appeals.

ENDNOTES

- 1 Sen. Comm. on the Judiciary, 115th Cong., Julius Ness Richardson Questionnaire for Judicial Nominees, 1-2, available at <https://www.afj.org/wp-content/uploads/2018/06/Julius-Ness-Richardson-Senate-Questionnaire-PUBLIC-OCR-report.pdf>.
- 2 *Id.* at 5.
- 3 *Id.* at 5-6.
- 4 *Id.* at 5-6.
- 5 *Id.* at 16.
- 6 Jay N. Richardson, Speaker, Second Amendment after *Heller* and *McDonald*, Guns Rights and Laws CLE, University of South Carolina School of Law, Columbia, South Carolina. Panel 1, Recording at 01:05:00, available at <https://www.youtube.com/watch?v=vKZ0HotaVDw> (Sept. 9, 2010).
- 7 Jay N. Richardson, Speaker, Second Amendment after *Heller* and *McDonald*, Guns Rights and Laws CLE, University of South Carolina School of Law, Columbia, South Carolina. Panel 2, Recording at 00:53:25, available at <https://www.youtube.com/watch?v=zYtY5oTIDeg> (Sept. 9, 2010).
- 8 *Id.* at 01:04:35.
- 9 Jay N. Richardson, Speaker, Heathwood Hall Commencement Address, Recording at 11:14, available at <https://www.afj.org/wp-content/uploads/2018/06/2017-05-26-Commencement-VTS-01-3.mp4> (May 26, 2017).
- 10 Report of the Sen. Judiciary Comm. Minority Members, Review of Republican Efforts to Stack Federal Courts, 19 (May 10, 2018), available at https://www.feinstein.senate.gov/public/_cache/files/b/7/b783e2d9-38be-4798-a7fb-e89ff11fd47c/A233636E649CB9CD98B0555FB3D18C88_judiciary-dems-final-judges-report-5.10.18-.pdf.
- 11 Jay N. Richardson, Speaker, Second Amendment after *Heller* and *McDonald*, Guns Rights and Laws CLE, University of South Carolina School of Law, Columbia, South Carolina. Panel 1, Recording at 01:05:00, available at <https://www.youtube.com/watch?v=vKZ0HotaVDw> (Sept. 9, 2010).
- 12 *Id.* at 00:42:35.
- 13 *Id.* at 00:52:00.
- 14 *Id.* at 00:53:00.
- 15 Sen. Comm. on the Judiciary, 115th Cong., Julius Ness Richardson Questionnaire for Judicial Nominees, 30, available at <https://www.afj.org/wp-content/uploads/2018/06/Julius-Ness-Richardson-Senate-Questionnaire-PUBLIC-OCR-report.pdf>.
- 16 *Id.* at 30.
- 17 Jay N. Richardson, Speaker, Second Amendment after *Heller* and *McDonald*, Guns Rights and Laws CLE, University of South Carolina School of Law, Columbia, South Carolina. Panel 1, Recording at 01:08:40, available at <https://www.youtube.com/watch?v=vKZ0HotaVDw> (Sept. 9, 2010).
- 18 *Id.* at 01:05:00.
- 19 *Id.* at 00:43:47.
- 20 *Id.* at 00:45:20.
- 21 Jay N. Richardson, Speaker, Second Amendment after *Heller* and *McDonald*, Guns Rights and Laws CLE, University of South Carolina School of Law, Columbia, South Carolina. Panel 2, Recording at 01:11:57, available at <https://www.youtube.com/watch?v=zYtY5oTIDeg> (Sept. 9, 2010).
- 22 Jay N. Richardson, Speaker, Second Amendment after *Heller* and *McDonald*, Guns Rights and Laws CLE, University of South Carolina School of Law, Columbia, South Carolina. Panel 1, Recording at 1:21:20, available at <https://www.youtube.com/watch?v=vKZ0HotaVDw> (Sept. 9, 2010).