



**STATEMENT OF**  
**REAR ADMIRAL A.B. CRUZ III USN (RET.)**  
**PRESIDENT**  
**NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION**

**BEFORE THE**  
**SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND THE INTERNET**  
**COMMITTEE ON THE JUDICIARY**  
**U.S. HOUSE OF REPRESENTATIVES**  
**FOR A HEARING ENTITLED**  
**THE IMPORTANCE OF A DIVERSE FEDERAL JUDICIARY, PART 2: THE SELECTION AND**  
**CONFIRMATION PROCESS**

**JULY 12, 2021**

Chairman Johnson, Ranking Member Issa, and distinguished members of the Subcommittee, it is my honor and privilege to submit this testimony and appear before the Subcommittee on Courts, Intellectual Property, and the Internet for a hearing entitled, “The Importance of a Diverse Federal Judiciary, Part 2: The Selection and Confirmation Process.” I thank the Subcommittee for highlighting this critical issue which is of paramount significance for ensuring faith and confidence in the rule of law.

The National Asian Pacific American Bar Association (NAPABA) represents the interests of over 60,000 Asian Pacific American (APA) legal professionals and is comprised of a network of nearly 90 affiliated national, state, and local APA bar associations. NAPABA is a leader in addressing civil rights issues confronting APA communities. Through its national network, NAPABA provides a strong voice for increased diversity of the federal and state judiciaries, advocates for equal opportunity in the workplace, works to eliminate hate crimes and anti-immigrant sentiment, and promotes the professional development of people of all backgrounds in the legal profession.

### **Current Challenges Facing the Asian Pacific American Population and Legal Community**

For the APA community, this hearing comes at a crucial moment. Throughout the country, there is an ongoing surge of reported hate crimes and hate-fueled incidents targeting Asian Americans. The APA legal community has been thrust into the forefront of efforts to advocate for the safety of this population which has suffered thousands of attacks,<sup>1</sup> to represent victims, to explain both to APA communities and the public at large federal and state hate crimes laws, and to use all legal mechanisms available to combat discrimination and hate-fueled violence.

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<sup>1</sup> See, e.g., JEUNG, ET AL, Stop Asian Hate National Report (March 31, 2021) <https://stopaapihate.org/wpcontent/uploads/2021/05/Stop-AAPI-Hate-Report-National210506.pdf> (last visited July 9, 2021).

The challenges that APAs face are not unique to this population – indeed this surge in anti-Asian hate comes at an inflexion point in the history of our country – as we fight the twin scourges of bigotry and COVID, for which so many Asian Americans have been falsely scapegoated, many of our fellow Americans of color continue to confront racism and discrimination which has unfortunately led to a loss of trust in our institutions, including in the justice system.

In order for the justice system to work as our founders designed it, with independence and a sacred duty to safeguard constitutional rights and liberties, the American public must have confidence that the judicial system in this country is fair, impartial, and will provide equal justice for all.

**Lack of Mentorship, Role Models, and Opportunity Account for Underrepresentation of Asian Pacific Americans on the Federal and State Judiciaries**

The Judicial Conference of the United States has enumerated “diversity and respect” as one of its core values – meaning that the court system should reflect the diversity of the public it serves and treat all with dignity and respect.<sup>2</sup>

A judicial system serving a diverse nation such as ours can only maintain public trust and confidence if collectively, it is not viewed as “someone else’s” system.

For the APA legal community, representation on the federal bench continues to be a struggle. The numbers bear out the underrepresentation in stark detail. Out of 673 congressionally authorized Article III Federal District Court judgeships, only 27 are held by APA jurists. Out of 179 congressionally authorized Courts of Appeals judgeships, only 10 active APA judges are currently seated. Article III judges also include the Court of International Trade, where there is only one APA judge. As this Committee knows full

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<sup>2</sup> JUDICIAL CONFERENCE OF THE UNITED STATES. (2020). *STRATEGIC PLAN FOR THE FEDERAL JUDICIARY*. [https://www.uscourts.gov/sites/default/files/federaljudiciary\\_strategicplan2020.pdf](https://www.uscourts.gov/sites/default/files/federaljudiciary_strategicplan2020.pdf) (last visited Jul 9, 2021).

well also, there has never been an APA Justice on the Supreme Court of the United States, nor has one ever been nominated to serve.

