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CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

APRIL 28, 2021

Serial No. J–117–8

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CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

WEDNESDAY, APRIL 28, 2021

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., in Room G50, Dirksen Senate Office Building, Hon. Richard J. Durbin, Chair of the Committee, presiding.

Present: Senators Durbin [presiding], Leahy, Feinstein, Whitehouse, Klobuchar, Coons, Blumenthal, Hirono, Booker, Padilla, Ossoff, Grassley, Cornyn, Lee, Cruz, Hawley, Cotton, Kennedy, Tillis, and Blackburn.

Also present: Senators Bennett, Duckworth, Hickenlooper, and Menendez.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chair DURBIN. Good morning. This meeting of the Senate Judiciary Committee will come to order.

Today the Senate Judiciary Committee will hold its first judicial nominations hearing of the 117th Congress. Our first panel will include two circuit court nominees with outstanding credentials, Candace Jackson-Akiwumi to be on—taking an Illinois seat on the seventh circuit, and Judge Ketanji Brown Jackson for the DC circuit. Our second panel will feature three highly qualified district court nominees: Julien Neals, Judge Zahid Quraishi, both nominated to the District Court of New Jersey, and Regina Rodriguez, nominated for the District Court of Colorado. Senators Bennett, Duckworth, Hickenlooper, Menendez, and Booker will join us shortly to join in introducing the nominees, but before I turn it over to them and to Ranking Member Grassley, I would like to make a few points about this historic day for the Biden administration.

Looking at this slate of nominees, I am struck that they not only bring qualifications that are extraordinary in this next level of achievement, but also demographic and professional diversity. We need it on the Federal bench. I am reminded of what President Lyndon Johnson said when he nominated Thurgood Marshall to the Supreme Court in 1967. Mindful that he just sent up the nomination of the first African-American Supreme Court Justice, President Lyndon Johnson said that Marshall "has had a distinguished record as private counsel and as Government counsel in the courts of the land. I believe he has already earned his place in history, but I think it will be greatly enhanced by his service on the Court."

Johnson continued, "I believe he earned that appointment. He deserves that appointment. He is best qualified by training and by very valuable service to the country. I believe it is the right thing to do, the right time to do it, the right man and the right place." Importantly, he closed with this admonition, and I quote, "I trust that this nomination will be promptly considered by the Senate." I would say to—if I could to President Johnson, a lot of nominees wish the very same thing.

Surveying these five nominees, I believe that they are qualified by training, have distinguished records. They are the right nominees to fill these vacancies, and they have earned and deserve these appointments. All five of these nominees are people of color. They also come from a range of professional backgrounds. All five—all five—received "well qualified" ratings by the American Bar Association. Both circuit court nominees are former Federal Public Defenders and will, as a result, bring that perspective and experience that is far too often missing on the bench, and that is not a partisan point of view. In fact, scholars at the Cato Institute—the Cato Institute, hardly a liberal bastion—have highlighted the critical importance of adding more public defenders to the ranks of the judiciary. Today, we are on our way to doing just that.

Today's district court nominees, likewise, represent a depth and breadth of experience that will serve them well on the bench, and that will, in turn, serve the people of New Jersey and Colorado. This district court panel includes Julien Neals, an expert in municipal law and a dedicated public servant, who presided over more than 6,000 cases in the Newark municipal court system; Judge Zahid Quraishi, a decorated military veteran, Federal magistrate who, if confirmed, will be the first American Muslim to sit on an Article III court; Regina Rodriguez, a path-breaking, former chief of the Civil Division in the Colorado U.S. Attorney's Office, whose mother's family was interned during World War II in what was one of our Nation's most shameful moments.

While this breadth and depth of experience is important, so, too, is the confidence we can have that all these nominees, once confirmed, understand their responsibility as judges. It is a welcome change to see nominees who have been selected for their credentials and abilities rather than those who simply check the box in their political experience. For 4 years, President Trump nominated, and Senate Republicans approved, far too many nominees, many of whom never should have been nominated. Ten of the nominees in the Trump administration for lifetime appointments to the Federal court had been found unanimously—unanimously—"unqualified" by the American Bar Association, but that did not deter their nomination, and, in most cases, their selection. Thankfully, with today's five nominees, the Biden administration has taken an important step toward orienting the courts back toward evenhandedness, fairmindedness, and competence. The administration has done so with a group of nominees whose qualifications are beyond question.

I have the honor and privilege of introducing two of them. I will start with Candace Jackson-Akiwumi, nominated to an Illinois seat on the seventh circuit. Ms. Jackson-Akiwumi is the daughter of two judges. Her father, Judge Raymond Jackson, is a Federal district court judge in Virginia. Her mother, Judge Gwendolyn Jones Jack-

son, previously served as a State court judge. Their daughter, Candace, received her undergraduate degree from Princeton, her law degree from Yale where she served on the Yale Law Journal. She clerked for Judge David Coar on the U.S. District Court for the Northern District of Illinois, who incidentally heads my panel to approve nominees for the Federal bench in Illinois, and Judge Roger Gregory on the Fourth Circuit Court of Appeals. She then practiced at the law firm Skadden, Arps in Chicago and then did something which is highly unusual. She decided to leave private practice to join the Federal Public Defender's Office in the Northern District of Illinois, working in that office for 10 years, leaving just last fall when she came to DC with her husband, Eric, pursuing a job opportunity. For the last several months, she has practiced at the DC office of the law firm Zuckerman Spaeder. However, upon confirmation, she will return to Chicago. Good for us. I want to thank her husband, Eric, for adjusting his own career for the sake of his wife's.

It is a sad reality that 4 years of President Trump and a Republican Senate did not expand diversity on our Federal courts. This includes both demographic diversity and life experience. Over 4 years, President Trump appointed 54 judges to the circuit courts. Fifty-four. None of them, not one of them, was Black. Currently, the seventh circuit has no judges of color. In fact, only one judge of color has ever served on the seventh circuit, my friend and retired Federal judge, Ann Claire Williams, who was appointed by President Clinton with my strong support. In 2016, President Obama nominated a highly qualified Black attorney named Myra Selby to an Indiana seat on the seventh circuit. Republican Senators blocked her nomination for nearly an entire year.

The NAACP has made it clear that this lack of diversity means something important to the Federal bench. In a November 2020 letter, NAACP president, Derrick Johnson, wrote, and I quote, "The absence of diversity undermines the integrity and legitimacy of the Federal judiciary. Judges from different racial, ethnic, and other backgrounds enrich judicial decision-making and promote trust and confidence by communities impacted by their rulings."

Thankfully, we have Ms. Jackson-Akiwumi before us today, highly qualified with a unique perspective, and only a tiny fraction have spent—on the Federal bench now have spent the majority of their careers as public defenders or in legal aid. In fact, out of 179 current Federal circuit court judgeships, there appear to be only two judges who spent a significant part of their legal career as Federal Public Defenders, one of them from the State of Iowa, Eighth Circuit Judge Jane Kelly, and a Third Circuit Judge Luis Restrepo of Pennsylvania. In contrast, there are many former Federal prosecutors on the Federal bench. Many are extraordinary jurists, but they do not share the same life experience as these nominees.

As a Federal defender, Ms. Jackson-Akiwumi represented over 400 indigent Federal defendants at all stages of the criminal justice process. She has tried eight trials to verdict and argued six appeals before the circuit court. She has litigated hundreds of contested hearings, including sentencing hearings. Ms. Jackson-Akiwumi knows these criminal—the criminal justice system inside and out.

She is exactly the type of nominee we should hope to see more of. I look forward to hearing more about her experience today.

I also have the honor of introducing Judge Jackson—Brown Jackson, nominated to the DC circuit.

Judge Jackson was born right here in Washington, DC, where her parents, who were natives of Miami, were at the time working as public school teachers. When she was 3 years old, Judge Jackson and her parents went back to Miami so her dad could go—attend law school at the University of Miami. He later served as a principal attorney for the Dade County School Board, while Judge Jackson's mother served for 14 years as the principal of a leading magnet school in the Miami area. Judge Jackson herself attended Harvard and Harvard Law. She then went on to a series of clerkships at the district court on the first circuit, and finally a Supreme Court clerkship for Justice Stephen Breyer.

The breadth of her legal career is impressive, from her work in private practice at the law firm Morrison & Foerster, to her service as an attorney on the U.S. Sentencing Committee—Commission, to her time as a Federal Public Defender. Judge Jackson is well known to us on this Committee in light of her prior nominations to the Sentencing Commission and the U.S. District Court for the District of Columbia. I might note, she won unanimous support for both of these roles from this Committee and from the Senate as a whole.

There are two aspects of Judge Jackson's record I would like to highlight. First is her tenure on the Sentencing Commission. The issue of criminal sentencing is one that is deeply important to me, and I am sure to my colleague, Senator Grassley. As a Sentencing Commission member and as a Federal judge who has handed down sentences, Judge Jackson has faced the often difficult questions inherent in that responsibility. She will bring that experience to bear on the DC circuit.

The second is, more broadly, her record on the Federal bench. Judge Jackson has shown time and again in her decisions that she is guided not by ideology or a preferred outcome, but by a steadfast belief in approaching every case with fairness and impartiality. We see that reflected not only in her evenhanded record, but in the comments of those who have served with her. She has won praise across the ideological spectrum, including from DC circuit judge, Thomas Griffith, a George W. Bush appointee, who wrote to the Committee in support of her nomination. Judge Griffith wrote, and I quote, "Although she and I sometimes differed on the best outcome of a case, I have always respected her careful approach and agreeable manner, two indispensable traits for success in a collegial body." In these partisan times, Judge Griffith's words ring even more important.

I look forward to hearing from Judge Jackson today and from all five of today's nominees. With that, I turn it over to my friend and fellow colleague, the Ranking Member, Chuck Grassley.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. For the first three paragraphs of my remarks, I would ask the Democrats to pay attention. It may sound face-

tious, but I want to make a point. Today we are hearing from five nominees to be considered for judgeships, including two circuit nominees. Because this is the Committee's first hearing on judicial nominees of this Congress, I will be very attentively listening to my Democratic friends to see if I catch any apologies from them to Justice Amy Coney Barrett. You see, last fall we heard from them time and time again for weeks that Judge Barrett was being put on the Supreme Court for two reasons: one, to steal the election for Donald Trump and to get rid of Obamacare. I just checked. Joe Biden is President of the United States, and Obamacare is still on the books. If my friends do not want to apologize to Justice Barrett publicly, she is right next door, and I will bet she would be happy to accept any apologies in person.

Turning to today's nominees, Judge Jackson has been nominated to the DC circuit court, often called the second highest court in the land. Judge Jackson was appointed by President Obama to serve on the DC district court in 2013, and has been involved in over 500 cases as a judge since then. As someone who has been very interested and invested in criminal justice reform, as Senator Durbin has been, I appreciate Judge Jackson's work on the Sentencing Commission where she also served. We will also hear from Ms. Jackson-Akiwumi today, nominated for the seventh circuit. She is a nominee who served as a Federal Public Defender for 10 years in the Chicago area before moving to DC, and has represented over 400 criminal defendants, many of whom were charged with crimes involving illegal firearms. I will be interested in hearing her views on the so-called gun pandemic and how violent criminals play into that.

From my review of her record, it certainly seems that Ms. Jackson-Akiwumi has been a zealous advocate for clients and criminal defendants who are deserving of competent representation in our justice system, but I will be asking her today about some of the specific positions she has advocated for. I am sure Democrats will complain that we should not hold a nominee responsible for her clients, and perhaps that once was true. The fact is that previous nominees, like Kyle Duncan, Howard Nielson, Rossie Alston, Britt Grant, Mike Park, and countless others were opposed by Democrats because of the clients that they represented. At the same time, there is a growing hostility to fair representation on the left with student radicals saying, "Not everyone deserves representation," and liberal activists seeking to penalize law firms representing clients with wrong positions—so-called wrong positions—on social or political issues. As a wise man said recently, it cannot be one set of rules for Republicans and another for Democrats, so I plan to look at the candidates' records, including their legal advocacy, on behalf of clients.

The fact is that the far left group, demand justice, which seems to be in charge of the judicial selections in this administration, says you can tell what kind of judge someone will be by their clients. They strongly support Judge Jackson and Ms. Jackson-Akiwumi because their time as Federal defenders were—apparently caused them to pursue social justice rather than follow the law. Of course, I hope not, and it is not an accusatory statement, but it does take

off on some very unfair accusations against nominees of one party versus the nominees of another party.

This hearing is our first look at President Biden's judicial nominees. I am hopeful that these nominees will engage with all Senators and ultimately respond to our questions. Congratulations to all of you for your nominations.

Chair DURBIN. Thank you, Senator Grassley. A number of Senators would like to formally introduce one or more of our nominees, and I have a list of those who are available. The first is physically present, from the State of New Jersey, our colleague, Senator Cory Booker.

OPENING STATEMENT OF HON. CORY A. BOOKER, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator BOOKER. Mr. Chairman, this is indeed an honor for me to be able to introduce the two nominees, Julien Neals and Judge Zahid Quraishi. They have both been nominated by President Biden to serve as United States District Court judges for the District of New Jersey, and we are in a very severe judicial emergency right now. Both are highly qualified, experienced people who serve—who share an understanding of the impact that our courts will have on the people of our State and across this Nation. The first individual I choose to introduce, we have done this, again, before. Judge Neals is someone that was nominated by the Obama administration in 2015 to serve as a Federal district judge, but, unfortunately, the Senate failed to bring his nomination up for a vote. Despite the delay on Neals' confirmation, I would like to, again, just speak to who he is.

Judge Neals and I have worked together for a very long time. We have history. He is someone that I have had the honor of working with, and of all the people I have worked with in my career, and I have worked with extraordinary individuals both here in the United States Senate and through my career in Newark, Judge Neals is unequivocally amongst the best people I have ever had the honor to work alongside. For 2 years he served as chief judge of the Newark municipal court, which is the largest court in the State—municipal court in the State of New Jersey. He personally presided over 6,000 cases, but he ushered in a spate of reforms, helping to create the State's first veterans court, the State's first youth court, and other innovations that helped Newark, New Jersey become a national model for court innovation. He then joined my mayoral administration. He served again at the head of the busiest corporation counsel's office in our state, the Newark Corporation Counsel's Office, and then he served as business administrator for the city of Newark, and he served at a time that we were in crisis. The city was going through the Great Recession along with the rest of the planet Earth.

I do not think there is any person here that was a former Governor, a former county executive, or a former mayor who had to do what Julien and I had to do, which was to govern down our city size 25 percent to cut our city's budget and to cut our personnel, days and months and years of painful work of getting our budgets to fit with the massive shortfalls in revenue that we had. He is a

brilliant, skilled administrator who has a balance and an equipoise to keep his head about him when all else are losing theirs.

He currently serves as the counsel to New Jersey's biggest county, Bergen County, the county of my birth and where I was raised. If you talk to people in Bergen County, they talk about him almost as if he is a holy sanctified figure. They say he has more cool than Obama. They say he is one person that truly, when they walk into a room, everyone listens. Bergen County, New Jersey is a political place with a lot of fiefdoms and a lot of different power bases, but Julien seems to sail above it all with great dignity and a great sense of expertise that trumps all politics.

I am so honored to know this human being, and when I imagine what a Federal judge should be, I imagine someone with the qualities, the gifts, the kindness, the decency, and the love for others that Julien Neals possesses. It is an honor for me, not only to introduce him, but to have recommended him to the President of the United States, and it is so great to see my old friend here today.

The second person I would like to introduce is Judge Zahid Quraishi. Judge Quraishi is someone who has had an extraordinary life of commitment to country. He is a dedicated public service who has—servant who has served this Nation in many roles. You said it, Mr. Chairman. He was in the military, in the JAG Corps, at the Department of Homeland Security, and, most recently, worked as an assistant United States attorney in the Office of the U.S. Attorney for New Jersey. He currently is a Federal magistrate judge in New Jersey.

This is someone who believes in this Nation and her ideals, and is dedicated to serving them. He has honors in just about everything that he has done, including his military service. Judge Quraishi is a well-respected person who is also seen as a standout in our State. He is one of the best that New Jersey has. His legal skills and experience will serve the people of New Jersey in our judicial crisis as a U.S. district court judge. It has been said also that if he is confirmed, Judge Quraishi will be a history maker as the first Muslim-American Article III judge in all of our country's past. Because of his example, because of his leadership, because of his character, he will most certainly not be the last.

Both of these nominees are dedicated to the rule of law, to justice and fairness. Both of these nominees will help to restore integrity, and independence, and public faith in our courts, and both of these nominees are exceptionally, extraordinarily, unequivocally qualified. I thank President Biden for recognizing and nominating Judge Neals and Judge Quraishi to serve as United States district court judges for the District New Jersey, and I strongly urge my fellow Committee Members to support their nominations. Thank you.

Chair DURBIN. Thanks, Senator Booker. Senator Bennet, I believe, by remote. Are you there, Senator Bennet?

Senator BENNET. I am here. Can you hear me, Mr. Chairman?

Chair DURBIN. I hope we can—your volume up just a bit, but we can hear you. Please proceed.

Senator BENNET. Okay. Let me—can you hear me now?

Chair DURBIN. Yes.

Senator BENNET. Okay. Thank you.

STATEMENT OF HON. MICHAEL F. BENNET,
A U.S. SENATOR FROM THE STATE OF COLORADO

Senator BENNET. Thank you very much, Chairman Durbin and Ranking Member Grassley, for inviting me to share a few words about Regina Rodriguez, President Biden's nominee for the U.S. District Court for the District of Colorado. Gina comes to this Committee with broad support in my State. We have received a flood of letters on her behalf. All of them testify to her character, hard work, and commitment to justice and the rule of law. She learned all of it from her family who join us today.

Her mom's family knew injustice firsthand, as the Chairman mentioned, during the Second World War. They were relocated from California to the Heart Mountain Internment Site in Wyoming, joining over 10,000 people whose loyalty to America was questioned for no other reason but their Japanese ancestry. Her father, Peter, was a Mexican-American who went from living in a railroad boxcar on the South Side of Chicago to earning a nomination for the NFL Hall of Fame. Her mother, Linda, became a teacher and an administrator in the Denver Public Schools, my old district when I served as superintendent.

Education and hard work transformed her parents' lives, and Regina has always sought to live up to their example. She graduated, the Ranking Member might be interested to know, with honors from the University of Iowa, then returned home to earn a J.D. from the University of Colorado Law School. After starting at a private firm in Denver, Gina joined the U.S. Attorney's Office. The Department of Justice recognized her talent, and she went to work for the Attorney General on alternative dispute resolution, a new approach at the time meant to avoid lengthy trials through arbitration and mediation. Gina helped to mainstream this approach for all U.S. attorneys, saving the Government countless hours and taxpayer dollars. Regina's leadership in Washington earned her a promotion back in Denver, where she rose to become chief of the Civil Division in the U.S. Attorney's Office. Today, she is one of the most respected trial lawyers in Colorado and has received award after award for her work.

Her commitment to the community has been just as impressive. She is a founding board member of Colorado Youth At Risk, a nonprofit that helps kids stay on the right track. She served as one of Colorado's higher education commissioners and still serves on the board of Denver's highest-performing charter school. Somehow she still finds time to mentor lawyers from underrepresented communities.

I could go on and on, but the evidence is overwhelming. Regina Rodriguez is an exceptionally qualified nominee with a distinguished career and commitment to service. She has blazed trails in Colorado law through the sheer force of her intellect, hard work, and character. She has my full and enthusiastic support, and I urge the Committee to approve her nomination.

Chair DURBIN. Thank you, Senator Bennet.

Senator BENNET. Thank you.

