

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

David Steven Morales

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

United States District Judge for the Southern District of Texas

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.

Kelly Hart & Hallman LLP
303 Colorado Street, Suite 2000
Austin, Texas 78701

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

1968; Edinburg, Texas

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.

1991 – 1994, St. Mary’s University School of Law; J.D., 1994

1986-1987, 1988-1990, St. Edward’s University; B.B.A., 1990

1987-1988, Texas A&M University at Kingsville; no degree conferred

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.

2016 – present
Kelly Hart & Hallman LLP
303 Colorado Street, Suite 2000

Austin, Texas 78701
Partner

2014 – 2016
University of Texas System Board of Regents
210 West 7th Street
Austin, Texas 78701
Deputy General Counsel

2011 – 2014
State of Texas, Office of the Governor
1100 San Jacinto Boulevard
Austin, Texas 78701
General Counsel

1994 – 2011
State of Texas, Office of the Attorney General
209 West 14th Street
Austin, Texas 78701
Deputy First Assistant Attorney General (2010 – 2011)
Deputy Attorney General for Civil Litigation (2007 – 2010)
Associate Deputy Attorney General for Litigation and Chief Ethics Officer (2004 – 2007)
Assistant Attorney General, General Litigation Division (1994 – 2004)
Law Clerk, General Litigation Division (1994)

Summer 1993
Vidaurre, Lyde, Rodriguez and Haynes
202 North 10th Avenue
Edinburg, Texas 78541
Summer Associate
Formerly Brin & Brin PC

Summer 1993
Plunkett, Griesenbeck and Mimari, Inc.
1635 Northeast Loop 410, Suite 900
San Antonio, Texas 78209
Summer Associate
Formerly Plunkett, Gibson & Allen

Fall 1992
Honorable Edward C. Prado
U.S. Circuit Judge for the Fifth Circuit
755 East Mulberry
San Antonio, Texas 78212
Briefing Attorney Intern
Formerly U.S. District Judge for the Western District of Texas

Summer 1992
Hidalgo County District Attorney's Office
Hidalgo County Courthouse
100 North Closner
Edinburg, Texas 78539
Summer Clerk

1990-1991
Zale Corporation
Dillard's Division
Hancock Center
1000 E. 41st Street
Austin, Texas 78751
Sales Associate

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 U.S. military. I registered for selective service following my 18th birthday.

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.

Distinguished Alumnus Award, Incarnate Word Academy, Corpus Christi, Texas (2014)

Commencement Speaker, Sul Ross State University (2009)

Fellow, Center for Public Policy Dispute Resolution, University of Texas at Austin School of Law (2008)

Commencement Speaker, Sul Ross State University – Rio Grande College (2008)

Graduate, Governor's Executive Development Program, University of Texas at Austin, Lyndon B. Johnson School of Public Affairs (2007)

Rising Star, *Texas Monthly* and *Law and Politics* (2005 – 2006)

Academic Scholarship, St. Edwards University (1986)

Eagle Scout (1983)

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.

Austin Bar Association (2005 – present)

Federal Bar Association for the Western District of Texas (2016 – present)

Fifth Circuit Bar Association (1995 – present)

National Association of College and University Attorneys (2014 – 2015)

State Bar of Texas (1994 – present)

Texas Access to Justice Commission (2012 – 2014)
Ex Officio Member

Texas Supreme Court Historical Society (2016 – present)

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.

Texas, 1994

There was a 6-day administrative lapse in membership from June 10-16, 1999, while continuing legal education requirements were being processed. There have been no additional lapses 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, 2000

United States Court of Appeals for the Fifth Circuit, 1996

United States District Court for the Eastern District of Texas, 1997

United States District Court for the Northern District of Texas, 1997

United States District Court for the Southern District of Texas, 1995

United States District Court for the Western District of Texas, 1995

I am currently inactive in the U.S. District Court for the Eastern District of Texas and have not renewed my membership since I left the Attorney General's Office.

I am currently active in the U.S. District Court for the Southern District of Texas,

but had an administrative lapse from October 28, 2016 to November 3, 2016, while my most recent membership renewal for that Court was being processed.

