

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Caitlin Joan Halligan

2. **Position:** State the position for which you have been nominated.

United States Circuit Judge for the District of Columbia Circuit

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

New York County District Attorney's Office
One Hogan Place
New York, New York 10013

4. **Birthplace:** State year and place of birth.

1966; Xenia, Ohio

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1992 – 1995, Georgetown University Law Center; J.D. (*magna cum laude*), 1995

1984 – 1988, Princeton University; A.B. (*cum laude*), 1988

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

January 2010 – present
New York County District Attorney's Office
One Hogan Place
New York, New York 10013
General Counsel

2005 – Present
Columbia University School of Law
435 West 116th Street
New York, New York 10027
Lecturer-in-Law

2007 – 2009
Weil, Gotshal and Manges, LLP
767 Fifth Avenue
New York, New York 10153
Partner

1999 – 2007
Office of the New York State Attorney General
120 Broadway
New York, New York 10271
Solicitor General (2001 – 2007)
First Deputy Solicitor General (2001)
Chief, Internet Bureau (1999 – 2000)

1998 – 1999
Howard, Smith & Levin LLP (since merged with Covington & Burling)
1330 Avenue of the Americas
New York, New York 10019
Associate

1997 – 1998
Supreme Court of the United States
Washington, D.C. 20543
Law Clerk to Justice Stephen G. Breyer

Spring 1997
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
Adjunct Faculty

1996 – 1997
Wiley, Rein, and Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Associate

1995 – 1996

United States Court of Appeals for the District of Columbia Circuit
333 Constitution Avenue, N.W.
Washington, D.C. 20001
Law Clerk to Judge Patricia M. Wald

Summer 1995

Jenner and Block
1099 New York Avenue, N.W.
Washington, D.C. 20001
Summer Associate

Summer 1994

Bredhoff and Kaiser
805 15th Street, N.W.
Washington, D.C. 20005
Summer Associate

Summer 1994

Arnold and Porter
555 12th Street, N.W.
Washington, D.C. 20004
Summer Associate

1992 – 1994

Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
Research Assistant to Professor Michael Gottesman (1993-1994)
Research Assistant to Professor Peter Edelman (1992-1993)

1993

United States Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201
Summer Assistant to Peter Edelman, Counselor to the Secretary

1992

Georgians For Children
Atlanta, Georgia
Policy Associate

1989 – 1991

United States House of Representatives
Washington, D.C. 20515
Legislative Aide to Representative William V. Alexander

1988 – 1989
Wuhan Institute of Technology
Wuhan, People's Republic of China
Princeton University Teaching Fellow

Summer 1988
South Carolina Governor's School
College of Charleston
66 George Street
Charleston, South Carolina 29424
Counselor

Other Affiliations (uncompensated)

2009
National Center for Law and Economic Justice
275 Seventh Avenue
New York, New York 10001
Director

2009
Gull Pond Property Owners Association
20 Gull Pond Road
Piercefield, NY 12973
Director

2007 – 2009
Fund for Modern Courts
351 West 54th Street
New York, New York 10019
Director

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I have not registered for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Best Brief Awards, Nat'l Assoc. of Attorneys General (2001, 2002, 2003, 2004, 2005)
Milton A. Kaufmann Prize, Georgetown Law School (1995)
Managing Editor, Georgetown Law Journal (1994 – 1995)

John M. Olin Law and Economics Fellowship (1994 – 1995)
Georgetown Public Interest Law Scholar (1992 – 1995)
Order of the Coif (1995)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

New York City Bar

Federal Courts Committee (2003 – 2006)

Information Technology Committee (no record of dates)

New York State Bar Association

Special Committee on the Civil Rights Agenda (2006 to approx. 2008)

New York State Judicial Screening Committees

State Committee and First Department Committee (2007 – 2009)

In preparing this questionnaire, I found Internet reference to my participation on the Chicago-Kent College of Law Working Group on Consumer Protection in 1999. Although I have no recollection of this organization, I am listing it in an abundance of caution.

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Maryland, 1995

New York, 2001

There has been no lapse in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2001

United States Court of Appeals for the First Circuit, 2004

United States Court of Appeals for the Second Circuit, 2002

United States Court of Appeals for the Fourth Circuit, 2007

United States Court of Appeals for the Fifth Circuit, 2007

United States Court of Appeals for the Sixth Circuit, 2008

United States Court of Appeals for the Federal Circuit, 2009

United States District Court for the Southern District of New York, 2001

United States District Court for the Eastern District of New York, 2009

There have been no lapses in membership.

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Fund for Modern Courts

Board of Directors (2007 – 2009)

Gull Pond Property Owners Association (approximately 2006 – Present)

Board of Directors (2009)

Historical Society of the Courts of the State of New York (2007 – Present)

National Center for Law and Economic Justice

Board of Directors (2009)

New York Law Journal, Board of Editors (2007 – Present)

New York City Road Runners (various years)

Princeton Alumni Association (1988 – Present)

In December 2009, the American Constitution Society Board of Directors elected me to serve a board term beginning in 2010. I informed the organization prior to January 1, 2010, that I would not be able to serve as a director because I had accepted a position with the New York County District Attorney's Office that would preclude such participation.

I have made financial contributions, both individually and with my spouse, to a number of charitable organizations over the years, including various cultural, environmental, neighborhood, and other types of organizations. I have not included in the list above any organizations to which I only have given funds and where I have not participated in programmatic activities, although the organizations' development protocols may deem me a "member." Although there may be others I have not found in my records, these organizations include: Adirondack Mountain Club, Avon Foundation, Brearley School, Carnegie Hall, Citizens Union, Classic Stage Company, Columbia Law School Public Interest Law Foundation, City Parks Foundation, Equal Justice Works, Film Forum, First Presbyterian Church Nursery School, Friends of Grace Church School, Friends of Outdoor Action (Princeton University), Grand Street Settlement, Honorable Howard A. Levine Fellowship in Juvenile Justice at Albany Law School, Innocence Project, Legal Information for Families Today, Metropolitan Museum of Art, Museum of Modern Art, National Center for Youth Law, New Israel Fund, New York Women's Foundation, New York University Brennan Center, Office of

the Appellate Defender of New York, Princeton-in-Asia, Princeton University, St. Margaret Mary School, Sisters of Mercy of the Americas, Thirteen Associates (WNET New York), Union Settlement Association, University of Arizona College of Science, Urban Justice Center, Wild Center Tupper Lake, Windows of Hope Family Relief Foundation, WNYC, YMCA of Greater New York, and Yivo Institute for Jewish Research.

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of these organizations has discriminated during my membership and I am not aware of any former discrimination by them.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

This list represents the published material I have identified through searches of my files and Internet databases. I have tried my best to list all of them here, although there may be some that I have not been able to identify or locate.

Note, “‘Just What the Doctor Ordered’: Oregon’s Medicaid Rationing Process and Public Participation In Risk Regulation,” 83 Geo. L. J. 2697 (1995). Copy supplied.

“Supreme Court Watch: *Caperton v. A.T. Massey Coal Co., Inc.*,” Metropolitan Corporate Counsel, June 30, 2009. Copy supplied.

As head of the Appellate Practice at Weil, Gotshal and Manges, LLP, I reviewed and occasionally drafted summaries of decisions handed down by the Supreme Court of the United States. Those summaries are available at www.weil.com/supreme-court-watch-archive/. The decisions for which summaries are posted include the following: *Department of Revenue of Kentucky v. Davis*, *CBOCS West, Inc. v. Humphries*, *Allison Engine Co. v. United States*, *Quanta Computer, Inc. v. LG Electronics, Inc.*, *Florida Dep’t of Revenue v. Piccadilly Cafeterias, Inc.*, *Meacham v. Knolls Atomic Power Laboratory*, *Chamber of Commerce v. Brown*, *Exxon Shipping Co. v. Baker*, *Altria Group, Inc.*

v. Good, Crawford v. Metropolitan Gov't of Nashville and Davidson County, Tenn., United States v. Eurodif and USEC v. Eurodif, Pacific Bell Telephone Co. v. linkLine Communications, Inc., Summers v. Earth Island Institute, Wyeth v. Levine, Vaden v. Discover Bank, Philip Morris USA v. Williams, 14 Penn Plaza LLS v. Pyett, FCC v. Fox Television Stations, Inc., Arthur Andersen LLP, et al. v. Carlisle, et al., Burlington Northern and Santa Fe Railway Co. v. U.S., Shell Oil Co. v. U.S., Carlsbad Technology, Inc. v. HIF Bio, Inc., Boyle v. United States, Caperton v. A.T. Massey Coal Co., Inc., and Gross v. FBL Financial Services, Inc.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

This list represents the reports, memoranda and policy statements I have identified through searches of my files and Internet databases. I have tried my best to list all such documents to which I contributed, although there may be some that I have not been able to identify or locate.

Fund for Modern Courts

During my service on the Board of Directors of the Fund for Modern Courts, the organization issued, submitted, or joined a handful of amicus briefs and issue reports. Except as indicated, I did not personally contribute or participate in these reports other than as a member of the Board of Directors, which approved them.

Caperton v. A.T. Massey Coal Co., No. 08-22 (S. Ct.) (amicus brief in support of petitioners). Copy supplied.

Kaye v. Silver, No. 400763/08 (N.Y. Sup. Ct.) (amicus brief in support of plaintiffs; I was also counsel of record). Copy supplied.

“White Paper on Improving Help Centers in New York State Family Court,” Report of the Family Court Task Force (Nov. 2009). Copy supplied.

“A Call to Action: The Crisis in Family Court,” Report to the Chief Judge of the State of New York of the Family Court Task Force (Feb. 2009). Copy supplied.

“Enhancing the Fair Administration of Justice in New York’s Towns and Villages through Court Consolidation,” Report of the Town and Village Justice Courts Task Force (Feb. 2008). Copy supplied.

New York City Bar Association
(Formerly Association of the Bar of the City of New York)

During my service on the Federal Courts Committee of the New York City Bar, the Committee issued various reports and public statements. I do not recall personally contributing or participating in these reports other than as a member of the Committee approving them.

Committee on Federal Courts of the Association of the Bar of the City of New York, "Guide to Mediation in the Southern & Eastern Districts of New York" (Mar. 2006). Copy supplied.

Letter to Hon. Peter G. McCabe, Secretary of the Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts re: Federal Rule of Civil Procedure 30(b)(6) (Mar. 24, 2006). Copy supplied.

Letter to Hon. Peter G. McCabe, Secretary of the Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts re: Proposed Electronic Discovery Amendments to the Federal Rules of Civil Procedure (Feb. 15, 2005). Copy supplied.

Letter to Hon. William H. Frist, Majority Leader, United States Senate re: Lawsuit Abuse Reduction Act of 2004 (Nov. 23, 2004). Copy supplied.

Committee on Federal Courts of the Association of the Bar of the City of New York, "The Surge of Immigration Appeals and its Impact on the Second Circuit Court of Appeals" (Aug. 2004). Copy supplied.

Committee on Federal Courts of the Association of the Bar of the City of New York, "Court-Annexed Mediation Programs in the Southern and Eastern Districts of New York: The Judges' Perspective" (Aug. 2004). Copy supplied.

Committee on Federal Courts of the Association of the Bar of the City of New York, "Tiering and the Foreign Sovereign Immunities Act after *Dole*" (July 2004). Copy supplied.