Chair DURBIN. I believe Senator Duckworth is available, remote. Senator, can you hear us?

Senator DUCKWORTH. I sure can.

Chair DURBIN. Please proceed.

STATEMENT OF HON. TAMMY DUCKWORTH, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DUCKWORTH. Thank you, Mr. Chairman and Ranking Member Grassley. Thank you both. It is my honor to appear before this Committee to both introduce and to offer my strong support to Ms. Jackson-Akiwumi, President Biden's nominee to be the next United States circuit judge of the seventh circuit. Ms. Jackson-Akiwumi exemplified President Biden's fulfillment of his promise to nominate highly qualified individuals to the Federal judiciary who reflect an incredibly diverse city of our great Nation.

As one would expect, Ms. Jackson-Akiwumi possesses an impressive academic background, graduating with honors from Princeton University and then earning her J.D. from Yale Law School, where she served as a senior editor on the Yale Law Journal, and was an NAACP Legal Defense Fund Earl Warren legal scholar. After graduation, she quickly gained experience serving in the Federal judiciary, first clerking for Northern District of Illinois Judge David Coer, and then for fourth circuit Judge Roger Gregory.

I was especially struck by Ms. Jackson-Akiwumi's commitment to public service. She has dedicated the majority of her legal career to public service, and spent a decade in the city of Chicago serving as a staff attorney in the Federal defender program. As that public defender, Ms. Jackson-Akiwumi gained immense litigation experience while advocating for those who are often the most vulnerable and underserved in our communities. She represented over 400 defendants, tried seven jury trials, and argued five appeals before the seventh circuit. Ms. Jackson-Akiwumi is currently a partner at the Law Firm of Zuckerman Spaeder, where she is a member of the firm's business litigation, investigation, and white collar defense groups.

However, even in the private sector, Ms. Jackson-Akiwumi demonstrated a strong commitment to public service, spending a significant portion of her time working on pro bono matters involving adoption, civil rights, criminal law, and immigration. For example, she won lawful permanent residency and protection under the Violence Against Women Act for a mother with her two children, advocated for better conditions for incarcerated clients, and represented an employment discrimination plaintiff in a successful EEOC mediation.

Beyond Ms. Jackson-Akiwumi's accomplishments, it is important to recognize ground—the groundbreaking nature for her nomination and the urgency of moving swiftly to confirm her. If seated on the bench, she would be only the second Black woman in history to serve on the seventh circuit, and the only person of color serving on that court today. Equally important, Ms. Jackson-Akiwumi would strengthen the seventh circuit by bringing a broad diversity of experience with her, particularly her time serving as a public defender.

Mr. Chairman thank you again for allowing me to introduce Ms. Jackson-Akiwumi, and I strongly urge the Committee to act favorably on her nomination. I yield back.

Chair DURBIN. Thank you, Senator Duckworth. Next up is our friend and colleague from the State of New Jersey, Senator Menendez. Are you with us, Senator?

[No response.]

Chair DURBIN. We'll go back—come back to Senator Menendez in a minute. Currently, I believe Senator Hickenlooper of Colorado is waiting. Senator, can you hear us?

Senator HICKENLOOPER. Yes.

Chair DURBIN. Please proceed.

Senator HICKENLOOPER. Thank you, Chairman Durbin and Ranking Member Grassley. Can you hear me?

Chair DURBIN. Please proceed.

Senator HICKENLOOPER. Yes. Yes.

STATEMENT OF HON. JOHN W. HICKENLOOPER, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator HICKENLOOPER. Thank you, Chairman Durbin and Ranking Member Grassley, for letting me share a few words about Regina Rodriguez, President Biden's nominee for the U.S. District Court for the District of Colorado. I want to add a little bit to what Michael Bennet said so elegantly. I mean, Regina Rodriguez comes to this Committee with broad, well-earned support in our State, 30 years of legal experience and accomplishments, and she really has dedicated her career to the people of Colorado in fighting for historically disadvantaged communities. It is not surprising that she got the enthusiastic support of the Colorado Lawyers Committee and the Colorado Sam Cary Bar Association. These two organizations consist of attorneys dedicated to providing legal services to children, to the poor, to using knowledge of the law to improve our society and our legal system.

Former United States attorneys appointed by Presidents from both political parties note that Regina's experience, knowledge, demeanor, and work ethic make her really an ideal candidate. Throughout her career, she has managed complex matters that required the coordination of hundreds, if not thousands, of cases and trials in multiple jurisdictions. Given her extensive experience representing both plaintiffs and defendants, Rodriguez understands the importance of applying the law evenhandedly, based always on the facts.

As the Latina First Foundation put it, "There is no person better qualified to effectively serve on the U.S. district court than Regina Rodriguez." I wholeheartedly agree. Regina has my full support, and I hope this Committee will confirm her nomination, and that the Senate will act swiftly to confirm her. Thank you Chairman Durbin, Ranking Member Grassley, and all the Members on the Committee for your consideration of this outstanding nominee.

Chair DURBIN. Thanks, Senator Hickenlooper, and now the question is whether Senator Menendez is available.

Senator MENENDEZ. I am available, Mr. Chairman.

Chair DURBIN. Oh good. Thanks. Please proceed, Bob.

STATEMENT OF HON. ROBERT MENENDEZ,
A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator MENENDEZ. Thank you, Mr. Chairman, and to Ranking Member Grassley and distinguished Members of the Committee. It is my great privilege to join my colleague from New Jersey, a distinguished Member of the Judiciary Committee, in recommending two highly qualified nominees to the United States District Court for the District of New Jersey, Julien Neals and Zahid Quraishi. These nominees represent the best of New Jersey. Both reflect our State's proud and uniquely rich diversity, and both demonstrate a steadfast commitment to equal justice under the law.

Mr. Neals has served as the county counsel for Bergen County since 2015. Prior to taking on that role, he served the people of Newark in an array of capacities. From 2010 to 2014, he was the business administrator for the city of Newark, the highest-appointed administrator in New Jersey's largest city. He also led the city's department of law, and served as chief judge of the Newark municipal court. He commands enormous respect in our legal community, from serving on the Supreme Court of New Jersey's Committee on Character and Fitness, to serving as chairman for Volunteer Lawyers for Justice. He personifies the meaning of "public service." Mr. Neals' tremendous breadth of knowledge and experience, even temperament, and exacting judgment make him a superb candidate to serve on the Federal bench.

I am also honored to join in introducing Zahid Quraishi, who today serves as a U.S. Magistrate Judge for the U.S. District Court for the District of New Jersey. Prior to his appointment, he was a partner at the firm of Riker Danzig. There, he chaired the white collar criminal defense and investigations group, and served as the firm's first chief diversity officer. Judge Quraishi also served as an assistant United States attorney for more than 5 years in Newark. Previously, he served our country as a military prosecutor with the U.S. Army Judge Advocate General Corps, where he achieved the rank of Captain. Beyond his impeccable credentials, if confirmed, Judge Quraishi would also make history as the first Muslim-American Federal judge, and the first Asian American to serve on the Federal bench in New Jersey. Judge Quraishi has demonstrated both integrity and intellect throughout his distinguished career in public service, and I believe he will bring to this position the wisdom, experience, and demeanor that the District Court of New Jersey deserves.

Finally, Mr. Chairman and Members of the Committee, New Jersey's District Court currently faces six vacancies, all of which have been declared judicial emergencies by the Judicial Conference of the United States. I strongly urge the Committee's unanimous support and hope that we can have a speedy confirmation process on these qualified nominees. Thank you, Mr. Chairman, for bringing up these nominees as quickly as you have, and we look forward to working with you in the days ahead.

Chair DURBIN. Thank you, Senator Menendez. Would our first two nominees please stand to be sworn?

[Pause.]

Chair DURBIN. Equipment time out. Ready?

[Witnesses are sworn in.]

Chair DURBIN. Let the record reflect both witnesses have answered in the affirmative, and we will start with Judge Jackson. You may make an opening statement at this time.

STATEMENT OF HON. KETANJI BROWN JACKSON, NOMINEE TO SERVE AS UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

Judge JACKSON. Good morning, Mr. Chairman. Thank you very much. It is an honor to be here—to appear before you all this morning, and I would like to start by expressing my sincerest gratitude to you, Mr. Chairman, for scheduling this hearing and for introducing me. I would also like to extend my thanks to Ranking Member Grassley and to all of the Members of the Committee for participating in this hearing today. I have had the great privilege of having been invited to come before this Committee twice before for confirmation, so I know that I have already taken up a great deal of your collective time, and I am both humbled and very grateful to be here once again. I am also truly thankful to President Biden for giving me the honor of this nomination to the circuit court.

Mr. Chairman, I do not have opening remarks, but I would like to introduce you to my family members, some of whom have traveled great distances to be here today. I am going to refrain from giving individual tributes, but I want each of them to know that their love and encouragement has meant so much to me throughout the years, and there is no question that I would not be who I am or where I am today without their support.

I would like to start with my parents Johnny and Ellery Brown, who left their permanent home in Miami, Florida last week for the first time since the start of the pandemic and traveled here by way of West Virginia where they partially reside. My parents-in-law, Gardner and Pamela Jackson, are lifelong Boston and Cape Cod residents, and they, too, made the effort to travel here via I–95 to be here with me today. Also here are my terrific brother-in-law and sister-in-law, William and Dana Jackson, who live in Maryland, and if William looks familiar, it is because his identical twin brother is my husband, Dr. Patrick Jackson, who is also here. He did not have to travel very far. He has actually been with me all along during this incredible journey, by my side for 25 years come this October. Finally, also here today is the younger of our two daughters, Leila, who is a junior in high school. She is in the most demanding season of this extraordinary challenging academic year, so it is a special treat for me that she is with us today. As a side note, our older daughter, Talia, would have made the effort, but she is a freshman in college, and after spending three-quarters of this academic year taking classes from her bedroom, she finally got the chance to live on campus just weeks ago, and I did not have the heart to make her come back again.

Mr. Chairman, there are so many other members of my family who could not be here with us at this time. They are in Wisconsin, and Florida, and Utah, and Colorado, and Massachusetts, and some are dearly departed. I am truly grateful for all of them and for all of the wonderful friends around the country who are watching these proceedings and cheering me on through this process.

With that, Mr. Chairman, let me once again reiterate my thanks to you for inviting me here this morning. I am enormously grateful, and I look forward to answering the Members' questions.

Chair DURBIN. Thank you, Judge Jackson. Ms. Jackson-Akiwumi, please proceed with your opening remarks.

STATEMENT OF CANDACE JACKSON-AKIWUMI,
NOMINEE TO SERVE AS UNITED STATES
CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT

Ms. JACKSON-AKIWUMI. Good morning. I am deeply grateful to the Senators from my adopted home State of Illinois, Senators Durbin and Duckworth, for their warm introductions of me. I am grateful to Chairman Durbin and Ranking Member Grassley for convening the hearing today, and all of the Members here for considering my nomination. I also am grateful to the President for the honor of this nomination.

My immediate family is here today supporting me. I struggle for words to succinctly capture how truly wonderful they are and what a gift they are to me. My parents have traveled from my hometown of Norfolk, Virginia to be here. They are just over my right shoulder, my father, the Honorable Raymond A. Jackson, United States District Court judge for the Eastern District of Virginia. Seated next to him, my mother, the Honorable Gwendolyn Jones Jackson, a retired judge for the Commonwealth of Virginia. My siblings are here today as well. My sister is the Reverend Arlette Estelle Jackson. She did not travel far. She is a longtime resident of the District of Columbia. My brother is here, Raymond Daniel Jackson, attorney at law. He has traveled from Tampa, Florida to support me today. Last but not least, my husband, Eric Akiwumi. He remains the best friend that I have ever had in addition to the many other amazing roles he plays in our partnership. My husband and I have not invited today our very active 15-month-old daughter, Noel. We will all be much more productive today without her here. Also missing is Noel's big brother, my 14-year-old stepson, Isaiah, who lives in Tampa, Florida. He will be watching this hearing later today as an excellent civics lesson in the advise and consent role of the United States Senate.

There are obviously many other family members, and loved ones, and friends who could not be here today because of the COVID restrictions here in the building, but I am deeply grateful to them all. My family is the best part of me, and I would not be here today without their love and support. Thank you again.

Chair DURBIN. Thank you very much. Before I turn to questions, I want to lay out a few of the standards we are going to follow. At the request of Senator Grassley, he has asked that for these two circuit court nominees, that we have 7 minutes to ask questions. I asked Senator Grassley before this hearing how he enforced the time when you announce these things, and he came up with the Grassley rule. I am sure I will not state in its entirety, but basically he said if you are in the midst of a question as your time runs out, finish the question, but try to keep it short and keep the answers short. Is that about right?

Senator GRASSLEY. Yes.

Chair DURBIN. Okay. My ruling has been blessed by Senator Grassley, so we have a bipartisan start here. The second panel on district court nominees will go back to the 5-minute standard. Let me start my questioning and the 7-minute rule.

You both have an extraordinary background in having served in the Federal Public Defender's Office representing indigents and people who often struggle in our system of justice. I think we know that we are engaged in a national conversation now about justice is long overdue, and it has raised questions about law enforcement, questions about sentencing, questions about incarceration. It really calls to question the agenda of this Committee, the Senate Judiciary Committee, on the criminal justice side. You have got a special perspective that you bring to this that many nominees do not in light of what you have done with your life.

I do not want you to address any case or any specific situation, but I would like your observations because you have spent such a big part of your lives—it goes back to what Langston Hughes once said. It has been such a long part of your—big part of your life. "For those who would say life for me ain't been no crystal stair," for folks—Black, brown, poor defendants—who seeking representation in the system that seems, to them, just overwhelming and fundamentally unfair in some cases.

What would be your general thoughts, without any specific case in mind, about justice in America today, and how you have seen it and how it has changed in your time? Judge Jackson.

Judge JACKSON. Thank you, Senator. I had the privilege of serving as a Federal Public Defender, assistant Federal Public Defender, in Washington, DC, I think it was some 16 years ago, and as part of that experience, I, as you say, represented people. I represented them in the appellate division of my office, so all of my clients were convicted. I think that the insights that one gains from that kind of professional experience really can be very helpful in future endeavors, especially if you go into judicial service, as I have.

I can give you a concrete example. When I worked with my clients as a defender, my job was to talk with them and to try to get their help to identify errors, things that had gone wrong in their trial proceeding so that I could raise them on appeal. One of the things that I noticed that I was really struck by was how little they could help me with that project. Most of my clients did not really understand what had happened to them. They had just been through the most consequential proceeding in their lives, and no one really explained to them what they were supposed to expect, so they did not know where things might have gone wrong. I remember that experience from all those years ago.

When I became a trial judge, one of the things that I do now is I take extra care to communicate with the defendants who come before me in the courtroom. I speak to them directly and not just to their lawyers. I use their names. I explain every stage of the proceeding because I want them to know what is going on. When I have to sentence someone, and I have sentenced more than 100 people to date, I always tell them—I explain to them this is why your behavior was so harmful to society, that Congress thought that it had to be made a crime. I say, this is why I as the judge

believe that you have to serve these consequences for your decision to engage in criminal behavior.

I think that is really important for our entire justice system because it is only if people understand what they have done, why it is wrong, and what will happen to them if they do it again, that they can really start to rehabilitate. There is a direct line from my defender service to what I do on the bench, and I think it is beneficial.

Chair DURBIN. Thank you. Ms. Jackson-Akiwumi, I noted in my introduction that you made the extraordinary career move from private practice to the Federal Defenders Program for 10 years, I believe, that you served there. I would like you to consider the same question I just asked Judge Jackson. In the process, perhaps you would comment on demeanor and temperament of judges.

Ms. JACKSON-AKIWUMI. Certainly, Senator. Thank you for the question. I can think of two observations from my time serving as a Federal Public Defender that I think will bode well for me in serving the public as a judge, if confirmed. First is the importance of listening and the importance of being heard. It is actually something I learned well before I went to law school from my mother when she served as a judge. She often talked about the importance of letting people make sure they have been heard by the court, because it is easier for people to accept even adverse rulings by the court when they at least know they have been heard. That is built into our system of due process, which involves an opportunity to be heard.

A cousin to that is listening. I gained an extraordinarily—extraordinary amount of experience listening as a Federal Public Defender, listening to the views of opposing counsel, prosecutors about their views of the case to find out where we might negotiate, where we might find common ground; listening to the stories of my clients to understand why and how they came to be standing before the court and what their fears and questions were; and listening very carefully to the questions that piercing trial judges and appellate judges were asking me about the case. Being a Federal Public Defender sharpened my listening skills, and I know that even though the job of advocate and judge are completely different, one skill that should translate well for me is that of listening because circuit judges, above all, must listen to the parties before they even attempt to reach a reasoned decision.

The other observation from my time in the criminal justice system as an advocate is the importance of setting aside personal convictions, personal opinions. At the Federal Defense Program, we represented whoever walked in the door charged with whatever crime, so long as they needed an attorney, so long as they were poor and working class and could not afford an attorney. That is what the Constitution and the caselaw dictated. With each and every case, I had to put aside any personal opinions I would about my client and any personal opinions I had about what they were accused of or the behavior, and represent them zealously in the courts. Again, even though the role of advocate and judge are completely different, that is one similarity. Like a Federal Public Defender, a judge has to set aside their personal opinions and their personal convictions in decision-making. Thank you.

Chair DURBIN. Thank you. Senator Grassley.

Senator GRASSLEY. Yes. I am going to start with Jackson-Akiwumi. During the most recent seventh circuit hearing, we heard about the supposed link between Indiana gun shows and street violence in Chicago. For 4 years, you represented a man who during 1 year had bought nine firearms in Indiana gun stores and proceeded to sell them without a license to people in Chicago, including at least one felon. He was investigated when the police in Chicago recovered seven firearms that he had bought in Indiana. You said in the pretrial motion that, "This case is not about gun violence or gangs in Chicago." Do you stand by the view that a case about illegal firearms traffic from Indiana to Chicago is not about guns, violence, or gangs in Chicago?

Ms. JACKSON-AKIWUMI. Senator, I lived in Chicago for many, many years, my formative years as an attorney and just as a private citizen, so I am all too aware of the crisis regarding guns that Chicago faces and so many other communities face. It affects me personally as a—as a citizen. I stand by my commitment and the oath that I took as an attorney, which is to represent zealously everyone who requires representation in our Federal courts, and that is without regard to the crimes they are charged with. That is how our system works best.

If you look at the Sixth Amendment and how the Supreme Court has interpreted the Sixth Amendment in *Gideon v. Wainwright*, it talks about the right to counsel, and there is no limitation on that based on what someone is charged with.

Senator GRASSLEY. I think I will accept that answer. Going on on the same case, do you agree that vigorously prosecuting unlicensed firearm traffickers is the best way to stop pipeline of illegal guns into the city of Chicago? That should be an easy one to answer.

Ms. JACKSON-AKIWUMI. Senator, thank you for the question. I think there are a number of tools in the tool book for combating an issue like guns and gun violence. Prosecution is one tool. I also know that this body and other legislative bodies at every level—State, Federal, and local—have to consider these issues and have been working on these issues vigorously. There are just a number of tools out there.

Senator GRASSLEY. Thank you. Last question on that case. No, it is not really on that case. Just give me a very rough idea of how many firearm traffickers you have defended in court. Just a rough number.

Ms. JACKSON-AKIWUMI. Senator, I appreciate the question. It actually would be hard to say. I have always described my career over a decade like this. About a third of my cases involved a panoply of fraud. There are so many frauds in the United States Code book, it would—it would blow your mind. A third of my cases involved drugs and firearms, whether it was possession of firearms, trafficking of firearms. Then about a third of my cases involved a big mix of everything else, from bank robbery to immigration offenses, sex offenses. It would be difficult to give you an exact number right now.