There have been no additional 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.

Down Home Ranch (2005 – 2007)
Board Member (2005 – 2007)
Advisory Counsel (2007)

Knights of Columbus (2005 – present)

Leadership Austin (2005 – present)

National Eagle Scout Association (2005 – present)

- 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.

The Knights of Columbus is a Catholic fraternal organization limited to men, although there is a corresponding organization for women. The Boy Scouts of America has limited youth membership in Cub Scouting, Boy Scouting and Varsity Scouting to boys. In October 2017, the organization announced that it will open the Cub Scouting program to girls and deliver a Scouting program for older girls in 2018. The National Eagle Scout Association is comprised of members of the Boy Scouts of America. Otherwise, to the best of my knowledge, none of the organizations listed above currently discriminates 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.

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.

Letter to the Editor, *Trump U. and Texas*, HOUS. CHRON., June 3, 2016. Copy supplied.

Message from the Deputy First Assistant Attorney General, @ Work, December 2010. Copy supplied.

- 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.

February 18, 2014: Meeting Minutes for the Texas Access to Justice Commission. Copy supplied.

October 21, 2013: Meeting Minutes for the Texas Access to Justice Commission. Copy supplied.

July 18, 2013: Meeting Minutes for the Texas Access to Justice Commission. Copy supplied.

April 23, 2013: Meeting Minutes for the Texas Access to Justice Commission. Copy supplied.

January 29, 2013: Meeting Minutes for the Texas Access to Justice Commission. Copy supplied.

October 22, 2012: Meeting Minutes for the Texas Access to Justice Commission. Copy supplied.

July 19, 2012: Meeting Minutes for the Texas Access to Justice Commission. 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.

On February 15, 2011, I testified before the Texas Senate Finance Sub-Committee on Medicaid on Prosecuting Medicaid Fraud in Texas. A copy of my PowerPoint is supplied. A recording is available at http://tlcsenate.granicus.com/MediaPlayer.php?view_id=12&clip_id=1945.

On August 18, 2010, I testified before the Texas House of Representatives State Affairs Committee concerning federal preemption of state laws regarding immigration and undocumented immigrants. Recording available at http://tlchouse.granicus.com/MediaPlayer.php?view_id=25&clip_id=7464.

In May 2009, I wrote a letter the Chairs of the Joint Texas House of Representatives Human Services Committee and Senate Health and Human Services Committee, updating them on the status of the settlement of *United States v. Texas*, No. 09-CV-409 (W.D. Tex.) and that then-Attorney General Eric Holder had signed off on the agreement. After a diligent search, I was unable to locate a copy of this letter.

On May 22, 2009, I testified before the Joint Texas House of Representatives Human Services Committee and Senate Health and Human Services Committee on the negotiated resolution of *United States v. Texas*, No. 09-CV-409 (W.D. Tex.). Recording available at http://tlchouse.granicus.com/MediaPlayer.php?view_id=25&clip_id=4532.

- 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.

May 16, 2009: Speaker, Commencement Address, Sul Ross State University, Alpine, Texas. Copy of speech and press coverage of the event is supplied.

December 13, 2008: Speaker, Commencement Address Sul Ross State University, Rio Grande College, Del Rio, Texas. Copy supplied.

October 26, 2007: Speaker, "The AG and Attorney-Client Relations," Given at a meeting of the Texas Association of College and University Attorneys, Houston, Texas. Copy supplied.

- 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.

Skepticism Voiced About Texas AG's Bid to Silence Ex-Agency Lawyer, TEX. LAWYER, June 7, 2016. Copy supplied.

Uber and Lyft Plans to be Investigated: Austin PAC, LEGAL MONITOR WORLDWIDE, May 7, 2016. Copy supplied. Reprinted in multiple outlets.

Top Man Will Get Top Dollar at UT, HOUS. CHRON., Aug. 22, 2014. Copy supplied. Reprinted in multiple outlets.

A State of Gold and Blue, ST. MARY'S UNIV. SCHOOL OF LAW LAW NOTES, Summer 2012. Copy supplied.