Letter to Hon. Russell D. Feingold, United States Senate re: S.1023, a Bill to Increase the Annual Salaries of Justices and Judges of the United States (approximately 2004). Copy supplied.

Letter to Hon. Peter G. McCabe, Secretary of the Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts re: Proposed Amendment to the Federal Rules of Appellate Procedure Concerning the Citation of Unpublished Opinions (Feb. 12, 2004). Copy supplied.

Committee on Federal Courts of the Association of the Bar of the City of New York, "The Indefinite Detention of 'Enemy Combatants': Balancing Due Process and National Security in the Context of the War on Terror (Feb. 2004), reprinted in *The Imperial Presidency and the Consequences of 9/11* (James R. Silkenat & Mark R. Shulman, eds.) (2007). Copy supplied.

Although I have not identified any other reports in which I was involved or to which I contributed, the New York City Bar issues many reports on which chairs of its committees, including the committees on which I served, may have been consulted with varying levels of formality.

New York State Bar Association

In 2008, the New York State Bar Association's Special Committee on the Civil Rights Agenda issued a report entitled "Steps Towards a More Inclusive New York and America." I briefly reviewed the report in draft version, and do not recall whether I provided any input to the committee. Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

This list represents the testimony, official statements, and other communications relating to matters of public policy or legal interpretation that I have identified through searches of my files and Internet databases. I have tried my best to list all such documents to which I contributed, although there may be some that I have not been able to identify or locate.

August 5, 2009 – Signatory to letter submitted to U.S. Senate Committee on the Judiciary in support of Justice Sonia Sotomayor's nomination as Associate Justice of the Supreme Court of the United States. Copy supplied.

September 19, 2000 – Participation in panel discussion entitled "Implications for Fair Information Practice Principles," Online Privacy Technologies Workshop and Technology Fair, held by National Telecommunications and Information Administration, Department of Commerce, Washington, D.C. I have no notes, transcript, or recording.

November 22, 1999 – "From Wall Street to Web Street: A Report on the Problems and Promise of the Online Brokerage Industry" (issued by the Internet and Investor Protections and Securities Bureaus of the New York State Attorney General's Office). Copy supplied.

June 11, 1999 – Letter to Donald S. Clark, Secretary, Federal Trade Commission, re: Children’s Online Privacy Protection Rule (Comment P994504) (submitted on behalf of 17 state Attorneys General). Copy supplied.

April 30, 1999 – Letter to Donald S. Clark, Secretary, Federal Trade Commission, re: U.S. Perspectives on Consumer Protection in the Global Electronic Marketplace (Comment P994312) (submitted on behalf of 30 state Attorneys General). Copy supplied.

At some point in 1999 or 2000, I testified before a New York State Senate or Assembly committee on issues of internet privacy and internet commerce. I do not have a record of the date or committee, but retained a copy of my written testimony. Copy supplied.

During my tenure as Solicitor General of the State of New York, the office issued numerous opinions regarding matters of state law to local government entities in New York State, as well as to state agencies. Ordinarily, these were signed by the Attorney General or, in the case of informal opinions, by the Assistant Solicitor General who had authored the opinion. I reviewed and contributed to many of these opinions from 2001 to 2007. The opinions are available on Westlaw under the database name NY-AG.

A single opinion was issued in my name, concluding that as a matter of statutory interpretation, the New York Domestic Relations Law did not authorize same-sex marriage. The opinion was No. 2004-1 (Mar. 3, 2004). Copy supplied. I had supervisory responsibility but was not counsel of record in a subsequent lawsuit that arose regarding this issue. .

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

The following is a list of speeches and panel discussions of which I have a record. To create this list, I searched my personal files, Weil Gotshal time sheets, and the Internet. I have, however, spoken frequently at informal events, particularly during my tenure in the New York State Attorney General’s Office, and did not generally retain a record of those appearances. I did not generally prepare written versions of my remarks, or retain notes from which I spoke.

I also spoke publicly at times as a surrogate for the Attorney General regarding legal matters of interest to the office. None of these remarks reflected views that were personal to me, as opposed to the Attorney General's Office. I have included in the list below all such events I have been able to identify.

Notwithstanding my best efforts to create a list responding to this question that is as complete as possible, there may be other presentations I have given that I have been unable to identify or remember.

March 4, 2009 - Panel discussion on Appellate Strategies: Insights on the Many Strategic Issues Facing an Appellate Advocate before Putting Pen to Paper, at the National Association of Attorneys General Appellate Practice Conference. I have no notes, transcript or recording. The address of the organization is: 2030 M Street, N.W., 8th Floor, Washington, D.C. 20036.

February 6-7, 2009 – Participated in a symposium entitled “The Supreme Court at Mid-Term,” at Stanford Law School, in Stanford, California. I have no notes, transcript or recording.

January 22, 2009 – Panel discussion for clients regarding legal developments at the Supreme Court of the United States. I have no notes, transcript or recording. The address of the organization is: Weil, Gotshal & Manges, LLP, 1300 I Street, N.W., Washington, D.C. 20005.

December 17, 2008 – Moderated panel discussion conducted by attorneys from Legal Momentum on the U.S. Supreme Court's docket for October Term 2008. I have no notes, transcript or recording. The address of the organization is: Weil, Gotshal & Manges, LLP, 767 Fifth Avenue, New York, New York 10153.

October 6, 2008 – Participated as judge at “First Monday in October” program held by New York Appellate Defender's Office at New York University Law School. I have no notes, transcript or recording. The address of the organization is: 40 Washington Square South, New York, New York 10012.

May 7, 2008 – Presentation on Supreme Court's October Term 2007 for legal staff at American Airlines. I have no notes, transcript or recording. The address of the organization is: American Airlines, Dallas, Texas.

April 14, 2008 – Guest lecturer for Professor Albert Rosenblatt's class. My presentation concerned litigating appeals in the New York state courts and the duties of the New York State Solicitor General. I have no notes, transcript or recording. The address of the organization is: 40 Washington Square South, New York, New York 10012. (I made a similar presentation to Professor Rosenblatt's class on another date, but do not have any specific records of the date of this presentation, or any notes, transcript or recording.)

March 5, 2008 – Panel discussion on Appellate Strategies: Insights on the Many Strategic Issues Facing an Appellate Advocate before Putting Pen to Paper, at the National Association of Attorneys General Appellate Practice Conference. I have no notes, transcript or recording. The address of the organization is: 2030 M Street, N.W., 8th Floor, Washington, D.C. 20036.

January 1, 2008 – Panel discussion on class actions at ALI Consumer Finance Conference in New York City. I have no notes, transcript or recording.

In 2008, I participated as a guest lecturer for a course on appellate advocacy taught by then-Judge Sonia Sotomayor. I have no record of the specific date, or notes, transcript or recording.

November 28, 2007 – Panel discussion on Petitions and Oppositions to Certiorari, at the National Association of Attorneys General Annual Supreme Court Advocacy Seminar. I have no notes, transcript, or recording. The address of the organization is: 2030 M Street, N.W., 8th Floor, Washington, D.C. 20036.

November 15, 2007 – Panel discussion entitled “Are New York Judicial Elections in Crisis?,” held at New York University Law School. I have no notes, transcript or recording. Coverage of the event in the NYU Alumni Almanac (Autumn 2008) is supplied. The address of the organization is: 40 Washington Square South, New York, New York 10012.

August 2, 2007 – Panel discussion for clients entitled “Practical Implications of the Supreme Court’s Resale Price Maintenance Decision” (*Leegin Creative Leather Products, Inc. v. PSKS, Inc.*). I have no notes, transcript or recording. The address of the organization is: Weil, Gotshal & Manges, LLP, 767 Fifth Avenue, New York, New York 10153.

June 19, 2007 – Remarks at American Constitution Society membership event at the Harvard Club of New York. I discussed opportunities for state law enforcement initiatives in the context of a federal system. I have no notes, transcript, or recording. The address of the organization is: 1333 H Street, N.W., 11th Floor, Washington, D.C. 20005.

December 5, 2006 – Panel discussion on Petitions and Oppositions to Certiorari, at the National Association of Attorneys General Annual Supreme Court Advocacy Seminar. I have no notes, transcript, or recording. The address of the organization is: 2030 M Street, N.W., 8th Floor, Washington, D.C. 20036.

July 13, 2006 – Panel discussion on the Supreme Court’s October Term 2006, at an in-house continuing legal education program for legal staff at the New York State Attorney General’s Office. I have no notes, transcript or recording. The address of the organization is: New York State Attorney General’s Office, 120 Broadway, New York, New York 10271.

June 29, 2006 – I moderated a roundtable discussion on Important Legal Issues State Appellate Lawyers are Facing and the Various Legal Arguments They Can Advance in Civil Appeals, at the National Association of Attorneys General State Solicitors & Appellate Chiefs Conference. I have no notes, transcript, or recording. The address of the organization is: 2030 M Street, N.W., 8th Floor, Washington, D.C. 20036.

May 22, 2006 – Participation as judge in moot court argument entitled “The Scales of Justice – A Reargument of *Palsgraf v. Long Island R.R. Company*.” I have no notes, transcript or recording. The event was held by the Historical Society of the Courts of the State of New York. The address of the organization is: 140 Grand Street, White Plains, New York 10601.

2006 (approx.) – Discussion regarding the scope of a “reporter’s privilege,” at a lunch event sponsored by the Communications and Media Law Committee of the NYC Bar Association. I have no notes, transcript or recording of my presentation. The address of the organization is: 42 West 44th Street, New York, New York 10036.

December 7, 2005 – Remarks at meeting of New York State Bar Association’s Media Law Committee in New York City. I have no notes, transcript or recording. The address of the organization is: One Elk Street, Albany, New York 12207.

December 1, 2005 – Panel discussion at New York State Bar Association seminar on New York Appellate Practice. I have no notes, transcript or recording. The address of the organization is: One Elk Street, Albany, New York 12207.

October 11, 2005 – Panel discussion entitled “Making a Living in Social Change: Scholarship, Service and Action.” Princeton University Career Services Office. I have no notes, transcript or recording. The address of the organization is: 36 University Place, Suite 200, Princeton, New Jersey 08544.

July 30, 2005 – Panel discussion entitled “The New Takings Jurisprudence,” American Constitution Society National Convention, in Washington, D.C. Audio recording supplied.

July 25, 2005 – Panel discussion on the Supreme Court’s October Term 2005, at an in-house continuing legal education program for legal staff at the New York State Attorney General’s Office. I have no notes, transcript or recording. The address of the organization is: New York State Attorney General’s Office, 120 Broadway, New York, New York 10271. The same program was conducted for legal staff in the Albany, New York office of the New York State Attorney General on July 28, 2005.

June 22, 2005 – I moderated a panel entitled “A View from the Bench: Insights on

Appellate Advocacy from our federal and state judges who formerly served in state Attorney General offices,” at the National Association of Attorneys General State Solicitors and Appellate Chiefs Conference. Participants were Justice Jeffrey Amestoy, Justice Brian Morris, Judge Jeffrey Sutton, and Peter Verniero. I have no notes, transcript or recording. The address of the organization is: 2030 M Street, N.W., 8th Floor, Washington, D.C. 20036.

July 12, 2004 – Panel discussion on the Supreme Court’s October Term 2004, at an in-house continuing legal education program for legal staff at the New York State Attorney General’s Office. I have no notes, transcript or recording. The address of the organization is: New York State Attorney General’s Office, 120 Broadway, New York, New York 10271. The same program was conducted for legal staff in the Albany, New York office of the New York State Attorney General on July 13, 2004.

