IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

JAMES MONEY, WILLIAM RICHARD,
GERALD REED, AMBER WATTERS,
TEWKUNZI GREEN, DANNY
LABOSETTE, CARL REED, CARL “TAY
TAY” TATE, PATRICE DANIELS, and
ANTHONY RODESKY, on behalf of
Themselves and all similarly situated
Individuals,

Petitioners,

No. 20 cv 2094

v.

JEFFREYS, ROB,

Respondent.

DECLARATION OF PROFESSOR JUDITH RESNIK REGARDING
PROVISIONAL REMEDIES FOR DETAINED INDIVIDUALS

I have been asked to provide a declaration explaining my understanding of the remedies, both provisional and permanent, that federal judges can provide to people who are incarcerated and facing the threat of COVID-19. I declare that the following is a true and accurate account of what I believe are the pertinent legal principles and how they can apply in this unprecedented context. My views are based on my knowledge of the law and my experiences in cases. This opinion is mine and is not that of the institutions with which I am affiliated.

MY BACKGROUND

1. I am the Arthur Liman Professor of Law at Yale Law School where I teach courses, including on federal and state courts; procedure; large-scale litigation; federalism; and incarceration. Below, I provide a brief overview of my background; more details are in my resume, attached as Exhibit A to this Declaration.

2. Prior to joining the faculty of Yale Law School in 1997, I was the Orrin B. Evans Professor of Law at the University of Southern California (U.S.C.). During the decades before taking my current position, I was also a visiting professor at the law
schools of the University of Chicago, Harvard University, Yale University, and New York University.

3. At the beginning of my legal career, after I obtained a B.A. from Bryn Mawr College and a J.D. from N.Y.U. Law School where I was an Arthur Garfield Hays Fellow, I was a law clerk for the Honorable Charles E. Stewart in the United States District Court Southern District of New York.

4. I have worked on occasion as a lawyer, including in the clinical programs at Yale Law School and at U.S.C. I have appeared before the United States Supreme Court and in federal district and appellate courts. I have also been appointed by federal judges to assist in issues arising in large-scale litigation.

5. I have taught law for decades. Much of my focus has been on the role and function of courts, and the relationship of governments to their populations. Of particular relevance to this declaration is that I regularly teach the class, Federal and State Courts in the Federal System. Readings for students include materials on habeas corpus and on civil rights litigation, including 42 U.S.C. §1983.

6. I have been recognized for my scholarship and other work, and I have received awards from various organizations.

7. In 2018, I was awarded an Andrew Carnegie Fellowship to work on a book, tentatively entitled Impermissible Punishments, which explores the impact of the 1960s civil rights revolution on the kinds of punishments that governments can impose on people convicted of crimes. In that year, I also was awarded an honorary doctorate from University College London.

8. I am the Founding Director of the Arthur Liman Center for Public Interest Law. The Liman Center teaches classes yearly, convenes colloquia, does research projects, supports graduates of Yale Law School to work for one year in public interest organizations, and is an umbrella for undergraduate fellowships at eight institutions of higher education.

9. I write about the federal courts; adjudication and alternatives such as arbitration; habeas corpus and incarceration; class actions and multi-district litigation; the judicial role and courts’ remedies; gender and equality; and about transnational aspects of these issues. In recent years, I have spent a good deal of time doing research related to prisons. I have helped to develop
a series of reports that provide information nation-wide on the use of solitary confinement.

10. I regularly speak at conferences, and topics have included the federal courts, remedies, habeas corpus, civil rights, and prison litigation.


12. I have testified before the United States Congress, in hearings of subcommittees of the U.S. Judicial Conference addressing federal rules, and I serve as a court-appointed expert and trustee. I have given workshops and lectures to groups of federal judges, including at the request of the Federal Judicial Center and at the conferences of some federal circuits.


**Remedies Available in the Federal Courts:**
**Habeas Corpus, Civil Rights Litigation, and Enlargement**

14. In light of my knowledge of the federal law of habeas corpus, Section 1983, state and federal court relations, procedure, and remedies, I have been asked by counsel for the petitioners/plaintiffs to address the range of responses available
to judges presiding in cases that raise claims related to COVID-19.

15. As I understand from public materials on the health risks of this disease, COVID-19 poses a deadly threat to the well-being and lives of people who contract this disease. To reduce the risk and spread of this disease, our governments have instructed us to stay distant from others and to take measures that are extraordinary departures from our daily lives and routines.

16. Applying these urgent medical directives to prisons poses challenges in every jurisdiction. Governing legal principles about prisoners’ access to courts were not framed to address COVID-19’s reality: that being inside prisons can put large numbers of people (prisoners and staff) at risk of immediate serious illness and potential death.

17. These unprecedented risks from and harms of COVID-19 in prison raise a new legal question: whether COVID-19 has turned sentences which, when imposed, were (or may have been) constitutional into unconstitutional sentences during the pendency of this crisis. When sentencing people to a term of years of incarceration, judges had no authority to impose putting a person at grave risk of serious illness and death as part of the punishment for the offense. Now, such grave risks and harms can arise from the fact of incarceration.

18. A recent Supreme Court case, Montgomery v. Louisiana, 136 S.Ct. 718 (2016), provides an analogous situation - a constitutional-when-sentenced but unconstitutional-now sentence. The Court determined that, in light of new understandings of the limits of brain development in juveniles, sentences of life without parole (LWOP) imposed on individuals who had committed crimes when under the age of eighteen were lawful when issued but became unconstitutional. As a consequence, parole boards or courts had to reconsider whether LWOP remained appropriate. COVID-19 raises a parallel question, as it requires courts to address whether sentences lawful at imposition can (at least temporarily) no longer be served in prisons because otherwise, the sentence would become an unconstitutional form of punishment. In normal times, using Montgomery v. Louisiana as a guide, federal judges could remit eligible individuals to state courts and parole boards. But in these abnormal times, the speed at which decisions are made is critical. Therefore, as I discuss below, provisional remedies (enabling enlargement and release for some individuals and de-densifying for others) are necessary.
19. As is familiar, the classic and longstanding remedy for relief from unconstitutional detention, conviction, and sentences is habeas corpus. Courts’ jurisdiction and remedial authority under habeas is constitutionally enshrined, has a substantial common law history, and is codified in federal statutes. See generally Paul D. Halliday, Habeas Corpus (Harvard U. Press, 2012); Amanda L. Tyler, Habeas Corpus in Wartime (Oxford U. Press, 2017); Randy Hertz and James Leibman, Federal Habeas Corpus Practice and Procedure (2 volumes, 2019); Hart & Wechsler, The Federal Courts and the Federal System, Chapter XI, 1193-1164 (Richard H. Fallon, Jr, John F. Manning, Daniel J. Meltzer & David Shapiro, 7th ed., 2015). These citations are the tip of a vast and substantial literature that aims to understand the history and law of habeas corpus.

The Legal Thicket

20. By way of a brief overview, in federal courts, petitioners file under 28 U.S.C. §2254 (state prisoners), §2255 (federal post-conviction prisoners), as well as under §2241 (the general habeas statute).\(^1\) In the mid-1970s, the Supreme Court provided rules and forms for §2254 and §2255 filings.