### FEDERAL ARTICLE III SNAPSHOT<sup>3</sup>

| Article III Judgeships       | Authorized | APA (Active) |
|------------------------------|------------|--------------|
| Supreme Court                | 9          | 0            |
| Court of Appeals             | 179        | 10           |
| District Courts              | 673        | 27           |
| Court of International Trade | 9          | 1            |
| Total                        | 870        | 38           |

With only 5.6% of Federal Courts of Appeals seats and 4% of Federal District Courts seats held by APA judges, there remains a disparity compared to the percentage of APAs in the overall population of approximately 7%.<sup>4</sup> However, this disparity is not confined to the federal system. Even a cursory glance at the state supreme courts in the United States reveals that out of the 50 highest state courts (plus the District of Columbia) only 6 states currently have an APA justice sitting on the highest bench. See Appendix A for further information.

#### ***What accounts for this disparity?***

In 2017, NAPABA and Yale Law School, published their landmark joint study,<sup>5</sup> “A Portrait of Asian Americans in the Law,” (“Portrait Project”). That study found that the APA legal community faces particular barriers to advancement including inadequate access to

<sup>3</sup> 28 USC §133; see also, [https://www.uscourts.gov/sites/default/files/district-temporary-judgeships\\_0.pdf](https://www.uscourts.gov/sites/default/files/district-temporary-judgeships_0.pdf) (last visited July 9, 2021).

<sup>4</sup> See: <https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-americans/> (last visited July 9, 2021).

<sup>5</sup> ERIC CHUNG ET AL., A PORTRAIT OF ASIAN AMERICANS IN THE LAW, [https://static1.squarespace.com/static/59556778e58c62c7db3f84/t/596cf0638419c2e5a0dc5766/1500311662008/170716\\_PortraitProject\\_SinglePages.pdf](https://static1.squarespace.com/static/59556778e58c62c7db3f84/t/596cf0638419c2e5a0dc5766/1500311662008/170716_PortraitProject_SinglePages.pdf) (last visited Jul 9, 2021).

mentors and contacts, lack of formal leadership training programs, and lack of recognition for the work of its members. Stereotyping, even for ostensibly positive traits such as quiet diligence, has often disadvantaged APA attorneys who may be passed over for assignments because of misguided perceptions of being too passive to be effective in a litigation or courtroom setting. The Portrait Project also found that while Asian American law students are disproportionately enrolled in top-ranked schools, they do not obtain judicial clerkships in numbers comparable to their enrollment at highly ranked schools, and they are significantly underrepresented in the partner and leadership ranks of law firms. This is because:

These selection processes—clerkships and law firm promotion—involve not only objective measures of ability, but also access to mentorship and subjective criteria such as likability, gravitas, leadership potential, and other opaque or amorphous factors that may inform whom judges, faculty members, or law firm partners regard as their protégés. Asian Americans appear to face significant obstacles in these settings.<sup>6</sup>

Despite being underrepresented in the law firm partner ranks, the Portrait Project found that APA lawyers still “skew toward law firm jobs [which] account for the higher salaries [,] but also [for] lower career satisfaction and higher frequency of mental health problems.”<sup>7</sup> Additionally, the Portrait Project noted that few Asian Americans appear motivated to pursue law in order to gain a pathway into government or politics. Statistics from 2015 show that Asian Americans comprised only 3.1% of senior level U.S. Department of Justice attorneys.<sup>8</sup> One common factor is readily apparent: whether in the private sector or public service, APA lawyers are underrepresented in legal leadership positions.

Indeed, according to the Portrait Project’s findings, inadequate access to mentors and contacts, lack of leadership training, and work going unrecognized were cited as the top

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<sup>6</sup> *Id.* at 39.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 22.

barriers to career advancement. These subjective factors present challenges to APA attorneys in the judicial pipeline that must be overcome in order to cultivate the next generation of APA jurists.

