

Leondra Kruger

Leondra Kruger is an Associate Justice on the California Supreme Court; she was nominated to that position by Governor Jerry Brown in 2014. She is described as the Court's "[swing vote](#)."

BIOGRAPHY

Justice Kruger was born in 1976 and grew up in Pasadena, California. She attended Harvard University, where she was elected to Phi Beta Kappa, and Yale Law School, where she became the first Black woman to serve as the editor in chief of the Yale Law Journal. After law school Justice Kruger clerked for two federal judges: Associate Justice John Paul Stevens of the Supreme Court of the United States and Judge David Tatel of the U.S. Court of Appeals for the District of Columbia Circuit.

LEGAL EXPERIENCE

Before her federal clerkships, Kruger worked in the D.C. office of [Jenner & Block](#). While there, she worked on [Veith v. Pennsylvania](#), a notable challenge to partisan gerrymandering that ultimately made its way to the Supreme Court, and [Hargrave v. Vermont](#), bringing a successful challenge under the Americans with Disabilities Act to a Vermont law that allowed health care workers to medicate individuals against their will when they were civilly committed due to a mental illness. Kruger left Jenner & Block for her two judicial clerkships and subsequently worked for two years at [Wilmer Hale](#) in D.C., where her work included amicus briefs in [Price v. Phillip Morris Inc.](#), arguing that the Court should review a ruling in favor of Phillip Morris in a deceptive trade practices suit; and in [Parents Involved in Community Schools v. Seattle Sch. Dist. No. 1](#), arguing on behalf of psychological associations regarding the benefits of diversity in education.

Kruger left Wilmer Hale in 2006 to spend a year as a Visiting Assistant Professor at the University of Chicago. She then served as Assistant to the Solicitor General and Principal Deputy Solicitor General under President Obama. During her time in the Solicitor General's Office (OSG), she argued twelve cases before the Supreme Court. She was also on the brief for the United States in notable cases such as [NFIB v. Sebelius](#), the successful defense of the Affordable Care Act, and [Ashcroft v. Al-Kidd](#), as well as in [U.S. Dep't of Health and Human Servs. v. Commonwealth of Mass.](#) and [Office of Personnel Mgmt. v. Golinski](#), notable LGBTQ rights cases in which the U.S. asked the Court to review the constitutionality of the Defense of Marriage Act. In 2013, she briefly moved to the Office of Legal Counsel before Governor Brown nominated her to the California Supreme Court.

LEGAL RECORD

Below is an overview of Justice Kruger’s legal record, alphabetized by issue area, including her work in the Obama administration and on the California Supreme Court. It includes a summary of her civil justice record, including cases related to arbitration, consumer protections, the environment, immigration, victim’s rights, and worker protections. It also includes a summary of her criminal justice record, including on the death penalty, due process, and Fourth, Fifth, and Sixth Amendments. These summaries do not include every case that she has worked on or considered but do include notable cases in her record and ones that divided the Justices on the California Supreme Court.

CIVIL JUSTICE

Arbitration

Justice Kruger authored a dissent in [Sandquist v. Lebo Automotive](#), where the Court held that an arbitrator should decide the availability of class arbitration; Justice Kruger would have held that this was a “gateway question” to be decided by a judge, and not by the arbitrator. Justice Kruger was concerned that the Court’s ruling might lead to “unwilling parties” being forced into arbitration when “they reasonably thought a judge, not an arbitrator, would decide.” And in [Balthazar v. Forever 21](#), Justice Kruger, on behalf of a unanimous Court, held that a take-it-or-leave-it arbitration clause which applied only to employees’ disputes and that provided confidentiality to the employer was not both procedurally and substantively unconscionable.

Consumer Protections

In [T.H. v. Novartis Pharmaceuticals](#), a mother was prescribed a generic labor suppression drug with a warning label identical to that of the brand-name version Novartis once produced. After the mother’s child experienced developmental side effects that were not on the warning label, the family sued Novartis, arguing that because generic manufacturers must use the brand-name warning label, the brand-name manufacturer is liable for label deficiencies on the generic drug. In dissent, Justice Kruger would have held that past manufacturers have no duty to customers after they cease manufacturing or selling a drug.