Interview with Deputy AG for Civil Litigation, @ WORK, July, 2011. Copy supplied.

Interview with Deputy Attorney General for Legal Counsel, @ Work, November 2010. Copy supplied.

Abbott Intervention Denied; Gay Divorce Stands, AUSTIN AMERICAN-STATESMAN, Apr. 1, 2010. Copy supplied.

Criminals Battle Parole Restrictions, DALLAS MORNING NEWS, Nov. 12, 2008. Copy supplied. Reprinted in multiple outlets.

Scholar, Lawyer Keeps University System in Touch with Its Past, THE NATIONAL LAW JOURNAL, Oct. 3, 2007. Copy supplied. Reprinted in multiple outlets.

Court Hands Willacy County DA Partial Victory in Ongoing Legal Melee, THE MONITOR (McAllen, Tex.), Mar. 30, 2007. Copy supplied.

Lawsuit on Legal Fees is Dismissed, FORT WORTH STAR TELEGRAM, Jan. 21, 2005. Copy supplied.

Morals Offender Ban Sought, CORPUS CHRISTI CALLER-TIMES, Jan. 10, 2002. Copy supplied.

Two A&M Kingsville Players Agree to Sit Out Games, CORPUS CHRISTI CALLER-TIMES, Oct. 7, 1999. Copy supplied.

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 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 held judicial office.

- 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.

General Counsel, Office of the Governor (2011-2014)
Appointed by then-Texas Governor Rick Perry

Ex Officio Member, Texas Access to Justice Commission (2012-2014).
Appointed by then-Governor Rick Perry

Interim Director, Texas Film Commission (2013)
Appointed by then-Governor Rick Perry

Deputy First Assistant Attorney General (2010-2011)
Appointed by then-Texas Attorney General Greg Abbott

Deputy Attorney General for Civil Litigation (2007-2010)
Appointed by then-Texas Attorney General Greg Abbott

Associate Deputy Attorney General for Litigation and Chief Ethics Officer (2004-2007)

Appointed by then-Texas Attorney General Greg Abbott

I have never been a candidate for elected office. In 2009, I submitted a judicial application to the Appointments Office of then-Texas Governor Rick Perry. Following my appointments as Deputy First Assistant Attorney General in 2010 and General Counsel to the Governor in 2011, I did not further pursue a state judicial nomination.

- 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 January 2012, I served as an unpaid volunteer for then-Governor Rick Perry's presidential campaign. I volunteered as a phone-bank worker and caucus speaker in the Sioux City, Iowa area.

In October 2004, I served as an unpaid volunteer for then-President George W. Bush's re-election campaign. I volunteered as a block-walker and phone-bank worker in Chester County, Pennsylvania.

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;

In the fall of 1992, I served as a briefing attorney intern to the Honorable Edward C. Prado, then-U.S. District Court Judge for the Western District of Texas.

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

I have never practiced law 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.

2016 – present

Kelly Hart & Hallman LLP
303 Colorado Street, Suite 2000
Austin, Texas 78701
Partner

2014 – 2016
University of Texas System Board of Regents
210 West 7th Street
Austin, Texas 78701
Deputy General Counsel

2011 – 2014
State of Texas, Office of the Governor
1100 San Jacinto Boulevard
Austin, Texas 78701
General Counsel

1994 – 2011
State of Texas, Office of the Attorney General
209 West 14th Street
Austin, Texas 78701
Assistant Attorney General, General Litigation Division (1994 – 2004)
Associate Deputy Attorney General for Litigation and Chief Ethics
Officer (2004 – 2007)
Deputy Attorney General for Civil Litigation (2007 – 2010)
Deputy First Assistant Attorney General (2010 – 2011)

- 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.

From 1994 to 2004, I served as an Assistant Attorney General in the General Litigation Division of the Texas Attorney General's Office. In this position, I was litigation/trial counsel to state officials, judges, agencies, commissions and universities in suits filed in state and federal court. I was responsible for all aspects of civil litigation for my clients including pre-litigation counseling, pre-trial depositions, motion practice, *voir dire*, jury and bench trials, and appeals.