21. Congress has recognized that federal judges are authorized under the habeas statutes to “summarily hear and determine the facts, and dispose of the matter as law and justice require.” See 28 U.S.C. §2243. In addition to this statutory authority, federal judicial power is predicated on the constitutional protection of the writ and on the common law.

22. As is familiar, Congress has channeled and circumscribed some of federal judicial authority through the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and, relatedly, under the Prison Litigation Reform Act (PLRA) of 1996. Moreover, the Supreme Court has issued many decisions interpreting the prior habeas statutes, the 1996 revisions in AEDPA, and the intersection

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\(^1\) In terms of the potential for concurrent bases for federal court jurisdiction, I will discuss the overlap with civil rights claims filed under 42 U.S.C. § 1983, on which a substantial amount of case law exists. In addition, habeas jurisdiction overlaps with other jurisdictional bases. For example, when I worked at Yale Law School in its clinical program, I filed lawsuits for federal prisoners predicated on 28 U.S.C. §2241 as well (in appropriate situations) as 28 U.S.C. §1331 (general question jurisdiction) and 28 U.S.C. §1361 (mandamus). Some of these cases, invoking both habeas and other jurisdictional provisions, were filed as class actions.
of habeas and civil rights claims brought under 42 U.S.C. §1983. The result is a dense arena of law and doctrine that can be daunting for litigants and jurists alike.

23. A good deal of case law in the Supreme Court and in the circuits addresses when §1983 (with jurisdiction based on 28 U.S.C. §1343) is the appropriate mode for prisoners to use, as contrasted with habeas corpus. Given the ability to plead in the alternative, proceeding under both would be possible as a matter of federal procedural rules. Yet because state prisoners who rely on 28 U.S.C. §2254 have to exhaust state judicial remedies, they may seek to use §1983, to which that requirement does not apply. And, because the PLRA affects §1983 litigants, prisoners may hope to avoid its strictures by filing under habeas.

24. In response, the Supreme Court has set forth distinctions to channel claims. The shorthand that reflects much of the case law is that, when the fact or duration of confinement is at issue and release is the remedy, habeas is the preferred route. If prisoners are challenging conditions of confinement, §1983 is the method. See, e.g., Preiser v. Rodriguez, 411 U.S. 475 (1978); Heck v. Humphrey, 512 U.S. 477 (1994).

25. Yet the distinctions have been complex to apply in practice. Line-drawing has prompted many opinions that parse situations that entail overlaps, as exemplified by Mohammad v. Close, 540 U.S. 744 (2004), Wilkinson v. Dotson, 544 U.S. 74 (2005), and by other Supreme Court and lower court decisions.

26. COVID-19 poses a new and painful context in which to undertake that analysis. Some reported decisions addressing the constitutional right of prisoners that officials not be "deliberately indifferent to serious medical needs" consider those Eighth Amendment claims to be appropriate for §1983 because they relate to conditions. But this deadly disease turns ordinary conditions into potentially lethal threats of illness for which the remedy to consider is release of at least some prisoners because density puts people at medical risk. Thus, because COVID-19 can end people’s lives unexpectedly and abruptly, COVID-19 claims turn the condition of being incarcerated into a practice that affects the fact or duration of confinement. In my view, COVID-19 claims, therefore, collapse the utility and purpose of drawing distinctions between what once could more coherently be distinguished. Therefore COVID-19 claims ought to be cognizable under both provisions.
27. Recognizing the availability of both forms of jurisdiction is only the beginning of a series of questions that courts have to address. If cases proceed under habeas, §1983, or both, courts need to consider how COVID-19 fits (or not) with conventional rules on exhaustion of judicial remedies for state court prisoners, many provisions of AEDPA, and the parameters of the PLRA. Again, new problems have emerged. For example, in terms of exhaustion of state judicial remedies, whatever the viability of state courts responding quickly, the concern is that day by day, the risk of illness increases for prisoners and staff. Those illnesses endanger others as well as stretch health care resources. Exhaustion would be “futile,” not only if state courts cannot act quickly but also if people become sick, risks skyrocket, and deaths occur. “Futility” thus needs to be analyzed in terms not only of the capacity of institutions but in terms of the likelihood that the people seeking relief will be well enough to have the capacity to do so, and that the remedy provided will be effective given the alleged harm.

28. Many other legal issues exist, in addition to the relationship of habeas and §1983 and exhaustion. Courts will need to consider when class actions are appropriate and when the criteria of Rule 23 is met; many facets of AEDPA including questions of successive petitions and deference to state court rulings; and the merits of arguments about unconstitutional sentences and conditions; and the range of remedies.

The Availability of Provisional Remedies

29. The reason to flag some of the many issues that litigation of both habeas petitions and civil rights cases entail is to underscore the importance of considering provisional remedies when cases are pending. In general, time is required for lawyers to brief and for judges to interpret and apply the law. But waiting days in a world of COVID infections can result in the loss of life.

30. While courts have not faced COVID before, they have faced urgent situations, which is why provisional legal remedies exist. Because COVID-19 cases may be predicated both on habeas corpus petitions and on §1983, courts have two ways to preserve the status quo – which here means protecting to the extent possible the health of prisoners, staff, and providers of medical services. One route is the use of temporary restraining orders and preliminary injunctions. These remedies require no explanation because they are familiar procedures. See Fed. R. Civ. Pro. 65.
31. Another option is an aspect of federal judicial power that is less well-known. District courts have authority when habeas petitions are pending to “enlarge” the custody of petitioners. “Enlargement” is a term that, as far as I am aware, is used only in the context of habeas. (More familiar terms for individuals permitted to leave detention are “release” and “bail,” and some decision that “enlarge” petitioners use those words rather than enlargement).

32. The distinction is that enlargement is not release. The person remains in custody - even as the place of custody is changed and thus “enlarged” from a particular prison to a hospital, halfway house, a person’s home, or other setting. Enlargement is thus, a provisional remedy that modifies custody by expanding the site in which it takes place. In some ways, enlargement resembles a prison furlough.

33. Enlargement has special relevance in cases in which jurisdiction is based both on habeas and §1983, to which the PLRA has application. As I understand the PLRA’s rules on the “release” of prisoners, enlargement would not apply, as enlargement is not a release order. And, of course, interpreting the many directives of the PLRA in light of COVID entails more elaboration that this brief mention. - The need to work through that statute and case law is another reason why the availability of provisional remedies is so important. Enlargement provides an opportunity for increasing the safety of prisoners, staff, and their communities while judges consider a myriad of complex legal questions.

34. I first encountered the provisional remedy of enlargement in the 1970s, when I represented a prisoner - Robert Drayton - who was confined at F.C.I. Danbury and who filed a habeas petition alleging that the U.S. Parole Commission had unconstitutionally rescinded his parole. The Honorable T.F. Gilroy Daly, a federal judge sitting in the District of Connecticut, granted Mr. Drayton’s request for enlargement while the decision on the merits was pending. Mr. Drayton returned to his home in Philadelphia and came back to Connecticut for the merits hearing. Judge Daly thereafter ruled in his favor; that decision was upheld in part and reversed in part. See Drayton v. U.S. Parole Commission, 445 F. Supp. 305 (D. Conn. 1978), affirmed in part, Drayton v. McCall, 584 F.2d 1208 (2d Cir. 1978).