June 30, 2004 – Panel discussion entitled “Marriage for Same-Sex Partners: Where Do We Stand Now?,” held by the New York County Lawyers’ Association in New York City. I have no notes, transcript or recording. The address of the organization is: 14 Vesey Street, New York, New York 10007.

June 17, 2004 – I moderated a roundtable discussion on Emerging Legal Issues in Civil Appeals, at the National Association of Attorneys General State Solicitors & Appellate Chiefs Conference. I have no notes, transcript, or recording. The address of the organization is: 2030 M Street, N.W., 8th Floor, Washington, D.C. 20036.

November 6, 2003 – Panel discussion on the Supreme Court’s docket for October Term 2003, at an in-house continuing legal education program for legal staff at the New York State Attorney General’s Office. I have no notes, transcript or recording. The address of the organization is: New York State Attorney General’s Office, 120 Broadway, New York, New York 10271.

May 5, 2003 – Remarks at Law Day 2003, held at New York State Judicial Institute. Text of remarks and press report supplied.

April 2, 2002 – Panel discussion entitled “Fair Trials/Free Press,” held at Columbia University Law School. I have no notes, transcript or recording. The address of the organization is: 435 West 116th Street, New York, New York 10027.

October 1, 2001 – Discussion in class entitled “Women at the Top,” led by Professor Rita Maldonado-Bear at New York University Stern School of Business. I have no notes, transcript or recording. The address of the organization is: 25 West 4th Street, New York, New York 10012.

July 10, 2001 – Panel discussion regarding Markle Foundation study entitled “Toward a Framework for Internet Accountability.” I have no notes, transcript or recording. Video is available at <http://www.stateofthe.net/framework.shtml>. Press report supplied.

November 14, 2000 – Panel discussion entitled “Caught in the Web: Privacy Concerns in Cyberspace,” held at New York University Law School. I have no notes, transcript or recording. The address of the organization is: 40 Washington Square South, New York, New York 10012.

November 7, 2000 – Panel discussion entitled “Litigating Copyright, Trademark, and Unfair Competition Cases,” at a continuing legal education program held by the Practicing Law Institute in New York City. I have no notes, transcript or recording. The address of the organization is: New York Conference Center, 810 Seventh Avenue, New York, New York 10019.

September 19, 2000 – Panel discussion entitled “Implications for Fair Information Practice Principles,” at a Privacy Workshop, National Telecommunications and Information Administration, U.S. Department of Commerce. Transcript supplied.

July 7, 2000 – Panel discussion on “Privacy and the Internet,” held by National Association of Women Lawyers in New York City. I have no notes, transcript or recording. The address of the organization is: 321 North Clark Street, Chicago, Illinois 60654.

June 30, 2000 – Panel discussion on “E-Commerce Crime,” National White Collar Crime Center and National Coalition for Prevention of Economic Crime. I have no notes, transcript or recording. The address of the organization is: 10900 Nuckols Road, Glen Allen, Virginia 23060.

June 27, 2000 - Panel discussion at a continuing legal education program on “Internet law” held by the Practicing Law Institute in New York City. I have no notes, transcript or recording. The address of the organization is: New York Conference Center, 810 Seventh Avenue, New York, New York 10019.

June 18, 2000 – Panel discussion entitled “Cybersafety: Issues and Challenges Online,” at meeting on “Partnering for Safe Neighborhoods” held by the New York State Attorney General’s Office. I have no notes, transcript or recording. The address of the organization is: New York State Attorney General’s Office, 120 Broadway, New York, New York 10271.

June, 2000 – Panel discussion at Internet and Society Conference, held by Berkman Center for Internet and Society, Harvard Law School. I have no notes, transcript or recording. The address of the organization is: 23 Everett Street, Cambridge, Massachusetts 02138.

May 7, 2000 – Economic Crime Summit, Austin, TX. I have no notes, transcript or recording. Press report supplied.

April 5, 2000 – American Advertising Federation Conference, Washington, D.C. I have no notes, transcript or recording. Press report supplied.

March 27, 2000 – Panel discussion entitled “Privacy Requirements and the Limits on Cross-Marketing,” at a conference held by the Practicing Law Institute in New York City. I have no notes, transcript or recording. The address of the organization is: New York Conference Center, 810 Seventh Avenue, New York, New York 10019.

January, 2000 – Panel discussion entitled “Impact of the Internet on the Mission of the Attorneys General,” at conference held by National Association of Attorneys General. I have no notes, transcript or recording. The address of the organization is: 2030 M Street, N.W., Washington, D.C. 20036.

November, 1999 – Panel discussion entitled “Litigating Copyright, Trademark and Unfair Competitions Cases for the Experienced Practitioner,” at a continuing legal education program held by the Practicing Law Institute in New York City. I have no notes, transcript or recording. The address of the organization is: New York Conference Center, 810 Seventh Avenue, New York, New York 10019.

October 8, 1999 – Panel discussion entitled “Get Wired: Practicing Law in the Internet Age; Internet and the Public Interest,” at a continuing legal education program held by the Association of the Bar of the City of New York. I have no notes, transcript or recording. The address of the organization is: 42 West 44th Street, New York, New York 10036.

June 16, 1999 – Presentation to inaugural meeting of E-Commerce Committee, The Business Council of New York State. I have no notes, transcript or recording. The address of the organization is: 152 Washington Avenue, Albany, New York 12210. Press report supplied.

June 9, 1999 – Panel discussion entitled “Jurisdiction and Choice of Law for Consumer Protection in eCommerce: U.S. Perspectives,” at Federal Trade Commission Public Workshop on “U.S. Perspectives on Consumer Protection in the Global Electronic Marketplace.” I have no notes, transcript or recording.

June 8, 1999 – Panel discussion entitled “Core Protections for eConsumers,” at Federal Trade Commission Public Workshop on “U.S. Perspectives on Consumer Protection in the Global Electronic Marketplace.” I have no notes, transcript or recording.

I have conducted internal trainings and made ceremonial presentations at in-house events not open to the public, such as new attorney welcomes and performance award presentations, during my time at the New York County District Attorney's Office, at Weil Gotshal, and at the New York Attorney General's Office. I am not aware of these having been recorded, except for a handful of continuing legal education programs used by Weil Gotshal for attorneys of the firm.

On September 20, 2010, I gave an in-house CLE lecture on "Professional Responsibility" (with Dan Alonso, Chief Assistant District Attorney) to the entering class of Assistant District Attorneys.

My records of in-house CLE lectures at Weil Gotshal include the following presentations:

Supreme Court Review (panel), July 7, 2009
Supreme Court Review (panel), July 8, 2008
Appeals and Oral Advocacy (with Miranda Schiller), November 21, 2008
Appeals and Oral Advocacy (with Miranda Schiller), December 4, 2007
Oral Arguments (with Christopher Pace), September 26, 2007

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have searched my files and Internet databases to refresh my memory in an effort to produce as complete a list of interviews as I could, but it is still possible there are some I was not able to locate.

Vesselin Mitev, "Amici Line Up in Dispute Over Appointment of Ravitch," New York Law Journal (Aug. 18, 2009). Copy supplied.

Peter Page, "Appellate Appeal: Younger Attorneys Can Get on the Fast Track Into Court With A Trend to Appoint State Solicitors General," Broward Daily Business Review (Aug. 20, 2008). Identical or nearly identical versions of this article appeared in other publications. Copy supplied.

Joanna Breitstein, "Pharma's Day in Court," Pharmaceutical Executive (July 2008). Copy supplied.

Ellen Rosen, "What's Happened to the Lawyers Who Worked for Spitzer?" New York Times (May 18, 2007). Copy supplied.

"Caitlin Halligan to Join Weil, Gotshal & Manges LLP as Head of Appellate Practice Group," PR NewsWire (May 17, 2007). Copy supplied.

John Caher, "Caitlin J. Halligan / Top Trials of 2005," New York Law Journal Magazine (Feb. 2006). Copy supplied.

Karen Setze, "U.S. Supreme Court Declines to Hear Challenge to New York 'Convenience' Test," State Tax Notes (Nov. 7, 2005). Copy supplied.

Gregory J. Langlois, "Dress Rehearsal: The Moot Court Program at Georgetown Law Center's Supreme Court Institute," Journal of Appellate Practice and Process (Fall 2005). Copy supplied.

Patrick D. Healy, "State Court is Debating the Future of Casinos," New York Times (Mar. 22, 2005). Copy supplied.

Glenn Coin, "After Hearing: Hope, Caution," Post-Standard (Jan. 13, 2005). Copy supplied.

Rick Brand, "Spitzer's Novel Claim: Court Revives Suit Over Chandler Estate," Newsday (Dec. 17, 2004). Copy supplied.

John Caher, "Spitzer's Vision is Reflected in Major Cases, Minor Details," New York Law Journal (Dec. 8, 2004). Copy supplied.

Tony Mauro, "Supreme Court Hears Arguments on Felons' Voting Rights," Legal Intelligencer (Nov. 9, 2004). Copy supplied.

Tony Mauro, "Stating Their Case," The American Lawyer (Aug. 18, 2003) (reprinted in other publications). Copy supplied.

John Caher, "Judge in Conduct Hearing Points Finger At Commission," New York Law Journal (Apr. 4, 2003). Copy supplied.

Margo Schlanger, Inmate Litigation, 116 Harv. L. Rev. 1555, 1564 (2003). Copy of excerpt supplied.

John Caher, "Spitzer Names Halligan Solicitor General," New York Law Journal (Sept. 25, 2001). Copy supplied.

Lisa I. Fried, "Internet Abuse Spawns New Age Cops," New York Law Journal (Sept. 27, 1999). Copy supplied.

Stephen Labaton, "Can Defendants Cry 'E-Sanctuary' and Escape the Courts?" New York Times (Sept. 22, 1999). Copy supplied.

Mark Harrington, "Keeping Law and Order On Net Transactions," Newsday (Sept. 17, 1999). Copy supplied.

Lisa I. Fried, "E-Commerce: A Recent Ruling Stirs Compliance Concerns," New York Law Journal (Aug. 26, 1999). Copy supplied.

David McGuire, "Consumers, Industry Clash Over Online Disclosure," Newsbytes (June 8, 1999). Copy supplied.

Michael Hill, "High-Tech Issues: Faster Than the Speed of Legislation?" Associated Press State and Local Wire (June 1, 1999). Copy supplied.

Henry Gilgoff, "Dragnet for Net Fraud: Growth of Internet Commerce Brings Concerns About Consumer Protection," Newsday (Mar. 21, 1999). Copy supplied.

"State Online Consumer Protection Units Cropping Up," Communications Daily (Mar. 18, 1999). Copy supplied.

Heidi Kriz, "Stranger than Fiction," Wired Magazine (Feb. 18, 1999). Copy supplied.

On February 20, 2008, I commented in an interview with Nina Totenberg of National Public Radio regarding preemption decisions handed down by the Supreme Court of the United States. Transcript supplied.

On December 7, 2004, I commented in an interview with Nina Totenberg of National Public Radio regarding *Swedenburg v. Kelly*, a case regarding the constitutionality of state restrictions on shipment of wine that I argued in the United States Supreme Court. Transcript supplied.