Senator GRASSLEY. I accept that answer. Second point with you. In your sentencing memoranda, you repeatedly highlighted the sen-

tencing differences that exist between Black defendants and white defendants charged with the same crime. In fact, you have gone so far as to argue that your Black clients should not receive a sentence higher than any applicable mandatory minimums "to avoid further entrenching and approving racial disparities." As a sitting Senator, I agree with your policy points about racial disparities in the laws we write, but I have concern about the courts engaging in those policy arguments. When you made these arguments in court, did you expect district judges to let broad social policy concerns govern how they applied the law in the case before them? Maybe I can give you a short answer. You would say they should apply the law, not the policy, right?

Ms. JACKSON-AKIWUMI. Senator, yes, because that is actually the law that Congress passed. Congress passed the sentencing statute, 18 U.S.C. § 3553(A), and one of those factors Congress has said that judges should consider is disparities, any disparities that might result from the sentence the judge imposed. In those cases like the one that you provided an example of, I was asking the court to apply that statutory sentencing factor.

Senator GRASSLEY. Okay. Another question. If district judges should let policy concerns governing how they apply the law, would it be right for them to give white defendants longer sentences than the facts require in order to correct racial disparities?

Ms. JACKSON-AKIWUMI. Senator, every sentencing judge that I have ever appeared before has been guided by the same statute I have referred you to, § 3553(A), which sets forth at least seven sentencing factors, including disparities. Everyone in the system, both the judge and the attorneys, are operating within that framework that Congress provided. If confirmed, that is the exact framework that I would be looking to in order to review any sentencing decisions by judges.

Senator GRASSLEY. I accept that.

Ms. JACKSON-AKIWUMI. Okay.

Senator GRASSLEY. As an appellate judge, would you have the ability to take social facts, such as racial disparities, into consideration when reviewing a sentence?

Ms. JACKSON-AKIWUMI. Senator, what guides for circuit judges, and what would guide for me if confirmed, is the law, and applying the law to the facts of any given case. That is purely what guides.

Senator GRASSLEY. I think I am going to take my last—I am going to send questions of you for an answer in writing so I can ask Judge Jackson only one question.

You have worked on sentencing reform, and as someone who has worked hard on the First Step Act and other issues of criminal justice reform, I really appreciate your work on sentencing reform. When it comes to more sentencing reform, people like you and Judge Bill Pryor both agree sentencing needs to be reformed. Can you explain how your views differ from Judge Pryor's, or, specifically, why do you trust judges with more discretion when it comes to sentencing than Pryor does?

Judge JACKSON. Thank you for that question, Senator. First, let me just say, as a former member of the Sentencing Commission, thank you for your work. I know that the Chairman, that you, that Senator Lee, and others on this Committee were very, very active

in making changes to the sentencing system partly because the Commission did research and pointed out to you some of the disparities in our laws, and Congress has made changes that have been very beneficial to the system.

I did have the privilege of serving with Judge Pryor. We were on the Commission together, and he and I both did talk quite a bit about—in our public statements and in the meetings, about the need for reform and how do we change the system after the Supreme Court's decision, making the guidelines advisory, and not binding anymore on judges. I would say my primary answer is because, in my experience, most judges really do not like to be outliers when they are sentencing. Most judges really do want to do something that is consistent not only with the law, but also with what similarly situated other defendants are getting in their district.

In my view, instead of more, you know, mandatory minimums or prescriptions that actually bind judicial discretion, if we could just give judges more information, that turning to a repository of information, like the Sentencing Commission, that captures every sentence that Federal judges give, and then giving judges access to that information is a way of ensuring that judges are handing out fair sentences that are similarly situated to other defendants. I think Judge Pryor tends to—he said that we need to do a little bit more to constrain judicial discretion, but my hope and faith is that judges will constrain themselves to an extent when they get the information that they need.

Chair DURBIN. Senator Feinstein.

Senator FEINSTEIN. Thanks very much, Mr. Chairman. According to the Center for American Progress, only 1 percent of sitting circuit judges have spent the majority of their career as public defenders or within a legal aid setting. In light of this fact, I just want you to know that I am very pleased that we are considering two nominees today with extensive service as public defenders. I want to ask you this question. There are some critics who claim wrongly, in my book, that a public defender cannot function as an impartial judge. How do you respond to this question? The judge may go first.

Judge JACKSON. Thank you, Senator. I have been a judge for 8 years, and, as I mentioned at the outset, I think that actually having defender experience can help not only the judge him or herself in considering the facts and circumstances in the case, but also help the system overall in terms of their interactions with defendants and the way in which they proceed in the courtroom. I would think that there would be no difference between defender experience and prosecutorial experience from the standpoint of whether or not someone can do what the law requires, and many, many prosecutors have been appointed as judges.

When you become a judge, you take an oath to look only at the law in deciding your cases, that you set aside your personal views about the circumstances, the defendants, or anything else, and you—and you apply the law. I would—I guess I would just say that I would not see any distinction between people with prosecutorial backgrounds and defense backgrounds in their ability to stay true to their oaths.

Senator FEINSTEIN. Thank you. Judge Jackson, also I was impressed to learn that, according to the Alliance for Justice, you have a reversal rate of less than 2 percent of your more than 550 decisions since assuming the role of U.S. District Judge for the District of Columbia. To what do you credit that 98-percent affirmative rate on appeal?

Judge JACKSON. Oh, thank you, Senator. I think it might be my methodology in the way that I approach cases. What I will say about that is that when I get a case, if you look at my 550 cases, you will see that there is a consistency in the way in which I am analyzing the issues. I am applying a particular method, as the Supreme Court has directed, which is that I am looking only at the arguments that the parties have made, at the facts in the record of the case, and at the law as I understand it, and I am sticking very closely to those three inputs. I am also applying the same amount of analytical rigor to my analysis of those inputs.

As a result, I think I am not making many errors, although the DC circuit tells me that I do occasionally, but I am doing that because I want to see every case through the same analytical lens. It does not make a difference whether or not the argument is coming from a death inmate or the President of the United States, I am not injecting my personal views. I am looking at those three things, and I think by being very methodical, I have been able to produce opinions that the circuit can see my reasoning and they understand that I am evenhandedly applying the law in every case.

Senator FEINSTEIN. Thank you. I would like to ask the other candidate here, since the Supreme Court held in *U.S. v. Booker* that Federal sentencing guidelines are not binding on judges at sentencing, we have seen a gradual return to discrepancies in the way different judges at different courts sentence those before them. How do we ensure fairness and consistency in sentencing while maintaining judicial discretion consistent with the Supreme Court's ruling in *Booker*?

Ms. JACKSON-AKIWUMI. Senator Feinstein, thank you for what is really an incredibly difficult question that you have rightly recognized. That is, in fact, why the guidelines were invented created to avoid disparities, and then that is why they were moved from mandatory to advisory to remove disparities and give judges more discretion. Sitting here today, what I know is that it would not be my role as a circuit judge, if confirmed, to opine on those issues and sort through those issues in the way that, for example, the Sentencing Commission would and this body would, and—but my role would be to review cases very carefully, review the record scrupulously to see if sentencing judges at least adhered to the sentencing law and took into account fairly all of the factors that they were supposed to.

If I may address your earlier question about public defenders being able to be fair and neutral judges, I will note that in the Northern District of Illinois, this body has confirmed a few district court judges at the district court level with public defender experience. Those judges have been serving a long time, and they are all doing so diligently, fairly, neutrally, impartially. I will also note that my entire career, I have had to work within the framework of the rule of law. Every argument I ever made to a court was

grounded in a Constitution or a statute. You do not get anywhere with our fine judges of the Northern District of Illinois and the seventh circuit if you make up arguments that do not have a basis in law. I have even had to advise clients when the law is not on their side, when they had an argument that they hoped we might be able to make, and I did the research or I knew immediately that there was no law to support that argument. That happened many times.

I am confident that I can serve, if confirmed, as a neutral, fair, impartial judge who works within the rule of law. I have had to do it my entire career.

Senator FEINSTEIN. Thank you very much. Thanks, Mr. Chairman.

Chair DURBIN. Senator White—Senator Cornyn. I am sorry.

Senator CORNYN. Thank you, Mr. Chairman. Let me say to both of the nominees, I very much appreciate the fact that both of you have had extensive trial court experience as practitioners and as a judge in the case of Ms. Jackson. I think that is a very important qualification for somebody who is going to sit in judgment on an appellate court, that they actually know how the trial courts operate and understand the appropriate standards of review on appeal. Both of you have a very impressive background. I agree with my colleagues that it is important to have—the public have confidence in the judiciary. I think part of that confidence is knowing that people like them can be—serve on the bench and that we applaud that diversity.

I have noticed a difference in the way those issues have been treated in the past when my Democratic colleagues blocked, for example, Janice Rogers Brown, an African American on the DC circuit, Miguel Estrada. Thankfully, we have had some great judges in the—in the Western District, the Northern District of Texas, people like ADA Brown and Jason Pulliam in San Antonio, and then Asian-American circuit court judge, Jim Ho, who was confirmed for the fifth circuit. Since our Democratic colleagues seem to be placing so much emphasis on race and—I just want to ask this question. None of us can choose our parents, and even if we could choose our parents, I suspect that most of us would choose the very parents we have. What role does race play, Judge Jackson, in the kind of judge that you have been and the kind of judge you will be?

Judge JACKSON. Thank you, Senator. I do not think that race plays a role in the kind of judge that I have been and that I would be in the way that you asked that question. I—as I mentioned to Senator Feinstein, I am doing a certain thing when I get my cases. I am looking at the arguments, the facts, and the law. I am methodically and intentionally setting aside personal views, any other inappropriate considerations, and I would think that race would be the kind of thing that would be inappropriate to inject in my evaluation of a case.

I would say that my different professional background than many of the court of appeals judges, including my district court background, which will be different, if I am confirmed, than many of my colleagues, would bring value. It is sort of like the Oliver Wendell Holmes quote that, "The life of the law is not logic. It is

experience." I have experienced life in perhaps a different way than some of my colleagues because of who I am, and that might be valuable—I hope it would be valuable, if I was confirmed to the court—the circuit court.

Senator CORNYN. Thank you very much. Ms. Jackson, the same question for you, please.

Ms. JACKSON-AKIWUMI. Thank you Senator. I agree with Judge Jackson that I do not believe race will play a role in the type of judge that I would be if confirmed. I do believe that demographic diversity of all types, even beyond race, plays an important role in increasing public confidence in our courts, and increases the public's ability to accept the legitimacy of court decisions. It is very akin to the way in which we guarantee a jury of one's peers, and the idea that you walk into the courtroom and 12 people from all kinds of different backgrounds might decide your case. I also think that demographic diversity of all types helps us achieve a role modeling result for young students, law students, young lawyers. It is important for anyone aspiring to public service to know that that path is open to all.

Senator CORNYN. Thank you very much for that answer. For what it is worth, I agree with you. It is well said. Judge Jackson, I just have a few questions for you. You know, in this town, there are lot of people expressing themselves on a variety of topics, and I know you are not responsible for what these third parties are saying. I just want to ask you, first of all, are you familiar with an organization called Demand Justice?

Judge JACKSON. Senator, I know of Demand Justice, yes.

Senator CORNYN. Do you know that they are spending money to promote candidates—your nomination to this circuit court?

Judge JACKSON. If you mean by advertising or placements in various publications, I am aware of that.

Senator CORNYN. Okay. On their website, they say they advocate adding additional seats to the Supreme Court. Do you think Congress should add additional seats to the Supreme Court?

Judge JACKSON. Senator, as a sitting judge, I am bound by the Supreme Court, and I do not think it is appropriate for me to comment on the structure or the size of the Court, any more than it would be for me to comment on the Court's rulings. Regardless of the size, I would follow the precedents of the Supreme Court.

Senator CORNYN. Demand Justice claims that the Supreme Court is broken. Do you think the Supreme Court is broken?

Judge JACKSON. Senator, I have never said anything about the Supreme Court being broken, and, again, you know, I am not able to comment on the structure, the size, the functioning even of the Supreme Court.

Senator CORNYN. Finally, Demand Justice says that the Supreme Court has been captured by partisan Republican interests on their website. Judge Jackson, Ms. Jackson, do you—do you agree with that or disagree, or do you have no opinion? Judge Jackson first.

Judge JACKSON. Senator, I, again, am not able to make any comment about whether or not the Supreme Court is influenced in the way that Demand Justice apparently, as you say, believes that it is. I don't have a comment.

Senator CORNYN. Thank you. Ms. Jackson.

Ms. JACKSON-AKIWUMI. Yes, Senator. I am—I am not aware of that quote by Demand Justice or anything they have said, quite frankly. Likewise, the code of conduct for United States judges does apply to nominees as well, and so, like Judge Jackson, it would not be appropriate for me to comment on any type of views about the Supreme Court. The Supreme Court's rulings would be binding on me as a circuit judge.

Senator CORNYN. Thank you very much. Good luck to both of you.

Ms. JACKSON-AKIWUMI. Thank you.

Chair DURBIN. Thanks Senator Cornyn. Senator Whitehouse.

Senator WHITEHOUSE. Thanks, and welcome to you both to the Committee. I am sorry we are so far apart and spread out here. That is the nature of the—of the pandemic. Usually it is a setting in which we can see one another a little bit better.

I wanted to ask you both questions about fact finding at the appellate level. We had an interesting hearing in my Courts Subcommittee yesterday on this very question. It was my training in law school, my training when mentored by experienced appellate advocates, and my mentoring when I was trying to bring along other appellate advocates, to stay the hell away from the facts because, really, the only two ways that an appellate court gets to look at facts is either to be asked to overturn a factual determination by the court below, which is heavily defended by the clearly erroneous standard, therefore, not usually a great avenue for appellate advocacy, or facts that are really not in dispute, facts of which judicial notice can be taken, that Christmas fell on a Wednesday in a particular year or whatever. What are your thoughts about the role of appellate courts engaging in fact finding that is outside of the record that is presented to the court either by Congress as it put together the statute that is the subject of the challenge, or by the court below as it assembled the record to support its decision? What, as an appellate judge, do you get to do at that point regarding facts?

Judge JACKSON. Thank you, Senator, for that question. Let me just say that my training was similar to yours in terms of the judges for whom I clerked at the appellate level and the way in which, at least I was taught to think, about the role of the appellate court in terms of the facts. I do not, as I sit here, know what the practice is in the District of Columbia, and I will say that we have a little bit of an unusual docket insofar as so many of our cases come through the administrative process where even at the district court level, we are not looking at trials very much, and we are not developing a factual record very much. There is already an administrative record that travels with the case.

Senator WHITEHOUSE. Yes.

Judge JACKSON. I think, you know, I would have to——

Senator WHITEHOUSE. Let us say whether it is the Congressional Record, or whether it is an administrative agency record, or whether it is a trial court record, those are three sources that an appellate court can draw from to determine what the facts are in the case and to support or overrule the finding of the District Court. What happens when a court goes outside those records and starts finding facts on its own, *sua sponte*?

Judge JACKSON. Yes. I, frankly, do not know. I would have to talk with my colleagues and look at the Federal Rules of Appellate Procedure and the practices local rules of our court. I am not sure the circumstance in which the appellate court would feel at liberty to do that sort of thing.

Senator WHITEHOUSE. Okay.

Ms. JACKSON-AKIWUMI. Yes, Senator. Broadly speaking, Senator Whitehouse, Federal courts are courts of limited power, and one duty of circuit court judges, and I remember this fairly—very clearly from my time clerking on the Fourth Circuit Court of Appeals, is to be quite restrained. Federal judges are supposed to be restrained and decide only the issues that appear before them and no other issues. It extends, in the way you described, to fact finding, so it would—it would be from my experience, both clerking and then also litigating before the Seventh Circuit Court of Appeals, quite rare for appellate judges to go outside the record. Sitting here today, I cannot tell you a circumstance where I have seen it in my own practice, so I cannot tell you what exceptions there might be to make that rare thing happen.

Senator WHITEHOUSE. Yes. The case that obviously comes to mind that has enormous impact on those of us in the political line of work is *Citizens United*, which allowed unlimited amounts of money into politics on the predicate, on the premise that all of that spending was going to be transparent and, therefore, would not contribute to corruption or the appearance of corruption in—of the political system. Of course, it is indisputable that it has been anything but transparent, we are well through $1 billion in anonymous political funding.

That fact that Justice Kennedy stood his decision on is simply provably false, which then raises the question now, what do you do about that decision? If that fact was the hinge upon which the decision swung and the fact is false, where do you go?

Judge JACKSON. Senator, for lower court judges, we cannot go anywhere really.

Senator WHITEHOUSE. Yes, even when it is fact finding. I mean, you are supposed to agree with the legal determinations of the Supreme Court and to follow them, but it is an interesting question whether a false factual determination by the Supreme Court merits similar deference or the deference that separation of powers puts the legislative and executive branches under with respect to a Supreme Court decision. It is something to ponder because it has not been the custom of the Court to engage in this free-range fact finding, and particularly false free-range fact finding. Some of the political decisions of the Court have stood on false free-range fact finding, and it raises this whole new interesting set of questions about what do you do when the Supreme Court has made a factual determination that is not supported by any record that is provably false, that is essential to the logic of their decision. Is it really true that all of Government is powerless to address that error?

I have used my time. Something for you to ponder as you move toward your seats on our circuit courts of appeal, which I will strongly support. Thank you.

Judge JACKSON. Thank you.

Chair DURBIN. Thank you, Senator Whitehouse. Senator Lee.

Senator LEE. Thank you, Mr. Chairman. Thanks to both of you for being here today and for your willingness to serve in our judiciary, if confirmed. I am going to dive right in. I have got a number of questions. We will start with you, Ms. Jackson-Akiwumi.

It has been widely reported that President Biden met with you in anticipation of your nomination to the U.S. Court of Appeals for the Seventh Circuit, and congratulations again on that nomination. During that meeting with him, did you—were you asked for commitments regarding, or did you discuss abortion, *Roe v. Wade*, the Second Amendment, or *DC v. Heller*, efforts to defund the police, illegal immigration, any of those issues?

Ms. JACKSON-AKIWUMI. None of the above, Senator.

Senator LEE. Okay. Judge Jackson, what about you?

Judge JACKSON. No, sir.

Senator LEE. Okay. Judge Jackson, in your notes for a presentation that you gave at Columbia Law School in 2019, I believe you said that, "Disparities in judicial outcomes can also occur when judges consider legitimate and relevant factors." Talk to me a little bit about what that meant.

Judge JACKSON. Thank you, Senator. That presentation was a symposium that I had been invited to to comment on an article that was being presented, and the article itself was about judicial bias, and I was critiquing it and making arguments in response to it based on my experience. I believe that the—I would have to see exactly the context of the quote that you read, but what I was suggesting was the idea that, because the factors in the law concerning something like sentencing are open ended, that Congress says you have to sentence defendants to terms of imprisonment that are sufficient, but not greater than necessary, to promote the purposes of punishment, and it lists the purposes of punishment. Any judge who looks at that has basically those broad parameters within which to think about how they are going to sentence. The judge then will have to decide whether they are thinking about deterrence or retribution or various purposes in order to determine how they are going to sentence.

My idea was that a similarly situated judge looking at the exact same set of facts, applying those factors in § 3553(A) could reach a different result, so that you are going to have sort of inherent in the nature of judicial exercise of discretion in the world of something like sentencing, disparity, unbeknownst.

Senator LEE. Thank you. No, that is—that is helpful.

Judge JACKSON. Yes.