35. This provisional district court remedy of enlargement is not mentioned directly in in federal rules governing the lower federal courts. In contrast, at the appellate level, Federal Rule of Appellate Procedure (FRAP) 23 provides in part that:
While a decision not to release a prisoner is under review, the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court, may order that the prisoner be: (1) detained in the custody from which release is sought; (2) detained in other appropriate custody; or (3) released on personal recognizance, with or without surety. While a decision ordering the release of a prisoner is under review, the prisoner must - unless the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court orders otherwise - be released on personal recognizance, with or without surety.

As that excerpt reflects, the Rule uses language familiar in the context of bail, and provides that appellate courts may also determine that a petitioner be detained in “other appropriate custody.”

36. Federal courts at all level are authorized by Congress to decide habeas cases “as law and justice requires.” 28 U.S.C. §2243. The case law also references that, at the district court level, the authority to release a habeas petitioner pending a ruling on the merits stems from courts’ inherent powers. See, e.g., Mapp v. Reno, 241 F.3d 221, 226 (2d Cir. 2001). And, as I noted, in these reported decisions, the terms “bail” or “release” are sometimes used instead of or in addition to “enlargement.”

37. In the last weeks, the saliency of enlargement has prompted me to review the law surrounding it. To gather materials and opinions on enlargement, I asked two law students, Kelsey Stimson of Yale Law School and Ally Daniels of Stanford Law School, to help me research what judges have said about enlargement and what others have written. Below I detail some of the governing case law. The Hertz & Liebman Treatise on Habeas also has a section (§14.2) devoted to this issue.

38. Some of the decisions involve requests for release when habeas petitions were pending from state prisoners, and others from federal prisoners, or from people in immigration detention. Further, several appellate cases address the issue of whether a district court order on enlargement was appealable as of right or subject to mandamus.

39. My central point is that, amidst these various debates about appealability and the test for enlargement/release, most circuits have recognized that district courts have the authority
to order release. See e.g., Woodcock v. Donnelly, 470 F.2d 93, 43 (1st Cir. 1972); Mapp v. Reno, 241 F.3d 221, 226 (2d Cir. 2001); Landano v. Rafferty, 970 F.2d 1230, 1239 (3d Cir. 1992); Calley v. Callaway, 496 F.2d 701, 702 (5th Cir. 1974); Dotson v. Clark, 900 F.2d 77, 79 (6th Cir. 1990); Cherek v. United States, 767 F.2d 335, 337 (7th Cir. 1985); Martin v. Solem, 801 F.2d 324, 329 (8th Cir. 1986); Pfaff v. Wells, 648 F.2d 689, 693 (10th Cir. 1981); Baker v. Sard, 420 F.2d 1342, 1342-44 (D.C. Cir. 1969).

40. The Fourth and Eleventh Circuits appear, albeit less directly, to recognize enlargement authority. See Gomez v. United States, 899 F.2d 1124, 1125 (11th Cir. 1990); United States v. Perkins, 53 F. App’x 667, 669 (4th Cir. 2002). A Ninth Circuit opinion from 1989 likewise appears to recognize the power of district courts to grant release pending a habeas decision where there are “special circumstances or a high probability of success.” See Land v. Deeds, 878 F.2d 318 (9th Cir. 1989). Thereafter, another decision, In re Roe, described the Circuit as not having ruled on the issue in terms of state prisoners. See 257 F.3d 1077 (9th Cir. 2001).2

41. A discrete question is the standard for enlarging petitioners. To obtain an order for release pending the merits of habeas decision, the petitioner must demonstrate “extraordinary circumstances” and that the underlying claim raises “substantial claims.” See e.g. Mapp v. Reno, 241 F.3d 221, 226 (2d Cir. 2001). Courts have also discussed that release is appropriate when “necessary to make the habeas remedy effective.” Mapp, 241 F.3d at 226; see also Landano v. Rafferty, 970 F.2d 1230, 1239 (3d Cir. 1992). As that Third Circuit decision explained, release was “available ‘only when the petitioner has raised substantial constitutional claims upon which he has a high probability of success, and also when extraordinary or exceptional circumstances exist which make the grant of bail necessary to make the habeas remedy effective.’”

42. Some judges have interpreted the “substantial questions” prong to require the underlying claim to have a “high probability

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2 Subsequent lower court cases debated whether district courts do possess such authority. See, e.g., Hall v. San Francisco Sup. Ct., 2010 WL 890044, at *2 (N.D. Cal. Mar. 8, 2010) (“Based on the overwhelming authority [of other circuit courts] in support, the court concludes for purposes of the instant motion that it has the authority to release Hall pending a decision on the merits.”); United States v. Carreira, 2016 U.S. Dist. LEXIS 31210, at *4, (D. Haw. Mar. 10, 2016) (“[T]his Court declines to address the merits of Petitioner’s bail requests in the absence of definitive guidance from the Ninth Circuit regarding the scope of this Court’s bail authority.”).
of success.” See Hall v. San Francisco Superior Court, No. C 09-5299 PJH, 2010 WL 890044, *1 (N.D. Cal. Mar. 8, 2010); In re Souels, 688 F. App’x 134, 135 (3d Cir. 2017). That test resembles standards for preliminary injunctive relief and for stays, which include an assessment of the likelihood of success on the merits and of whether the balance of hardships tips in favor of altering the status quo. (And, of course, more can be said about the nuances of these bodies of law as well.)

43. A few cases focus on the health of a petitioner as central to the conclusion that “extraordinary circumstances” exist. For example, in Johnston v. Marsh, the petitioner, Alfred Ackerman, brought a habeas claim alleging that he was convicted in Pennsylvania through a trial that lacked “due process.” 227 F.2d 528 (3d Cir. 1955). Ackerman asked for release pending a decision on the merits of his habeas petition; he argued that he had advanced diabetes and was “rapidly progressing towards total blindness.” Id. at 529. The district court authorized Ackerman to be released to a private hospital. The prison warden (Frank Johnston) went to the Third Circuit invoking writs of prohibition and mandamus to order the district court (Judge Marsh) to change his ruling. Rejecting the petitions, the Third Circuit affirmed that district courts possessed the authority to order relocation while the habeas petition was pending. Johnson v. Marsh has been cited in more recent cases to illustrate that findings of extraordinary circumstances may “be limited to situations involving poor health or the impending completion of the prisoner’s sentence.” Landano, 970 F.2d at 1239.

44. The court in In re Souels addressed what showing of health problems constituted extraordinary circumstances. See 688 F. App’x at 135-36. Sean Souels, who was serving a 46-month federal prison sentence, petitioned for a writ of mandamus directing the court to rule on his writ of habeas corpus and sought release pending the decision. Id. at 134. The court denied Souels bail because “he [did] not describe his medical conditions in any detail or explain how he cannot manage his health issues while he is in prison.” Id.