On January 17, 2000, I appeared on a CNN Moneyline News Hour program regarding "E-Commerce." Transcript supplied.

On July 27, 1999, I appeared on a CNN Moneyline News Hour program regarding the application of New York laws to online gaming. Transcript supplied.

When I was Solicitor General of New York, I commented in numerous interviews on behalf of the New York State Attorney General, generally on cases handled by the Solicitor General's Office. Most of these interviews were on background and I have no record of them.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held a judicial office.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

i. Of these, approximately what percent were:

jury trials: _____%
bench trials: _____% [total 100%]

civil proceedings: _____%
criminal proceedings: _____% [total 100%]

b. Provide citations for all opinions you have written, including concurrences and dissents.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

e. Provide a list of all cases in which certiorari was requested or granted.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system

by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

From 1999 until early 2007, I served in the Office of the New York State Attorney General. During that time, I served as Chief of the Office's Internet Bureau (1999-2000), First Deputy Solicitor General (2001), and Solicitor General (2001-early 2007). I was appointed to those positions by New York Attorney General Eliot Spitzer.

Since January 2010, I have served as General Counsel of the New York County District Attorney's Office. I was appointed to that position by New York County District Attorney Cyrus Vance.

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 2009, I was a member of the Women for Cy Committee of the Cy Vance for Manhattan District Attorney Campaign. I served as one of many co-hosts of a fundraiser.

In 2008, I coordinated research conducted by several other attorneys on the election laws of several states, which was provided to representatives of the Obama presidential campaign.

In 2004 and 2008, I canvassed voters on one or two occasions on behalf of the Democratic nominees for President (respectively, John Kerry and then-Senator Barack Obama).

In 1998, I volunteered briefly in formulating policy positions and conducting research for the campaign of Eliot Spitzer for New York State Attorney General.

I may have volunteered upon occasion for various political candidates during high school and college, but have no specific recollections of such activities.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

1997-1998; I served as a law clerk to Justice Stephen G. Breyer, Supreme Court of the United States.

1995-1996; I served as a law clerk to Judge Patricia M. Wald, United States Court of Appeals for the District of Columbia Circuit.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Summer 1995
Jenner and Block
1099 New York Avenue, N.W.
Washington, D.C. 20001
Summer Associate

1996 – 1997
Wiley, Rein, and Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Associate

1998 – 1999
Howard, Smith & Levin LLP (since merged with Covington & Burling)
1330 Avenue of the Americas
New York, New York 10019
Associate

1999 – 2007
Office of the New York State Attorney General
120 Broadway
New York, New York 10271
Solicitor General (2001 – 2007)
First Deputy Solicitor General (2001)
Chief, Internet Bureau (1999 – 2000)

2007 – 2009
Weil, Gotshal and Manges, LLP
767 Fifth Avenue
New York, New York 10153
Partner

January 2010 – present
New York County District Attorney's Office
One Hogan Place
New York, New York 10013
General Counsel

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

As a junior associate at Wiley, Rein & Fielding (1996 – 1997) and Howard, Smith & Levin (briefly in 1998), I performed legal research and

drafted briefs under the close supervision of a partner. I also reviewed documents in preparation for depositions.

As Chief of the Internet Bureau in the New York Attorney General's Office (1999 – 2000), I managed a small unit that investigated and litigated online fraud and other Internet cases. About half of my time was devoted to handling my own cases, with the balance spent supervising matters handled by other attorneys and working on Internet policy issues.

As First Deputy Solicitor General (2001), approximately one-third of my time was spent handling my own appeals, and the remainder was devoted to supervising other attorneys and addressing office-wide questions of law and legal policy.

As Solicitor General (2001 – early 2007), I supervised a group of approximately 45 lawyers and assisted in setting office-wide legal policy. Approximately one-third of my time was devoted to administration, policy matters, and legal issues that arose in a trial setting; approximately one-third was devoted to reviewing draft briefs written by other lawyers in my office; and the balance was devoted to cases that I personally handled on behalf of the Office.

As a partner and head of the appellate practice at Weil, Gotshal & Manges (2007 – 2009), I spent the majority of my time on appeals in which I served as lead counsel. I also devoted substantial time as part of legal teams handling trial-level matters, generally in federal courts and occasionally in arbitration. The balance of my time was spent on business development and administration.

As General Counsel to the New York County District Attorney (2010 – present), my responsibilities are varied. The vast majority of my time is spent on the Office's criminal matters; I also monitor a number of civil issues that affect the Office and its lawyers. I devote approximately one-third of my time to policy and budget issues. Additionally, I personally handle a docket of about 10 misdemeanor cases as part of an effort by the senior lawyers in the office to support the line prosecutors in the approximately 88,000 misdemeanor cases handled by the office each year.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As Solicitor General and First Deputy Solicitor General, my clients included the State of New York and its agencies, as well as individual state officials and employees. While I devoted some time to formulating legal strategy at the investigative or trial stages of a matter, my practice was predominately in the federal and state appellate courts. The issues I

handled were wide-ranging, including federal and state constitutional challenges to state statutes; questions of statutory interpretation; and various types of proceedings against state officials in both federal and state courts. As Chief of the New York State Attorney General's Internet Bureau, I investigated and litigated various issues that arose in the online environment, including online trading, fraud and consumer protection cases, and privacy.

In private practice, my clients were primarily large corporations, and also included several smaller businesses, two public entities, and several non-profit groups and individuals whom I represented on a pro bono basis. The subject matter of my work varied widely, including commercial litigation, ERISA, international trade, and arbitration.

In the New York County District Attorney's Office, my client is the People of the State of New York; my practice heavily emphasizes criminal law.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

The vast majority of my practice has been in litigation. I did not appear in court as a junior associate. As First Deputy Solicitor General and Solicitor General, I appeared frequently in courts of appeal, and continued to appear in courts of appeal, albeit less frequently, as a partner.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 65% |
| 2. state courts of record: | 35% |
| 3. other courts: | |
| 4. administrative agencies: | |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 90% |
| 2. criminal proceedings: | 10% |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Although I have assisted in briefing or developing legal strategy for cases in numerous courts of record, I have not tried any cases to verdict, judgment, or final decision.

- i. What percentage of these trials were:
 1. jury:
 2. non-jury:
- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have argued four cases before the Supreme Court of the United States:

Swedenburg v. Kelly, 544 U.S. 460 (2005)
City of Sherrill v. Oneida Indian Nation of New York, 544 U.S. 197 (2005)
United Haulers Assn., Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth., 550 U.S. 330 (2007)
United States v. Eurodif, S.A., 129 S. Ct. 878 (2009).

Oral argument transcripts are supplied.

I have written and/or appeared as counsel of record on numerous certiorari petitions, oppositions to certiorari, merits briefs, and amicus briefs. My review of my own records, along with the Supreme Court's docket, indicate that those matters include:

Hoffman Plastic Compound, Inc. v. Nat'l Labor Relations Bd., No. 00-1595 (Amicus brief in support of respondent on behalf of New York and other states). Copy supplied.

Ulster Home Care, Inc. v. Spitzer, No. 01-248 (Brief in opposition to certiorari). Copy supplied.

N.Y. Ass'n of Convenience Stores v. Roth, No. 01-560 (Brief in opposition to certiorari). Copy supplied.

Nevada Dep't of Human Res. v. Hibbs, No. 01-1368 (Amicus brief in support of respondents on behalf of New York and other states). Copy supplied.

Grutter v. Bollinger, No. 02-241, and *Gratz v. Bollinger*, No. 02-516 (Amicus brief in support of respondents on behalf of New York and other states). Copy supplied.

Pataki v. Consol. Edison Co. of N.Y., No. 02-358 (Certiorari petition and reply brief). Copies supplied.

S. Fla. Water Mgmt. Dist. v. Miccosukee Tribe of Indians of Fla., No. 02-626 (Amicus brief in support of respondents on behalf of New York and other states). Copy supplied.

Anderson v. Treadwell, No. 02-639 (Brief in opposition to certiorari). Copy supplied.

Weiss v. Commack Self-Service Kosher Meats, Inc., No. 02-672 (Certiorari petition). Copy supplied.

Verizon Communications, Inc. v. Law Offices of Curtis V. Trinko, LLP, No. 02-682 (Amicus brief in support of respondent on behalf of New York and other states). Copy supplied.

Cooper Industries, Inc. v. Aviall Services, Inc., No. 02-1192 (Amicus brief in support of respondent on behalf of New York and other states). Copy supplied.

Pataki v. Saratoga County Chamber of Commerce, No. 03-392 (Certiorari petition and reply brief). Copies supplied.

Rondout Electric, Inc. v. N.Y. State Dep't of Labor, No. 03-560 (Brief in opposition to certiorari). Copy supplied.

Roper v. Simmons, No. 03-633 (Amicus brief in support of respondent on behalf of New York and other states). Copy supplied.

City of Sherrill v. Oneida Indian Nation of N.Y., No. 03-855 (Amicus brief in support of petitioners on behalf of New York). Copy supplied.

Novello v. DiBlasio, No. 03-1137 (Certiorari petition and reply brief.) Copies supplied.

Dibble v. Fenimore, No. 03-1184 (Brief in opposition to certiorari). Copy supplied.

Spargo v. N.Y. Comm'n on Judicial Conduct, No. 03-1273 (Brief in opposition to certiorari). Copy supplied.

Swedenburg v. Kelly, No. 03-1274 (Brief in support of certiorari and brief of respondents). Copies supplied.

Spitzer v. Mateo, No. 03-1589 (Certiorari petition and supplemental letter). Copies supplied.

Cutter v. Wilkinson, No. 03-9877 (Amicus brief in support of petitioners on behalf of New York and Washington States). Copy supplied.

Lingle v. Chevron USA, Inc., No. 04-163 (Amicus briefs at certiorari and merits stages in support of petitioners on behalf of New York and other states). Copies supplied.

Muntaqim v. Coombe, No. 04-175 (Brief in opposition to certiorari and supplemental letter). Copies supplied.

San Remo Hotel v. City and County of San Francisco, No. 04-340 (Amicus brief in support of respondents on behalf of New York and other states). Copy supplied.

Domino's Pizza v. McDonald, No. 04-593 (Amicus brief in support of respondent on behalf of New York and other states). Copy supplied.

McBride v. Ortiz, No. 04-668 (Certiorari petition). Copy supplied.

Rapanos v. United States, No. 04-1034, and *Carabell v. U.S. Army Corps of Engineers*, No. 04-1384 (Amicus brief in support of respondents on behalf of New York and other states). Copy supplied.

Merrill Lynch v. Dabit, No. 04-1371 (Amicus brief in support of respondent on behalf of New York and other states). Copy supplied.

S.D. Warren Co. v. Me. Dep't of Envtl. Prot., No. 04-1527 (Amicus brief in support of respondent on behalf of New York and other states). Copy supplied.

Huckaby v. N.Y. State Div. of Tax Appeals, 04-1734 (Brief in opposition to certiorari). Copy supplied.

N.Y. Dep't of Transp. v. Newsday, Inc., No. 05-309 (Certiorari petition and motion to dismiss the petition). Copies supplied.

Karr v. Pataki, No. 05-361, and *Dalton v. Pataki*, No. 05-368 (Brief in opposition to certiorari). Copy supplied.

Woodford v. Ngo, No. 05-416 (Amicus briefs in support of certiorari petition and in support of petitioners on behalf of New York and other states). Copies supplied.