### **Why Representation Matters on the Bench**

Representation matters. I know this personally from my service in the military, as a graduate of the U.S. Naval Academy, and as a flag officer in the U.S. Navy. When I was a midshipman and even after receiving my commission, the lack of diversity of the officer corps struck me as glaring, and even though my career was driven by my personal sense of duty, love of country, and of the Navy, there were times when I did wonder, “does this Navy reflect who I am as an American?” During my first assignment, I was only one of two minority officers aboard the USS GRAY (FF-1054). One day, there was a knock on my stateroom door, and when I went to open it, in rushed a crowd of minority sailors of all different backgrounds. They told me how inspiring it was to see an officer of color aboard their ship, and for once, the Navy was not “someone else’s Navy.” To be clear, they did not mean that it was “their Navy” to the exclusion of others, but that moment was, for many, the first time they felt a true sense of belonging. Faith and confidence in the leadership aboard the ship was enhanced because the sailors saw that they were represented, that they too could aspire to leadership, and that the dividing line between enlisted personnel and officers did not have to be based on race or ethnicity.

The same holds true in the civilian sector, in business, and in the law. When someone walks into a courtroom, they look to the judge as the presiding officer, they look to the counsels’ table, they look at the jury, the bailiffs, the clerks – and confidence and trust in that courtroom as a venue for dispensing equal and impartial justice regardless of race, ethnicity, gender, religion, sexual orientation, or disability, will be reinforced by the public seeing a diversity of the community represented in the courtroom working at every position and every level.

Writing for the majority in *Grutter v. Bollinger*,<sup>9</sup> Justice Sandra Day O'Connor's stated that access to legal education and the legal profession must be inclusive and open to all backgrounds in a diverse society:

In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training. As we have recognized, law schools "cannot be effective in isolation from the individuals and institutions with which the law interacts."<sup>10</sup> ... Access to legal education (and thus the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity, so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America.<sup>11</sup>

In her opinion, Justice O'Connor also cited to the United States military amici who filed briefs in the case: "What is more, high-ranking retired officers and civilian leaders of the United States military assert that, '[b]ased on [their] decades of experience,' a 'highly qualified, racially diverse officer corps ... is essential to the military's ability to fulfill its principal mission to provide national security.'"<sup>12</sup>

Similarly, United States military amici in the *Fisher v. Texas*<sup>13</sup> case argued, "For the United States military, a highly qualified and racially diverse officer corps is not a lofty ideal. It is a mission-critical national security interest."<sup>14</sup> Those amici, all retired senior officers and civilian Armed Forces leaders, stated "[a]n all volunteer force must represent the country it defends .... '[i]n a democracy, it is believed that a broadly

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<sup>9</sup> *Grutter v. Bollinger*, 539 U.S. 306 (2003).

<sup>10</sup> *Id. citing Sweatt v. Painter*, 339 U.S. 629, 634 (1950).

<sup>11</sup> *Id.* at 332.

<sup>12</sup> *Id. citing* Brief for Julius W. Becton, Jr. et al. as Amici Curiae Supporting Respondents at 5, *Grutter v. Bollinger*, 539 U.S. 306 (2003).

<sup>13</sup> 570 U.S. 297 (2013).

<sup>14</sup> Brief for Julius W. Becton, Jr. et al. as Amici Curiae Supporting Respondents at 1, *Fisher v. Texas*, 570 U.S. 297 (2013).

representative military force is more likely to uphold national values and to be loyal to the government— and country—that raised it.”<sup>15</sup>

I am struck not only by Justice O’Connor’s opinion in the *Grutter* case, but her eloquent description of the special bond with Justice Thurgood Marshall and the benefit to her for having a different perspective in chambers. Justice O’Connor wrote of Justice Marshall, that “although all of us come to the court with our own personal histories and experiences...[h]is was the eye of a lawyer who saw the deepest wounds in the social fabric and used law to help heal them. His was the ear of a counselor who understood the vulnerabilities of the accused and established safeguards for their protection.” At oral arguments and conference meetings, she wrote, he was “constantly pushing and prodding us,” to reach better legal outcomes.

For NAPABA and the APA legal bar, it is not about merely increasing raw numbers – it is about increasing role models, mentors, a sense of community, and opportunities. Judicial candidates will rise and fall on their own merits. However, we can and must do more to look at a broader, more inclusive pool of applicants and to cultivate that talent by providing those missing role models, mentors, and networking opportunities. In order for the rule of law to endure in this country and to prevent a loss of faith and confidence in the judicial system, the courts cannot be “someone else’s” but rather, must belong to all the people.

Thank you for the opportunity to submit this testimony. I am happy to answer any questions you may have.