45. Health is not the only extraordinary circumstance that has been the basis for enlargement. For example, in United States v. Josiah, William Josiah brought a writ of habeas corpus after the Supreme Court invalidated the residual clause of the Armed Career Criminal Act (ACCA) and altered the method for determining whether prior convictions qualify as violent felonies under the ACCA. 2016 WL 1328101, at *2 (D. Haw. Apr. 5, 2016). Josiah, who was serving a federal prison sentence argued that his prior
convictions did not qualify as violent felonies and that he should not be subject to the fifteen-year mandatory minimum. The district court concluded that because the issue of retroactivity was pending before the Supreme Court and Josiah would have served his full sentence if the Court held its prior ruling retroactive, release pending the higher court’s ruling was appropriate. *Id.* at *4-6.

46. Another case involved enlargement in the context of the military. See *Gengler v. U.S. through its Dep't of Def. & Navy*, 2006 WL 3210020, at *6 (E.D. Cal. Nov. 3, 2006). As that court explained, a “district court has the inherent power to enlarge a petitioner on bond pending hearing and decision on his petition for writ of habeas corpus.” *Id.* at *5. The judge also noted that a “greater showing must be made by a petitioner seeking bail in a criminal conviction habeas ‘than would be required in a case where applicant had sought to attack by writ of habeas corpus an incarceration not resulting from a judicial determination of guilt.’” The court used the test of “exceptional circumstances and, at a minimum, substantial questions as to the merits.” *Id.* at *13. The court found “exceptional circumstances” based on the fact that the petitioner had been admitted to business school, had been granted permission by his commanding officer to attend, and would be forced to drop out if his custody were not enlarged. The court also ruled that “substantial questions as to the merits” existed because of alleged government’s errors in drafting the petitioner’s service agreement. *Id.* at *6.

47. As of this writing, I have located two reported cases on COVID. (Given the pace of litigation, I assume that more may have been filed and some may have been decided.) On April 7, the Honorable Jesse Furman, sitting in the Southern District of New York, granted on consent a motion styled “for bail” (the term used in the Second Circuit *Mapp* decision). Judge Furman ordered immediate release under specified conditions, pending the adjudication of the Section 2255 Motion. See *United States v. Nkanga*, No. 18-CR-00730 (S.D.N.Y., Apr. 7, 2020). The other case has less relevance as it was brought by an unrepresented litigant, Richard Peterson, who had originally sought habeas corpus relief on a claim about education credits and then filed an emergency request for release from a California state prison due to COVID-19. No. 2:19-CV-01480, 2020 WL 1640008, at *1 (E.D. Cal. Apr. 2, 2020). A class action seeking state-wide population reductions was pending at the time the district court ruled. The *Peterson* decision viewed the issue as one about conditions, to be litigated as a civil rights claim; the court also ruled that the petitioner had not shown he met the test for granting release. *Id.* at *2. Soon thereafter, the *Coleman/Plata* three-judge court held that the

48. The pro se Peterson case brings me back to the question of the relationship of habeas petitions based on COVID to civil rights claims based on conditions in a prison. As I discussed above, COVID-19 is an unprecedented event that, in my view, raises the legal question of whether the government-mandated protection for the disease means that sentences (that had been lawful when they were imposed and that remain lawful until sometime in February or March of 2020) cannot lawfully be served in settings of extreme risk. Thus, habeas corpus – which addresses the constitutionality of sentences and offers the possibility of release and enlargement – properly provides a jurisdictional basis and remedies for this situation. Further, as I have discussed, §1983 claims may also be appropriate, given that the distinction between conditions and duration becomes less plausible when confinement poses a risk of death, and thereby horribly altering the “fact” and “duration” of confinement. Class treatment of claims joined under habeas and §1983 enable layers of remedies, including the release of some individuals that will de-densify facilities to improve the safety for prisoners who remain the staff who work there.

49. By way of conclusion, I need to remind the Court that the Supreme Court has, in recent years, raised questions in many contexts about the remedial powers of federal judges. Whether the topic is nationwide injunctions or contracts, debates have occurred within the Court about the authority of federal judges.
50. Those cases do not address the extraordinary and painful moment in which we are all living. Ordinary life has been up-ended in an effort to keep as many people as possible alive and not debilitated by serious illness. Moreover, Supreme Court opinions have not focused on the relevance of remedial debates to the situation were confinement can put entire staffs and detained populations at mortal risk. Therefore, judges have the obligation and the authority to interpret statutes and the Constitution to preserve the lives of people living in and working in prisons. It is my hope that this dense account of case law and doctrine will be of service to this Court and to the parties in understanding the meaning and import of American law.

Dated: April 8, 2020

Judith Resnik
EXHIBIT A
Judith Resnik

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Employment
Arthur Liman Professor of Law, Yale Law School, 1997-present
   Founding Director, Arthur Liman Center for Public Interest Law
Honorary Visiting Professor, University College London
   Faculty of Law, 2009-2021
Visiting Professor, Dauphine Université Paris, March 2016
Visiting Professor, Université Panthéon-Assas Paris II, May 2015
Convening Professor, Constituting Federalism, a seminar for the Institute for
   Constitutional History in conjunction with the New York Historical
   Society, February 2014
Scholar in Residence, Columbia Law School, Spring 2011; 2012
Distinguished Visiting Professor, University of Toronto School of Law, 2005
Parsons Visitor, Sydney University School of Law, 2004
Visiting Professor, New York University School of Law, 1996-1997
Visiting Professor, Harvard Law School, Fall 1989
Visiting Professor, Yale Law School, Spring 1989
Visiting Professor, University of Chicago Law School, Fall 1988
Orrin B. Evans Professor of Law, University of Southern California, 1989-1997;
   Professor of Law: 1985-1989; Associate Professor: 1982-1985;
   Assistant Professor: 1980-1982
   Member, Faculty, The Salzburg Seminar on U.S. Legal Institutions, July 1988
Acting Director, Daniel and Florence Guggenheim Program in Criminal Justice,
   Yale Law School, 1979-1980
Lecturer in Law and Supervising Attorney, Yale Law School, 1977-1979
Instructor, New York University School of Law, 1976-1977
Law Clerk, Honorable Charles E. Stewart, United States District Court,
   Southern District of New York, 1975-1976
Selected Professional Activities