Senator LEE. In your—now, I believe you have been a judge now for about 8 years, if I am not mistaken. In your experience as a judge and prior to that, your experience as a lawyer, if—would you agree or disagree with someone who said that that most racial disparities in criminal—in criminal convictions and sentences result from an unconscious racial bias of judges, juries, and other judicial decision-makers? Would you agree or disagree with that statement?

Judge JACKSON. Senator, let me just say that as a judge now, it is very important for me not to make personal commitments about things like the question that you asked, that my personal views about anything do not impact my rulings. I am aware of social science research. There is a professor at Harvard, Professor Banaji,

who has done implicit bias work, and there are studies from the Commission, when I was back at the Commission in the policy-making role, that talked about and indicated that all of us human beings can have biases that we are unconsciously operating on, and that we have to think about that when we are making decisions, and especially policymakers in the criminal justice system.

Senator LEE. Now——

Judge JACKSON. I am aware of those studies, but I am not a social scientist, so——

Senator LEE. No. No, I understand that, and I am just asking for your overall sense as a judge, and certainly not for a commitment on social science. In 2019, in connection with the same—with notes prepared in connection with the same speech, you noted that, "Observed inconsistencies are largely attributable to factors other than group-based bias by judicial decision makers." Does that ring a bell? Is that something——

Judge JACKSON. Yes. In the context of the critique that I was making, because the article had indicated that they saw—they showed research that there were these demographic disparities, and the article said that they were attributable to bias.

Senator LEE. Right.

Judge JACKSON. I was trying to give another perspective.

Senator LEE. Right. What are some of the leading factors that is other than unconscious bias that you see having an impact there that account for some of the disparities that we see in convictions and in sentencing?

Judge JACKSON. One of the things that I was aware of in my time on the Sentencing Commission, and it is something that you all have worked on, were the differences in statutory penalties for things like crack and powder, that many, many——

Senator LEE. Vast disparities between what you get sentenced for with crack versus powder cocaine.

Judge JACKSON. Correct, and that it was having a demographic effect because the research and statistics showed that overwhelming number of defendants, who were convicted of crimes involving crack, were African American.

Senator LEE. Thank you, and that is very helpful. I do want to make sure I get to one other thing I wanted to talk to you about before I run out of time. You have remarked that Presidents are not kings. That is a comment that I have made a number of times as well, and I tend to agree with it. Whenever you are sitting in any court, from time to time you have to review executive actions. It seems like executive actions have more of a likelihood of coming up in the U.S. Court of Appeals for the DC Circuit than many other places. Do you think it would be appropriate under the guise of prosecutorial discretion for any President of the United States to tell an agency not to enforce a particular law?

Judge JACKSON. Senator, I am unfortunately not going to be able to engage in a hypothetical discussion, precisely because those kinds of matters might come before me, and I do not want to prejudge any case that might involve those facts. I do understand the implications of the law related to it, but I cannot tell you whether it would be appropriate or not.

Senator LEE. Okay. I would love to delve more into this. I see my time has expired, but thank you, Mr. Chairman.

Judge JACKSON. Thank you.

Chair DURBIN. Thank you, Senator Lee. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman, Ranking Member Grassley, and congratulations to both of you for your nominations and for your incredible work. Judge Jackson, the last time that you were here in December 2012, then Representative Paul Ryan introduced you. Do you remember that?

Judge JACKSON. I do.

Senator KLOBUCHAR. Okay. Saying, "Our politics may differ, but my praise for her intellect, for her character, for her integrity is unequivocal." On March 23rd, 2013, you were confirmed by this Senate by voice vote and have since presided over many jury trials, bench trials, and written 562 opinions. What have you learned during your time as a district court judge that will inform your service as a judge on the DC circuit?

Judge JACKSON. Thank you, Senator. I have been very fortunate to work in a wonderful district with terrific colleagues. What I have learned is a lot about agency practice. As has been previously mentioned, I did not do agency work in private practice or in my role as a Federal Public Defender. I have learned a lot about how our Government works in talking with my colleagues, and I am looking forward to if I am confirmed, being in constant communication with other judges in looking at some of these very, very complicated issues concerning our Government and its operation. I have learned the importance of having a collegial relationship with your colleagues on the bench, and I look forward to continuing that in my role as a circuit judge, if I am confirmed.

Senator KLOBUCHAR. Very good. Over the course of your service as a judge, you have ruled both for and against the Government, including in *Center for Biological Diversity*, that case are where you—*McAleenan*—where you rejected a challenge by groups opposing the previous administration's plan to build a wall along the southern border. How do you ensure that you impartially review the facts and law when approaching a case, and how will you apply those principles as a circuit court judge?

Judge JACKSON. Senator, I try to stick to the same methodology in my rulings. I try to focus—I do focus on the arguments, the facts, and the law, the binding precedents of the Supreme Court and the circuit. I very much methodically work through an analysis of those issues, of those inputs in every case, and that helps me to not pay attention to who is involved, whether it is, you know, a Government that is being run by one administration versus the other. I am just focused on the arguments that are being made. It is—it is funny because my clerks, sometimes they say, your opinions are all the same. Elementally, they all look the same, and I say, yes, exactly. That is the point. That is what I am trying to do to make sure that I am treating everybody equally, and I am not paying attention to who is in the administration when I am—when I am ruling on a case.

Senator KLOBUCHAR. Very good. Thank you very much for that answer. Ms. Jackson-Akiwumi, again, congratulations to you. You spent many years working as an advocate for various clients in

both criminal and civil cases with a breadth of experience. If you are confirmed to serve on the seventh circuit, which I very much hope you will be, you will have to impartially apply the law. Can you say more—I know you talked a little bit about your experience, but could you talk about how you view the role of a judge and how it differs from that of an advocate, and do you have any reservations about being able to set aside your past advocacy when analyzing a case?

Ms. JACKSON-AKIWUMI. Thank you, Senator Klobuchar. As you indicated, I have had a variety of different roles throughout my career—civil litigator at large law firms, at a small law firm now where I am a partner, or smaller, Federal Public Defender, law clerk to two Federal judges. In each of those roles, I have had to get up to speed in a variety of new areas of law and represent different types of clients: corporations, nonprofit organizations, individuals. I have enjoyed the challenge and the variety, and that is what I fully expect to encounter on the circuit court, if confirmed. I believe that will be a transition that I am up to, and I also am fully confident that I can apply the law neutrally and fairly as a circuit judge.

As I indicated in one of my earlier answers, being an advocate requires you to work within the framework of existing law. You cannot go off on your own. I am prepared to work within the existing framework of seventh circuit precedent, Supreme Court precedent in reaching reasoned decisions.

Then finally, Senator, yes, I am aware that the role of advocate and judge are so very different. As an advocate, your positions are essentially given to you because you must create—you are coming up with the best arguments for your client, the best positions within the framework of existing law to advocate what is best for your client. As a judge, you do not come from that perspective at all. You approach each case open mindedly—with an open mind, and you listen to the arguments of both parties without a thumb on the scale. You do the research. I am familiar with the fourth circuit, the collegial atmosphere. You talk with your colleagues, conference with your colleagues, and then you work through the law to get to a reasoned result, and it is not at all dictated by a position that you started with.

Senator KLOBUCHAR. Okay. Very good. I think that is a good description as well when you look at someone who served as a public defender, and people may, of course, not agree with some of the things that clients that you may have represented or with crimes that were committed, but you have a job to represent them under the law. I think it is that confusion of those issues that have sometimes led the Senate to not confirm some people, and I just see it as—having been in the role of the prosecutor before, done a little bit on the public defender side, more pro bono, just seeing that we have to differentiate that, or we will never have anyone in these jobs that has been as an advocate for clients on the criminal defense side. I guess I would end with that area.

Judge Jackson, you spent 2 years as an Assistant Special Counsel on the U.S. Sentencing Commission, later Vice Chair and Commissioner. How has that experience informed your approach as a

district court judge for sentencing principles, and how will that inform your work as a circuit court judge?

Judge JACKSON. Thank you, Senator. One thing that the Assistant Special Counsel did was to work on the actual drafting of the guidelines. Even apart from the substance, just the meticulous work that was necessary to draft the guidelines has been helpful in my drafting opinions. With respect to the substance, understanding sentencing, understanding sentencing policy and practice, it has really been useful for me as a trial judge because, as I said, I have sentenced more than 100 people, and you use the guidelines manual, as the Supreme Court directs, in order to do that. I came to the job with a—with a sense of what sentencing was about.

I think that for appeals, my experience in actually engaging in sentencings and understanding trial procedures from the trial court perspective would be very helpful because the court of appeals reviews trial court proceedings and sentencings in criminal cases. I think that that perspective should be valuable, if I were confirmed.

Senator KLOBUCHAR. Thank you very much. Thank you to both of you.

Chair DURBIN. Thanks, Senator Klobuchar. Senator Cotton.

Senator COTTON. Congratulations to you both on your nomination. Is it Judge Brown Jackson or Judge Jackson?

Judge JACKSON. Jackson, please. Thank you.

Senator COTTON. Judge Jackson, in your career before you were a judge, have you ever represented a terrorist at Guantanamo Bay?

Judge JACKSON. About 16 years ago, when I was a Federal Public Defender.

Senator COTTON. Okay. Was that case assigned to you as a Federal Public Defender?

Judge JACKSON. It was.

Senator COTTON. Who was the client that you had?

Judge JACKSON. Senator, I do not remember the name.

Senator COTTON. Okay. Could we get that for the record, please?

Judge JACKSON. Sure.

Senator COTTON. Thank you. Ms. Jackson-Akiwumi.

Ms. JACKSON-AKIWUMI. Jackson-Akiwumi.

Senator COTTON. Akiwumi.

Ms. JACKSON-AKIWUMI. Thank you.

Senator COTTON. I want to make sure I get it right. In your legal career, have you ever represented a terrorist at Guantanamo Bay?

Ms. JACKSON-AKIWUMI. No, Senator.

Senator COTTON. Thank you. I want to speak about race discrimination in the Constitution, Ms. Jackson-Akiwumi. Does the Constitution allow the Government to treat Americans differently because of their race?

Ms. JACKSON-AKIWUMI. No, Senator.

Senator COTTON. Thank you. I am glad that we agree on that. Judge Jackson. Same thing.

Judge JACKSON. No, Senator.

Senator COTTON. Thank you. Let us turn to religious liberty, if we can. The First Amendment protects the freedom of religion. This also means the Government cannot institute blanket policies that treat religious organizations, such as churches worse than

they treat secular organizations, such as restaurants or clubs or casinos. Is that right, Ms. Jackson-Akiwumi?

Ms. JACKSON-AKIWUMI. Senator, the—the First Amendment protects religious liberty, religious freedom, exercise of religion, and those—all of those issues are being actively litigated right now, including at the Supreme Court.

Senator COTTON. The Government cannot treat a religious organization worse than they would a secular business, like a restaurant or casino. Is that correct?

Ms. JACKSON-AKIWUMI. Senator, you are referring to the principal about neutral laws and that—there is a principle there that if a law is neutral as to everyone, a religious organization can be included. That—it is my view that the Supreme Court is testing the area of that. For example, the Supreme Court recently granted an injunction out of California that involved one of those issues. I just wanted to be sure to reflect the nuance there, Senator, and the fact that the Supreme Court is working through those issues. I will also add that First Amendment litigation has not been my area of practice the last 10 years or even 16 years, but that is my broad understanding of what is happening with the clause right now at the Supreme Court.

Senator COTTON. Thank you. Judge Jackson.

Judge JACKSON. Yes, Senator. I, too, have not had many cases involving religious liberty issues. I have one right now that might involve some of these issues, but I am aware that the Supreme Court has rightly viewed the First Amendment right to religious liberty as foundational, fundamental. It is in the First Amendment, and the Supreme Court is working through the doctrine. There have been a series of cases in the last few years as the Court determines what it means to treat religious organizations differently.

Senator COTTON. Thank you. Let us turn to the Second Amendment, Ms. Jackson-Akiwumi. Do you believe the Second Amendment protects an individual's right to keep and bear arms for self-defense?

Ms. JACKSON-AKIWUMI. Senator, the Supreme Court has said that very clearly. That was Justice Scalia writing in *Heller* that the Supreme Court protects an individual's right to keep and bear arms.

Senator COTTON. Which has been extended to the State and local governments through *McDonald*, correct?

Ms. JACKSON-AKIWUMI. That is correct, Senator.

Senator COTTON. What do you believe are the limits on that right?

Ms. JACKSON-AKIWUMI. That is the very thing that circuit courts across this country and the Supreme Court are figuring out right now.

Senator COTTON. Have you—do you have any personal views on that? Have you——

Ms. JACKSON-AKIWUMI. If I had any personal views, they certainly would not be relevant to decision-making that I would engage in as a circuit judge, if confirmed. I would be bound by the Supreme Court's precedent in *Heller*, in *McDonald*, and any of its progeny that develops.

Senator COTTON. Okay. Judge Jackson.

Judge JACKSON. I agree wholeheartedly with what Ms. Jackson-Akiwumi said. Any personal views regarding the fundamental right to bear arms would have no bearing on my decision-making concerning those issues, and I would be bound by the Supreme Court's and the DC circuit's precedents concerning the issue.

Senator COTTON. In *Heller* and *McDonald*?

Judge JACKSON. In *Heller* and *McDonald*.

Senator COTTON. Thank you. Ms. Jackson-Akiwumi, do you agree with Justice Stephen Breyer and the late Justice Ginsburg that the Supreme Court should have nine Justices and Justices should not be added?

Ms. JACKSON-AKIWUMI. Senator, I will have to admit that I am not familiar with their particular views on that issue, and I do not think it would be appropriate, as I indicated in a question from your colleague, for me to opine upon the composition of the Supreme Court or what should or should not happen. It is a question that this body must sort through. It is a question left to the legislative branch and the executive branch.

Judge JACKSON. Yes, Senator. I am currently——

Senator COTTON. I will not even ask since you are sitting——

Judge JACKSON. Okay. Thank you.

Senator COTTON. All right. Thank you both for your testimony today, and congratulations again.

Ms. JACKSON-AKIWUMI. Thank you.

Chair DURBIN. Thank you, Senator Cotton. Senator Coons.

Senator COONS. Thank you, Chairman Durbin, and welcome to our two nominees who are before this Committee today. Both of the nominees before us are highly qualified and impressive candidates, and both have demonstrated a commitment to justice and fairness throughout their extraordinary legal careers.

Judge Jackson, some critics have pointed to cases where you ruled against the Trump administration and somehow suggest that is evidence you are biased. A review of your actual record shows you have ruled both for and against administrations of both parties, even on some pressing and important legal matters with political overtones. Could you speak about some of these examples and how it is a mischaracterization of your judicial record to simply look at your record in the last 4 years?

Judge JACKSON. Thank you, Senator. I tend to leave it to others to characterize my record. I am doing the work of analyzing the arguments and the facts and the law in every case.

Senator COONS. Can I reframe that——

Judge JACKSON. Yes.

Senator COONS [continuing]. If that would be helpful. Thank you. If we try to assess a judge's record simply based on sort of a scorekeeping of which administration either they were confirmed under or they rule for or against, what does that miss about a judge's judicial philosophy and qualifications, and is that an adequate way to assess how you as a nominee for an important circuit seat would approach a case?

Judge JACKSON. I do think it misses quite a bit because, as—I am applying a methodology as I go through my cases, and it involves fastidiously looking only at the arguments that the parties are making, the facts, and the law. Sometimes those arguments are

being made by one party or another in a Government case, but that does not matter because I am testing out the merits of the claims that are being made and how the law—the binding law of the Supreme Court and the DC circuit applies to those claims in light of the facts. If you look at a judge's body of work, you will see that the claims, and the law, and the facts do not vary really based on party. Sometimes you are going to find cases in which the judge might rule in favor of one administration. Sometimes you might find against. That is not what is the driving force behind the judge's rulings.

I have had cases, many cases, in fact, that I can think of in which I have ruled partially for one party or the other. That—"party" meaning a party in the case, not a political party—so that it is a split decision, and, you know, both parties in the case are upset at the end of the day, but it is because that is what I believe the law required. If the judge is going to do their duty, they are not focused on the same political dynamics that you are talking about that other people try to find in their rulings.

Senator COONS. Can you both, but I will ask you to go first, if I could, Judge Jackson, just speak to the value of an independent judiciary, one that is insulated from temporal partisan political considerations?

Judge JACKSON. Senator, I think it is one of the bedrocks of the rule of law, which, as you know, is a foundational constitutional principle. It is what everything in our Government is really erected around. If you do not have judges who are able to do their duty, their *Marbury v. Madison* duty, saying what the law is independent of the political branches, then we have lost that very important check that the founders wanted us to have. It is the way our Government was constructed. The independence of the judicial branch is crucial.

Senator COONS. Thank you. Ms. Jackson-Akiwumi, would you also care to comment on the significance or importance of a Federal judiciary independent from the sort of winds of politics?

Ms. JACKSON-AKIWUMI. I will say, Senator Coons, it is hard to improve upon the answer that Judge Jackson just gave. I will also add that I have clerked for two Federal judges, and every single judge I have ever appeared in front—in front of seemed to understand this foundational principle about their independence. It does not seem to be in dispute among the judges I have appeared in front of and worked for.

Senator COONS. My understanding is both of your parents were also judges. Could you just fill me in briefly on what motivated you to pursue a career in service, and, in particular, in the law?

Ms. JACKSON-AKIWUMI. Thank you, Senator. It is true. I grew up in a family that very much valued public service. I always knew that the bulk of my career would be spent working in the public interest, so I am honored to have this opportunity and the faith of the President and our community in returning to public service. It is simply an honor. My parents have taught me a lot throughout my life. In terms of their judicial careers, I certainly witnessed my father do the very thing you just finished discussing: rule without fear or favor and understand his independence. I watched my mother put litigants first, even at risk of her own body. She sat for

hours on the bench because she knew that litigants had taken time off from work to come to court. Police officers were away from their beat. Caregivers were away from their families. She did not want to delay the administration of justice, so she sat for hours without taking a break. I learned a lot about service from my parents and judicial service long before the thought of serving our country in this way ever came to me, long before I was presented with this opportunity by our President.

Senator COONS. Last question. You would bring some badly needed diversity to the seventh circuit of several kinds. The Cato Institute had a study that showed there were four times as many prosecutors as defense attorneys in the Federal judiciary. In terms of background, life experiences, upbringing, racial, gender background, having a more broadly diverse Federal judiciary is a goal of this administration, and certainly one that I strongly support. Could you just speak briefly to what difference does that make, and why is that a value, professional experience and background diversity, for our Federal judiciary?

Ms. JACKSON-AKIWUMI. As I indicated earlier, demographic diversity and professional diversity certainly increase public confidence in the court—in our court system. People can accept decisions as more fair knowing that a broad array of judges have considered the matter and the courts are not restricted to just some. There is an important role modeling function so that young people in our country—young students, law students, young lawyers—know that the path of public service on the bench is open to everyone, not just those who have taken a certain career path. Then I hope to be able to bring something to discussions with my judicial colleagues, if confirmed, because of my experience, just in the way——

You know, I am aware of the collegial nature of our circuit courts, and from clerking, I am aware that judges conference after oral arguments to discuss their impressions about any particular case. Just like a colleague with a background as a State court judge might notice one fact in the record and want to discuss that, or a colleague with a background in mergers and acquisitions might notice another fact in the record and want to discuss that, or a prosecutor still yet another fact, I hope that I, too, can bring something to our discussion because of my experience as a Federal Public Defender and, thereby, enhance our collective discussion and decision-making.

Senator COONS. Thank you both. I really appreciate your answering my questions. I look forward to supporting your nominations. Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Coons. Senator Hawley.