Patterson v. New York, No. 05-550 (Brief in opposition to certiorari). Copy supplied.

Envtl. Def. Fund v. Duke Energy Corp., No. 05-848 (Amicus brief in support of petitioners on behalf of New York and other states). Copy supplied.

Seneca Nation of Indians v. New York, No. 05-905 (Brief in opposition to certiorari). Copy supplied.

Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, No. 05-908, and *Meredith v. Jefferson County Bd. of Educ.*, No. 05-915 (Amicus brief in support of respondents on behalf of New York and other states). Copy supplied.

Drogin v. Lee, No. 05-969, and *Thomas v. Lee*, No. 05-1114 (Amicus brief in support of certiorari petition on behalf of New York and other states). Copy supplied.

United States v. Pataki, No. 05-978, and *Cayuga Indian Nation of N.Y. v. Pataki*, No. 05-982 (Brief in opposition to certiorari). Copy supplied.

Watters v. Wachovia Bank, No. 05-1342 (Amicus brief in support of petitioner on behalf of New York and other states). Copy supplied.

United Haulers Ass'n v. Oneida-Herkimer Solid Waste Mgmt. Auth., No. 05-1345 (Amicus brief in support of respondents on behalf of New York and other states). Copy supplied.

Jones v. Bock, No. 05-7058, and *Williams v. Overton*, No. 05-7142 (Amicus brief in support of respondents on behalf of New York and other states). Copy supplied.

United States v. Eurodif, S.A., No. 07-1059, and *USEC, Inc. v. Eurodif, S.A.*, No. 07-1078 (Brief in opposition to certiorari and brief of respondent). Copies supplied.

Major League Baseball Advanced Media v. C.B.C. Distribution & Mktg., Inc., No. 07-1099 (Amicus brief in support of petitioners on behalf of National Football League Players Association and National Football League Players Incorporated). Copy supplied.

Free Enter. Fund v. Pub. Co. Accounting Oversight Bd., No. 08-861 (Amicus brief in support of respondent on behalf of constitutional law professors). Copy supplied.

New York v. Williams, No. 09-1425 (Certiorari petition and reply brief). Copies supplied.

I have assisted in the preparation of briefs filed in numerous other matters in the Supreme Court. My review of my own records indicated that those matters in which I provided substantial assistance include:

United Student Aid Funds, Inc. v. Brannan, No. 96-1210 (Certiorari petition; supplemental brief of petitioner). Copies supplied.

Porter v. Nussle, No. 00-853 (Amicus brief in support of petitioners on behalf of New York and other states). Copy supplied.

Goord v. Lawrence, No. 00-1619 (Certiorari petition). Copy supplied.

Scheidler v. Nat'l Org. for Women, Inc., No. 01-1118, and *Operation Rescue v. Nat'l Org. for Women, Inc.*, No. 01-1119 (Amicus brief in support of respondents on behalf of New York and other states). Copy supplied.

Massachusetts v. EPA, No. 05-1120 (Certiorari petition, brief of petitioner, and reply brief). Copies supplied.

N.Y. State Bd. of Elections v. Torres, No. 06-766 (Certiorari petition). Copy supplied. A reply brief was filed after I had left the Attorney General's Office.

Orkin v. Taylor, No. 07-216 (Brief in opposition to certiorari). Copy supplied.

Liberty Elec. Power, LLC v. Nat'l Energy & Gas Transmission, Inc., No. 07-684 (Certiorari petition). Copy supplied.

Am. Isuzu Motors Inc. v. Ntsebeza, No. 07-919 (Certiorari petition and reply brief). Copies supplied.

Al-Marri v. Spagone, No. 08-368 (Amicus brief in support of petitioner on behalf of constitutional, criminal procedure, and other legal scholars). Copy supplied.

Am. Needle, Inc. v. Nat'l Football League, No. 08-661 (Amicus brief in support of petitioner on behalf of National Football League Players Association and others). Copy supplied.

As this list suggests, I have had varying levels of involvement in a significant number of Supreme Court cases given that much of my legal practice has been as an appellate lawyer. I have searched my files and Internet databases to refresh my memory in an effort to produce as complete as possible a list of cases in which I have been substantially involved, but it is still possible there are some I was not able to locate.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
 - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
 - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. *United States v. Eurodif, S.A.; USEC Inc. v. Eurodif, S.A.*, 129 S. Ct. 878 (2009) (2008-2009)

This case concerned the meaning of a provision in the 1930 Tariff Act, which allows for the imposition of “antidumping” duties on “foreign merchandise” sold in the United States at “less than its fair value.” Pursuant to this provision, the United States Department of Commerce assessed duties on imports of “low enriched uranium,” which is used to fuel nuclear reactors. When uranium is processed for this purpose, the enricher (here, Eurodif, S.A.) draws from a stock of uranium that is not differentiated by customer, and processes it to the desired quantity and assay. The Court of International Trade reversed the Department of Commerce’s determination, concluding that in light of this arrangement, a customer does not retain an ownership right in a discrete amount of uranium feed, and thus a processing contract is a sale of services, not merchandise. The Federal Circuit affirmed. The Supreme Court of the United States granted certiorari and reversed; I briefed and argued the matter on behalf of Eurodif, S.A. The Court held that the Department of Commerce’s application of the statute to the transactions at issue reflected a permissible reading of the statute.

Counsel for co-petitioner Ad Hoc Utilities Group was Nancy Fisher, Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, N.W., Washington, D.C. 20037, Tel: 202-663-8965. Opposing counsel included Edwin Kneedler, Acting Solicitor General (representing the United States), United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530, Tel: 202-514-2217, and Sheldon Hochberg (representing USEC, Inc.), Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, D.C. 20036, Tel: 202-429-6218.

2. *United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste Management Authority*, 550 U.S. 330 (2007) (2006-2007)

Oneida-Herkimer Solid Waste Management Authority enacted “flow control” ordinances governing the management of solid waste in two counties (Oneida and Herkimer) located in upstate New York. The ordinances required that private haulers deliver solid waste collected in the counties to the Authority’s facility. Alleging that these provisions discriminated against interstate commerce in violation of the dormant Commerce Clause, a trade association and individual haulers sought to have the ordinances declared unconstitutional. The district court invalidated the laws under *C & A Carbone, Inc. v. Clarkstown*, 511 U.S. 383 (1994), and the Second Circuit reversed, reasoning that

Carbone did not control because the Oneida-Herkimer facilities were public, not private, entities. The Supreme Court of the United States granted certiorari; I filed an amicus brief and argued the case on behalf of New York State, which had worked with localities around the state to enact and implement similar waste ordinances. The Court affirmed, holding that laws favoring local government, as compared with those favoring local or in-state businesses, may be directed at legitimate, non-protectionist goals, and that accordingly, the challenged laws did not discriminate against interstate commerce.

Counsel for Oneida-Herkimer Solid Waste Management Authority was Michael Cahill, Germano & Cahill, P.C., 4250 Veterans Memorial Highway, Suite 275, Holbrook, New York 11741, Tel: 631-588-8878. Counsel for United Haulers Association, Inc. was Evan Tager, Mayer Brown LLP, 1999 K Street, N.W., Washington, D.C. 20006, Tel: 202-263-3000.

3. *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007) (2006-2007)

A group of private organizations petitioned the Environmental Protection Agency to regulate emissions of “greenhouse gases” under a provision of the Clean Air Act that requires the Agency to prescribe standards for certain air pollutant emissions. The Agency denied the petition, and the groups, joined by Massachusetts, New York, and other states and local governments as intervenors, sought review in the U.S. Court of Appeals for the District of Columbia Circuit. The court of appeals concluded that the Administrator’s exercise of discretion was permissible, and both the private organizations and the states petitioned for certiorari. The Supreme Court of the United States granted certiorari and reversed, in a 5-4 opinion. The Court held that there was no jurisdictional barrier to adjudicating the dispute; that the Agency has statutory authority to regulate the emissions of “greenhouse gases” from new motor vehicles; and that the Agency had not sufficiently explained its decision to refuse to regulate such emissions. In my capacity as Solicitor General of New York State, I assisted in the development of the legal arguments and briefs in this matter.

Counsel for Massachusetts was James Milkey, One Ashburton Place, Boston, Massachusetts 02108, Tel: 617-727-2200. Counsel for the Environmental Protection Agency was Gregory Garre, Deputy Solicitor General, United States Department of Justice, Washington, D.C. 20530, Tel: 202-514-2217.

4. *City of Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005) (2004-2005)

The Oneida Indian Nation, a tribe whose ancestral home was in central New York State, purchased tracts of land in the City of Sherrill in 1997 and 1998. Those properties had once been within the boundaries of the historic Oneida Reservation, but were sold to a non-Indian in 1807 and remained in private hands until the 1997 and 1998 sales. The Nation sought to revive its sovereignty over these properties and claimed they were therefore not taxable, relying on *County of Oneida v. Oneida Indian Nation of New York*, 470 U.S. 226 (1985). In that case, the Supreme Court of the United States had held that the Nation could maintain a common-law claim for wrongful possession of lands that the

historic tribe had conveyed to New York State in the late 1700s and early 1800s, but reserved the question of whether equitable considerations should limit such relief. The district court held in *Sherrill* that the properties purchased by the Nation were exempt from property taxes, and the Second Circuit affirmed. The Supreme Court of the United States granted certiorari, and I filed an amicus brief and argued the case on behalf of New York State. The Court held that in light of the longstanding authority exercised by the State and local governments over the land in question, and the Nation's delay in seeking relief, the Nation could not reassert sovereignty through open-market purchases of their aboriginal lands, and accordingly, their properties were subject to taxation.

Counsel for City of Sherrill was Ira Sacks, Dreier LLP, 449 Park Avenue, New York, New York, 10022, Tel: 212-328-6100. Counsel for Oneida Indian Nation of New York was Michael R. Smith, Zuckerman Spaeder, LLP, 1201 Connecticut Avenue, N.W., Washington, D.C., 20036, Tel: 202-778-1832. Counsel for the United States, which participated in oral argument as *amicus curiae*, was Malcolm Stewart, Deputy Solicitor General, United States Department of Justice, Washington, D.C., 20530, Tel: 202-514-2201.

5. *Swedenburg v. Kelly*, 544 U.S. 460 (2005) (2004-2005)

The plaintiff in this case, an out-of-state winery, challenged as unconstitutional New York's laws regulating the distribution of wine, which generally prohibited the direct shipment of wine from a winery to a consumer. While New York's laws allowed in-state wineries to make direct sales to consumers under certain circumstances, out-of-state wineries were required to ship their products to a wholesaler, who would in turn sell to a retailer. The district court invalidated the laws on the ground that they violated the dormant Commerce Clause; the Second Circuit reversed, on the ground that the statutes fell within the powers granted to the states by the Twenty-first Amendment. The Supreme Court of the United States granted certiorari, and consolidated the New York case with two cases from the Sixth Circuit invalidating a similar Michigan law (*Granholm, et al., v. Heald, et al.* and *Michigan Beer and Wine Wholesalers Association v. Heald, et al.*). I briefed and argued the case on behalf of New York. In a 5-4 decision, the Court held that both states' laws discriminated against interstate commerce in violation of the Commerce Clause, and that the Twenty-first Amendment did not immunize the laws from Commerce Clause scrutiny.