Justice Kruger’s most significant damages cases are [Jarman v. HCR Manor Care](#), where she joined a majority of the Court in holding that a \$500 statutory damages cap for current or former nursing home patients bring suit against skilled nursing facilities for regulatory violations applied to the whole action, over a dissent from Justices Cuellar and Liu arguing that the cap was \$500 per violation; and [Nickerson v. Stonebridge Life Ins. Co.](#), where Justice Kruger, in a unanimous opinion, held that attorney fees awarded separate from the jury’s award of damages should be considered compensatory when determining whether a jury’s punitive damages award exceeds the constitutionally required

10-1 ratio between punitive and compensatory damages.

Justice Kruger has participated in two notable statute of limitations cases: [Rubenstein v. Doe](#), where she joined the majority, over a dissent, in holding that even when an extended statute of limitations applies (here, to a sexual assault claim), a claim must still be presented to the opposing party within a defined “accrual period;” and [Flores v. Presbyterian Intercommunity Hosp.](#) where Justice Kruger authored a unanimous opinion holding that the professional negligence statute of limitations, rather than the general statute of limitations, applied to a patient injured after the rails on her hospital bed collapsed.

In [Hassell v. Bird](#), an attorney received a defamatory review on Yelp and sought a court order to remove the review. A majority of the Court reversed a lower court order to remove the review. Justice Kruger concurred, writing that the court could not issue such an order to Yelp without giving the company its day in court. In [Kim v. Toyota Motor Corp.](#), plaintiffs, who had been involved in an accident, argued industry custom was irrelevant to a risk-benefit analysis in a product liability case. Justice Kruger authored the opinion of the Court stating that industry custom evidence is permissible in limited circumstances (e.g. to show competitors’ design choices and the tradeoffs in adhering to or deviating from those choices), and thus affirmed the lower court’s dismissal of plaintiffs’ claims

Environment

Justice Kruger has authored four significant environmental decisions from the bench, all of which were unanimous: [Monterey Peninsula Water Mgmt. Dist. v. Pub. Utility Comm’n](#), holding that the Public Utility Commission lacks jurisdiction to review fees imposed on public utility customers by water management districts to recoup the cost of remediating environmental harm caused by a utility; [City of Buenaventura v. United Water Conservation Dist.](#), holding that groundwater pumping charges do not violate constitutional limitations on state revenue collection authority when they bear a reasonable relationship to the burdens or the benefits of a water conservation district’s conservation activities; [I.](#) holding that “vertical” rather than “horizontal” insurance exhaustion applied to a chemical company paying for environmental damage it caused, potentially making it [easier](#) to recover large environmental cleanup costs; and [Wilde v. City of Dunsmuir](#), holding that measures setting municipal water rates and other local utility charges are exempt from California’s referendum process.

Immigration

In [People v. Patterson](#), a Canadian citizen residing in the U.S. pled guilty to felony drug possession and subsequently learned that the plea subjected him to deportation. Justice Kruger authored a unanimous opinion holding that even though he had been advised that his plea “may” have immigration consequences he could still move to withdraw his guilty plea to avoid deportation. In

[Bianka M. v. Super. Ct.](#), Justice Kruger authored a unanimous opinion holding that an undocumented minor’s father was not an essential party to her case when the father had abandoned her at birth and failed to respond to outreach by the minor or the Court, thus allowing the case to move forward. Justice Kruger also stated that the lower court erred when it speculated that the purpose of the custody action was to aid in obtaining lawful immigration status.

Victims’ Rights

In 2021, Justice Kruger [wrote](#) a unanimous decision addressing sexual abuse of minor plaintiffs. Plaintiffs, girls who were training for the Olympics in taekwondo, were sexually abused by their coach and sought to hold a number of defendants liable, including USA Taekwondo and the U.S. Olympic Committee. The decision held that the athletes could sue USA Taekwondo but not the U.S. Olympic Committee because the Committee did not have a duty to protect or care for the plaintiffs. In January 2022, Justice Kruger [joined](#) a unanimous ruling which held that non-disparagement agreements do not bar subsequent civil lawsuits arising from the same incident. In the case, a building owner sexually harassed and assaulted a woman who owned a condo in his building. After the parties reached a mediation agreement which included a nondisparagement provision, the woman filed a civil rights lawsuit against the building owner. The Court held that the nondisparagement provision did not limit the woman’s civil suit, a decision which has [significant implications](#) for workplace discrimination lawsuits.