Senator HAWLEY. Thank you, Mr. Chairman. Thank you to the nominees for being here. Congratulations on your nominations. Ms. Jackson-Akiwumi, if I could start with you, I want to ask you again about the *Reginald Taylor* case in which I think you served as a defense attorney. This was an armed robbery case. When I asked you about your sentencing memorandum in this case, you argued in that memorandum that the defendant should not be subject to the 15-year mandatory minimum for—the armed career criminal minimum, that is, should not apply to this defendant. It was a mandatory minimum, so just walk me through this. What was your

argument about not applying a mandatory minimum sentence? Is it your view that the judges should be free to depart from those mandatory minimums? Help me understand your argument there.

Ms. JACKSON-AKIWUMI. Thank you, Senator, for the question, the opportunity to address that. That argument was based on the Armed Career Criminal Act, which stated—Congress stated that defendants should only be subject to the mandatory minimum if they had certain predicate offenses in their criminal history. The predicate criminal offense that the Government relied on in Mr. Taylor's criminal history was residential burglary. The Supreme Court, and the seventh circuit, and many circuits around the country were working through the issue of whether residential burglary qualified as a predicate offense. We took the position that residential burglary did not qualify as a predicate offense, and if it did not, that meant the mandatory minimum of the Armed Career Criminal Act would not apply in Mr. Taylor's case.

Senator HAWLEY. Very good. That makes sense to me. Let me ask you about something you wrote in that same sentencing memorandum. You wrote that this departure from the—from the mandatory minimum was appropriate because, and I am quoting now, "When Black defendants continue to receive a longer sentences than white defendants for the same crime, no additional time should be added to further entrench this disparity." Is it your view that the Armed Career Criminal Act or mandatory minimum sentences in general are racist and inherently racially disparate?

Ms. JACKSON-AKIWUMI. Senator, thank you for that question as well. There has been research by the Sentencing Commission and other agencies in our Government that have showed—have shown—the research has shown the racial impact of mandatory minimum sentences. It is an issue that this body and this very Committee has considered. What I was referring to in that portion of my sentencing memorandum that you quoted is the Supreme Court law—there is Supreme Court caselaw that says above and beyond a mandatory minimum, a judge does not have to impose any additional time. If the judge, in her discretion, feels that the mandatory minimum will impose what Congress has stated the standard is, a sentence that is sufficient, but not greater than necessary, then the judge does not have to add time on top of that. The argument that I was making to the judge was, look, court, if you feel the mandatory minimum imposes a sufficient, but not greater than necessary, sentence on Mr. Taylor here, please do not add additional time on top.

Senator HAWLEY. Let me ask you a question that I have asked other nominees who have come before this Committee. Do you think that the U.S. Criminal Justice System is systemically racist or is infected with systemic racism and bias?

Ms. JACKSON-AKIWUMI. Senator Hawley, those are not terms that I use. In the law, when we look at issues of race, we look at discrimination, which has very specific standards under Supreme Court and statutory law in terms of making findings. Courts will be generally looking for attorneys to prove up discriminatory intent, discriminatory impact, in some cases, retaliation. There is no Supreme Court doctrine that speaks to systemic racism, and it is certainly not a—those certainly are not words that I have ever

used in a court of law to make claims based under the Constitution or the applicable statute.

Senator HAWLEY. Those are, just to be clear, that is—those are not words, descriptors you would use to describe our criminal justice system as it currently exists.

Ms. JACKSON-AKIWUMI. That is certainly not the way, as an advocate, I would be able under the law to approach any case involving race.

Senator HAWLEY. Very good. Let me ask you about the Adam Walsh Child Protection and Safety Act. In a presentation you did for the Illinois Institute of Continuing Legal Education, you stated at the time that the law includes a new mandatory minimum condition—mandatory condition, rather, of electronic monitoring for all persons who are charged with a long list of sexual abuse or pornography crimes, including failure to register as a sexual offender under the appropriate statute. In your presentation to other defense counsel, you noted that a number of district courts had found this act unconstitutional as a violation of the excessive bail clause of the Eighth Amendment, procedural due process ground under the Fifth Amendment, and separation of powers doctrine.

I just want to ask you about this since you were advocating these—making these arguments to other defense counsel. Do you believe that the Adam Walsh Child Protection and Safety Act is unconstitutional on Eighth Amendment grounds?

Ms. JACKSON-AKIWUMI. Sitting here, Senator, I actually cannot remember that presentation that you are referring to or anything I might have said in that presentation. What I can tell you is that, if confirmed as a judge, I am certainly bound by the statutes of this body, and would be called upon to apply them to the facts of any case that is before the seventh circuit.

Senator HAWLEY. Very good. I wanted to ask you the same question about the statute being unconstitutional on Fifth Amendment grounds or separation of powers grounds. Is your answer the same for those as well?

Ms. JACKSON-AKIWUMI. Yes, Senator. I am sorry. I do not recall that presentation or the content.

Senator HAWLEY. That is fine. What we will do is I will give this to you as a question for the record, which will give you the opportunity to go back and look at your notes, and you can get back to us on that one you have had a chance to review.

Just in my final moments, I wanted to say, Judge Jackson that I noticed—I think I am right about this—that you served as some years ago on the Board of Montrose Christian School. Is that right? Have I got—have I got that right?

Judge JACKSON. Yes, Senator, for about a year.

Senator HAWLEY. Got it. I mention it because I noted in the Board's Statement of Faith at the time, it said that, "We should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death." It went on to say that, "Children from the moment of conception are a blessing and heritage from the Lord." The school also took the position that, "Marriage is the uniting of one man and one woman in a covenant commitment for a lifetime, and that the State has no right to impose penalties for religious opinions of any kind." Those are posi-

tions that I happen to agree with, which is beside the point. I raise them because I distinctly recall that Justice Amy Barrett was attacked for serving on the Board of Trinity School, which took similar positions. I defended her at that time. I would certainly defend your right to religious liberty and to serve on this board, whatever your opinions may be at the same time. I take it that from your service that you believe in the principle and the constitutional right of religious liberty. Is that fair to say?

Judge JACKSON. Senator, I do believe in religious liberty. That is a foundational tenet of our entire Government, our constitutional scheme. The Supreme Court has made clear through its caselaw that governments cannot infringe on people's religious rights. Those ideas, that concept comes from my duty to observe Supreme Court precedent, to follow its tenets, not from any personal views that I might have, and any personal views about religion would never come into my service as a judge.

I would also say that I have served on many boards, and that I do not necessarily agree with all of the statements of any—or all of the things that those boards might have in their materials. The statement that you read, I am not even sure that was something that was in the school's circumstances at the time that I was there because I was not aware of that. In any event, I do believe in religious liberty, yes, Senator.

Senator HAWLEY. Thank you very much. Thank you, Mr. Chairman.

Chair DURBIN. Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman. Thank you both for your willingness to serve. Thank you to your families who are undoubtedly very, very proud of you, justifiably so, and I am proud to be here as a Member of the Judiciary Committee to be involved in your confirmation. I will support you because you are both superlatively well qualified by your academic background, your professional standing, your service to our Nation, and your families'.

I want to just begin by saying that you both have backgrounds as public defenders. I served for 4½ years as United States attorney in Connecticut, the chief federal prosecutor. I then was attorney general of our State for 20 years, involved in law enforcement. I really welcome the President's emphasis on elevating and showing that public defenders are as deserving, by virtue of their background, to appointment as a Federal judge as a prosecutor, as anyone else. I know that the positions are very competitive now, but public defenders bring a perspective to judging that prosecutors may not, just as people who come from private practice bring a different perspective. I congratulate and thank you for your backgrounds as public defenders.

Likewise, I think diversity is very, very important on both of the circuits that you will join. The seventh circuit presides over 7.5 million people of color, and its jurisdiction includes Chicago, Milwaukee, and Indiana—Indianapolis, among other cities. Yet all of the judges currently sitting on the court are white. In 2021, I am dumbstruck. It is breathtaking that a Federal circuit court in any part of our country is all white, and I have remarked on this point before. Just to say it again. Again, thank you to the President,

thank you to you for helping to correct this injustice which undermines the faith of the public in our judiciary.

The reason that we are still as strong and resilient as we are as a democracy is because of an independent judiciary that has had the courage to stand up to the kind of potential abuse in our democracy that we have seen, the contempt for the rule of law that we have seen at the highest places in a past administration. I want to avoid unnecessarily going into politics here, but I do think that we are at a moment when we need to thank the judiciary as an independent branch of Government, most especially our district courts, our courts of appeals, for continuing to stand strong for our democracy. I am proud to support you.

I just want to ask each of you roughly the same question I asked Judge Jackson 8 years ago as a nominee for the district court about your positions on sentencing discretion. This issue is critically important now as we approach the Justice in Policing Act and possible revisions to our law to make it fairer and more just. Sentencing is an enormous power. You will not have it as circuit court judges, but I would be interested in your views as to when departures from the sentencing guidelines are justified and some of the more common reasons there ought to be for departing from those sentencing guidelines. Perhaps you could give us the benefit of your experience on that point?

Judge JACKSON. Senator, thank you for that question. The sentencing system has gone through different phases, and we are now at a point in which not only do we have the guidelines manual and the departures that are in the manual. As a result of the Supreme Court's decision in *Booker*, now judges can use the guidelines as a starting point for their analysis, and they can determine whether the guideline sentence and any departures are a sufficient penalty for the case. What that has meant is that in some districts, judges do not depart in the same way.

The departures are grounds within the guidelines manual for imposing a sentence that is different than the one that comes out just from the initial calculation. In the guidelines manual, there is a lot of room for judges to take into account certain factors concerning the circumstances of the individual in departing. In my district, I know the judges tend to, what we call, vary from the guidelines as well in circumstances in which, let us say, the age of the person may mean that the guideline penalty is too much. There are lots of different reasons—mental health reasons are in the guidelines—but they tend to be factors that have to do with the individual. Then there is also the most prevalent departure, which is one that prosecutors actually recommend in a situation in which a person is cooperating.

All of those factors enable judges now in our system to impose sentences that are sufficient, but not greater than necessary. Congress obviously, as the policymaking body, has to continue to evaluate whether any changes need to be made.

Senator BLUMENTHAL. Thank you. Ms. Jackson-Akiwumi.

Ms. JACKSON-AKIWUMI. Senator Blumenthal, this is my second time saying it today, but it is hard to improve upon the answer that Judge—very comprehensive answer that Judge Jackson gave. She accurately described the sentencing regime I litigated under

for a decade, and in every case—in almost every case, I will say, where judges departed from the guidelines and I was representing a client, it was because of the presence or absence of mitigating or aggravating factors. There would be aggravating factors that warranted, in the judge's mind, a higher sentence—guideline sentence in the rare case, and in the more common case, mitigating factors that warranted a sentence lower than the advisory guideline range.

In all of those cases, the judges were still operating under the statutory framework that this body laid out about how they should sentence. Only one of those many statutory factors was the sentencing guideline, so there are many other things that judges needed to look to. Thank you.

Senator BLUMENTHAL. Thank you very much. Thank you, both of you, and thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Blumenthal. Is Senator Tillis available remote?

Senator TILLIS. I am, Chairman.

Chair DURBIN. Please proceed.

Senator TILLIS. Thank you, Mr. Chairman. To Judge Jackson and Ms. Jackson-Akiwumi, congratulations on your nomination. I am sure your family and your friends are very proud of you, and rightfully so. Mr. Chairman, I think it is important to highlight one of the key reasons why we have these nominees before us today. The group, Demand Justice, a group I have spoken about in this Committee before and I spoke about it when Senator Whitehouse held a hearing on the issue of dark money campaigns behind judicial nominations, that group is largely responsible for the nominations that we have before us today.

Demand Justice is a dark money liberal group whose first priority is getting left-wing judges who will follow a liberal agenda instead of the Constitution, if confirmed. I should also add Demand Justice is spending millions of dollars advocating for the expansion and the packing of the Supreme Court. In fact, they have been pushing for liberal judges since before President Biden was even elected. Like many of us last year, Demand Justice called on candidate Biden to release a potential list of Supreme Court nominees, but he refused. However, Demand Justice released a list of their preferred Supreme Court nominees. The short list was first produced and released on October 15th, 2019. Without objection, Mr. Chairman, I would like to submit two documents that were on the Demand Justice website for the first and the second list that I will talk about in a moment.

The first list contained 32 names of bold progressive leaders who would help rebalance the Supreme Court. According to Demand Justice, their list included lawyers who have championed progressive values as public defenders, public interest lawyers, scholars, plaintiff's lawyers, and elected officials. However, the two nominees before us today we are not on the first Demand Justice list, but in April 2020, Demand Justice released the second short list of their Supreme Court nominees for soon-to-be President Biden to pick from. Both Judge Jackson and Ms. Jackson-Akiwumi were on this list—on the second list from Demand Justice, and now they are sitting in front of this Committee today as nominees to circuit court positions.

What changed between the first Demand Justice list and the second one? In Judge Jackson's case, roughly one month after the first Demand Justice Supreme Court short list came in, Ms. Jackson—Judge Jackson issued a ruling in a case brought by House Democrats who wanted to compel former White House counsel, Don McGahn, to testify. We can debate the conclusions of Judge Jackson—that Judge Jackson made. One thing is clear: the 120-page ruling had a purpose. I think Rachel Maddow explained the purpose of the 120-page ruling well. If the production crew can run the video clip of Ms. Maddow, do so now.

[Video is shown.]

Senator TILLIS. Just to repeat some of the comments, the ruling was written with a broad audience in mind. It is not just a legalistic thing, kind of a judicial ruling, that is. If this were an indictment, it would be a speaking indictment. This is a ruling designed to be read by people outside of the case. This case was one month after the Demand Justice Supreme Court short list came out.

The Demand Justice released their second Supreme Court short list in 2020, and Judge Jackson was added. How is this any different from what Democrats have accused Republicans of for the last 4 years, or is it suddenly okay when it is liberal dark money—a liberal dark money group picking the nominees for the highest courts in the country? Mr. Chairman, again, I would like to have—seek unanimous consent to add the two short lists from the Demand Justice website, and thank you.

Chair DURBIN. Without objection, they will be.

[The information appears as a submission for the record.]

Chair DURBIN. Does the Senator have any further comment or questions?

Senator TILLIS. No, sir. I am clear.

Chair DURBIN. Senator, I am going to ask Judge Jackson if she would like to reply to your question or comment—it was not a question—and it will be her decision. Judge Jackson?

Judge JACKSON. Yes, thank you, Mr. Chairman. I have been a Federal judge for 8 years, and I have a duty of independence. I clerked for three Federal judges before I became a judge, and they were models of judicial independence. What that has meant is that I know very well what my obligations are, what my duties are, not to rule with partisan advantage in mind, not to tailor or craft my decisions in order to try to gain influence or do anything of the sort. I have no control over what outside groups say about my rulings. I have no control over what reporters say about my rulings. To some extent, all of my 560 opinions are written for people outside of the case. They are written for the public, they are written for the appeals court, and they are written for the parties.

My statement is that I have always been an independent judge, and I believe that that is one of the reasons why the President has honored me with this nomination.

Senator TILLIS. Judge Jackson, I said from the onset that it was one of the factors, not all of them. I am sure your jurisprudence weighed into it. Your response would read almost identically to dozens of judges who came before the Judiciary and they were—they were rejected out of hand. The fact of the matter is dark money is influencing it. Demand Justice is trying to expand the Su-

preme Court. You can understand after 4 years of hearing how the Federalist Society and other organizations were a dark money group with malign intentions, a group that is very much supporting you, why we would draw the same conclusion. Thank you, Mr. Chair.

Chair DURBIN. Thank you, Senator, and let me just add one other element. I did not want to incorrectly infer this, but I want to make it clear, this hearing was scheduled today, not because of any plea by any special interest group at all. The nominees go through an extensive background check. All of them do, and it takes some period of time before that is completed and submitted to the Committee, to both sides of the Committee, Republicans and Democrats. We have scheduled the five judicial nominees today as soon as that process had been completed, and it takes time some time. I am sitting here looking through your questionnaires. I do not know how you managed to accumulate all this information in response, but it was a good faith effort, I am sure, to comply with everything under the law, and as soon as it was ready, we set this hearing. No outside group demands or pleas had anything to do with the timing of this hearing.

Senator Hirono, are you available by remote?

Senator HIRONO. Yes, I am.

Chair DURBIN. It is your turn.

Senator HIRONO. Thank you, Mr. Chairman. Democrats have long criticized the role of dark money in politics and certainly in judicial nominees, so if what I am hearing is that our Republican colleagues are now on the same page with us in criticizing dark money, then we should all be voting for legislation to require disclosure of dark money sources. I welcome that change from the Republicans. I congratulate our two nominees. You are eminently qualified. That is why the President has nominated you for these important judicial positions. Again, I congratulate both of you.

I ask the following two initial questions of every nominee who comes before any of the Committees on which I sit. These questions are, first question, since you became a legal adult, have you ever made unwanted requests for sexual favors or committed any verbal or physical harassment or assault of a sexual nature? I would like to each of you to respond.

Judge JACKSON. No, Senator.

Ms. JACKSON-AKIWUMI. No.

Senator HIRONO. Next question. Have you ever faced discipline or entered into a settlement related to this kind of conduct?

Judge JACKSON. No, Senator.

Ms. JACKSON-AKIWUMI. No, Senator.

Senator HIRONO. Both of you have served as public defenders, and you have been asked some questions about that. For Ms. Jackson-Akiwumi, in 2014, you gave an interview to Yale law women, in which you discussed being a Black woman attorney. You described the burden you carry, like when a prosecutor accused you of being overly aggressive and yelling just because you forcefully made a point, but you also described the benefits. You said, "Sometimes my client's families are very grateful to see me, a young Black woman, in a position of power. I can inspire a client's child without even knowing it." You are nominated to fill a seat in the

seventh circuit, which would make you the first Black person—person of color on the bench. What is the significance of that fact to you?

Ms. JACKSON-AKIWUMI. Thank you, Senator Hirono. I want to note I would be the second person of color nominated to the seventh circuit. Judge Ann Claire Williams served ably for decades and retired in 2017. I indicated earlier, and I stand by it, that there is the same role modeling function that I played when I was an advocate that I was referring to in that interview. Oftentimes, you can inspire a client's child without even knowing it because it might be the first time that they have seen a Black woman standing up in court before the bench, and the same would be true if I were confirmed as a judge. I could serve as a role model for any number of people coming behind me, and that is not limited to people of the same race or same gender. One can inspire any number of people, and I would hope to do that through my service, if confirmed.

Senator HIRONO. I very much appreciated your noting the importance of demographic diversity and professional diversity, such as being a public defender, to achieve role modeling that you speak of. This kind of modeling truly should reflect the diversity of our country. I very much appreciate your saying that. Getting back to both of you serving as public defenders, these are highly competitive and difficult jobs. I am sure you could have been—gone to a prosecutor's office, et cetera. We rarely have considered public defenders—defender nominees in the Judiciary Committee. Can you talk a little bit more, both of you, each of you, why you sought out these positions as public defenders?

Judge JACKSON. Senator, my service as a public defender was a while ago. I am trying to think back on my reasons. I had come from a staff position on the Sentencing Commission and was working on sentencing—just a sentencing policy. I remember thinking very clearly that I felt like I did not have enough of an idea of what really happened in criminal cases, and I wanted—I wanted to understand the system, if for no other reason than to be a better policymaker at the end of the day, although I did not end up ultimately doing that. I thought it would be a good opportunity to help people as well. I come from a background of public service. My parents were in public service. My brother is—was a police officer in the military. And being in the Public Defender's Office felt to me very much like the opportunity to help with my skills and talents.