From 2004 to 2007, I served as Associate Deputy Attorney General for Litigation and Chief Ethics Officer for the Office of the Attorney General. During this time, my practice shifted to assisting the Deputy Attorney General for Litigation in supervising and managing the agency's eleven civil litigation divisions, comprised of 285 litigation attorneys at that time.

From 2007 to 2011, I served as Deputy Attorney General for Civil Litigation and Deputy First Assistant Attorney General. My practice remained focused on the management and supervision of our civil litigation divisions and, as Deputy First Assistant, managing both the criminal and civil litigation divisions, as well as the administrative divisions of the agency. During this time, I kept an active appellate docket, personally arguing four cases to the Texas Supreme Court and one to the Fifth Circuit Court of Appeals.

From 2011 to 2014, I served as General Counsel to then-Governor Rick Perry. My practice shifted to a non-litigation, general counsel one where I advised and provided legal analysis to the Governor and his Chief of Staff on policy and legal matters before the Office of the Governor, including criminal justice issues, reprieves and commutations, and the screening and recommendation of judicial candidates for appointment.

From 2014 to 2016, I served as Deputy General Counsel to the University of Texas System Board of Regents. My practice continued as a general counsel, with me providing advice and legal analysis to the General Counsel and the members of the nine-member Board of Regents.

From 2016 to the present, I have been a litigation partner at Kelly Hart & Hallman LLP. My practice is primarily litigation, with a small-percentage of my practice has been appellate and higher-education law based.

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

While at the Office of the Attorney General, my clients were exclusively state officials, judges, agencies, law-enforcement officers, commissions, universities, and their employees.

While at the Office of the Governor and the University of Texas System Board of Regents, my clients were, respectively, the Governor and the Office of the Governor and the members the Board of Regents.

My current clients are primarily businesses and business owners, non-profit organizations and individuals.

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.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 60% |
| 2. state courts of record: | 40% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 0% |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 95% |
| 2. criminal proceedings: | 5% |

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.

During my ten years as an Assistant Attorney General, I personally litigated approximately 150 matters to final judgment. The majority of those matters were disposed of on pre-trial motions. During that time, I tried 13 matters to verdict, with 10 of those tried to a jury verdict.

i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 77% |
| 2. non-jury: | 23% |

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 never argued a case to the Supreme Court of the United States. While Associate Deputy Attorney General for Litigation, Deputy Attorney General for Civil Litigation and Deputy First Assistant Attorney General (2004-2011), all U.S. Supreme Court briefing and argument was handled by the Office of the Texas Solicitor General. However, as most of these matters arose from litigation in divisions under my supervision, I would be part of the senior management team providing input into the decisions to seek certiorari, as well as the development of arguments to be included in the briefing of those matters, and preparation for oral argument.

I am listed as supporting counsel in the district, 5th Circuit and U.S. Supreme Court in the following cases:

Sossamon v. Texas, 563 U.S. 277 (2011). Supplemental Brief for Respondents available at 2010 WL 1316247; Brief for Respondents available at 2010 WL 3806515; Brief for Respondents in Opposition available at 2009 WL 2220088.

Iron Thunderhorse v. Pierce, 562 U.S. 1134 (2011). Brief for Respondents in Opposition available at 2010 WL 2325349.

Texas Water Development Bd. v. U.S. Dep't of the Int., 559 U.S. 935 (2010). Reply to Brief in Opposition available at 2010 WL 146459; Petition for Certiorari available at 2009 WL 1640366.

Davis v. Tarrant County, 558 U.S. 1024 (2009). Brief of Respondent Judges in Opposition available at 2009 WL 3375038.

First American Title v. Combs, 556 U.S. 1221 (2009). Respondents' Brief in Opposition available at 2009 WL 871759.

Kickapoo Traditional Tribe v. Texas, 555 U.S. 811 (2008). Respondent's Brief in Opposition available at 2008 WL 2794262.

Equal Access for El Paso v. Hawkins, 555 U.S. 811 (2008). Respondent's Brief in Opposition available at 2008 WL 2846970.