Worker Protections

Recently, in *Castellanos v. California*, Justice Kruger joined a majority of the Court, over a dissent by Justices Goodwin Liu and Mariano-Florentino Cuellar, to [deny emergency review](#) of the legal challenge to California Proposition 22, which classified ride-share drivers and similar workers as independent contractors rather than employees.

Justice Kruger’s most significant decisions involving worker pay and benefits are *Ward v. United Airlines*; where she authored a unanimous opinion holding that interstate workers are entitled to wage statements from their employers under California law if their principal place of work is in California; [McLean v. State](#), where Justice Kruger authored a unanimous opinion holding that California law providing for prompt payment of wages at the end of employment applies to workers who retire in addition to those who quit; [Augustus v. ABM Security](#), where Justice Kruger concurred with a majority holding that employers must provide workers with rest periods where they are fully off duty, but partially dissented to write that the security guards in the immediate case had not demonstrated that being required to carry a phone or radio during a break constituted work; [Troester v. Starbucks](#), where Justice Kruger concurred with the Court’s decision that the “de minimus doctrine” – which prevents compensation for certain work tasks – did not apply in the immediate case and thus

the plaintiff's suit against Starbucks for unpaid wages could continue, but the Justice wrote separately to note that the doctrine could potentially apply in other circumstances; and [Lawson v. PPG Architectural Finishes Inc.](#), where Justice Kruger authored a unanimous opinion holding that worker whistleblower's retaliation claims should be subject to the California Labor Code's more lenient contributing factor test rather than the stricter McDonnell Douglas burden-shifting framework borrowed from federal law.

In [Voris v. Lampert](#), Justice Kruger held for a majority of the Court that conversion — a strict liability claim that wages owed and unpaid were property of the employee — is unavailable as a claim to plaintiffs seeking unpaid wages from a company owner (as opposed to the company itself). Justices Cuellar and Liu dissented. In [Desaulles v. Community Hospital of the Monterey Peninsula](#), the Court held that any plaintiff receiving "net monetary recovery" is a prevailing party entitled to attorney costs and fees, including a settlement agreement; Justice Kruger dissented, writing that trial courts have discretion to determine which party prevailed and may prevent plaintiffs from recovering costs and fees after obtaining only "minimal" recovery.

While working at the Office of the Solicitor General, Kruger participated in several cases involving employment discrimination: [Thompson v. North American Stainless](#), where she successfully argued that Title VII's prohibition on retaliation against an employee can encompass retaliation against third parties; [Hosana-Tabor v. E.E.O.C.](#), where she unsuccessfully argued the First Amendment "ministerial exception" should not apply to a religious school in an ADA case when the plaintiff teacher's job duties were mostly secular; and [Lewis v. Chicago](#), where she wrote in an [amicus brief](#) that a Title VII discrimination claim is timely, even if brought long after the adoption of a discriminatory practice, so long as the defendant continues to apply that practice.

CRIMINAL JUSTICE

Death Penalty

Justice Kruger has considered a number of death penalty cases due to the automatic death penalty appeal process in California. In some cases, Justice Kruger has overturned death penalty sentences, such as authoring unanimous opinions to reverse the sentence in [People v. Young](#) (where the prosecution inappropriately used evidence of defendant's white supremacist beliefs) and [People v. Peterson](#) (where the trial court improperly dismissed jurors who stated that they opposed the death penalty, but that their personal beliefs would not prevent them from following the law). In some instances, she has affirmed death penalty cases over the dissent of Justices Cuellar or Liu (for example, [People v. Miles](#) and [People v. Johnson](#), which considered whether black jurors had been unconstitutionally dismissed in a rape and murder trials, among various other procedural issues).