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<sup>15</sup> *Id.* at 18.





## **APPENDIX A**

### SUPREME COURT OF THE UNITED STATES

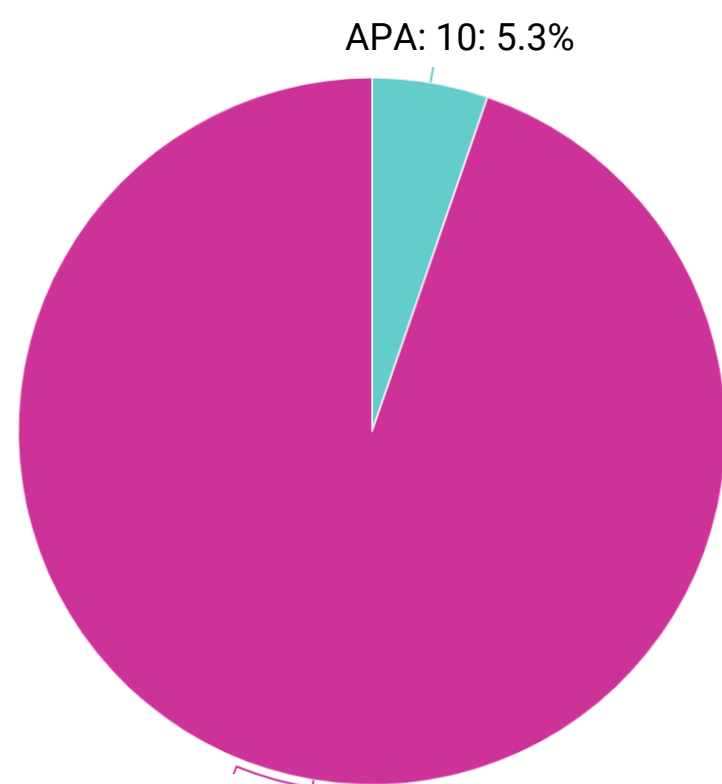
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APAs seated or nominated to the Supreme Court of the United States

### ARTICLE III U.S. COURT OF INTERNATIONAL TRADE

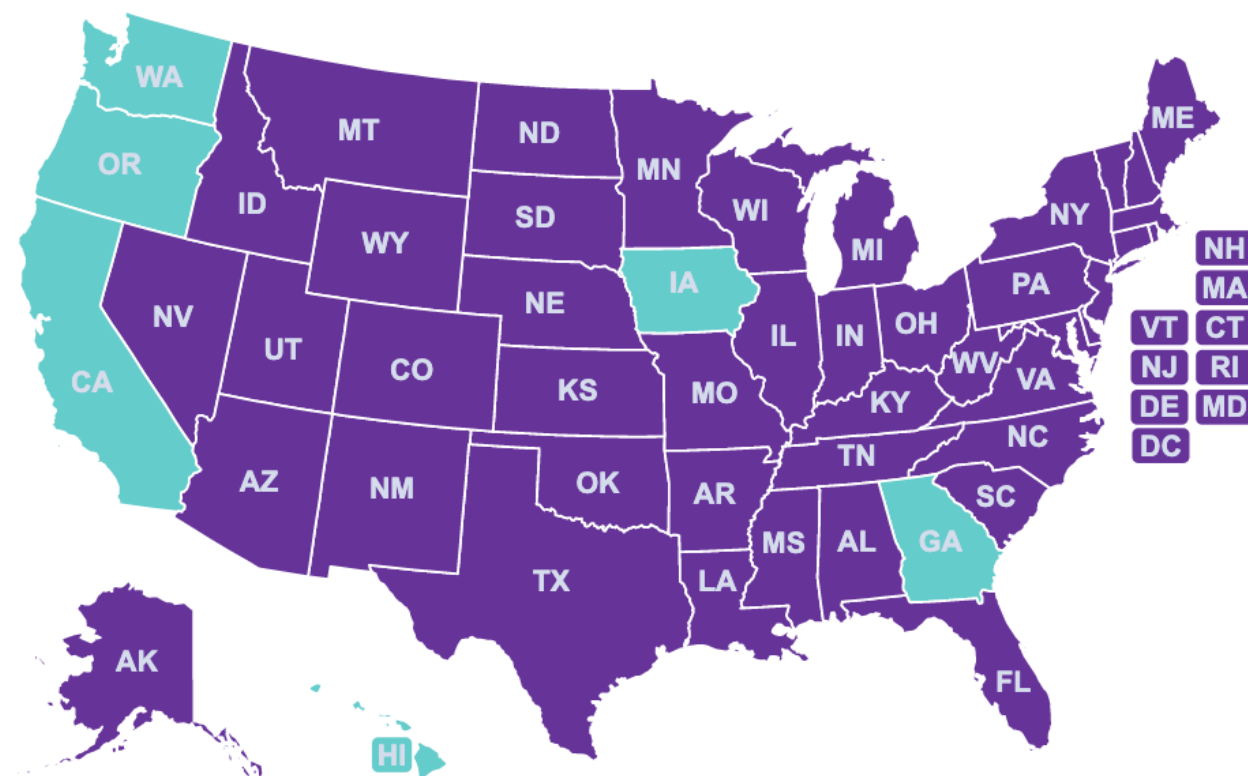
Out of a total of **9** seats, only **1** is held by an APA judge.