Hurst v. Texas Dep't of Assistive and Rehabilitative Services, 552 U.S. 989 (2007). Brief in Opposition available at 2007 WL 2826232.

Texas v. Meyers, 550 U.S. 917 (2007). Petitioners' Reply Brief available at 2007 WL 1074086.

Baranoski v. Hart, 552 U.S. 1062 (2007). Respondents' Brief in Opposition available at 2207 WL 3307505.

Wallace v. Sheppard, 531 U.S. 991 (2000). Respondents' Brief in Opposition available at 2000 WL 34014719.

Hernandez v. Texas Board of Dental Examiners, 515 U.S. 1141 (1995). Respondents' Brief in Opposition available at 1995 WL 17107568.

I am listed as supporting counsel on the following amicus briefs:

McDonald, et al., v. City of Chicago, 561 U.S. 742 (2010). Brief on behalf of the State of Texas and 37 other States as Amici Curiae in support of Petitioners. Brief available at 2009 WL 4378909.

NRA v. City of Chicago, 531 U.S. 1040 (2010). Brief on behalf of the State of Texas and 32 other States as Amici Curiae on behalf of Petitioners. Brief

available at 2009 WL 1970185.

Rhine v. Deaton, 559 U.S. 903 (2010), Brief for the State of Texas available at 2009 WL 5021971.

Virginia v. Moore, 553 U.S. 164 (2008). Brief on behalf of the State of Texas and 12 other States and Puerto Rico as Amici Curiae on behalf of Petitioners. 2007 WL 736704.

District of Columbia v. Heller, 554 U.S. 570 (2008). Brief on behalf of the State of Texas and 30 other States as Amici Curiae on behalf of Respondent. Brief available at 2008 WL 405558.

Crawford v. Marion County Election Board, 553 U.S. 181 (2008). Brief of the State of Texas and 7 other States and Puerto Rico as Amici Curiae supporting Respondents. Brief available at 2007 WL 4351592.

I am not listed on the briefs in the following cases, but assisted in the preparation briefing or litigation strategy of same:

Fisher v. University of Texas, 570 U.S. 297 (2013)

Van Orden v. Perry, 545 U.S. 677 (2005)

Karagounis v. U.T. Health Science Center at San Antonio, 528 U.S. 986 (1999)

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. *Texas Department of Public Safety v. Cox Texas Newspapers LP*, 343 S.W.3d 112 (Tex. 2011).

In *Cox*, the Texas Supreme Court recognized, for the first time, a common law

exception to the disclosure of certain public information which, if disclosed pursuant to the Texas Public Information Act, would create a substantial threat of physical harm. I represented the petitioner, the Department of Public Safety, and assisted in the drafting of the briefs on the merits. I argued the case to the Texas Supreme Court on September 15, 2010.

Dates of Representation: 2009 – 2011

Texas Supreme Court: Chief Justice Wallace Jefferson, Justice Nathan Hecht, Justice Dale Wainwright, Justice Paul Green, Justice Phil Johnson, Justice Eva Guzman, and Justice Debra Lehrmann.

Co-Counsel

Michael Patrick Murphy
Assistant Solicitor General
Office of the Texas Attorney General
209 West 14th Street
Austin, Texas 78701
(512) 936-1700

Clarence Andrew Weber
Kelly Hart & Hallman LLP
303 Colorado Street, Suite 2000
Austin, Texas 78701
(512) 495-6400
Formerly with the Office of the Texas Attorney General

Counsel for Respondent

William Gerow Christian
Graves, Dougherty, Hearon & Moody
401 Congress Avenue, Suite 2200
Austin, Texas 78701
(512) 480-5704

2. *Texas A&M University at Kingsville v. Yarbrough*, 347 S.W.3d 289 (Tex. 2011).

In *Yarbrough*, the Texas Supreme Court reversed the 13th Court of Appeals, holding that the “capable of repetition yet evading review” exception to the mootness doctrine is rare and applies only in exceptional circumstances in Texas. I represented the petitioner, Texas A&M University at Kingsville, and assisted in the drafting of the briefs on the merits. I argued the case to the Texas Supreme Court on January 4, 2011.

