



# Judge Alison J. Nathan

Nominee for the United States Court  
of Appeals for the Second Circuit

On November 18, 2021, President Joe Biden [nominated](#) current U.S. District Court Judge Alison J. Nathan to the United States Court of Appeals for the Second Circuit. Judge Nathan is nominated to the seat being vacated by Judge Rosemary Pooler, who is retiring. Before her decade-long service on the District Court, Judge Nathan had a distinguished career in private practice, academia, and government service. When she was confirmed by the U.S. Senate to her current position in 2011, Judge Nathan was only the [third openly LGBTQ+ federal judge](#) ever confirmed by the Senate. If confirmed to the Second Circuit, she will become the second openly LGBTQ+ woman to serve on any federal circuit court.

## **Early Life and Education**

Judge Nathan was born in Philadelphia, Pennsylvania, in 1972. She earned a Bachelor of Arts degree from Cornell University in 1994, then spent two years abroad in Japan and Thailand teaching English and working at a daily newspaper. Judge Nathan received her J.D., *magna cum laude* and Order of the Coif, from Cornell Law School in 2000, where she served as Editor-in-Chief of the *Cornell Law Review*.

## **Legal Experience**

After law school, [Judge Nathan](#) clerked for two federal judges: Judge Betty B. Fletcher of the U.S. Court of Appeals for the Ninth Circuit and Associate Justice John Paul Stevens of the Supreme Court of the United States.

From 2002 to 2006, Judge Nathan was an associate at the law firm Wilmer Cutler Pickering Hale and Dorr LLP in Washington, D.C., and New York, NY. While in private practice, she focused on Supreme Court and appellate litigation, as well as regulatory and government affairs. Judge Nathan also devoted substantial time to pro bono representations and received WilmerHale's Pro Bono Award in 2003, 2004, and 2005. For example, in *Walker v. True*, she represented an indigent incarcerated person on death row in Virginia in various habeas proceedings, appeals, and litigation matters.

From 2006 until 2009, Judge Nathan worked in academia as a Visiting Assistant Professor at Fordham University School of Law and as the Fritz

Alexander Fellow at New York University School of Law. She specialized in civil and criminal procedure and constitutional law. In 2009, Judge Nathan was appointed Associate White House Counsel and Special Assistant to President Obama. The following year, Judge Nathan became Special Counsel to the Solicitor General of New York. In government service, Judge Nathan drafted briefs, argued cases in the state and federal trial and appellate courts, and supervised Assistant Solicitors General in their brief and oral argument preparations. She earned the Louis J. Lefkowitz Memorial Achievement Award in 2010 in recognition of her outstanding performance on behalf of the Office of the Attorney General and the people of the State of New York. Since 2015, she has worked as an Adjunct Professor of Clinical Law at New York University School of Law.

### **Judicial Experience**

On March 31, 2011, President Obama [nominated](#) Judge Nathan to a seat on the U.S. District Court for the Southern District of New York. Judge Nathan's nomination garnered support from people across the ideological spectrum. For example, nearly the entire complement of law clerks who Judge Nathan clerked with at the Supreme Court — including clerks for Justices Thomas, Scalia, Rehnquist, and Kennedy — signed a [letter](#) supporting her nomination. She was [reported out](#) of the Senate Judiciary Committee by a 14–4 vote, then [confirmed](#) by the full Senate by a 48–44 vote on October 13, 2011.

During her time on the bench, Judge Nathan has presided over 45 trials and authored 1,546 opinions. Of those opinions, only 16 decisions were reversed, vacated, or remanded — a rate of approximately 1%. She has also sat by designation on the Second Circuit more than 30 times.

Judge Nathan's record on the District Court demonstrates that she is a fair, impartial jurist with a clear commitment to equal justice. The following cases are illustrative of her record.

### **CIVIL RIGHTS**

As a District Court Judge, Judge Nathan has made key decisions protecting civil rights. For instance, in [Common Cause/New York v. Brehm](#), Common Cause challenged New York's practice of regularly removing voters from active status and placing them on inactive status. Some counties did not keep lists of inactive voters at the polls, meaning that voters incorrectly placed on these lists did not have the opportunity to vote by affidavit, which was their right, and were subsequently disenfranchised. In an important decision protecting voting rights, Judge Nathan held that the state's refusal to provide lists of inactive voters at polling locations violated the Equal Protection Clause.

In [Medina v. City of New York](#), a New York Police Department (NYPD) officer held Tomás Medina in a banned chokehold for roughly 23 seconds and used a Taser on him 13 times during a response to a noise violation. Judge Nathan ruled that New York City and top NYPD officials could be held liable for the officer's misconduct, finding that, "Medina has raised a plausible inference that the NYPD has maintained a custom of tacitly endorsing or tolerating the improper or unconstitutional use of chokeholds and Tasers." This ruling drew attention to the NYPD's use of excessive force, and the parties eventually reached a [settlement agreement](#).

In [E.G. v. City of New York](#), the Coalition for the Homeless and parents of school-age children living in homeless shelters filed a class action lawsuit against New York City, alleging the city's failure to provide homeless students with reliable and adequate access to the internet during the COVID-19 pandemic violated the students' rights to basic education. Judge Nathan denied the city's motion to dismiss the case, finding that the plaintiffs had shown that the transition to remote learning, without providing homeless students reliable means to access the internet, created "significant barriers to homeless students' education," violating New York law. This decision protected the civil rights and liberties of vulnerable Americans. The parties ultimately [settled](#), with the City of New York agreeing to install wireless internet in over 200 shelters and take measures to make the internet accessible to homeless families.