Chair of Fellows Selection Committee and Founding Director, Arthur Liman Center for Public Interest Law, Yale Law School, 1997-present
Chair, Yale Law School Global Constitutionalism Seminar, A Part of the Gruber Program for Global Justice and Women’s Rights, 2012-present
Member, Board of Managerial Trustees, International Association of Women Judges, 2001-present
Chair, Order of the Coif Book Award Committee, 2018-2020
Fellow, Whitney Humanities Center, 2020-2021
Chair, American Association of Law Schools, Section on Law and Humanities, 2020
Chair, American Association of Law Schools, Section on its Sections, 2019-2022
Advisor, American Law Institute, Project on Sexual and Gender-Based Misconduct on Campus, 2015-present
Member, Task Force on Federal Judicial Selection, Project on Government Oversight of The Constitution Project, 2019
Steering Committee, Women Faculty Forum, Yale University, 2001-present
Academic Fellow, Pound Civil Justice Institute, 2016-present
Fellow, Davenport College, Yale University, 2002-present
Former Chair, Section on Civil Procedure, American Association of Law Schools; 2018, 2003, 1991
Member, Executive Committee, Section on Federal Courts, American Association of Law Schools, 1999-2004, 2014-present; chair, 2002
Member, Executive Committee, Section on Law and the Humanities, American Association of Law Schools, 2015-present
Member, Academic & Scientific Council, The Gender Equality Project, Switzerland, 2009-present
Member, Executive Session, State Courts in the Twenty-First Century, The Kennedy School, Harvard University, 2008-2011
Member, Advisory Group, Principles of the Law of Aggregate Litigation, American Law Institute, 2004-2009
Member, Standing Committee on Federal Judicial Improvements, American Bar Association, 2006-2010 (prior three-year term in the late 1990s); Chair, Academic Advisory Committee to the Standing Committee on Federal Judicial Improvements, American Bar Association, 2010-2014
Member, Editorial Board, Yale Journal of Law and Feminism
Member, Editorial Advisory Board, Yale Journal of Law and the Humanities
Member, Advisory Board, Journal of Law and Ethics of Human Rights
Member, Advisory Board, Litigation and Procedure, and Negotiation and Dispute Resolution eJournals (Social Science Research Network, online)
Member, Advisory Board, Women’s Studies Quarterly

Other Activities
Co-chair of the Board, Fansler Foundation, 2003-2014
Member, National Board of Academic Advisors for the William H. Rehnquist Center on the Constitutional Structures of Government, 2007-2009
Member, Advisory Board of the Science for Judges Project, Brooklyn Law School, 2003-2007
Board Member, Lawyers’ Committee for Civil Rights, 2004-2007
Liaison, American Association of Law Schools to the American Bar Association Commission on Women, 2000-2005
Member, Advisory Board of the Center for Judicial Process, Albany Law School, 2000-2004
Member, Editorial Board, Law and Social Inquiry, 1998-2004
Member, Committee on Diversity in Legal Education of the Section of Legal Education and Admissions to the Bar of the American Bar Association, 1996-2002
Consultant, RAND, Institute for Civil Justice, 1980-2002
Member, Editorial Board, The Justice System Journal
Member, Board of Governors, Society of American Law Teachers, 1980-1997
Co-Chair, University of Southern California Feminist Council, 1990-1996
Member, Ninth Circuit Gender Bias Task Force, 1990-1994
Co-Chair, Robert M. Cover Memorial Public Interest Retreat, Society of American Law Teachers, 1988-1992
Member of and a general reporter for the International Association of Procedural Law, 1991 Conference
Member, Planning Committee, ABA-AALS Conference on Women in Legal Education, 1990
Member, Advisory Panel to a Subcommittee of the Federal Courts Study Committee, 1989-1990
Member, Steering Committee for the Center for Feminist Research, University of Southern California, 1990-1994
Member, American Bar Association, Litigation Section, Federal Initiatives Task Force, 1991-1993
Chair, Section on Women in Legal Education, American Association of Law Schools, 1989
Member, Twentieth Century Fund Task Force on Judicial Responsibility, 1988-1989
Member, Board of ACLU of Southern California, 1985
Chair, Bryn Mawr College Centennial Campaign for Southern California, 1983-1985
Publications

Books and Monographs

Fragile Futures and Resiliency: Litigating Climate Change, Judging Under Stress (co-editor Clare Ryan, Yale Global Constitutionalism Seminar, A Part of the Gruber Program for Global Justice and Women’s Rights, 2019)


Global Reconfigurations, Constitutional Obligations, and Everyday Life (co-editor Clare Ryan, Yale Global Constitutionalism Seminar, A Part of the Gruber Program for Global Justice and Women’s Rights, 2018)


Reconstituting Constitutional Orders (co-editor Clare Ryan, Yale Global Constitutionalism Seminar, A Part of the Gruber Program for Global Justice and Women’s Rights, 2017)

Aiming to Reduce Time-In-Cell: Reports from Correctional Systems on the Numbers of Prisoners in Restricted Housing and on the Potential of Policy Changes to Bring About Reforms (co-author, Yale Law School Arthur Liman Public Interest Program and Association of State Correctional Administrators, 2016)


The Reach of Rights (editor, Yale Global Constitutionalism Seminar, A Part of the Gruber Program for Global Justice and Women’s Rights, 2015)

The Invention of Courts, Daedalus: Journal of the American Academy of Arts and Sciences (co-editor Linda Greenhouse, Summer 2014)

Isolation and Reintegration: Punishment Circa 2014 (co-editors Hope Metcalf and Megan Quattlebaum, Arthur Liman Public Interest Program Colloquium, 2014)

Sources of Law and of Rights (editor, Yale Global Constitutionalism Seminar, A Part of the Gruber Program for Global Justice and Women’s Rights, 2014)

Governments’ Authority (editor, Yale Global Constitutionalism Seminar, A Part of the Gruber Program for Global Justice and Women’s Rights, 2013)


Representing Justice: Invention, Controversy, and Rights in City-States and Democratic Courtrooms (with Dennis E. Curtis, Yale University Press, 2011)

Federal Courts Stories (co-editor Vicki Jackson, Foundation Press, 2010)

Migrations and Mobilities: Citizenship, Borders, and Gender (co-editor Seyla Benhabib, New York University Press, 2009)


Adjudication and Its Alternatives: An Introduction to Procedure (with Owen Fiss, Foundation Press, 2003)

Procedure (with Robert Cover and Owen Fiss, Foundation Press, 1988)


Chapters in Books
Not Isolating Isolation, in Solitary Confinement: History, Effects, and Pathways to Reform at 89-114 (Jules Lobel and Peter Scharff-Smith, eds., Oxford University Press, 2020)

Courts and Economic and Social Rights/Courts as Economic and Social Rights, in The Future of Economic and Social Rights at 259-286 (Katharine G. Young, ed., Cambridge University Press, 2019)

The Functions of Publicity and of Privatization in Courts and their Replacements (from Jeremy Bentham to #MeToo and Google Spain) in Open Justice: The Role of Courts in a Democratic Society at at 177-252 (Burkhard Hess and Ana Koprivica, eds., Max Planck Institute, Luxembourg, Nomos, 2019)


Constructing the “Foreign:” American Law’s Relationship to Non-Domestic Sources, in Courts and Comparative Law, at 437-471 (Mads Andrenas and Duncan Fairgrieve, eds., Oxford University Press, 2015)


“Hear the Other Side:” Miranda, Guantánamo, and Public Rights to Fairness and Dignity, in Law and the Quest for Justice, at 85-109 (Marjorie S. Zatz, Doris Marie Provine, and James P. Walsh, eds., Quid Pro Books, 2013)