Dates of Representation: 2008 – 2011

Texas Supreme Court: Chief Justice Wallace Jefferson, Justice Nathan Hecht, Justice Dale Wainwright, Justice Paul Green, Justice Don Willett, Justice David Medina, Justice Phil Johnson, Justice Eva Guzman, and Justice Debra Lehrmann.

Co-Counsel

Erika M. Kane
Electric Reliability Council of Texas
7620 Metro Center Drive
Austin, Texas 78744
(512) 225-7010
Formerly with the Office of the Texas Attorney General

Counsel for Respondent

Joey Williams Moore
Walsh, Gallegos, Trevino, Russo & Kyle P.C.
505 East Huntland Drive
Austin, Texas 78752
(512) 454-6864
Formerly with the Texas State Teachers Association

3. *Iliff v. Ilif*, 339 S.W.3d 74 (Tex. 2011).

In *Iliff*, the Texas Supreme Court determined that a trial court may properly consider an obligor parent's intent to avoid child support as a factor in an intentional unemployment or underemployment analysis. I represented amicus curiae, the State of Texas. I argued the case to the Texas Supreme Court on October 30, 2010.

Dates of Representation: 2010-2011

Texas Supreme Court: Chief Justice Wallace Jefferson, Justice Nathan Hecht, Justice Dale Wainwright, Justice Don Willett, Justice David Medina, Justice Phil Johnson, Justice Eva Guzman, and Justice Debra Lehrmann.

Co-Counsel

Rande K. Harrell
John B. Worley
Michael D. Becker
Deterrean Gamble
Office of the Texas Attorney General
Child Support Division
209 West 14th Street
Austin, Texas 78701
(512) 460-6000

Counsel for Petitioner

Jeremy C. Martin
Simpson Martin LLP
1349 Empire Central
Woodview Tower, Suite 600
Dallas, Texas 75247
(241) 905-3739

Counsel for Respondent

Frank B. Suhr
473 South Seguin Avenue, Suite 100
New Braunfels, Texas 78130
(830) 625-4345

4. *Raby v. Livingston*, 600 F.3d 552 (5th Cir. 2010)

In *Raby*, the U.S. Court of Appeals for the Fifth Circuit affirmed Texas' capital punishment method of lethal injection, holding that the Eighth Amendment to the U.S. Constitution was not violated. As Deputy Attorney General for Civil Litigation, I represented the defendants-appellees, supervising the trial team's litigation of this matter in the district court, and assisted with the briefing in the Fifth Circuit.

Dates of Representation: 2007 – 2010

Fifth Circuit: Then-Chief Judge Edith Jones, Judge Emilio Garza and Judge Carl Stewart.

Co-Counsel

Adam Aston
Jackson Walker
100 Congress Avenue, Suite 1100
Austin, Texas 78701
(512) 236-2056

Formerly with the Office of the Texas Attorney General

M. Carol Gardner
David A. Harris
Office of the Texas Attorney General
209 West 14th Street
Austin, Texas 78701
(512) 936-0596

David A. Harris
Office of the Inspector General for the Texas Health and Human Services

Commission
11501 Burnet Road
Building 902
Austin, Texas 78758
512-491-2000
Formerly with the Office of the Texas Attorney General

Counsel for Plaintiff-Appellant

Kevin Dane Mohr
Amy Roebuck Frey
King & Spalding, LLP
1100 Louisiana, Suite 4000
Houston, Texas 77002
(713) 276-7428

5. *United States of America v. State of Texas*, No. 009-CV-00790 (W.D. Tex.).

The Department of Justice, Civil Rights Division, brought suit alleging that the State of Texas violated the Civil Rights of Institutionalized Persons Act (CRIPA) in its administration of its thirteen state supported living centers. I represented Defendant, the State of Texas and numerous state officials. After a negotiated agreement was reached with the Department of Justice, I testified in front of the Texas Legislature, successfully urging ratification of the agreement.