Senator HIRONO. It sounds as though it is the kind of experiential diversity that was mentioned. I think that is also really important to understand, the people who come before you and whose lives you can impact with your decisions. Would you like to also respond, Ms. Jackson-Akiwumi?

Ms. JACKSON-AKIWUMI. Thank you, Senator Hirono. When I initially applied to become a Federal Public Defender, I was looking for a job where I could help protect constitutional rights and work in that realm. I was really looking forward to being a trial litigator and an appellate litigator. At the Federal Defender Program in the Northern District of Illinois, we represented our clients from arrest all the way through appeal, even when they wanted to petition for cert in the U.S. Supreme Court, which I did in in two cases, and

I was also looking to represent individual clients. At that time, I had been a civil litigator for 3 years, and most of my clients, at least on the billable side, were corporations, nonprofit organizations. I was only representing individuals through my extensive pro bono work at the firm, so I wanted to do it full time.

Having had the benefit of 10 years of this kind of service, I see I was absolutely right about the reward that comes from helping our country to live up to its constitutional ideals in the Sixth Amendment, that everyone should have the assistance of counsel. What I also did not appreciate when I began, but quickly learned over the course of that 10 years, was how gratifying it was to walk with someone through the toughest days and nights of their lives when they were being judged for the worst moments in their lives, and to serve as a guide, counselor, investigator, social worker, strategist, negotiator. There were so many hats in addition to a trial litigator, appellate litigator, oral advocate, written advocate.

There was no end to the variety of ways that I was being called upon to help people and to help communities, and also to even help victims because the system works when everybody is ably represented, and certainly many of my clients were clients one day, but they had been victims the day before. It was a robust way to help our country live up to its constitutional values, and it was really an honor and privilege to do that.

Senator HIRONO. Thank you. Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Hirono. Appreciate it very much. Is Senator Blackburn available by remote?

Senator BLACKBURN. Yes, I am. Thank you, Mr. Chairman.

Chairman DURBIN. Please proceed.

Senator BLACKBURN. I am so pleased that we have these two nominees in front of us today. Judge Brown, I want to come to you first, if I may. I know you are fully aware that you are discussed regularly as a future Supreme Court nominee. Many of our Supreme Court nominees are—they come from the circuit that you would be serving on. We do have some that are advocating to pack the Court and expand the Court, and I know that has been discussed. I think Senator Cornyn talked with you about it earlier. This is something I see as a dangerous proposal because it would basically set up a judicial arms race. If somebody adds, somebody else is going to add, and we know that—it is said that even President Roosevelt's threat and unsuccessful attempt to pack the Court was enough to intimidate Justices.

First of all, do you believe that deliberately expanding the Court to allow one President to pack it with their nominees would undermine confidence in our laws and undermine the separation of powers? Then, second, if they were to expand the Court, if President Biden did that, would you accept Supreme Court nomination under those circumstances?

Judge JACKSON. Thank you, Senator. I am currently a sitting judge in the lower courts, and as such, I am bound by Supreme Court precedent and by Supreme Court rulings. I do not think that it is appropriate for me to comment on proposals about the structure of the Court, about expanding the Court, or anything of the sort, just as it would not be appropriate for me to talk about or cri-

tique or comment on Supreme Court precedent. I am unable to answer your question——

Senator BLACKBURN. You are aware that groups that are advocating for you support that.

Judge JACKSON. Senator, there are lots of people who have expressed their support for me——

Senator BLACKBURN. All right.

Judge JACKSON [continuing]. I am gratified, but I am really focused on this nomination, and I am hoping to be confirmed to the DC circuit.

Senator BLACKBURN. Okay. Ms. Jackson-Akiwumi, I appreciate the comments that you have had to say about diversity. I always say that having a good input—having good relationships with individuals who are different from me and who have different points of view from me is something that is important to help me in public policy and to do a better job in representing all Tennesseans, so I appreciate the comments that you have made there. I also noted, as I looked through your record, that you have represented many different clients during your tenure with the Federal Defender Program, and you have been a zealous advocate for those clients. I want to draw attention to a case where you defended a man who preyed on women for sex, trafficked—prostituted them. His victims accused him of physically restraining them with a firearm. Despite believing all women, you called these women liars to cast doubt on their testimonies, and claimed there was no evidence from the victims' testimonies and their words were dishonest. In your sentencing memorandum, you further shamed the victims' alleged prior prostitution work to support a more lenient sentence for your client. Do you support believing survivors of sexual violence and crime?

Ms. JACKSON-AKIWUMI. Thank you, Senator Blackburn, for the question. I am not sure which case you are referring to. As we have shown, I have represented more than 400 clients, and a number of those cases were sex offense cases. What I can say is that calling a victim a liar is not something that I have done in court or in written record. It is certainly my job as an attorney to examine the evidence and present questions about the evidence to the court, where appropriate and where necessary. Then the——

Senator BLACKBURN. Okay. Let us do this. Let me give you the specific case, and you can submit in writing because your sentencing memo is something that does cause me concern, and we have been through a time where a previous Supreme Court Justice, Kavanaugh, during that. We have got an issue right now with Governor Cuomo and whether—knowing where you stand on that, I think, is really important. I will get that to you in writing. Is that okay?

Ms. JACKSON-AKIWUMI. Thank you, Senator.

Senator BLACKBURN. Thank you. I appreciate that. Judge Jackson, I want to come back to you. In 2019, you granted a preliminary injunction against a DHS rule expanding the use of the Department's statutory authority to use expedited removal procedures. The DC circuit then reversed your injunction and found that Congress granted the DHS Secretary sole and unreviewable discretion on expedited removal determination to enforce our immigra-

tion laws. Since the beginning of President Biden's term, the amount of illegal border crossings has skyrocketed, and it appears that we will exceed everything that we hit at that border in 2019.

Last month, Border agents took over 170,000 migrants into custody at the southern border, including 19,000 unaccompanied children. These border apprehensions have hit a 15-year high. The Biden administration's flawed immigration policy has only encouraged more and more migrants coming to the country illegally. On top of that, the administration is failing to properly handle the surge in illegal crossings, and has allowed our country's borders to be overwhelmed. They have even failed to acknowledge the crisis exists. The administration's failures have caused massive suffering and endangered communities, and anyone who has not been to that border needs to go. I was astounded.

Judge Jackson, do our Homeland Security officials lack sufficient authority to act decisively and timely to keep us safe and enforce these immigration laws?

Judge JACKSON. Thank you, Senator. I have had a number of immigration cases, and in those cases, like the one you mentioned, what I am doing is I am evaluating the law, the immigration law's very complex scheme, the facts in the particular case and the claims that are being made, the arguments of the parties. I am not assessing the policy. I am not making a determination about—sort of in a general sense of whether or not DHS officials have enough authority or any other sort of policy consideration. Given what it is that I do and that is in my purview, I cannot say whether they have enough authority.

What I can tell you is that in the case that you referenced, that I worked on, there was a disagreement. The DC circuit disagreed with the way I would analyzed the statute, and that sometimes happens. The judges disagree on statutory interpretations, and so they made the ruling that they made, and that is binding precedent now in our circuit for how that statute is to be interpreted.

Senator BLACKBURN. Okay. All right. I have one other I will submit to you for writing, and it has to do with the number of reversals that you have had. I see Senator Booker there, and, Mr. Chairman, I thank you for the time.

Chair DURBIN. Thank you very much, Senator Blackburn. Senator Booker, are you available by remote?

[No response.]

Chair DURBIN. I do not hear him.

Senator BOOKER. I have been unmuted. Sorry. I was having trouble unmuting myself. I am grateful for that. I would like to just first make the case, it was said earlier in a—in an equivalency that was a bit stunning to me about outside groups' influence on the picking of judges for the circuit, and the—and the—in particular, the Supreme Court. I want to just say that Joe Biden has said no such thing. In fact, he has directly refuted questions about outside groups governing his decision. He understands that this is one of the civically sacred powers delineated to the President of the United States of America. It is an executive power. I am sure he would feel that it would be a betrayal of that power to farm out responsibility for making choices to an organization, especially one

that does not even necessarily align with his principles, his values for evaluating judges.

That is dramatically different than what President Donald Trump—former President Donald Trump said, and I will quote him. Trump promised that his judicial nominees would all be picked by the Federalist Society. He also said that he had turned to the "Federalist people" and to the Heritage Foundation to assemble his initial list of 21 potential Supreme Court nominees, which is basically saying that that sacrosanct power vested in in President of the United States was being turned over to organizations, and that, yes, that should bring up questions for every Senator. Who are these organizations? What are the money—what is the money and the interests behind them? Is it dark money? Is it folks with agendas that cut across the concerns that should be held by—in a bipartisan manner by Members of Congress? This is a stunning departure from our national history, and farming it out to such organizations should be abhorrent to everyone. I just wanted to make that distinction.

To both of our nominees, it is an extraordinary honor to be sitting before you. This is a day that, to me, is worthy of celebration given your backgrounds, given the uniqueness of your careers, and I want to thank you both for being here. I talk often about issues of race and diversity. Those have been brought up by people—Members on both sides.

I just want to ask one question, and it is simply about another type of diversity that is just not talked about enough, which is the diversity of career paths. We just do not see that many on the higher courts of our land, people that are not ones necessarily having prosecutorial backgrounds, but people having time working as public defenders. This is an ideal that goes back to Adams representing the British who were involved in the Boston Massacre, this belief that everyone deserves a defense. I think it is noble work, and I think it brings a much needed a bit of diversity to our judicial system, in fact, an urgently needed level of diversity, to have people from both career paths.

I would just love for both of you, and then I will take my answers off—all back on mute and turn it back over Chairman. For now, could each of you please maybe explain why it is important to you to have professional diversity on the Federal bench when appellate judges are deliberating as a panel or as a full court? How does that diversity, your professional experience, help to really inform their decisions, in your opinion, and maybe a little bit about how each of your experiences as public defenders affect your opinions in and of themselves. With that, I will—I will go back on mute, and thank the nominees in advance for their answers.

Judge JACKSON. Thank you, Senator. I had the experience of working as a law clerk for two extraordinary appellate judges. I do not know yet. I hope to be confirmed and could see firsthand what the deliberation process is, but I do know that the judges meet and they discuss cases. In that context, it seems to be quite typical for judges from all different backgrounds—prosecutors, people who have worked in private practice, people who have worked in other areas—to be able to contribute to the discussions about the cases. I sort of look at it from the Oliver Wendell Holmes view that, "the

life of the law is not logic. It is experience." The more experiences that can be brought to bear on our complex legal problems, the better.

I also know from my experience as a district judge that there have been changes in my own way of practicing, in my own way of interacting with defendants in my courtroom that are based on insights that I had from representing clients 16 years ago when I was an assistant Federal Public Defender, and so you learn things. You learn things from experiences that relate to what you are doing in the judicial system, and they can be useful in helping.

I told the story earlier just about the way in which I now communicate, and forecast, and lay out for defendants what is happening in cases. I do that because I was aware as a defender of how many of my clients did not really understand the process, and that was detrimental to their rehabilitation. I work on that communication aspect based on my insights from the time when I was a defender.

Ms. JACKSON-AKIWUMI. Senator Booker, I would only add that the seventh circuit has judges from many different backgrounds. There are State court judges who are now sitting on the seventh circuit, law professors, people who have been—judges who have been prosecutors, attorneys for the executive branch. I hope I would just add to that mix because, as I reflected earlier, and Judge Jackson also just referred to it, it is a collegial environment, and judges spend time discussing together their impressions of the cases in the effort to reach their individual opinions in a case. I hope that my background as a Federal Public Defender and, frankly, my background as a civil litigator as well, will help bring something to the table in the way that I know my colleagues' backgrounds already do.

Chair DURBIN. Thank you, Senator Booker. Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman. Congratulations to both of the nominees. Judge Jackson, you and I attended law school together.

Judge JACKSON. We did, sir.

Senator CRUZ. It is good to see you.

Judge JACKSON. Good to see you again.

Senator CRUZ. Congratulations. Let me start with a general question to both of you, which is, how would you define "judicial activism?"

Judge JACKSON. I think judicial activism is when a judge is unable or unwilling to separate out their own personal views of a circumstance or a case, and they rule consistent with those views rather than the law as they are required to do.

Ms. JACKSON-AKIWUMI. I would give the same answer, Senator Cruz, and also add, although judicial activism means many things to many different people, for me it also suggests a judge who goes outside—beyond the issues presented to the court. Judges are limited. They have quite a restrained role in that they are to only decide the issues presented to them, and one form of activism is going beyond that.

Senator CRUZ. What should a principal judge do if the law requires one outcome and your own personal political policy views are to the contrary? How does a judge resolve that conflict?

Judge JACKSON. Absolutely, the judge is duty bound to follow the law. The law is the binding principle that guides a case, and judges need to methodically separate out their personal use. When I rule in my cases, I look at the facts, the law, and the parties' arguments in the same way in every case, and I methodically apply only those inputs because I am trying very hard not to look at this case through anything other than the prism of the binding precedents of the Supreme Court and the DC circuit. Absolutely, there is no question that a judge has to set aside their personal views about how a case comes out and rule only consistent with the law.

Ms. JACKSON-AKIWUMI. That is absolutely correct, Senator. The roles of advocate and judge are completely different, but in the same way as an advocate that I set aside my personal opinions about my clients and what they were accused of or what they were guilty of, I would also set aside, if confirmed, my personal views, my personal convictions, if any, because the law is what guides and should guide judicial decision-making.

Senator CRUZ. What are both of your views on the notion of a living Constitution and whether we have a living Constitution?

Judge JACKSON. Senator, I have not had any cases that have required me to develop a view on constitutional interpretation of texts in the way that the Supreme Court has to do and has to—have thought about, the tools of interpretation. I am aware that the Supreme Court, at least with respect to certain provisions of the Constitution that it has already interpreted, has looked at history and has focused on the original meaning of the text, say, in the—in the Second Amendment context in the *Heller* case. I just have not had any opportunity to do that. I have worked with those kinds of materials. When I was in private practice, I filed an amicus brief in which we argued using English common law about whether or not the English courts would have accepted evidence that had been extracted by torture.

Senator CRUZ. Was this the amicus you did in the *Boumediene* case?

Judge JACKSON. This was. This was.

Senator CRUZ. Was that pro bono representation?

Judge JACKSON. That was, and I represented 20 former Federal judges who wanted to make that point.

Senator CRUZ. What led you—look, with pro bono representation that often reflects your own views. That is why frequently lawyers take it on. What led you to want to take that position——

Judge JACKSON. Oh, I was not in—I was not working alone. I was at a big law firm, and I was in their appellate division, and it was a client. It was a group of judges who I was assigned to work with as a part of that—my employment in the law firm.

Senator CRUZ. Did you agree with the position you were advocating?

Judge JACKSON. I was focused on my clients' interests. I was doing what advocates do. I did not have a personal view really of the issue other than just to make sure that I was making the most convincing argument that I could make on behalf of my clients.

Senator CRUZ. Let me go back to the original question, which is, do you believe we have a living Constitution?

Judge JACKSON. I believe that the Constitution is an enduring document. It is—it has—the Supreme Court has said a "fixed meaning," that we are to look to the original words in the Constitution and interpret as lower court judges would interpret provisions the way in which the Supreme Court does, and they look at the text and look at the original meaning. If I ever had one of those cases, that is how I would approach the task.

Senator CRUZ. Ms. Jackson-Akiwumi.

Ms. JACKSON-AKIWUMI. Senator, thank you for the question. I do not find these phrases particularly useful as a lawyer. A living Constitution is very similar to me like judicial activism. It means so many different things to many different people. I do know the Supreme Court has not used those terms. I know that Chief Justice Marshall said that we have a Constitution that was meant to endure for ages, which it has, and to be adapted to the various crises of human affairs, and I think that is what has happened with our Constitution over the years. Beyond that, it is the supreme law of the land, and if confirmed, I would be bound by the Supreme Court's interpretations of the Constitution. It would not be my job to make law.

Senator CRUZ. If you could both tell me your view of the importance of the First Amendment and, in particular, the protections of free speech and religious liberty.

Judge JACKSON. Senator, my view comports with the Supreme Court's view because as a judge, I have to apply the doctrines of the Supreme Court. It is very clear from the Court's recent rulings from the recent COVID cases—*Trinity Lutheran, Masterpiece Cake Shop*, and various others—that the Court is looking into and is concerned about restrictions on religious liberty as a First Amendment principle, as well they should be because the First Amendment includes religious freedom as a core constitutional right. My views comport with what the Supreme Court has held about these things, and I would have to apply the Supreme Court's principles in any of my cases.

Senator CRUZ. Ms. Jackson-Akiwumi.

Ms. JACKSON-AKIWUMI. I agree, Senator Cruz. The First Amendment is fundamental, it is foundational, all of the freedoms protected therein: speech, press, assembly, petitioning for redress, and religion.

Senator CRUZ. Thank you.

Chair DURBIN. Thank you, Senator Cruz. Senator Padilla.

Senator PADILLA. Thank you. Thank you, Mr. Chair. Before I begin my questions, I want to take a moment to remark on the significance of this hearing. As Chairman Durbin reminded us and noted at the outset of this hearing, for the past 4 years, the prior administration appointed 226 judges to the Federal courts, almost 30 percent of the current Federal judiciary. An overwhelming majority of those appointees, 189, were white, and nearly as many, 171, were men. Over the course of the prior administration, our Federal judiciary became markedly less diverse. Today marks an important step in reversing that trajectory and creating a Federal judiciary that reflects the America that it serves.

This Committee has heard and will hear testimony from five nominees, all persons of color and three women. They have experi-

ence in public defense, prosecution, civil litigation, municipal law, and military service. The diversity of background and professional experience they offer to the Federal judiciary, in addition to their impressive qualifications, is remarkable and important. I hope, Mr. Chair, and expect that this will be only the first of many such nomination hearings of this Congress.

To my questions, the first for Ms. Jackson. If confirmed, you will be one of the few former public defenders to serve in this capacity. Can you take just a minute to speak to the role and importance of public defenders to our criminal justice system?

Judge JACKSON. Senator, did you mean Ms. Jackson-Akiwumi?

Senator PADILLA. Ms. Jackson-Akiwumi.

Judge JACKSON. Yes, thank you.

Senator PADILLA. Yes, I am sorry.

Ms. JACKSON-AKIWUMI. Thank you, Senator Padilla. It is foundational. The Sixth Amendment guarantees the right to assistance of counsel, and the Supreme Court has interpreted in that the right to counsel in criminal cases when one cannot afford an attorney. This is important because the integrity of our system depends on it. Judges make the best decisions when they are presented with the best arguments from both sides, and due process guarantees that, that people be represented and have the opportunity to be heard, regardless of their ability to pay. It was my honor and privilege to work within that system for a decade to ensure that my clients were competently represented regardless of their ability to pay and, frankly, regardless of what they were accused of, and to help our country live up to its constitutional values.

Senator PADILLA. Just a follow on. Earlier in your career, you spent about 3 years working at a corporate law firm with, I am sure, very nice offices and a lot of resources and high salaries, but you chose to leave that very comfortable path to spend the next decade of your career as a public defender. Just for a minute—just for a moment to reflect on what would prompt you to make such a change.

Ms. JACKSON-AKIWUMI. Senator, I am very grateful for the 3 years I spent litigating at Skadden Arps. It was a tremendous experience representing our clients, which ranged from corporations to nonprofit organizations, individuals. I gained a lot of experience, tried my first jury trial, argued my first case before the Seventh Circuit Court of Appeals, which—before which I appeared many times after that as a Federal Public Defender. I always knew that I wanted to return to public service. I began my legal career serving the public as a law clerk to two Federal judges, and I wanted to spend the bulk of my career that way. This nomination by the President has given me an opportunity to yet again serve the public, if this Committee and the Senate as a whole so decides.