Counsel for State of Michigan was Thomas Casey, Solicitor General of Michigan, Office of the Michigan Attorney General, P.O. Box 30212, Lansing, Michigan 48909; Tel: 517-373-1124. Counsel for Michigan Beer & Wine Wholesalers Association was Miguel Estrada, Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, N.W., Washington, D.C. 20036, Tel: 202-955-8500. Opposing counsel included Clint Bolick (representing Swedenburg), 500 E. Coronado Road, Phoenix, Arizona 85004, Tel: 602-462-5000, and Kathleen Sullivan (representing Eleanor Heald), Quinn Emanuel Urquhart & Sullivan, LLP, 51 Madison Avenue, New York, New York 10010, Tel: 212-849-7000.

6. *Clearing House Association, L.L.C. et al. v. Cuomo*, 510 F.3d 105 (CA2 2007), *rev'd in part*, 129 S. Ct. 2710 (2009) (2005-2007)

In the course of investigating whether certain national banks had violated New York's fair lending laws, the New York Attorney General requested that the banks provide nonpublic information about their residential lending practices. A banking trade group, joined by the Office of the Comptroller of the Currency, sought to enjoin the Attorney General's request, contending that a regulation promulgated by the Comptroller pursuant to the National Bank Act precluded the state from enforcing its fair lending laws against national banks. I became involved in the matter at this point; the district court enjoined the investigation. I briefed and argued the appeal to the Second Circuit, which affirmed in a divided opinion. The majority held that the Comptroller's regulation was a reasonable interpretation of the National Bank Act's provision barring state officials from exercising "visitorial powers" over national banks. The Supreme Court of the United States subsequently granted certiorari and reversed in part, holding that in light of evidence that the National Bank Act did not prohibit ordinary enforcement of state law, the regulation was not a reasonable interpretation of the statute.

Circuit Judges Cardamone and B.D. Parker, and District Judge Koeltl heard the case. Counsel for the Clearing House Association, L.L.C. was Robinson Lacy, Sullivan & Cromwell, L.L.P., 125 Broad Street, New York, New York 10004; Tel: 212-558-4000. Counsel for the Office of the Comptroller of the Currency was Douglas Jordan, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219; Tel: 202-874-5280.

7. *Campaign for Fiscal Equity v. New York*, 100 N.Y. 2d 893 (2003); 8 N.Y. 3d 14 (2006) (2001-2006)

The New York State Constitution includes a provision requiring that the state offer a "sound basic education" to all children. The plaintiff, an education advocacy group, brought suit against New York State claiming that New York City schools did not meet this standard, and seeking additional funds for those schools. After a threshold decision on the justiciability of the constitutional provision, the New York Court of Appeals ruled in 2003 that the constitutional guarantee had not been satisfied, and remanded for further litigation on the appropriate remedy. Three years later, the Court of Appeals ordered the State to provide certain amounts in operating aid and capital funding to fulfill its constitutional obligation. I closely supervised the briefing and argument of both cases in the New York intermediate appellate courts and New York Court of Appeals.

Counsel for the Campaign for Fiscal Equity included Joseph Wayland, Simpson Thacher, 425 Lexington Avenue, New York, New York 10017; Tel: 212-455-3203, and Michael Rebell, Teachers College of Columbia University, 525 West 120th Street, New York, New York 10027; Tel: 212-678-4144.

8. *Spargo v. New York State Commission on Judicial Conduct*, 351 F.3d 65 (CA2 2003) (2003-2004)

The New York State Commission on Judicial Conduct charged plaintiff, an elected state judge, with violating several of the state's judicial conduct rules. The judge asked a federal district court to enjoin the state disciplinary proceedings, alleging that they violated the First Amendment and Equal Protection Clause. The district court, relying on the decision of the Supreme Court of the United States in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), declared the conduct rules facially unconstitutional and permanently enjoined their enforcement. I became involved in the matter at this juncture. On appeal, the Second Circuit reversed, holding that the pending state proceedings warranted absention under *Younger v. Harris*, 401 U.S. 37 (1971).

Circuit Judges Miner, Calabresi, and Straub heard the case. Counsel for Thomas Spargo was David Kunz, DeGraff, Foy, Kunz & Devine L.L.P., 90 State Street, Albany, New York, 12207; Tel: 518-462-5300.

9. *Commack Self-Service Kosher Meats, Inc. v. Weiss*, 294 F.3d 415 (CA2 2002) (2000-2002)

Under New York law, the state Department of Agriculture and Markets enforced laws intended to prevent intentional fraud in the sale of kosher food; those laws defined "kosher" to mean food "prepared in accordance with orthodox Hebrew religious requirements." After receiving numerous citations for violations of these laws, plaintiff, a kosher meat company, brought suit alleging, *inter alia*, that the provisions ran afoul of the Establishment Clause. The district court agreed, and declared the laws unconstitutional. I briefed and argued the matter in the Second Circuit, which affirmed. The Court held that the challenged provisions excessively entangled government and religion by mandating adherence to orthodox Hebrew religious requirements, and impermissibly advanced Orthodox Judaism's dietary restrictions.

Circuit Judges Miner, Leval, and Pooler heard the case. Counsel for Intervenor Silver, et al. was Nathan Lewin, Lewin & Lewin, L.L.P., 1828 L Street, N.W., Washington, D.C. 20036; Tel: 202-828-1000. Counsel for Commack Self-Service Kosher Meats, Inc. was Robert Dinerstein, Dinerstein & Lesser, P.C., 6080 Jericho Turnpike, Commack, New York, 11725; Tel: 631-462-1226.

10. *Milk Industry Foundation v. Glickman*, 949 F. Supp. 882 (D.D.C. 1996); 955 F. Supp. 8 (D.D.C. 1997); 967 F. Supp. 564 (D.D.C. 1997) (1996-1997)

In 1993, six New England states formed a compact (the Northeast Dairy Compact) that allowed them to raise the minimum prices paid by milk processors to dairy farmers in that region. Congress passed a law consenting to the compact, subject to a finding by the Secretary of Agriculture of a "compelling interest in the Compact region." The Secretary published such a finding, and plaintiff sought to enjoin implementation of the compact. By requiring that the Secretary make this determination, plaintiff argued, Congress had

impermissibly delegated its power to consent to an interstate compact; in any event, the finding was arbitrary and capricious, in violation of the Administrative Procedure Act. The district court denied injunctive relief, issued a stay to allow the Secretary to amplify his finding, and granted summary judgment to the Secretary; I assisted in briefing the matter at each of these stages. The United States Court of Appeals for the District of Columbia Circuit subsequently affirmed.

District Judge Paul Friedman heard the case. Counsel for Secretary Glickman was Marcia Sowles, United States Department of Justice, Civil Division, Federal Programs Branch, 20 Massachusetts Avenue, N.W., Washington, D.C. 20530; Tel: 202-514-4960. Counsel for the Milk Industry Foundation was Steven Rosenbaum, Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington, D.C. 20004; Tel: 202-662-5568.

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Both in private practice and in the public sector, my legal work has primarily centered on litigation. As General Counsel of the New York County District Attorney's Office and as Solicitor General in the New York Attorney General's Office, I have had significant responsibilities for managing legal staff, setting office policies on various subjects, evaluating the office's positions on a range of legal and policy matters, and addressing legal and budgetary issues with other government agencies.

From 2007-2009, I served, on a pro bono basis, as counsel to the Board of Directors of the Lower Manhattan Development Corporation, which is the government entity tasked with overseeing the revitalization of lower Manhattan following the terrorist attacks of September 11, 2001. In that capacity, I reviewed board actions and resolutions, monitored legal actions involving the Corporation, and assisted in negotiation of a major insurance dispute to which the Corporation was a party.

I have performed no lobbying activities on behalf of any client or organization.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

From 2005 to 2007, I taught a seminar on "Contemporary Issues in Federalism" at Columbia Law School with Professor Gillian Metzger; in 2009, I taught the course alone. A copy of the 2009 syllabus is supplied. The topics addressed in the seminar include a historical and comparative perspective on federalism; federalism's theory and values;

federal power and the Tenth Amendment; the Eleventh Amendment; international and horizontal dimensions of federalism; and an examination of how states exercise their sovereignty.

In the fall of 1996, I co-taught a seminar on social welfare law and policy at Georgetown University with Professor Peter Edelman. I did not retain a syllabus of the course.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

My husband is a partner at Paul, Weiss, Rifkind, Wharton, and Garrison, LLP, which may appear before the United States Court of Appeals for the District of Columbia Circuit. If confirmed, I would recuse myself from all matters involving his firm. I would also recuse myself from any matters that I handled or

supervised while in the New York County District Attorney's Office; Weil, Gotshal, and Manges, LLP; or the New York State Attorney General's Office, as well as any matters substantially related to matters I handled or supervised in those offices, although I am not aware of any such conflicts of interest.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I would handle all matters involving actual or potential conflicts of interest through the careful application of the Code of Conduct for United States Judges, as well as other relevant canons and statutory provisions.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

During my time in private practice, I devoted significant time to serving pro bono clients. For example, from 2007 to 2008, I handled a case in the United States Court of Appeals for the Fifth Circuit on behalf of Hurricane Katrina and Hurricane Rita evacuees. The Federal Emergency Management Agency terminated my clients' rental assistance benefits without adequate notice of the grounds for termination or an opportunity for a hearing prior to termination; as a consequence, a number of them were at a severe risk of homelessness.

In other cases, I wrote amicus briefs on behalf of not-for-profit organizations in both state and federal high courts. My clients included the Fund for Modern Courts, an organization devoted to improving the administration and quality of justice in New York state courts, on whose behalf I filed a brief in support of raising the salaries of New York state judges, and Citizens Union, a nonpartisan group in New York. I also filed an amicus brief in the United States Supreme Court on behalf of a group of constitutional law scholars in *Free Enterprise Fund v. PCAOB*, a case concerning the constitutionality of an oversight entity created by the Sarbanes-Oxley Act. In addition, I assisted in formulating appellate strategies in a number of other pro bono matters handled by others at my law firm.

From 2007 to 2009, I also devoted substantial time to serving as pro bono counsel to the Board of the Lower Manhattan Development Corporation. The Corporation, a public entity, is responsible for facilitating the rebuilding of Lower Manhattan following the terrorist attack of September 11, 2001.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and

the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

There is no selection commission of which I am aware for the District of Columbia Circuit.

In April, 2010, I spoke with an attorney from the White House Counsel's Office, who informed me that my name was being forwarded to the Justice Department for vetting in regards to a potential nomination on the District of Columbia Circuit. I subsequently spoke with attorneys from the Justice Department regarding the vetting and nomination process. On June 8, 2010, I met with representatives of the White House Counsel's Office and the Justice Department. On September 29, 2010, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AFFIDAVIT

I, **CAITLIN JOAN HALLIGAN**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

September 29, 2010

(DATE)

Caitlin Hall

(NAME)

Marilyn R. Bauza

(NOTARY)

MARILYN R. BAUZA
Notary Public, State of New York
No. 01BA484148
Qualified in Westchester County
Certificate Filed in New York County
Commission Expires September 30, 2013

January 5, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on September 29, 2010, to be United States Circuit Judge for the District of Columbia Circuit. Incorporating the additional information below, I certify that the information contained in that document is, to the best of my knowledge, true and accurate.