### U.S. COURTS OF APPEALS



Out of a total of **179** U.S. Courts of Appeals seats, only **10** are held by active APA judges.

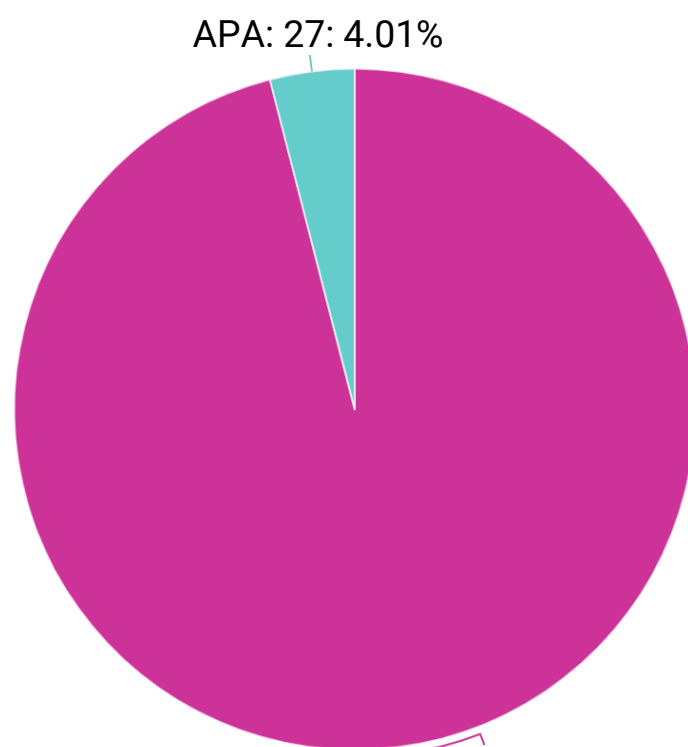
### STATE SUPREME COURTS



Out of the **50** states plus the District of Columbia, only **6** have State Supreme Courts with an APA Justice on the bench.

