

### Litigators of the Week: How Willkie, O'Melveny and Epstein Becker Litigators Teamed Up to Challenge Trump's Wall

Our challenge was not a partisan effort or about political views, but rather a defense of the Constitution and delicate balance between the executive and legislative branches upon which our government is founded.

By Jenna Greene  
October 18, 2019

Our Litigators of the Week are Richard Mancino of Willkie Farr & Gallagher, Stuart Gerson of Epstein Becker & Green; and Anton Metlitsky of O'Melveny & Myers, who notched a major win in Texas. Working pro bono, the trio teamed up to challenge President Trump's bid to secure border wall funding by declaring a national emergency.

On Oct. 11, U.S. District Judge David Briones in El Paso ruled that the plaintiffs had standing to challenge the president's action, and that the administration's use of funds to build a border wall violated the Consolidated Appropriations Act.

Mancino discussed the case with Lit Daily.

**Lit Daily: Who are your clients and how did you get involved in the case?**

Richard Mancino: Willkie was asked to become a part of the team by Protect Democracy. Willkie litigation partner Shaimaa Hussein and I previously worked on a number of amicus briefs in support of actions challenging various policies related to immigration under the current administration, so it was familiar territory.

**Tell us about the members of your team – what individual strengths did they bring to the representation?**

Richard Mancino: Our team includes myself, partner Shaimaa Hussein, and associates Samantha Prince, Jordan Reisch, Michaela Connolly and Madeleine Tayer.



Richard Mancino of Willkie Farr

Shaimaa, Samantha and I previously worked on many other immigration-related pro bono matters. We understood the law and the challenges presented by new immigration policies enacted by the current administration. Our team worked diligently and collaboratively, and devoted a great deal of resources in developing the legal claims and researching the key issues we anticipated would be raised in the litigation. Shortly after filing the complaint, we also traveled to El Paso to meet with community members to gather the necessary facts to support the standing and redressability points that we expected the government to raise in seeking to dismiss our claims.

**Can you comment about working with co-counsel? How did you all coordinate your efforts?**

Richard Mancino: Working with our co-counsel was an extraordinary experience. There was a tremendous amount of effort, by each attorney across the various organizations, in pursuit of one goal – which was to defend our clients against the unlawful actions of the current administration. The group was highly collaborative and supportive of one another, and as a result, we were able to advance the strongest arguments in support of our clients.

**What was your overarching theme or message?**

Richard Mancino: Our challenge was not a partisan effort or about political views, but rather a defense of the Constitution and delicate balance between the executive and legislative branches upon which our government is founded. In issuing his Emergency Declaration and seeking to use funds appropriated by Congress for other purposes, and instead building additional border construction, the president flouted those fundamental principles. Our Constitution simply does not permit the president to act unilaterally in that way, disregarding the powers granted to the other branches of government.

**What to you were some of the most fascinating elements of the case? How unique were the issues presented?**

Richard Mancino: This case is particularly fascinating because the key facts are largely undisputed. The government has not disputed the statements by the president or the fact that he is seeking to use funds that were explicitly denied to him by Congress. Our arguments relied on the president's statement that he did not believe there was an actual emergency necessitating his emergency declaration, his negative remarks about El Paso and the communities at the southern border, and the clear response by Congress denying the president the additional funding that he originally sought for the border wall construction.

The veracity of those facts was not at issue in this case. The questions before Judge Briones were entirely

legal questions of whether the president's actions could be reviewed by the court and whether our clients had standing to pursue their legal claims. As complex commercial litigators, it was a rare and humbling opportunity to dive into constitutional issues and matters implicating the governance of our country.

**Take us into the courtroom for the hearing on Aug. 29. How did the argument unfold? Highlights? Surprises?**

Richard Mancino: Judge Briones runs a tight ship. He gave each side an hour apiece to present their arguments, and asked the parties to address standing first. He listened intently to both sides. What struck me most is that at no point did Judge Briones give a hint or suggestion of where he might be leaning.

The oral advocacy was excellent all around. I may be biased, but I thought that Stuart Gerson and Ephraim McDowell presented our clients' positions as well as any advocates I've worked with.

**What to you were some of the most notable aspects of Judge Briones' decision?**

Richard Mancino: I think the decision is most notable for two reasons. First the court's clear and simple statutory interpretation of the Consolidated Appropriations Act: The defendants raised a number of arguments and case law to get around the clear words of the CAA but the court was not persuaded. Ultimately, Judge Briones based his opinion on a very comprehensive and straight-forward interpretation of the clear words of the CAA.

Second, the recognition by Judge Briones of the tangible harms inflicted on our clients as a result of the president's actions. His opinion recognizes that words do, in fact, have meaning especially when they are the words of our president.

**What happens next?**

Richard Mancino: The court has asked that we present our proposed injunction by Monday. Once entered, we expect that the government will appeal the decision by Judge Briones. We are prepared to respond appropriately.