Dates of Representation: 2008 – 2009

Western District of Texas: Judge Sam Sparks

Co-Counsel

James Beau Eccles
Texas Department of Housing and Community Affairs
221 East Eleventh Street
Austin, Texas 78711
(512) 475-3932
Formerly with the Office of the Texas Attorney General

Counsel for Plaintiff, United States of America

Benjamin O. Tayloe, Jr.
Marina Mazor
U.S. Department of Justice
Civil Rights Division
601 D Street, N.W.
Washington D.C. 20004
(202) 514-6255

6. *City of Waco v. Kirwan*, 298 S.W.3d 618 (Tex. 2009).

In *Kirwan*, the Texas Supreme Court found that a landowner generally does not owe a duty to warn or protect recreational users against the danger of a naturally-occurring condition. I represented amicus curiae, State of Texas, and presented oral argument to the Texas Supreme Court on February 3, 2009.

Dates of Representation: 2008 – 2009

Texas Supreme Court: Chief Justice Wallace Jefferson, Justice Nathan Hecht, Justice Dale Wainright, Justice Harriet O’Neill, Justice Scott Brister, Justice Paul Green, Justice Don Willett, Justice David Medina, Justice Phil Johnson.

Co-Counsel

Danica Milios
Office of the Texas Attorney General
209 West 14th Street
Austin, Texas 78701
(512) 460-6000

Counsel for Petitioner

Charles D. Olson
Haley & Olson, P.C.
510 North Valley Mills Drive, Suite 600
Waco, Texas 76710
(254) 776-3336

Counsel for Respondent

Michael Singley
Mundy & Singley, LLP
816 Congress Avenue, Suite 1670
Austin, Texas
(512) 334-4300

7. *Karagounis v. University of Texas Health Science Center at San Antonio*, 168 F.3d 485 (5th Cir. 1999)

In *Karagounis*, I represented the medical faculty and administration of the University of Texas Health Science Center at San Antonio (UTHSC-SA) in this Title VII gender and national origin discrimination case. In November 1996, I tried this case to a jury verdict and final judgment in San Antonio district court, and represented UTHSC-SA in the subsequent appeal to the Fifth Circuit.

Dates of Representation: 1995 – 2000

U.S. District Court: Judge Orlando L. Garcia

Fifth Circuit: Circuit Judges Carolyn Dineen King, Rhesa Hawkins Barksdale and Carl E. Stewart

Co-Counsel

Sarah L. Anderson
Burns Anderson Jury & Brenner LLP
4807 Spicewood Springs Road, Building 4, Ste. 100
Austin, Texas 78759
(512) 338-5322

Opposing Counsel

David T. Lopez
Law Office of David T. Lopez
3900 Montrose Boulevard
Houston, Texas 77006
(713) 523-3900

8. *Van Orden v. Perry*, 545 U.S. 677 (2005)

In *Van Orden*, the U.S. Supreme Court held that Texas' display of a monument inscribed with the Ten Commandments on the grounds of the Texas State Capitol did not violate the First Amendment's Establishment Clause. As Associate Deputy Attorney General for Litigation, I assisted the Attorney General in preparation for oral argument at the U.S. Supreme Court.

Counsel for Respondent

Governor Greg Abbott
Texas State Capitol
Austin, Texas 78701
(512) 463-2000
Formerly Attorney General of Texas

Senator R. Ted Cruz
U.S. Senate
185 Dirksen Senate Office Building
Washington, D.C. 20510
(202) 224-5922
Formerly with the Office of the Texas Attorney General

Counsel for Petitioners

Erwin Chemerinsky
Schonbrun Seplow Harris & Hoffman LLP
11543 West Olympic Boulevard
Los Angeles California 90064
(310) 396-0731

Counsel for United States as Amicus Curiae

Paul D. Clement
Kirkland & Ellis LLP
635 15th Street, N.W.
Washington, D.C. 20005
(202) 879-5000

9. *Neely v. West Orange Cove, et al.*, 176 S.W.3d 746 (Tex. 2005).

In *West Orange Cove*, the Texas Supreme Court affirmed the constitutionality of the Texas public school finance system under the Texas Constitution. As Associate Deputy Attorney General, I represented the State of Texas and assisted in assembling and supervising the trial court litigation of this matter.