- I am counsel of record in *Tolentino v. New York*, No. 09-11556, which is currently pending before the Supreme Court of the United States and is scheduled for oral argument on March 21, 2011. I have appended a copy of the brief in opposition to certiorari; the brief of respondent New York has not yet been filed.

I am also forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,

A handwritten signature in black ink, appearing to read "Caitlin J. Halligan", followed by a long horizontal line extending to the right.

Caitlin J. Halligan

cc:

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

No. 09-11556

IN THE
Supreme Court of the United States

JOSE TOLENTINO,

Petitioner,

- versus -

STATE OF NEW YORK,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
NEW YORK COURT OF APPEALS**

BRIEF IN OPPOSITION

CYRUS R. VANCE, JR.

District Attorney

CAITLIN J. HALLIGAN*

General Counsel

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OCTOBER 7, 2010

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COUNTERSTATEMENT OF QUESTION PRESENTED

Whether the exclusionary rule applies to preexisting government records obtained after an allegedly unlawful traffic stop, where the only link between the two is that the police learned the petitioner's identity as a result of the stop?

OPINIONS BELOW

The opinion of the New York Court of Appeals is reported at 14 N.Y.3d 382, 926 N.E.2d 1212. Pet. App. A1-A7. The opinion of the Appellate Division of the Supreme Court of the State of New York, First Department, is reported at 59 A.D.3d 298, 873 N.Y.S.2d 602. Pet. App. A1-A7. The opinion of the Supreme Court of the State of New York, New York County is unreported. Pet. App. A9-A10.

JURISDICTION

The New York Court of Appeals rendered its decision on March 30, 2010. The petition was filed on June 22, 2010. Petitioner properly invokes this Court's jurisdiction under 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

On January 1, 2005, several New York City police officers stopped petitioner, who was driving in Manhattan, for playing his music too loudly. They ascertained his identity and ran a computer check of petitioner's New York State Department of Motor Vehicles ("DMV") records. That check revealed that petitioner's license had been suspended, and that he had received at least ten suspensions on at least ten different dates for failure to answer a summons or pay a fine. Petitioner was charged with one count of Aggravated Unlicensed Operation of a Motor Vehicle in the First Degree. See N.Y. Veh. & Traf. Law § 511(3)(a)(ii).

Petitioner moved to suppress his DMV records and statements he made after his arrest as, inter alia, the product of an unlawful police stop of his vehicle.

Alternatively, petitioner requested that the court hold a Mapp hearing¹ on these motions. Pet. App. A12. In his motion, petitioner noted that the felony complaint alleged that an officer had conducted a computer check of his DMV records, which revealed that his license had been suspended. As a general matter, “[t]he steps required to obtain a DMV records check are the stop of the vehicle and the elicitation of the driver’s name or the driver’s license number.” Pet. App. A21. While acknowledging that DMV records are public records that existed in computerized form prior to his arrest, see Pet. App. A23, petitioner claimed that the police would not have obtained his DMV records “[b]ut for his unlawful seizure by the police . . . and they are therefore the fruit of the police illegality.” Pet. App. A21.

The People opposed petitioner’s motion on two grounds: first, that the officers’ stop of petitioner was lawful, and second, that even if petitioner had been stopped illegally, the exclusionary rule had no application. Pet. App. A39-A42. With regard to the second point, the People argued that the Fourth Amendment imposes no sanction when an unlawful stop leads to discovery of a person’s identity, which in turn leads to pre-existing official records. Pet. App. A39-A42.

While allowing a hearing on whether to suppress statements made by petitioner at the time of the stop, the trial court denied petitioner’s request for a suppression

¹ A Mapp hearing is conducted to determine whether evidence was obtained as a result of a Fourth Amendment violation, and thus must be suppressed under the exclusionary rule. See Mapp v. Ohio, 367 U.S. 643 (1961).

hearing regarding the DMV records.² The court concluded that “[a]n individual does not possess a legitimate expectation of privacy in files maintained by the [DMV] and such records do not constitute evidence which is subject to suppression under a fruit of the poisonous tree analysis.” Pet. App. A9-A10.

On August 3, 2005, petitioner pled guilty to Aggravated Unlicensed Operation of a Motor Vehicle in the First Degree, which was the sole count in the indictment. He entered this plea before any hearing could be held on his motion to suppress his statements. On September 28, 2005, he was sentenced to five years probation.

Petitioner’s subsequent appeal of the order denying his motion to suppress the DMV records was rejected.³ Before New York’s intermediate appellate court (the Appellate Division, First Department), petitioner claimed, *inter alia*, that the trial court had erred in holding that the exclusionary rule had no application to DMV records, and he sought a remand for a hearing on his motion to suppress those records. The Appellate Division unanimously affirmed. Pet. App. A8. The court recognized that “a defendant need not establish a privacy interest in an alleged fruit of a preexisting violation of his or her Fourth Amendment rights.” Pet. App. A8. With respect to the

² Under New York’s criminal procedure law, a court may deny a suppression motion without a hearing if the motion papers do not allege a legal basis for suppression. See N.Y. Crim. Proc. Law § 710.60(3)(a).

³ New York’s criminal procedure law allows a defendant to appeal a final order denying a motion to suppress evidence, “notwithstanding the fact that such a judgment is entered upon a plea of guilty.” N.Y. Crim. Proc. Law § 710.70(2).

scope of the “fruits” doctrine, the Appellate Division held that “DMV records are not suppressible fruits.” Pet. App. A8. In INS v. Lopez-Mendoza, 468 U.S. 1032, 1039 (1984), the Court stated that “[t]he...identity of a defendant...is never itself suppressible as a fruit of an unlawful arrest.” Thus, the court concluded, “there is no sanction to be applied when an illegal arrest only leads to discovery of [a person’s] identity and that merely leads to the official file.” Pet. App. A8 (quoting United States v. Guzman-Bruno, 27 F.3d 420, 422 [9th Cir. 1994] [internal citations omitted]). The court also found it significant that the DMV records had been compiled independently of petitioner’s arrest. Pet. App. A8.

The New York Court of Appeals affirmed. The state high court noted that petitioner did not contend that his name or identity could be suppressed as the fruit of an allegedly unlawful stop. Rather, he claimed that the DMV records could be suppressed because absent an illegal stop, the police would not have learned petitioner’s name and would not have been able to obtain the records. Pet. App. A3. The court examined federal circuit court decisions holding that the exclusionary rule has no application when the police unlawfully stop someone, learn his name, and use that name to check preexisting government immigration records. See id. (citing United States v. Farias-Gonzalez, 556 F.3d 1181, 1189 [11th Cir. 2009]; United States v. Bowley, 435 F.3d 426, 430-31 [3d Cir. 2006]; United States v. Roque-Villanueva, 175 F.3d 345, 346 [5th Cir. 1999]; Hoonsilapa v. INS, 575 F.2d 735, 737 [9th Cir. 1978]). Relying on these decisions, as well as this Court’s decision in Lopez-Mendoza,

the New York high court held that petitioner's DMV records were not subject to suppression as fruits of a purportedly unlawful stop. Pet. App. A3.

The Court of Appeals found further support for its holding in United States v. Crews, 445 U.S. 463 (1980). See Pet. App. A3. In Crews, a plurality of the Court held that "[t]he exclusionary rule enjoins the Government from benefiting from evidence it has unlawfully obtained; it does not reach backward to taint information that was in official hands prior to any illegality." Pet. App. A3 (quoting Crews, 445 U.S. at 475). DMV records, the New York high court reasoned, like other preexisting records already in possession of the government, are not subject to suppression. Pet. App. A3.

In addition, the Court of Appeals distinguished this case from Davis v. Mississippi, 394 U.S. 721 (1969), and Hayes v. Florida, 470 U.S. 811 (1985), on two distinct grounds. First, the defendants in those cases, unlike petitioner, were illegally stopped for the purpose of obtaining fingerprints, which were not preexisting, to connect them to crimes under investigation. Second, the fingerprints were used to establish the defendants as perpetrators of a crime, not merely to establish the identities of the individuals stopped by the police. Pet. App. A4.

Lastly, the court reasoned that its ruling would not give the police an incentive to illegally stop, detain and search individuals. Because any evidence recovered in the course of such a stop is still subject to the exclusionary rule, the court explained, the police would be sufficiently deterred from conducting illegal car stops. Pet. App. A4.

Two judges dissented, arguing that DMV “records are subject to suppression if obtained by the police through the exploitation of the Fourth Amendment violation.” Pet. App. A5.

ARGUMENT

This case presents the narrow question of whether pre-existing government documents—here, DMV records—are subject to suppression, where police learn the identity of a driver through an allegedly unlawful traffic stop, and then procure his DMV records. The New York Court of Appeals correctly held below that the exclusionary rule has no application in this context, and petitioner offers no legitimate reason for this Court to review that decision. Accordingly, the petition for certiorari should be denied.

Petitioner points this Court to a purported split among the federal courts on the applicability of the exclusionary rule to fingerprints and related evidence used to establish a defendant’s immigration status. See Pet. 23-25, 27. However, any division among the courts on the issue is not implicated here. See Point I, infra. All of the cases cited by petitioner involve fingerprints (and in some instances other types of evidence) that are obtained in the course of an unlawful search and seizure, and later used in a criminal proceeding brought under 8 U.S.C. § 1326.⁴ While the decisions cited by petitioner discuss the import of this Court’s decision in INS v. Lopez-

⁴ 8 U.S.C. § 1326 makes it a crime to be present in the United States after having been previously deported.

Mendoza, they do so in the context of a specific type of evidence and a specific criminal statute, neither of which is at issue in the decision below.

With respect to the question that was actually decided below, the New York Court of Appeals reached the correct result. See Point II, infra. Lopez-Mendoza suggests that a defendant's identity cannot be the subject of suppression in any circumstance. See 468 U.S. at 1039-40. Precedent that predates Lopez-Mendoza, in particular United States v. Crews, 445 U.S. 463, confirms this principle.

Finally, this case provides a poor vehicle for resolving any issues regarding the scope of the exclusionary rule. See Point III, infra. Although the People argued before the trial court that the stop of petitioner's car was indeed lawful, the trial court did not address this point. Even if this Court were to grant certiorari and rule in petitioner's favor on the legal question presented here, a remand would be required to determine the legality of the stop. If the traffic stop was found to be lawful, as is likely, then petitioner's DMV records would not be subject to suppression in any event.

I. To the extent that there is a split among the federal circuit courts, it is not implicated in this case.

Petitioner claims that the federal circuit courts are divided "as to the applicability of the exclusionary rule to pre-existing identity-related documents

maintained by the government.” Pet. 14. To the extent petitioner has identified a valid split, however, it is not implicated here.

According to petitioner, the Fourth, Eighth, and Tenth Circuits have held that “identity-related” evidence is subject to suppression,⁵ while the Third, Fifth, Ninth, and Eleventh Circuits have reached the opposite result. See Pet. 23-25 (comparing United States v. Oscar-Torres, 507 F.3d 224 [4th Cir. 2007]; United States v. Guevara-Martinez, 262 F.3d 751 [8th Cir. 2001]; and United States v. Olivares-Rangel, 458 F.3d 1104 [10th Cir. 2006], with Bowley, 435 F.3d at 426; Roque-Villanueva, 175 F.3d at 345; Guzman-Bruno, 27 F.3d at 420; and Farias-Gonzalez, 556 F.3d at 1181).⁶

None of these cases, however, are directly on point. The decisions cited by petitioner all address the applicability of the exclusionary rule to fingerprint evidence, and in some cases other types of evidence, obtained from undocumented immigrants

⁵ While focusing on a purported split among the circuits, petitioner also cites United States v. Juarez-Torres, 441 F.Supp.2d 1108 (D. N.M. 2006). There, the district court set forth a view regarding the scope of the exclusionary rule that is arguably at odds with the one adopted by the court below. However, Juarez-Torres, unlike the case at issue here, concerns a prosecution under 8 U.S.C. § 1326. In any event, a difference of opinion between a single district court and a state court does not warrant review by this Court. See Supreme Court Rule 10(b).