Recently, Justice Kruger authored a unanimous [decision](#) that narrowed the reach of a death penalty related voter initiative which limited a death-row prisoner's ability to file successive habeas petitions. The Court held that incarcerated people can file habeas petitions as long as the petitions are based on new information each time. Justice Kruger also joined a unanimous decision in [People v. McDaniel](#), which reaffirmed the Court's precedent that jury unanimity was not required as to the existence of aggravating factors; a ruling that unanimity was required would have overturned hundreds of death row sentences.

Due Process

Justice Kruger joined a unanimous decision (*In re Humphrey*) holding that the use of cash bail in California's criminal justice system violated the U.S. Constitution because it resulted in arrestees being detained solely because of a lack of financial resources.

During her time in the U.S. Solicitor General's office, Kruger successfully argued in *Turner v. Rogers* that a person cannot be jailed for failure to pay child support without first receiving a hearing on the person's ability to pay.

Fifth Amendment

In [People v. Rhoades](#), Justice Kruger rejected a Batson challenge by a white defendant, holding that though Black jurors were disproportionately dismissed from the jury, there wasn't heightened concern because the defendant and victim were white and the record indicated "readily apparent, race-neutral grounds" for the dismissals. In [People v. Daniels](#), a defendant was convicted of murder and sentenced to death after waiving his right to counsel and jury trial. The Court unanimously ruled that Daniels had validly waived his right to counsel but split over the validity of the jury trial waiver. Justice Kruger joined a majority holding the waiver invalid for the penalty phase and wrote separately that the Court should remand to develop a better record regarding the intelligence of the waiver. In [People v. Flores](#), Justice Kruger authored an opinion affirming a death penalty conviction. The opinion was unanimous on most issues, but Justice Kruger's decision that Flores had failed to unambiguously invoke his right to remain silent due to the unclear nature of the investigator's question and the bemused tone of Flores's response drew a dissent from Justices Liu and Cuellar.

Fourth Amendment

In [People v. Lopez](#), Justice Kruger held that a California exception to the Fourth Amendment's warrant requirement, allowing police to search a vehicle for a driver's identification following a traffic stop, was no longer entitled to stare decisis deference in light of the U.S. Supreme Court's decision in *Arizona v. Grant*. In [People v. Buza](#), she held that a California law requiring law enforcement to collect DNA samples for felony arrestees was constitutional. Justice Kruger emphasized the seriousness of the specific offense at issue in the case — arson —

and recognized the law might raise additional constitutional questions in other cases.

Sixth Amendment

In [Gardner v. Appellate Div. of Super. Ct.](#), Justice Kruger interpreted the California Constitution as more protective than the U.S. Constitution, ruling that a criminal defendant has a right to appointed counsel to respond to the state's appeal of a pretrial suppression motion. In [People v. Gallardo](#), a defendant was subject to an increased sentence after a trial court judge determined that she had used a deadly weapon in an earlier conviction. Justice Kruger wrote that this violated the Sixth Amendment principles the U.S. Supreme Court announced in *Apprendi v. New Jersey*, since a judge, not a jury, made the factual determination that defendant had used a deadly weapon.

[In re Gay](#) involved a petitioner seeking habeas relief due to ineffective assistance of counsel. Justice Kruger authored a unanimous opinion holding the petitioner's lawyer had been ineffective at the guilt phase of the trial by failing to investigate or call witnesses and hiding that he himself was under investigation for embezzlement.

When she was an Assistant to the Solicitor General at the Department of Justice, Justice Kruger appeared on the United States' amicus brief in *Vermont v. Brillion*. Justice Kruger successfully argued that an appointed attorney's delays should be attributed to the defendant and not the government, protecting the constitutional right to a speedy trial.

Other Criminal Justice Cases

Other notable criminal cases include: [People v. Rodas](#), where Justice Kruger authored a unanimous opinion holding that a defendant deemed competent to stand trial, but who subsequently exhibited signs of incompetence, was entitled to an additional competency inquiry before the trial proceeded; [People v. Conley](#), where Justice Kruger authored a unanimous opinion holding that the principle of *In re Estrada* (courts apply legislative reduction of criminal penalties retroactively if the legislation does not address retroactivity) does not apply when legislation addresses retroactivity; and [People v. Contreras](#), where Justice Kruger joined a majority holding that a sentence of 50 years to life for juvenile defendants in nonhomicide cases violated the Eighth Amendment.