## **INTELLECTUAL PROPERTY**

In [ABC, Inc. v. Aereo](#), television broadcasters sued Aereo for copyright infringement and moved for a preliminary injunction. They argued that Aereo's system, which offered subscribers broadcast television programming over internet-connected devices, violated copyright laws. Judge Nathan denied the preliminary injunction, relying on a Second Circuit case, *Cartoon Network LP, LLLP v. CSC Holdings, Inc.*, which established the legality of cloud-based streaming. She held that Aereo's streams to subscribers were not "public performances," and thus did not constitute copyright infringement. On review, the Second Circuit affirmed Judge Nathan's decision, reasoning that she had correctly applied its precedent and concluded that Aereo's streams were not public performances. However, the [Supreme Court](#) had an alternative interpretation of the Copyright Act and reversed in a "limited holding," finding that Aereo's viewing service amounted to a public performance.

## **IMMIGRATION**

Judge Nathan has ensured the protection of due process rights for all individuals in immigration cases. In [Vasquez Perez v. Decker](#), the New York Civil Liberties Union, Cardozo Law Immigration Justice Clinic, and The Bronx Defenders filed a putative class action lawsuit against Immigration and Customs Enforcement (ICE) and the Department of Homeland Security (DHS) challenging the unconstitutional practice of jailing immigrant New Yorkers for months before bringing them in front of a judge. Judge Nathan ruled that detained immigrants must receive a hearing before a judge within 10 days of being arrested. This ruling, which was the first of its kind establishing standards to curb ICE's practice of prolonged detentions, followed longstanding precedent that immigrants are entitled to the same constitutional protections as everyone else.

Similarly, in [Doe v. ICE](#), plaintiffs sought to stop ICE from making federal immigration arrests without a judicial warrant or court order in and around New York courthouses. Judge Nathan denied the government's motion to dismiss with respect to all but plaintiffs' Sixth Amendment claim, thereby allowing the lawsuit to move forward. In a subsequent [ruling](#), Judge Nathan also allowed plaintiffs to redact their personal identifying information. Although the case is still ongoing, these rulings reinforced that immigrant New Yorkers should have equal and full access to our courts without fearing abusive ICE tactics.

## **CRIMINAL JUSTICE**

During her time on the bench, Judge Nathan has also adjudicated a significant number of criminal cases where she impartially and fairly applied the law while protecting the rights of defendants under the Constitution. For instance, in [United States v. Burrell](#), Judge Nathan presided over a gang case involving 63 defendants, one of the largest single indictments in the history of the Southern District of New York. The defendants were charged with, among other things, conspiring to commit acts of racketeering, conspiring to violate narcotics laws, distributing narcotics near schools, and using firearms in furtherance of these conspiracies. Judge Nathan coordinated and managed the appointment of counsel, bail hearings, arraignments, and guilty pleas. Appeals stemming from this matter have all been affirmed on review by the Second Circuit.

In [United States v. Scparta](#), Judge Nathan granted compassionate release to a defendant with hypertension, sleep apnea, high blood pressure, and high cholesterol who had served more than half of his

prison sentence. A month prior to this decision, Attorney General William Barr [ordered](#) federal prisons to increase releases to home confinement because of the dangers posed by COVID-19 to elderly and medically vulnerable incarcerated people. The Bureau of Prisons (BOP), in turn, implemented a policy requiring individuals on the cusp of release to quarantine together for at least 14 days. No testing for COVID-19 was done before placement in the group quarantine, and if anyone in the group tested positive, the 14-day clock for every individual re-started. In granting Mr. Scparta's release, Judge Nathan noted that the BOP's policy was "inconsistent with the directive of the Attorney General," as it put all of the individuals in the facility at greater risk of contracting coronavirus.

In [United States v. Sadr Nejad](#), Sadr was charged and convicted for violating American sanctions laws against Iran by moving more than \$115 million in payments for his family business through banks in the United States. However, the government later disclosed that it failed to turn over evidence that could have helped Sadr mount a defense, violating its constitutional disclosure obligations. Due to these problems with the prosecution, Judge Nathan vacated Sadr's conviction and called for a "coordinated, systemic response from the highest levels of leadership within the United States Attorney's Office for the Southern District of New York." She also ordered every federal prosecutor to read her opinion within one week of its publication. Judge Nathan's decision to call out prosecutorial misconduct demonstrates her commitment to due process rights for all individuals in our criminal justice system.

Judge Nathan is currently presiding over the high-profile trial of [Chislaine Maxwell](#), which began on November 29, 2021. If Judge Nathan is confirmed by the Senate during the trial, she announced that she would continue handling her many civil and criminal cases, including presiding over the Maxwell trial until its completion.

### ***Professional Activities and Accolades***

Judge Nathan is a member of several bar associations, including the American Bar Association, D.C. Bar Association, and New York City Bar Association. She is also a member of the Federal Bar Council Inn of Court, the Second Circuit Federal Bar Council, and the American Law Institute. Throughout her career, she has been recognized with various honors and awards for her outstanding contributions to the legal community. In 2015, she received the Community Service Award from Fordham OUTlaws, an LGBTQ+ law student organization.

In her current position as U.S. District Court Judge for the Southern District of New York, Judge Nathan serves on the Bench and Bar Fund Committee, COVID Response Team, Grievance Committee, and as Chair of the Security Committee.