Changing the Climate: The Role of Translocal Organizations of Government Actors (TOGAs) in American Federalism(s), in Navigating Climate Change Policy: The Opportunities of Federalism, at 120-143 (Edella C. Schlager, Kirsten H. Engel, and Sally Rider, eds., The University of Arizona Press Tucson, 2011)


Managerial Judges, Jeremy Bentham and the Privatization of Adjudication, in Common Law, Civil Law and the Future of Categories, at 205-224 (Janet Walker and Oscar


From “Rites” To “Rights” of Audience: The Utilities and Contingencies of the Public’s Role in Court-Based Processes (with Dennis E. Curtis) in Representation of Justice, at 195-236 (Antoine Masson and Kevin O’Connor, eds., P.I.E. - Peter Lang, 2007)


Contracting Civil Procedure, in Law and Class in America: Trends Since the Cold War, at 60-86 (Paul Carrington and Trina Jones, eds., New York University Press, 2006)

Democratic Responses to the Breadth of Power of the Chief Justice, in Reforming the Court: Term Limits for Supreme Court Justices, at 181-200 (Paul D. Carrington and Roger C. Cramton, eds., Carolina Academic Press, 2006)

Composing a Judiciary: Reflections on Proposed Reforms in The United Kingdom on How to Change the Voices of and the Constituencies for Judging, in Constitutional Innovation: The Creating of A Supreme Court for the United Kingdom; Domestic, Comparative and International Reflections, A Special Issue of Legal Studies, at 228-252 (Derek Morgan, ed., LexisNexis, United Kingdom, 2004)


The Rights of Remedies: Collective Accountings for and Insuring Against the Harms of Sexual Harassment in *Directions in Sexual Harassment Law*, at 247-271 (Reva Siegel and Catherine MacKinnon, eds., University Press, 2004)


Contested Identities: Task Force on Gender, Race, and Ethnic Bias and the Obligations of the Legal Profession (with Deborah Hensler) in *Ethics in Practice, Lawyers’ Roles, Responsibilities, and Regulation*, at 240-263 (Deborah L. Rhode, ed., Oxford University Press, 2000)


Foreword (with Carolyn Heilbrun) to *Beyond Portia: Women, Law & Literature in the United States*, at 11-52 (Jacqueline St. Joan and Annette Bennington McElhinney, eds., Northeastern University Press, 1997)


From the Senate Judiciary Committee to the County Courthouse: The Relevance of Gender, Race, and Ethnicity to Adjudication, in *Race, Gender, and Power in America, The Legacy of the Hill-Thomas Hearings*, at 177-227 (Anita Hill and Emma Jordan, eds., Oxford Press, 1995)


*Undelivered Care*: The Incapacitated and the Mentally Ill New York City Defendant, A Report to the Mayor’s Criminal Justice Coordinating Council (August 1973) (co-authored)

**Articles**


Inability to Pay: Court Debt Circa 2020 (with David Marcus), 98 *North Carolina Law Review* 361 (2020)

Book Review: The Challenges of Engaging “The Art of Law: artistic representations and iconography of law and justice in context, from the middle ages to the first world war,” in 7 Comparative Legal History 239 (2019)

Sentencing Inside Prisons: Efforts to Reduce Isolating Conditions (with Kristen Bell), 87 University of Missouri Kansas City Law Review 133 (2018)


Accommodations, Discounts, and Displacement: The Variability of Rights as a Norm of Federalism(s), 17 Jus Politicum 209 (2017)


Reinventing Courts as Democratic Institutions, *Daedalus: Journal of the American Academy of Arts and Sciences* 9 (Summer 2014)


Inventing Democratic Courts: A New and Iconic Supreme Court (with Dennis E. Curtis), 38 *Journal of Supreme Court History* 207 (2013)

*Gideon* at Guantánamo: Democratic and Despotic Detention (with Hope Metcalf), 122 *Yale Law Journal* 2504 (2013)


Globalization(s), privatization(s), constitutionalization and statization: Icons and experiences of sovereignty in the 21st century, 11 *International Journal of Constitutional Law (I·CON)* 162 (2013)


Comparative (In) equalities: CEDAW, the jurisdiction of gender, and the heterogeneity of transnational law production, 10 *International Journal of Constitutional Law (I·CON)* 531 (2012)


Kyoto at the Local Level: Federalism and Translocal Organizations of Government Actors (TOGAs) (with Joshua Civin and Joseph Frueh), 40 Environmental Law Reporter 10768 (2010)


Ratifying Kyoto at the Local Level: Sovereigntism, Federalism, and Translocal Organizations of Government Actors (TOGAs) (with Joshua Civin and Joseph Frueh), 50 Arizona Law Review 709 (2008)


Foreign as Domestic Affairs: Rethinking Horizontal Federalism and Foreign Affairs Preemption in Light of Translocal Internationalism, 57 Emory Law Journal 31 (2007)


Responding to a Democratic Deficit: Limiting the Powers and the Term of the Chief Justice of the United States (with Lane Dilg), 154 *University of Pennsylvania Law Review* 1575 (2006)


Living Their Legal Commitments: Paideic Communities, Courts and Robert Cover, 17 *Yale Journal of Law & the Humanities* 17 (2005)


Procedure’s Projects, 23 *Civil Justice Quarterly* 273 (2004)


Tribute to Norman Dorsen, 58 Annual Survey of American Law 29 (2001)


The Modernity of Judging: Judicial Independence and the 20th Century United States Federal Courts, presented at The 1701 Conference, Vancouver, British Columbia,
Canada, May 9-11, 2001, on the 300th anniversary of the 1701 Act of Settlement


On the Margin: Humanities and Law, 10 *Yale Journal of Law and the Humanities* 413 (1998)


Litigating and Settling Class Actions: The Prerequisites of Entry and Exit, 30 *U.C. Davis Law Review* 835 (1997)


Changing the Topic, 7 *The Australian Feminist Law Journal* 95 (1996); also published in 8 *Cardozo Studies in Law and Literature* 339 (Fall/Winter 1996)
Asking About Gender in Courts, 21 Signs: Journal of Women in Culture and Society 952 (Summer 1996)

Individuals Within the Aggregate: Relationships, Representation, and Fees (with Dennis E. Curtis and Deborah Hensler), 71 New York University Law Review 296 (1996)


Aggregation, Settlement, and Dismay, 80 Cornell Law Review 918 (1995)


Convergences: Law, Literature, and Feminism (with Carolyn Heilbrun), 99 *Yale Law Journal* 1913 (1990)

Constructing the Canon, 2 *Yale Journal of Law and the Humanities* 221 (Winter 1990)


The Limits of Parity in Prison, 13 *Journal of the National Prison Project* 26 (1987)


Images of Justice (with Dennis E. Curtis), 96 *Yale Law Journal* 1727 (1987)

Failing Faith: Adjudicatory Procedure in Decline, 53 *University of Chicago Law Review* 494 (1986); also published by RAND, Institute for Civil Justice (1986)

The Declining Faith in the Adversary System, 13 *Litigation* 3 (1986)


Commentaries on Prisoner Litigation, 9 *Justice System Journal* 347 (Winter 1984)