Dates of Representation: 2004 – 2005

Texas Supreme Court: Chief Justice Wallace Jefferson, Justice Nathan Hecht, Justice Dale Wainwright, Justice Harriet O’Neill, Justice Scott Brister, Justice Paul Green, Justice David Medina, Justice Phil Johnson.

Counsel for Appellants

Senator R. Ted Cruz
U.S. Senate
185 Dirksen Senate Office Building
Washington D.C. 20510
(202) 224-5922
Formerly with the Office of the Texas Attorney General

Counsel for Appellees

Randall Buck Wood
Ray, Wood & Bonilla, LLP
2700 Bee Caves Road
Austin, Texas 78746
(512) 328-8877

10. *Wallace v. Wellborne, et al.*, 204 F.3d 165 (5th Cir. 2000)

In *Wallace*, the Fifth Circuit held that two Texas Department of Public Safety agents did not violate the Fourth Amendment in the seizure of adult videos from a bookstore without a prior adversarial judicial hearing. I represented the Texas Department of Public Safety and the state district judge who signed the search warrant. I briefed this matter and presented oral argument to the Fifth Circuit Court of Appeals.

Dates of Representation: 1999 – 2000

Fifth Circuit panel: Then-Chief Judge Carolyn Dineen King, Judge John Malcom Duhe, and Judge Harold R. DeMoss Jr.

Counsel for Appellant
Gregory C. Gladden
3017 Houston Avenue
Houston, Texas 77521
(713) 880-0333

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.)

As my 23-year legal career has been litigation-based, the majority of significant legal activities fall into that category. However, during my three years of service as General Counsel to the Texas Governor, my office was charged with the responsibility of reviewing the trial, appellate, and federal habeas corpus history of all capital punishment defendants scheduled for execution in Texas. I, along with my team of attorneys, reviewed each record and request for clemency or reprieve of execution prior to providing advice and recommendation to the Governor on same.

From 2012-2014, I served as an *ex officio* member of the Texas Access to Justice Commission, which is charged by the Supreme Court of Texas with expanding access to and enhancing the quality of justice in civil legal matters for low-income Texans.

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.

I have not taught any courses.

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.

I do not anticipate any deferred income, future benefits, or compensation for any financial or business interest.

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.

I have no plans, agreements, or commitments to pursue any outside activities or employment.

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 Statement of Net Worth.

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.

If confirmed, I will recuse in any case in which I have ever been involved. For a period of time, I expect that I will recuse in any case in which my current firm, Kelly Hart & Hallman LLP, represents a party. In all other cases, I will evaluate any real or potential conflict, including relationships that could give rise to the appearance of a conflict, on a case by case basis pursuant to 28 U.S.C. § 455, the Code of Conduct for United States Judges, and all applicable rules or policies governing ethics and 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.

If confirmed, I will carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

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.

I have spent the vast majority of my career in public service and have therefore been unable to assist private clients, even on a pro bono basis. While in private practice, I have volunteered my time to provide counsel and advice to Central Texas veterans through the Austin Bar Association’s monthly Austin VA Legal Clinic. Through this program, local attorneys donate two hours of time each month to provide free legal advice to veterans, including help with leases, wills, contracts, social security matters and employment law. In 2016, I assisted a local family with a family law/custody matter in Williamson County District Court. I appeared at a day-long hearing and donated approximately forty pro bono hours of legal work to that matter.

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.

On February 20, 2017, I submitted an application for a judicial vacancy in the U.S. District Court for the Southern District of Texas to the Texas Federal Judicial Evaluation Committee established by Senators Cornyn and Cruz. I interviewed with the Committee in Dallas, Texas, on March 17, 2017, and subsequently with Senators Cornyn and Cruz on April 7, 2017, in Washington D.C. On May 3, 2017, I interviewed with attorneys from the White House Counsel’s Office and the Office of Legal Policy at the Department of Justice. Since then, I have been in communication with the White House Counsel’s Office and the Office of Legal Policy at the Department of Justice. The President submitted my nomination to the Senate on April 12, 2018.

- 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.