Senator PADILLA. Thank you. My next question is for Ms. Brown Jackson.

Judge JACKSON. Thank you.

Senator PADILLA. In the 8 years you have served as a district court judge, you have presided over hundreds of cases. In that time, you have ruled for both prosecutors and criminal defendants, for workers and employers, for the Government and those challenging governmental decisions. Is there an ideology or philosophy

that guides your approach to judicial decision-making, and, you know, how do you view that changing, if at all, if you are confirmed to the circuit court?

Judge JACKSON. Thank you for that question, Senator. Not really a philosophy, more of a methodology. It is the idea that it is only appropriate for the judge to take into account the arguments of the parties, the facts in the case, and the law that applies in every case. I have found that if you do that, you can be consistent in the way that you are analyzing the issues, and you can set aside any thoughts about who is making the arguments, what advantages any side might take away from your opinions. If you have a fidelity to the rule of law that is grounded in looking at only those inputs, then I think you can rule without fear or favor, which is what I have attempted to do.

Senator PADILLA. I want to, as some of my colleagues have already done, thank you both for your willingness to serve, and thank your families for supporting your service because they know it is not easy. In the last minute I have left, I ask you both to briefly comment on what it just means to you personally for you and for your family, for you to be here with this opportunity before you?

Judge JACKSON. Senator, I am fortunate enough to have an office now that is just a few blocks from the National Archives. Sometimes I go there and I reflect on the momentousness of my duties, and the fact that I have had an opportunity that my grandparents would not have been able to even fathom. It is the beauty and the majesty of this country that someone who comes from a background like mine could find herself in this position. I am just enormously grateful to have this opportunity to be a part of the law in this way, and I am truly thankful for the President giving me the honor of this nomination.

Senator PADILLA. Thank you.

Ms. JACKSON-AKIWUMI. Senator Padilla, I share a similar sentiment. I am the granddaughter of a sharecropper. Three of my four grandparents had only a 4th and 6th grade education, but I also grew up with the precept, to whom much is given, much is required. Despite those humble beginnings, my family has always been one that valued education, and I have been given a top-notch education and top-notch experiences that I am so grateful for.

I recall Attorney General Garland telling you all that he believed it was the highest and best use of his skills to be able to serve the country in this way now, and although I have not been a circuit judge and I am certainly not the Attorney General, I agree with Attorney General Garland. In this moment now, to serve as a circuit judge at the request of our President would be the highest and best use of the skills that I have, and such a way to thank my family and this country for the many opportunities that I have been given.

Senator PADILLA. As a proud son of immigrants from Mexico who had little formal education, but a work ethic that led to 40 years working as a short-order cook and a domestic worker, who had an opportunity to study at the Massachusetts Institute of Technology, earn a degree, and years and years later gets to sit on this side of the dais, I thank you both.

Ms. JACKSON-AKIWUMI. Thank you.

Senator PADILLA. Thank you, Mr. Chair.

Chair DURBIN. Thank you, Senator Padilla. Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman. Judge, counsel, welcome. Counsel, let me start with just a few general questions. Can you give me your thoughts about the meaning and the importance, if you think it is important, of the adequate and independent State ground doctrine, which you will probably see a lot on the court of appeals?

Ms. JACKSON-AKIWUMI. Sure, Senator Kennedy. It is actually a doctrine of the Supreme Court that governs when a case presents Federal grounds, but if there is also an independent and adequate State court ground that supports the decision, the Supreme Court will not choose to take the case. The Supreme Court is the body that has the ability to exercise that doctrine. The Seventh Circuit Court of Appeals, if I am confirmed to it, would not have that opportunity because, as you know, the court of appeals takes every case that is appealed to it. It does not have the ability, like the Supreme Court does, to pick and choose which cases it will hear.

Senator KENNEDY. You are saying that the seventh circuit cannot decide a case or invoke the adequate and independent State ground doctrine?

Ms. JACKSON-AKIWUMI. Senator, there are other abstention doctrines that would govern if the seventh circuit—if a panel felt that there were State court questions that needed to be resolved, so the Federal case should hold off for a bit, or if there was an independent State court ground for the case that necessitated a particular type of ruling. It would not—that doctrine would not cause the seventh circuit to not take the appeal—take the case to begin with. The seventh circuit has to consider the appeal and then issue a decision, yes.

Senator KENNEDY. Right. Right, but you are not saying that the adequate and independent State ground doctrine is not applicable to the seventh circuit, are you?

Ms. JACKSON-AKIWUMI. I am saying that it is a doctrine of the Supreme Court, and the seventh circuit has other——

Senator KENNEDY. It is a doctrine of the court of appeals, too, is it not?

Ms. JACKSON-AKIWUMI. My understanding, and I will—I will tell you, Senator Kennedy, that this is not an area I have been litigating in the last 16 years, but this is my broad understanding, that it is a doctrine of the Supreme Court.

Senator KENNEDY. Okay. What is your definition of "justice?"

Ms. JACKSON-AKIWUMI. Thank you for the question, Senator Kennedy. Emblazoned on the Supreme Court across the street is "equal justice under law." I marry that with the Ethical Cannons and Codes of Conduct that apply to judges, and one of them includes treating all parties fairly and impartially, and acting with diligence, and upholding the independence of the court. I think when you marry all of those concepts together, then you arrive at, hopefully, what is justice for the parties who become—who come before a court.

Senator KENNEDY. Counselor, do you believe that crime is a—is a disease that needs a cure, or is it antisocial behavior that deserves punishment?

Ms. JACKSON-AKIWUMI. Senator Kennedy, neither of those options are words I have ever used to describe crime, which has been my province for the last 10 years representing people accused of crime and who have pled guilty to crime. If there is anything that my decades as a public defender taught me is how gray everything is, and how there is often a faint line, an indescribable line, sometimes a complicated line, from when someone goes from being law abiding to breaking a law, and all the reasons why that happens, and all the different ways we as a society can address that. I hope to bring that nuanced understanding with me to the circuit court, if confirmed. I will be guided by the law and have to apply the law, and would willingly do that to the facts of any given case, but I think that nuanced understanding will enhance my ability to understand the facts of any given case.

Senator KENNEDY. Okay. Are you a textualist or a purposivist?

Ms. JACKSON-AKIWUMI. Thank you, Senator Kennedy. One of the things that I expressed to your colleague who asked a question earlier about a living Constitution, and there was yet another question about judicial activism, is that I do not find these labels particularly helpful. They mean so many things to so many different people. What we do know is that the Supreme Court has instructed us that one of the first——

Senator KENNEDY. Actually, counselor, I think they are pretty standard definitions. Can you tell me which way you lean?

Ms. JACKSON-AKIWUMI. No, Senator. The Supreme Court has instructed that one must first look to the text of the Constitution, the plain meaning there, also the plain meaning of the text of a statute. That method, the Supreme Court has instructed judges what to do.

Senator KENNEDY. Counselor?

Ms. JACKSON-AKIWUMI. Yes?

Senator KENNEDY. I am sorry to interrupt you, but my Chairman is very strict on me, and I do want to get to ask the judge one question in my 35 seconds. I am sorry to interrupt you. Judge, you have been on the bench, and you have seen the Federal judicial system up close, and I agree with you, America is a remarkable country. Do you think the Federal judicial system is systemically racist?

Judge JACKSON. Senator, thank you for that question. I am aware of social science research——

Senator KENNEDY. I am sorry. I could not hear you.

Judge JACKSON. I am aware of social science research——

Senator KENNEDY. Yes, ma'am.

Judge JACKSON [continuing]. In particular, in my former area of expertise, which is in sentencing, that relates to ways in which policy choices about various aspects of the system can have demographic disparate effects. The most obvious one is one that this body has worked on very hard, and much appreciated, the 100-to–1 crack-powder disparity.

Senator KENNEDY. Mm-hmm.

Judge JACKSON. As a judge, I am not looking at systemic effects. I am not thinking about, or focusing on, or forming opinions about the research or the—or the circumstances in the abstract like that. I am looking at each case. A person might make a claim that they have been discriminated against in a particular context, and I am

applying the law to determine whether or not the law sustains that claim. I do not really have a frame of reference to answer a question about systemic racism, but I am happy that you are thinking about those things because they are in the province of the policymakers, like yourself.

Senator KENNEDY. Okay. Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Kennedy, and I would to like to thank our two circuit court nominees for your patience, your endurance. Please be mindful that, as you have heard, Senators may submit written questions following the hearing. We would ask you to diligently respond as they are sent your way.

I am going to excuse this panel, and just in time—in the nick of time comes the Senator from New Jersey. Have you voted?

Senator BOOKER. Yes, sir.

Chair DURBIN. Good. Come right on up here because I have not. Thank you to this panel, and I am going to ask the Senator from New Jersey to convene the second panel——

Judge JACKSON. Thank you.

Chair DURBIN [continuing]. And prepare them for testimony, and I will return briefly.

[Pause.]

Senator BOOKER. [Presiding]. Can I ask the nominees to take their seats? I am actually going to swear them in first.

[Voice heard off microphone.] Yes.

Senator BOOKER. Yes, so forgive me. You all were right in standing up and staying there. It is a long time since I had Julien Neals telling me what to do every day, and Julien will remember I am usually swearing at him, but now I will swear him in.

Would you please raise your right hand and repeat after me or—and answer this question?

[Witnesses are sworn in.]

Senator BOOKER. Thank you very much. You may take your seats. Why do not we proceed with the testimony? We will start with the Honorable Julien Neals.

[No response.]

Senator BOOKER. He seems to be having some technical issues.

Judge NEALS. I seem to be having some technical—oh, is it on? Oh, thank you.

STATEMENT OF HON. JULIEN XAVIER NEALS, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY

Judge NEALS. First off, Senator, I would just like to thank Chairman Durbin and Ranking Member Grassley, and sincerely thank the Committee for today's hearing. Thank you to you and also to Senator Menendez for that more than generous introduction. Thank you also to both of you for submitting my name to President Biden, and my thanks to President Biden for this nomination.

I offer congratulations to my conominees. It is truly an honor to share this experience with both of them, and I owe a debt of gratitude for even reaching this point in this process, and also to those who are with me today: my father, a World War II Veteran and retired administrative law judge, Felix Neals; my mother, retired teacher, poet, and actress, Betty Neals. Their unending energy, en-

couragement, love, and support have carried me to this point in my life and career. My sister is also with me, college professor, world traveler, Felice Neals, whose fearless, adventurous spirit has always been an inspiration to me. My dearly beloved wife, Lauren Jones-Neals, who has been a grounding, loving force in my life since my second year of law school. Our son, Julien Keith, could not be here, but he brings his love and perspective. He is finishing up finals at King University, and, unfortunately, had to spend his senior year remote with his parents.

Also in attendance is Anna Pereira, a tremendous former fellow judge and corporation counsel colleague from the city of Newark, and Arvelise Gonzales-Muriel, my assistant of 25 years, which in and of itself proves her saintly qualities; my brother, Felix, who is watching from Washington State. He has been the best big brother anyone could ask for. I send love, warm greetings, and thanks to family, the incredible professionals with whom I have worked at the firm of Chasan, Lamparello, Mallon, and Cappuzzo, the great city of Newark, and the great county of Bergen, and to the many friends and professionals who have wished me luck who are watching. Finally, a special 21-year-old birthday wish to Julia Pessers. Thank you, sir.

Senator BOOKER. Thank you very, very much. We will now go on to Judge Quraishi. You may also make your opening remarks.

STATEMENT OF HON. ZAHID N. QURAISHI, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY

Judge QURAISHI. Thank you, Senator Booker. I would first also like to thank Chairman Durbin and Ranking Member Grassley for scheduling the hearing for today, and also thank the Members of this Committee for taking the time to consider my nomination. I would also like to thank, of course, the President for nominating me, and also my home State Senators, both Senator Booker and Senator Menendez, for their consideration, recommendation, and support of my nomination. I share Mr. Neals', or Judge Neals', comments. Thank you, Senator Booker, for your kind introductory remarks form earlier today.

I have a few folks with me that I would like to introduce. First, my mother, Shahida Quraishi, is here. I do not have enough time, Senator, to properly introduce my mother. What I will tell you is that when I asked if she would like to attend today's hearing, she said she would walk from New Jersey if needed.

[Laughter.]

I hope that gives you some context for the love and bond that I have with my mother. I would like to mention my father, Dr. Nisar Quraishi. Unfortunately, my father cannot be here today. He tragically passed away last year due to the COVID–19 virus. I know he would have been very proud to be here sitting alongside my mother behind me, and I feel his presence today in this room. I would also like to thank and introduce Jenny Chung and Lee Vartan, two individuals very close to me who were especially supportive of my nomination and supportive of me throughout this process. They were kind enough to accompany both me and my mother here today, and I am grateful to have them.

Last, Senator, I would like to just address my children who are back home in New Jersey, hopefully in class, but I have a feeling they are trying to log into the video link to today's hearing, my daughter, Zoe, and my son, Aiden, who I love very much. I have said this before publicly and privately: I have held many titles and many roles in my life. The one that means the most to me in my life is that of being their father, so I am grateful for the two of them, although they could not be here today.

Senator, thank you for indulging me. It is an honor to appear before this Committee with my friend, Julien Neals, and Gina Rodriguez from Colorado, and I welcome the opportunity to answer any questions you may have regarding my qualifications.

Senator BOOKER. Thank you very much, Judge Quraishi. Ms. Rodriguez, would you please give us your opening statement?

STATEMENT OF REGINA M. RODRIQUEZ, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLORADO

Ms. RODRIGUEZ. Thank you, Senator. It is my pleasure to be here with you today, and I also wish to extend my thank you to Chairman Durbin, Ranking Member Grassley, and Members of the Committee. I appreciate you holding this hearing to consider our nominations, and I congratulate my fellow nominees today. Thank you to President Biden for the honor of this nomination, and a very warm thank you to Senators Bennett and Hickenlooper for the confidence they have placed in me. It is very humbling. I also thank former President Obama and Senator Gardner for their support of my prior nomination.

I want to introduce to you now the Colorado contingent, also known as my family. I am very proud to have them here with me today: my husband and my partner, Arnold, in what will be 20 years of marriage in the next couple of days. Neither of us imagined that our journey would lead us here, but we are very grateful to be here; my daughter, Nya, who is a high school senior this year. Her resilience and fortitude in this unusual year has been inspiring. My son, Miles, who always makes us proud in his feats in the classroom as well as on the football and basketball fields; my mother, Linda Rodriguez that you have heard some about. Her story is a journey in and of itself. My sister, Marla, who works for Nine Health in Colorado, and her husband, Noel Willis, who works for Denver Water. There are many people who have supported and championed me to bring me to this moment, too many to mention by name, but you know who you are, and I thank you so much.

Thank you again for this honor, Senator, and I look forward to the Members' questions.

Senator BOOKER. You all got me a little verklempt with your families there. What extraordinary people you have behind you. The journey to this moment for each of you is extraordinary, but it is a tribute to the Nation that we all love. You are sitting before the Judiciary Committee of the United States of America's Senate, and it is a wonderful opportunity. Even though you do not see a full cavalcade of Senators on both sides of the aisle, I want you to know that this part of the process, as spelled out by the Constitution of the United States, is a sacred part of the process. As you

all sit before us, I am sure there will be questions for the record that you all will be asked to be completing. For now, until the Chairman comes back, I have the gavel. I have the power. Let us have some fun.

[Laughter.]

I will first turn my questioning toward Julien Neals and ask him, in his 20 years of working with me, would he please go over in detail my finer points as a leader?

[Laughter.]

Senator BOOKER. No. In all—in all seriousness, I would like to direct the first question to Judge Quraishi. You have dedicated the vast majority of your professional life to serving your country. That says a lot. You worked in the JAG Corps, the U.S. Department of Homeland Security, the U.S. Attorney's Office for the District of New Jersey, and now as a U.S. magistrate judge. You had a lot of other lucrative opportunities before you, and I was wondering if you could tell us why you are so passionate about public service, and why you believe these experiences have really prepared you for the role as an Article III district court judge.

Judge QURAISHI. Thank you, Senator Booker. As you may recall, we refer in New Jersey to the folks that practice in Federal court as our Federal family. That involves not only the judges and the court staff, but it involves prosecutors, Federal public defenders, civil practitioners in the Federal Bar. I think, for me, in my career, I have felt a part of that Federal family and being a member of that Federal family before I even knew what it was. I think that stemmed early in my career in the military. When I was honorably discharged and was returning home to New Jersey after military service, I was looking to find some civilian equivalent of what I had felt when I was serving in the Army, being a part of something larger than myself. That, to me, was public service in the Federal Government with the Department of Homeland Security, followed by the United States Attorney's Office, and even in the private sector, supporting programs like the re-entry court, and the Judicial Conference, and other programs for our Federal court.

As far as my collective experience, I think it will be useful as a district judge. I think having the experience of being both a prosecutor and a defense lawyer, as a veteran, as a—as a practitioner, a private lawyer, working at a law firm, and currently sitting as a United States magistrate judge, where I am—I am handling civil cases and some of the criminal duties of a magistrate judge. I think, collectively, all of that will benefit me if I was so fortunate to be confirmed as a district judge.

Senator BOOKER. I am really—I am really grateful for that. I cannot help but mark the significance of your faith. If you are confirmed, as has been said multiple times already, you will be the first Muslim to serve as an Article III Federal judge. In my opinion, it goes without saying that this should have happened a very long time ago. There were Muslim Americans here at the founding of our country and have played a role in everything from arts, business, invention, in so many areas of American life, but not on the bench at the Federal level. I am wondering, as we now see us break this extraordinary milestone, I just wonder if you might tell

us what you are thinking and how it feels to be a trailblazer, a glass ceiling breaker, and a history maker.

Judge QURAISHI. Thank you, Senator. You know, I have thought a little bit about that only because I do not identify myself in any particular way through this nomination process, but I have obviously read that I would be the first Muslim-American Article III judge, if confirmed. Candidly, I would prefer to have been the 100th or the 1000th, not the first, but I understand that it comes with a lot of responsibility. Senator, as you know, I was the first Asian American to sit on the district court in our State—in our State's history on the Federal court, and I understand what that means to the community.

I can tell you that, if confirmed, I would—I would approach this historical nomination the same way I approach being the first Asian American on the New Jersey district court, and that would be to put my head down, do the work that is before me on the court to help my colleagues and the Article III judges that are overwhelmed with a significant case load and six vacancies, and to serve by example. I think you said it better than I could, Senator, that if I am so fortunate to be confirmed to be the first, the goal is for me not to be the last, and so that is how I would approach it.

Senator BOOKER. I am grateful. I am in full recognition that I have tumbled from the high height of being Chairman of the Judiciary Committee back down to being the junior Senator from New Jersey. My time has expired, even though I have some more questions for Julien Neals, perhaps on a second round, if the Chairman now would so allow it. I will yield to the senior Senator from the State of Illinois and the Chairman of this Committee.

Chair DURBIN. [Presiding]. Thank you very much, Senator Booker. I hurried back because I wanted to see if Mr. Neals had a halo——

[Laughter.]

Chair DURBIN [continuing]. After initial introduction by Senator Booker. I was anxious to see. He looks like a perfectly fine normal human being, and he has given you sanctified, miraculous qualities. I thank you for being here.

It is such a refreshing experience here to have candidates for lifetime appointments to the Federal judiciary who have actually been in a courtroom. In the last 4 years, that was not always the case. We had many nominees brought before us who may have watched the first part of NCIS on television, but that was as close as it ever came to courtroom experience. I do not have to ask you, sir, in terms of 6,000 cases—was that the number that you were involved in with the municipal court?