The Assumptions Remain, 23 *Judges’ Journal* 37 (Fall 1984)

Managerial Judges and Court Delay: The Unproven Assumptions, 23 *Judges’ Journal* 8 (Winter 1984)


**Selected Commentary in Newspapers, Magazines, and Journals**


This Question Changed the Face of the Supreme Court, CNN.com, September 25, 2018; http://www.cnn.com/2018/09/25/opinions/anita-hill-patsy-mink-changed-how-we-see-kavanaugh-judith-resnik/index.html

The Supreme Court’s Arbitration Ruling Undercuts the Court System, HuffPost, May 25, 2018; https://www.huffingtonpost.com/entry/opinion-resnik-forced-arbitration_us_5b08395ae4b0802d69caeb47?1s

To Help #MeToo Stick, End Mandatory Arbitration, HuffPost, January 23, 2018; https://www.huffingtonpost.com/entry/opinion-resnik-mandatory-arbitration_us_5a65fc39e4b0e630071c15d?g9r


No Fast Track for Unfair Trade Deals (with Amy Kapczynski), HuffPost Politics, June 11, 2015; http://www.huffingtonpost.com/amy-kapczynski/tpp-isds-no-fast-track-for-unfair-trade-deals_b_7562084.html?1434041001

Can Less Confidentiality Mean More Fairness in Campus Sexual Assault Cases? (with Alexandra Brodsky and Claire Simonich), The Nation, February 23, 2015; http://www.thenation.com/article/198713/can-less-confidentiality-mean-more-fairness-campus-sexual-assault-investigations


The Return of the Terrible Plan to Ship Female Inmates from the Northeast to Alabama, Slate, October 4, 2013; http://www.slate.com/blogs/xx_factor/2013/10/04/female_inmates_in_federal_prison_must_give_up_their_beds_to_men_and_move.html


Harder Time: Why are the federal prison beds for women in the Northeast going to men—while the women get shipped to Alabama?, Slate, July 25, 2013;
http://www.slate.com/articles/news_and_politics/jurisprudence/2013/07/women_in_federal_prison_are_being_shipped_from_danbury_to_aliceville.html


Abolish the Death Penalty and Supermax, Too: Updating the Ban Against Cruel and Unusual Punishment (with Jonathan Curtis-Resnik), Slate, June 18, 2012; http://www.slate.com/authors.judith_resnik_and_jonathan_curtisresnik.html


A Collective Collage: Women, the Structure of American Legal Education, and Histories Yet to be Written (with Dennis E. Curtis), 80 University of Missouri Kansas City Law Review 737 (2012)


From Fool’s Blindfold to the Veil of Ignorance (with Dennis E. Curtis), Yale Law Report (Winter 2011)

Object Lesson: On and Off Her Pedestal (with Dennis E. Curtis), Yale Alumni Magazine (November/December 2010)

Citizenship for the 21st Century: A Conversation with Seyla Benhabib and Judith Resnik, 38 Women Studies Quarterly 271 (Spring/Summer 2010)


Open the Door and Turn on the Lights, Slate, May 21, 2010; http://www.slate.com/id/2253500/

There’s a New Lawyer in Town (with Emily Bazelon), Slate, February 9, 2009; http://www.slate.com/id/2210637/

Revival of Justice, Slate, January 6, 2009; http://www.slate.com/id/2208017/

Translocal Transnationalism: Foreign and Domestic Affairs, 102 American Society of International Law Proceedings 214 (2008)

Sitting on Great Judges (with Emily Bazelon), Slate, December 19, 2008; http://www.slate.com/id/2207071/


Moving American Mores: From Women’s Education to Torture, 36 Women Studies Quarterly 339 (Spring/Summer 2008)

When the Justice Department Played Defense, Slate, October 27, 2006; http://www.slate.com/id/2152211/

Borders, Law, and Doors – Opening, Bryn Maw College Convocation, May 2006

Opening the Door: Court Stripping: Unconscionable and Unconstitutional? Slate, February 1, 2006; http://www.slate.com/articles/news_and_politics/jurisprudence/2006/02/opening_the_door.html

So Long: Changing the Judicial Pension System Could Keep Judges from Staying on the Bench for Too Many Years, July/August Legal Affairs 20 (2005)

One Robe, Two Hats (with Theodore Ruger), New York Times, Op-Ed, Section 4 at 13, July 17, 2005


At Home and Work, Still a Man’s World, Commentary (with Emily Bazelon), *Los Angeles Times*, January 2, 2004

Engendering Equality: A View from the United States, 35 *The European Lawyer* 21, (February 2004)


**Testimony**

Statement submitted for the record, Women in Prison: Seeking Justice Behind Bars, before the U.S. Commission on Civil Rights, March 22, 2019

Comments submitted on Proposed Changes to Code of Conduct for U.S. Judges and Judicial Conduct and Disability Rules (with Abbe R. Gluck), submitted to the Judicial Conference committees on Codes of Conduct and Judicial Conduct and Disability, November 13, 2018

Comments submitted for the Telephonic Hearing on Proposed Amendments to the Federal Rules of Civil Procedure before the Advisory Committee on Civil Rule of the Judicial Conference of the United States, February 16, 2017


Statement submitted for the record, Women in Detention: The Need for a National Agenda, Hearing before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, December 9, 2014


http://www.law.yale.edu/documents/pdf/Liman/Senate_Judiciary_Committee_BOPOveright_Hearing_Liman_Statement_for_the_Record


Hearings on the Judicial Nomination of John G. Roberts, Jr., to be Chief Justice of the United States, held by the Committee on the Judiciary of the United States Senate, Washington, D.C., September 15, 2005

Hearings on the Judicial Selection before the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness, held by the House of Commons, Ottawa, Canada, April 20, 2004

Hearings on the Proposed Amendments to Federal Rule of Civil Procedure 23, held by the Committee on Rules of Practice and Procedure, Judicial Conference of the United States, January 2002

Hearings on the Senate's Role in the Nomination and Confirmation Process: Whose Burden?, held by the Senate Committee on the Judiciary, Subcommittee on


Hearings on the Proposed Long Range Plan of the Judicial Conference of the United States, held by the Committee on Long Range Planning, December 16, 1994


Hearings on the Tentative Report of the Federal Courts Study Committee, held by members of the Committee, San Diego, California, January 29, 1990


Hearings on the Confirmation of Robert H. Bork to be an Associate Justice of the United States Supreme Court, held by the Committee on the Judiciary, United States Senate, September 25, 1987

Hearings on Proposed Amendments to Rule 52(a) of the Federal Rules of Civil Procedure, held by the Subcommittee on Criminal Justice of the Judiciary Committee of the U.S. House of Representatives, June 26, 1985


Hearings on Proposals to Amend the Rules Governing Section 2254 Cases in the United States District Courts, and Rules Governing Section 2255 Proceedings in the United States District Courts, held by the Advisory Committee to the Standing Committee on the Rules of Practice and Procedure of the United States Judicial Conference, 1984