⁶ Petitioner fails to cite the Sixth Circuit’s holding that under Lopez-Mendoza, a defendant’s identity is not suppressible. See United States v. Navarro-Diaz, 420 F.3d 581, 588 (6th Cir. 2005). Additionally, while the Ninth Circuit has more recently suggested that in some instances fingerprints obtained after an unlawful arrest may be subject to suppression, it has otherwise stood by the general principle that evidence relating to a defendant’s identity is not suppressible as fruit of the poisonous tree. See United States v. Garcia-Beltran, 443 F.3d 1126, 1131-35 (9th Cir. 2006).

who are charged with violating 8 U.S.C. § 1326, which criminalizes presence in the United States following deportation.

At issue in this line of cases is not whether mere identity is suppressible, or even whether pre-existing evidence is suppressible because it was located merely by learning a defendant's identity, but rather whether fingerprint evidence generated only after, and as the result of, improper police behavior can be suppressed. See Oscar-Torres, 507 F.3d at 226, 229; Olivares-Rangel, 458 F.3d at 1105, 1112-13; Guevara-Martinez, 262 F.3d at 752, 754-55. In fact, two of the cases relied upon by petitioner expressly distinguish between mere identity and identity-related evidence. See Oscar-Torres, 507 F.3d at 230 ("Despite the illegality of his detention or arrest, [a defendant] cannot suppress his person or the fact of his identity."); Olivares-Rangel, 458 F.3d at 1111 ("The language in Lopez-Mendoza merely says that the defendant cannot suppress the entire issue of his identity."). Likewise, the Eighth Circuit appears to have distinguished between a defendant's identity, which it would not suppress, and "identity evidence," *i.e.*, fingerprints, which are subject to suppression. See United States v. Perez-Perez, 337 F.3d 990, 993-94 (8th Cir. 2003); United States v. Navarro-Diaz, 420 F.3d 581, 585 (6th Cir. 2005) (discussing the Eighth Circuit's subsequent narrowing of its holding in Guevara-Martinez); see also 6 Wayne R. LaFare, Search and Seizure: A Treatise on the Fourth Amendment, § 11.4(g) n.415 (4th Ed. 2004 & Supp. 2008-09).

Unlike these cases, the decision below does not involve section 1326, or fingerprint evidence. And contrary to what petitioner suggests, see Pet. 21, 25-26, the state high court did not hold that anything which could broadly be considered “identity-related evidence,” such as fingerprints or witness identifications, are completely shielded from suppression. Rather, the court below “merely” held that pre-existing government records cannot be deemed the fruit of the poisonous tree when “the only link” between the assertedly improper police activity and those records “is that the police learned the defendant’s name” as a result of that activity. Pet. App. A4. Thus, any limitation that the court below imposed on the scope of the exclusionary rule is quite narrow: the mere fact of a person’s identity is not subject to suppression, whether directly or as a link in a causal chain that supposedly leads to some other evidence.

Indeed, even the circuits that have allowed suppression of fingerprint evidence in section 1326 cases would not likely apply the fruits doctrine on the facts presented here. Those courts distinguished fingerprints that were taken as part of a routine booking procedure, which were not suppressible, from fingerprints “obtained for an investigatory purpose exploiting the unconstitutional arrest,” which could be suppressed. See Olivares-Rangel, 458 F.3d at 1121; Oscar-Torres, 507 F.3d at 231-32 (same; citing Olivares-Rangel); Guevara-Martinez, 262 F.3d at 753, 755-56 (same); see also Perez-Perez, 337 F.3d at 993-94. Put another way, the courts recognized the distinction between fingerprints obtained merely to identify a person and those

actually created to serve as evidence. Here, contrary to petitioner's contention, see Pet. 20-21, the record is devoid of any evidence that the stop of petitioner's vehicle was motivated by an investigatory purpose rather than an administrative one. Thus, even under the rule set forth in Olivares-Rangel, Oscar-Torres, and Guevara-Martinez, suppression would not be an available remedy.

II. The decision below is fully consistent with this Court's precedent.

While petitioner contends that the decision below is at odds with numerous Fourth Amendment precedents of this Court, see Pet. 15-26, the analysis and holding of the New York Court of Appeals is fully consistent with relevant Supreme Court precedent.

Petitioner claims that the decision below misinterprets this Court's ruling in Lopez-Mendoza, see Pet. 21-26, but Lopez-Mendoza appears to resolve the question presented here in favor of respondent. There, the Court held that "the 'body' or identity of a defendant . . . in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest." 468 U.S. at 1039. Since the identity of the petitioner is all that was obtained by the police, that should end the inquiry. While petitioner claims that the Court in Lopez-Mendoza meant only to reiterate the well-established rule that a defendant can never use the exclusionary rule to contest personal jurisdiction, see Pet. 21-23, it likely would have stated simply that the "body" of a defendant is not subject to suppression had it so intended. More fundamentally, the

jurisdictional rule logically must mean that identity can never be suppressed. After all, if a defendant “can suppress the Government’s evidence of who he is, then he has accomplished the same thing he would have accomplished had he suppressed the ability of the court to exercise jurisdiction over him.” Farias-Gonzalez, 556 F.3d at 1188. In other words, if the government can never use the mere fact of a defendant’s identity once they learn it as a result of an unlawful arrest, then it would never be able to locate him and bring him before the court.

Moreover, even if the reach of Lopez-Mendoza were unclear, this Court had concluded prior to Lopez-Mendoza that a defendant could not use his mere identity as a basis for a “poisonous fruit” claim. In Crews, a majority of the Court found that a defendant’s “face,” or appearance, was not a suppressible fruit of an illegal arrest. See Crews, 445 U.S. at 477 (Powell, J., joined by Blackmun, J., concurring), 477-79 (White, J., joined by Burger, C.J. and Rehnquist, J., concurring). Notably, Crews involved a claim that a subsequent in-court identification of a defendant had to be suppressed where the defendant’s identity was obtained through an unlawful arrest. See id. at 465.⁷

⁷ Since the principle that mere identity is not a suppressible fruit predates Lopez-Mendoza, it is not surprising that three federal circuit courts have held that the identity of a defendant is not suppressible, without relying on Lopez-Mendoza. See United States v. Arias, 678 F.2d 1202, 1206 (4th Cir. 1982) (citing Crews for the proposition that “the identity of defendants is not suppressible under the exclusionary rule”); United States v. Adegbite, 846 F.2d 834, 838-39 (2d Cir. 1988) (quoting Arias); Farias-Gonzalez, 556 F.3d at 1185-86 & n.5, 1189 (concluding that the disputed language in Lopez-Mendoza was dicta, (Continued...))

As the court below recognized, see Pet App. A3, Crews also suggests that the very nature of DMV records precludes any application of the exclusionary rule. Information that is in the possession of a public agency and has been compiled independently of and prior to an illegal stop is not suppressible as the “fruit” of that stop. See Crews, 445 U.S. at 475-77 & n.22 (plurality) (“The exclusionary rule enjoins the Government from benefiting from evidence it has unlawfully obtained; it does not reach backward to taint information that was in official hands prior to any illegality.”); see also Bynum v. United States, 274 F.2d 767 (D.C. Cir. 1960) (cited with approval in Crews, 445 U.S. at 476-77, and Davis, 394 U.S. at 725-26 n.4). Indeed, evidence already in existence—and in the possession of the government—before any purported illegality cannot be viewed as the fruit of that illegality. After all, Fourth Amendment interests in preventing the government from searching for or seizing evidence cannot be implicated when the government already possesses the evidence. See generally Hudson v. Michigan, 547 U.S. 586, 594 (2006) (since the knock-and-announce rule for the execution of search warrants does not protect one’s interest in preventing the government from seeing or taking evidence described in the warrant, the exclusionary rule is inapplicable for a violation of the knock-and-announce rule).

(...Continued)

but still holding “that the exclusionary rule does not apply to evidence to establish the defendant’s identity in a criminal prosecution”).

Finally, this case is plainly distinguishable from Davis, 394 U.S. at 721, and Hayes, 470 U.S. at 811, as the court below also recognized. See Pet. App. A4-A5. In both Davis and Hayes, the evidence suppressed came into existence only after the unlawful stop or seizure, and as a direct product of the unlawful conduct. Indeed, in both cases, the police illegally detained defendants for the sole purpose of generating their fingerprints, so that they could compare those fingerprints to ones found at crime scenes. See Davis, 394 U.S. at 722-23; Hayes, 470 U.S. at 812-13. Here, by contrast, petitioner's DMV records were not only in existence before the purportedly illegal behavior, they were also in the government's possession before that behavior. And in both Davis and Hayes, the police were looking all along to generate proof that the defendants had committed specific crimes that the police were investigating; here, by contrast, the police simply wanted to know the identity of a driver they had stopped for playing music too loudly. See Pet. App. A4 (noting that the evidence in Davis and Hayes "established defendants' 'identities' as the perpetrators, but not their 'identities' in the sense relevant here").

III. This case presents a poor vehicle for resolving any questions about the scope of the exclusionary rule.

Because no court has yet decided if the police conduct at issue here was unlawful, this case presents an especially poor vehicle for resolving any questions about the scope of the exclusionary rule.

In response to petitioner's motion to suppress his DMV records, the People alleged that petitioner was properly stopped for playing loud music from his vehicle. See Pet. App. A39 (People's Affirmation in Response to the Defendant's Omnibus Motion); see also Pet. App. A2 (noting that "[t]he police stopped [petitioner] for playing music too loudly").⁸ The trial court, however, ruled only on the applicability of the exclusionary rule, without reaching the question of the legality of the traffic stop.

For this reason, even if this Court were to grant the petition for certiorari and hold that DMV records are subject to suppression in the circumstances presented here, a remand would be required to determine whether the records should, in fact, be suppressed. If the trial court concluded that the stop was lawful—and petitioner has not yet offered any reason to hold otherwise—then the records would be admissible. Thus, the question presented is not likely to be outcome-determinative.

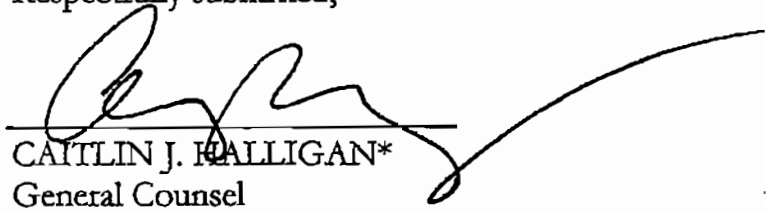
⁸ Several provisions of the New York City Administrative Code in effect at the time petitioner was stopped prohibited the operation of any sound-making device in, inter alia, any vehicle operated on a public street in a manner that creates unreasonable noise. See N.Y.C. Code § 24-220(a); § 10-108(a).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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October 7, 2010