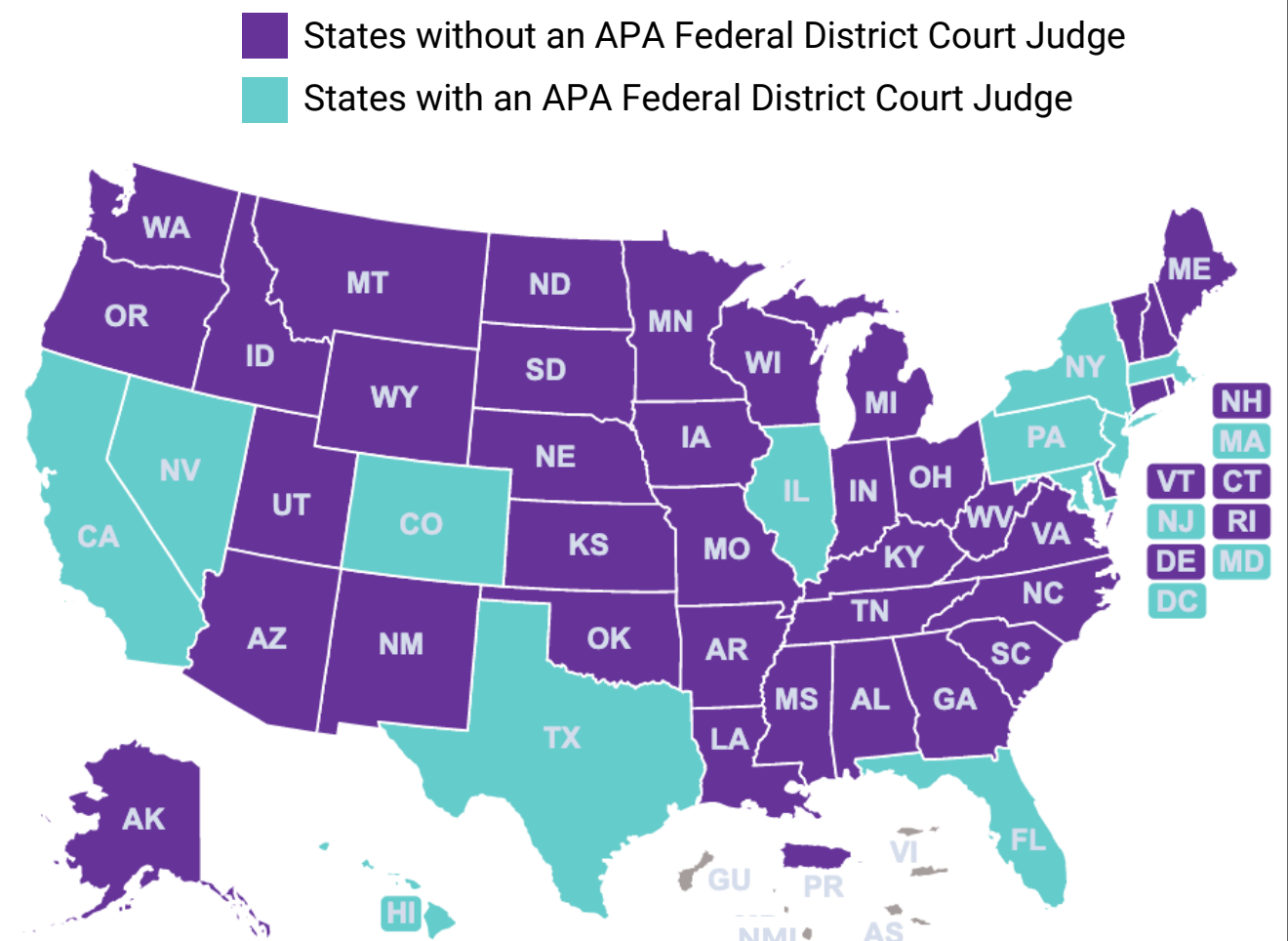
Legend:  
■ States without an APA on the State Supreme Court  
■ States with an APA on the State Supreme Court

### ARTICLE III U.S. DISTRICT COURTS\*



Out of a total of **673** Article III Federal District Court seats, only **27** are held by active APA judges.

Only **12** states and D.C. contain an Article III Federal District Court with APA judges.



\*There are 2 APA judges for the District Court of Guam and District Court of the Northern Mariana Islands, but those judges are Article IV judges appointed for 10-year terms.

### CURRENT PENDING APA NOMINEES



**JENNIFER SUNG**  
U.S. Court of Appeals for the Ninth Circuit



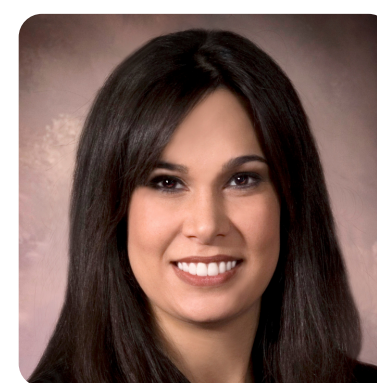
**SARALA NAGALA**  
U.S. District Court for the District of Connecticut



**ANGEL KELLEY**  
U.S. District Court for the District of Massachusetts



**TANA LIN**  
U.S. District Court of the Western District of Washington



**SHALINA KUMAR**  
U.S. District Court for the Eastern District of Michigan



**FLORENCE PAN**  
U.S. District Court for the District of Columbia