Female Offender: 1979-80, Part 1: Hearings before the Subcommittee on Courts, Civil Liberties, and Administration of Justice of the House Committee on Judiciary, 96th Cong. 59, October 11, 1979
Drug Abuse Treatment: Part 2: Hearings before the Select Committee on Narcotics Abuse and Control, House of Representatives, 96th Cong., July 25, 1978

**Honors and Awards**

Andrew Carnegie Fellowship, 2018-2020

Honorary Doctorate of Laws, University College London, 2018

Visiting Scholar, Max Planck Institute for Procedural Law, Luxembourg, February 2018

Establishment of the Resnik-Curtis Fellowship in Public Interest Law on the 20th anniversary of the Liman Program at Yale, 2017

Visiting Scholar, Phi Beta Kappa, 2014-2016

Recipient, Arabella Babb Mansfield Award, National Association of Women Lawyers, July 2013

*Representing Justice: Invention, Controversy, and Rights in City-States and Democratic Courtrooms* (with Dennis E. Curtis)

Selected as one of the “Best legal reads of 2011” by The Guardian

Recipient, SCRIBES Award from the American Society of Legal Writers, 2012

Recipient, PROSE Award, Excellence in Social Sciences, 2012

PROSE Award, Excellence in Law & Legal Studies, 2012

Selected as an Outstanding Academic Title of the Year by Choice Magazine, January 2012

Recipient, The Order of the Coif Biennial Book Award, January 2014

New York University Alumna of the Month Award, June 2012,
http://www.law.nyu.edu/alumni/almo/pastalmos/2011-12almos/judithresnikjune

Elizabeth Hurlock Beckman Award, Awarded to Outstanding Faculty in Higher Education in the Fields of Psychology or Law, Columbia University, March 2011

*Migrations and Mobilities: Citizenship, Borders, and Gender*, Selected as an Outstanding Academic Title of the Year by Choice Magazine, January 2011

Outstanding Scholar of the Year Award 2008, from the Fellows of the American Bar Foundation

Convocation Speaker, Bryn Mawr College Commencement, May 2006

Member, American Philosophical Society, elected Spring 2002

Fellow, American Academy of Arts and Sciences, elected Spring 2001

Recipient, Margaret Brent Women Lawyers of Achievement Award, American Bar Association Commission on Women in the Profession, August 1998

Recipient, NYU School of Law, Legal Teaching Award, Spring 1995

Recipient, USC Associates Award for Creativity in Research, Spring 1994

Recipient, Florence K. Murray Award, National Association of Women Judges, Fall 1993

Recipient, “Big Splash Award” from the Program of Women and Men in Society (SWMS), University of Southern California, 1992

Member, Phi Kappa Phi, elected by the USC Chapter, 1991

University Scholar, University of Southern California, 1982-1983

Recipient, Student Bar Association Outstanding Faculty Award, University of Southern California Law Center, 1982-1983

Arthur Garfield Hays Fellow, 1974-1975, New York University

Education
Bryn Mawr College, B.A., cum laude, 1972
New York University School of Law, J.D., cum laude, 1975

Bar Memberships
Connecticut
United States Court of Appeals for the First, Second, Third, Fourth, Ninth and Eleventh Circuits
United States Supreme Court

Selected Litigation
United States Supreme Court


Oral Argument presented on behalf of the Rotary Club of Duarte:
Board of Directors of Rotary International v. Rotary Club of Duarte,
481 U.S. 537 (1987) (on California public accommodations law and
associational rights under the First Amendment)

United States Courts of Appeals
Brief of Amici Curiae, Scholars of the Law of Prisons, the Constitution, and the Federal
Courts in Support of the Appellants (No. 16-4234), Delores Henry, et al., v. Melody
Hulett, et al. (7th Cir, rehearing en banc pending, 2020) (on constitutional rights in
prison)

Brief of Amici Curiae of Constitutional Law and Procedure Scholars Judith Resnik and
Brian Soucek in Support of Petitioner (No. 16-73801), submitted for the hearing
en banc, C.J.L.G. v. Jefferson B. Sessions III (9th Cir., , 880 F.3d 1122 (2019) (on
due process, right to counsel, and immigrant children)

Of counsel on Brief of Amici Curiae, Professors of Federal Courts Jurisprudence,
Constitutional Law, and Immigration Law in Support of Plaintiffs-Appellees, (No.
travel bans)

Of counsel on Brief of Amici Curiae, Professors of Federal Courts Jurisprudence,
Constitutional Law, and Immigration Law in Support of Plaintiffs-Appellees, (No.
17-2231 (L), 17-2232, 17-2233, 17-2240 (Consolidated)), Fourth Circuit,
International Refugee Assistance Project, et al., Iranian Alliances Across Borders,
et al., Ebblal Zakzok, et al., v. Donald Trump (2017) (on travel bans)

Of counsel on Brief of Amici Curiae, Constitutional Law Professors in Support of
Appellees and Affirmance (No. 17-1351), International Refugee Assistance
Project et al. v. Donald J. Trump, et. al. (4th Cir. 2017) (on travel bans)

Appellate Counsel
In re San Juan Dupont Plaza Hotel Fire Litigation, 111 F.3d 220 (1st Cir. 1997)
(on awards of fees and costs in a mass tort multi-district litigation)

In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel
Fire Litigation, 56 F.3d 295 (1st Cir. 1995)

In re Nineteen Appeals Arising Out of San Juan Dupont Plaza Hotel
Fire Litigation, 982 F.2d 603 (1st Cir. 1992)

United States District Court
Of Counsel on Motion for Leave to File Declaration of Correctional Expert Rick
Raemisch as Amicus Curiae, Savino et al. v. Hodgson et al. (D. Mass., No. 1:20-
cv-10617-WGY, granted March 31, 2020) (to provide the court and parties with expert information)


Expert appointed by the district court to assist the Special Master in McLendon v. Continental Group, Inc., 802 F.Supp. 1216 (D.N.J. 1992) (assisting the court in relationship to a settlement in an ERISA class action)

Exhibits, Co-Curator

_The Remarkable Run of a Political Icon: Justice as a Sign of the Law._ Rare Book Exhibition Gallery, Lillian Goldman Law Library, Yale Law School, September – December 2011 (with Dennis E. Curtis, Allison Tait & Michael Widener); http://library.law.yale.edu/justice-sign-law-exhibit

_Courts: Representing and Contesting Ideologies of the Public Sphere._ Yale Art Gallery, Study Galleries, January – May 2011 (with Dennis E. Curtis)

Selected Media

Interview, WNPR – Connecticut Public Radio’s _Where We Live_, presented by John Dankosky, August 5, 2013; http://wnpr.org/post/connecticuts-criminal-justice-system

Interview, BBC Radio 4’s _Law in Action_, presented by Joshua Rozenberg, March 12, 2013; http://www.bbc.co.uk/programmes/b01r5ln5

Cameo in _Fair Game_, directed by Doug Liman, Fall 2010, and panel moderator, discussion of the film with Valerie Plame, Joseph Wilson, Emily Bazelon and Doug Liman, Paris Theatre, New York City, October 5, 2010

Resnik, Judith resume April 7, 2020