Judge NEALS. Yes, Senator.

Chair DURBIN. What kind of cases?

Judge NEALS. Thank you, Senator, for the question. The Newark municipal court was—is composed of 11 full-time judges and a staff of 104, and hears approximately half a million cases a year, and those range from disorderly persons offenses, to landlord-tenant cases, to truancy cases, and other regulatory code violation cases. Traffic is also a significant portion of that as well. While I was sitting as chief, I would cover the courts for other judges in their ab-

sence, so I had the opportunity to sit on all those different types of cases during my tenure.

Chair DURBIN. That is real courtroom experience. There is no question about that. Mr. Quraishi, you, too, have had quite a background in the law in the—on the military side and civil, criminal side as well. I am going to follow-up with a question, which I am almost embarrassed to ask, but only because I have heard it from other Members of this Committee from time to time, and it is likely to come up at some point. What do you know about Sharia Law?

Judge QURAISHI. I do not know anything about that, Chairman. If the question, too, is whether I would apply the laws of the United States in the State of New Jersey, I can tell you in 21 years of practicing law as a Federal prosecutor, as a military officer in the United States Army, as a defense attorney and partner at a prestigious law firm in New Jersey, and a United States magistrate judge, I have never even been asked the question. That being said, I know probably less about it than you do, and I do not know anything about it.

Chair DURBIN. Good. Not good, but certainly we are anticipating criticism which has no basis in fact because of things we have heard. Your answer is solid. Ms. Rodriguez, gosh, what a journey your family has taken over the years. It is amazing to hear the story. I do not know if I am repeating something that was raised earlier about your going out and knocking on doors, trying to find a lawyer. Have you told that story here before the Committee?

Ms. RODRIGUEZ. I have not, Senator.

Chair DURBIN. Would you please?

Ms. RODRIGUEZ. Certainly. I was a senior in high school living in Macomb, Illinois at the time, and had an idea that I might want to be a lawyer one day, but I did not know any lawyers, and I did not really know what all that involved. In my rather naive 17-year-old way, I put on my best suit, and I started going from door to door to lawyers' offices in our town of Macomb, and most did not see me. Many people seemed very surprised that this young woman would show up at their doorsteps, and most explained that you had to at least have had 1 year of law school before you could get a job in a lawyer's office.

I found one person. His name was John Bisbee. He was a civil rights lawyer and a criminal defense lawyer, and he said to me, you want to do what? I said, well, I thought I should work in a law office to understand what lawyers do, and he hired me. I spent the summer serving subpoenas, helping to create a brief bank, and helping him in the ways that a young person could do in his law office, and that really was the start that I got.

Chair DURBIN. Is he still around?

Ms. RODRIGUEZ. Unfortunately, he has passed away. I did try to find him.

Chair DURBIN. That is a great story.

Ms. RODRIGUEZ. Yes.

Chair DURBIN. A great story about you and about him, and I am glad it happened in Illinois. It makes me feel good about it. It has been a long time since I have been in a Federal courtroom as a lawyer, practicing lawyer, and I will tell you that the temperament of the judge had as much to do with my experience in that court-

room as any law or facts that I brought before them. Do you want to say a word about temperament of a judge before people who come searching for justice, Ms. Rodriguez?

Ms. RODRIGUEZ. Yes, thank you for that question, Senator. I, too, share the belief that the temperament of the judge is very important. It certainly has shaped my experience in the many courtrooms that I have been in, but, even more importantly, it shaped the experience of the people who appear before those judges seeking justice. Fundamentally, that is what all of our jobs are when we enter into a Federal courtroom, or any courtroom for that matter.

It is critical that the judge listen intently and provide every person who appears before him or her with a fair opportunity to be heard. I believe we heard the nominees for the circuit court talked about the importance of listening and hearing what parties have to present, and them having the experience of been being heard. I agree with that wholeheartedly, and that would be my goal should I be honored with a confirmation for this position.

Chair DURBIN. Thank you, Mr. Quraishi, what is your experience?

Judge QURAISHI. Thank you, Chairman Durbin. I can tell you, and I do not know if this is a popular answer, but I like lawyers. I was a practicing lawyer for most of my career. Many of my friends, members of the Bar, mentors that I have looked up to in my career before serving on the bench, are all folks that appear in our district court in New Jersey. For me, it is seeing a reflection of myself when somebody walks into the courtroom to appear before me as a magistrate judge. I think they are me. I would hope that I would bring that same thoughtfulness and respect and mutual respect, that I hope to—that I brought as United States magistrate judge. I hope to bring that, if I was fortunate to be confirmed as a United States district judge, Chairman.

Chair DURBIN. The sanctified Mr. Neals.

[Laughter.]

Judge NEALS. Thank you, Senator. I have to say that in my time as practice, I had a very deep understanding and appreciation for judicial temperament, just in terms of being able to get your case heard and get your case processed. My time as chief judge, however, with Newark municipal court gave me a whole different appreciation of the importance of judicial temperament. For most people, their experience in court is a very intimidating one, and it became very clear to me that, especially from the litigant's perspective, it is very important that they feel that their case is going to be heard, they are going to have the opportunity to tell their story, they are going to understand the proceedings, and they are going to understand the result, and the judge is the one who sets that tone. I think it is just important to have a calm demeanor, open mindedness, and you show your appreciation for the fact that this is such an important event in most people's lives. I also think that that temperament has to also be reflected in how you deal with the attorneys, with your court staff, and the public in general.

Chair DURBIN. Thank you. I have no further questions.

Senator BOOKER. Chairman, I appreciate you allowing me. May I—may I continue for a few moments?

Chair DURBIN. Please.

Senator BOOKER. Thank you, sir. This is—everything you say here is for the record and under oath, and I just imagine, as systems get better digitized, your testimony here could be looked at by future generations. I would imagine that perhaps one day somebody from your lineage will look back to listen to what you had to say today. Mr. Quraishi, your father died of COVID recently. I remember how I felt when I came to this institution days after my dad had died to become a United States Senator. I was wondering, for the record and for the future, could you just tell us about your dad's influence on you, and how that influence helped to make you—would help to make you a better judge?

Judge QURAISHI. Sure, Senator. It is a difficult question, and I have been prepared for many questions today, but not this one. My father and I were very close. He was a significant influence in my life. You know, I remember speaking to a room of maybe 400 lawyers at my investiture ceremony almost 2 years ago and told them that in a room full of Federal judges and the best practitioners in the State, my first advisor if I ever needed anything would be my father, and that was true.

He grew to be a close friend and also a counselor to me, and, candidly, he was my first influence in how I even went to law school. You know, like some or many Pakistani fathers, I think my father early on, I thought, that I would go to medical school. It was not in the cards for me. I was not into science. I was not into medicine. I remember when I was considering a career in law enforcement, it was my father who first suggested why don't you consider law school, you know, get your degree, your juris doctorate, and after you are done, you can consider, you know, what you want to do next. If it is a career in law enforcement, that will not have escaped you because you went to school for another 3 years. It was my father's initial advice, along with my mother, that supported me going to law school.

As far as who I am today, I will tell you, frankly, Senator, if I am half the man my father was before he passed away, I will have been a success in my life. His loss was tragic to my family, to my mother. What I hope to do and what I strive to do for my children, who were very fond of their grandfather as well, is do the best I can, treat everybody with respect, be kind to others, and hope that he will be proud of the man that I am, which he was before he passed away, and that—the man that I will continue to be.

Senator BOOKER. I am grateful for that. Just one more question for each of the nominees, and then this experience, I hope will be coming to a conclusion. Ms. Rodriguez, I am sorry, I did not plan to ask this question, but you piqued my curiosity. Again, with the same sort of caveat that you are speaking to the future, behind you is an extraordinary woman that you said has an incredible story. Could you tell us a little bit more about your mother and her influence on you in being here today?

Ms. RODRIGUEZ. Thank you for that question, Senator. It was my—it is the generation of women in my family, starting with my grandmother, Mary Takahashi. Her Japanese name is Yoneko. My daughter is named after her, Nya Yoneko. They had a business. They had a life in California. When the internment order came,

they were ordered to gather their belongings into what they could carry in suitcases, and they did not know where they were going. My mother was very young and her brother as well.

I think of the fact of our families, how much we love our children and how we try to protect them, and what it would be like to be told all of a sudden that you were going to leave your home and carry only what you could carry with you for your children. They were put on a train to Wyoming, and that is where they remained for a number of years. What is interesting to me is that my family never really talked about the internment and the hardships they endured, which there were many. What they talked about was the friends they made, the people they knew, and the opportunities that now this country has given. After the internment, my grandmother had heard that there was still discrimination against the Japanese in California, but she had heard that the Governor in Colorado was welcoming, and so they moved the family to Colorado, in Denver, and that has been the beginning of the legacy there.

My parents met in Gunnison, Colorado, and my father hails as well, and I appreciate just a moment to also mention my father who passed away just a few years ago. He did grow up in a boxcar in what he calls the South Side of Chicago, although I think he thinks that that is a little elevated for where he actually was. He grew up without running water or electricity, but both my parents made their way to school, and that is really what has given them their start and what has given me my start, and so I am eternally grateful for that. It means that now it is my opportunity to once again return to public service and give back.

Senator BOOKER. I am very grateful for that. What extraordinary American stories, both of these last two witnesses who spoke, have, and it is just a testimony to what I think so many of us love about our country, that we are this Nation of the highest ideals of humanity that bring together all of humanity in this diverse tapestry that makes us all better from our whole.

I want to just end with Julien Neals, and I will say to my senior colleague that any sanctification that I am doing, trust me, it was earned through some of those difficult years of my life, trying to govern a city in a global recession. I had these moments, though, that were—I cherished. When I first made Julien Neals my chief judge, that same family you see behind there would gather together with incredible pride. I then made him my corporation counsel, and I saw the same gathering of family. Then he became the leader of the city, really the person that did the day-to-day work trying to get our city out of a deep ditch, and managed to do it in a way that not only got us to fixed fiscal strength, but every—the biggest parks expansion in a century in our city, brought supermarkets, our first hotels in decades, our first office towers in generations, doubled the production of affordable housing.

This man found ways to make a way out of no way and take a city that many people wanted to cast aside, look down upon. He made us stand up with pride. There is nothing like the pride of his family, and I hope you get a chance, Mr. Chairman, to walk over there because his father is one of the more dapper men that I have

met and reflects the dignity that his son has, and his mom is such an extraordinary woman that beams light.

I just want to end by saying, Julien, we have gone through this a lot. Never before on a national stage, at a Federal level. I would just want to tell you that I know you are the man that you are because of the parents that you had, and would you just please say for the record and for eternity some words about them? Then I am done, Mr. Chairman.

Judge NEALS. Thank you, Senator. The influence that my parents have had is immeasurable. My father was born in 1929 in Florida, and imagining the experiences that he has gone through to have matriculated here, to have eventually become an attorney, and eventually become a judge is just remarkable. My mother, the pride that she has had in being a Newarker, and her words that would resound of how important it was for her that her children would have that same experience, that they would have a rooting and a relationship with this substance of that cultural experience, and what that the city fought to overcome.

Honestly, when it was my distinct honor to serve with you in Newark, it was hearing words of what your vision was for Newark that resounded against what my mother had told me, and I knew at that point that public service was the right direction for me. With both of them being retired public servants, I realized the value of giving back, and I realized the sacrifices that they have made and the life pursuits that they have done in raising three children in what often were many difficult times, putting them through private school and supporting them even to this day.

I really appreciate the opportunity, Senator, to have given that recognition to my parents and just the experience and the support that they have given me. I thank you as well for this opportunity.

Senator BOOKER. Thank you, Mr. Chairman.

Chair DURBIN. Thank you very much. I have come to know Senator Booker in his Senate career, and I would say, Mr. Neals, that if you could cover him with glory, you are truly a talented man and destined for great things.

[Laughter.]

I hope that—I believe that will include the Federal bench. I thank you for being here and especially for your family continuing to back you up. Mr. Quraishi, the story you told about your father was touching, and I want to thank you as well for being a person to make history in America. That is saying something, and it is something I am sure he would be very proud of. Ms. Rodriguez, I am glad you stopped in Macomb, Illinois for some inspiration in part of your life's journey, and what a remarkable story on your family as well.

Before I adjourn today's hearings, I want to enter a number of letters in the record and a few logistical notes. We have received letters of support: the letter I referenced in my opening statement from Judge Thomas Griffith in support of Judge Jackson; a letter in support of Ms. Jackson-Akiwumi from 134 lawyers practicing in the Northern District of Illinois, including four former U.S. attorneys; another letter supporting Ms. Jackson-Akiwumi from 90 attorneys in the Chicago area who worked with the nominee and served as opposing counsel; and many, many, many letters in sup-

port of our exceptional district court nominees. I will enter all these letters into the record, as Senator Booker said, for future generations or anyone who cares to see.

Questions for the record will be due to the nominees by 5 p.m. on Wednesday, May 5th. The record will likewise remain open until that time to submit letters and similar materials.

Chair DURBIN. With that, the hearing is adjourned. Thank you.

[Whereupon, at 1:53 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Ketanji Brown Jackson (née Ketanji Onyika Brown)

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.

   United States District Court for the District of Columbia
   E. Barrett Prettyman United States Courthouse, Room 4423
   333 Constitution Avenue, Northwest
   Washington, District of Columbia 20001

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

   1970, Washington, District of Columbia

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.

   1993 – 1996, Harvard Law School; J.D. (*cum laude*), 1996
   1988 – 1992, Harvard University; B.A. (*magna cum laude*), 1992

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.

2013 – Present
United States District Court for the District of Columbia
E. Barrett Prettyman United States Courthouse, Room 4423
333 Constitution Avenue, Northwest
Washington, District of Columbia 20001
United States District Judge

2010 – 2014
United States Sentencing Commission
One Columbus Circle, Northeast
Washington, District of Columbia 20002
Vice Chair & Commissioner

2007 – 2010
Morrison & Foerster LLP
2000 Pennsylvania Avenue, Northwest, 6th Floor
Washington, District of Columbia 20006
Of Counsel

2005 – 2007
Office of the Federal Public Defender
625 Indiana Avenue, Northwest
Washington, District of Columbia 20004
Assistant Federal Public Defender

2003 – 2005
United States Sentencing Commission
One Columbus Circle, Northeast
Washington, District of Columbia 20002
Assistant Special Counsel

2002 – 2003
The Feinberg Group, LLP (now known as Feinberg Rozen, LLP)
1455 Pennsylvania Avenue, Northwest
Washington, District of Columbia 20004
Associate

2000 – 2002
Goodwin Procter LLP
Exchange Place
53 State Street
Boston, Massachusetts 02109
Associate

1999 – 2000
Supreme Court of the United States
One First Street, Northeast
Washington, District of Columbia 20543
Law Clerk for Associate Justice Stephen G. Breyer

1998 – 1999
Miller, Cassidy, Larroca & Lewin LLP (now defunct)
2599 M Street, Northwest
Washington, District of Columbia 20007
Associate

1997 – 1998
United States Court of Appeals for the First Circuit
1 Exchange Terrace
Providence, Rhode Island 02903
Law Clerk for the Honorable Bruce M. Selya

1996 – 1997
United States District Court for the District of Massachusetts
1 Courthouse Way
Boston, Massachusetts 02210
Law Clerk for the Honorable Patti B. Saris

Summer 1996
Ropes & Gray LLP
One International Place
Boston, Massachusetts 02110
Summer Associate

Summer 1995
Miller, Cassidy, Larroca & Lewin LLP (now defunct)
2599 M Street, Northwest
Washington, District of Columbia 20007
Summer Associate

Summer 1994
Kirkland & Ellis LLP
Citigroup Center
153 East 53rd Street
New York, New York 10022
Summer Associate

1992 – 1993
Time Magazine, Inc.
1271 Avenue of the Americas
New York, New York 10020
Staff Reporter/Researcher

Teaching Affiliations

January Terms 2019 and 2018
Harvard Law School
Trial Advocacy Workshop Instructor (uncompensated)
1563 Massachusetts Avenue
Cambridge, Massachusetts 02138

Spring Terms 2014, 2012, and 2011
George Washington University Law School
Professional Lecturer in Law—Federal Sentencing Seminar
2000 H Street, Northwest
Washington, District of Columbia 20052

Other Affiliations (uncompensated):

2019 – Present
Georgetown Day School
4200 Davenport Street, Northwest
Washington, District of Columbia 20016
Board of Trustees

2019 – Present
Supreme Court Fellows Commission
1 First Street, Northeast
Washington, District Columbia 20543
Commissioner

2016 – Present
Harvard University
17 Quincy Street
Cambridge, Massachusetts 02138
Board of Overseers (2016 – present)

2016 – Present
American Law Institute
4025 Chestnut Street
Philadelphia, Pennsylvania 19104
Council

2015 – Present
Historical Society of the District of Columbia Circuit
333 Constitution Avenue, Northwest, Room 4726
Washington, District of Columbia 20001
Board of Directors

2014 – Present
Edward Bennett Williams Inn of Court
333 Constitution Avenue, Northwest
Washington, District of Columbia 20001
Vice President

2013 – 2017
Council for Court Excellence
1111 14th Street, Northwest, Suite 500
Washington, District of Columbia 20005
Co-Chair, CCE Jury Project: Jury Service in the 21st Century (2013 – 2015)
Board of Directors (2015 – 2017)

2011 – 2013
National Institute of Corrections
320 First Street, Northwest
Washington, District of Columbia 20534
Advisory Board (designee of Chair of the Sentencing Commission)

2010 – 2011
Montrose Christian School (closed 2013)
5100 Randolph Road
Rockville, Maryland 20852
Advisory School Board

2004 – 2007
Harvard Alumni Association
124 Mount Auburn Street, 6th Floor
Cambridge, Massachusetts 02138
Elected 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 was not required to register with the 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.

Empowering Women of Color, Columbia Law School,
Constance Baker Motley Award (2021)

Black Law Students Association, University of Chicago Law School,
Distinguished Visiting Jurist, Third Annual Judge James B. Parsons Legacy Award (2020)

Women's Bar Association of the District of Columbia, Stars of the Bar Award (2019)

The University of Utah, S.J. Quinney College of Law,
David T. Lewis Distinguished Jurist-in-Residence (2019)

NBC News, She Thrives: Black Women Making History (2019)

Keynote Speaker, Harvard Law Review's 130th Spring Banquet (2017)

The University of Chicago Law School,
Edward H. Levi Distinguished Visiting Jurist (2014 – 2015)

Harvard Law Review (Volume 109, Supervising Editor, 1995 – 1996)

Harvard College Scholarship for Academic Achievement (1989 – 1991)

Elizabeth Carey Agassiz Certificate for Academic Achievement (1989 – 1990)

Glamour Magazine's Top Ten College Women Competition, Semi-finalist (1991)

National Catholic Forensic League National Champion in Original Oratory (1988)

National Forensics League National Finalist in Humorous Interpretation (1988)

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.

ABA Criminal Justice Section, Sentencing Task Force (2018 – Present)

American Law Institute, Council (2016 – Present)

Edward Bennett Williams Inn of Court, Vice President (2014 – Present)

Judicial Conference Committee on Defender Services (2017 – Present)

Magistrate Judge Merit Selection Panel (2005)

Supreme Court Fellows Commission (2019 – Present)

Supreme Court Institute, Georgetown University, Moot Court Jurist (2003 – 2009)

United States District Court for the District of Columbia
D.C. Circuit Judicial Wellness Committee (2018 – Present)
District Court Admission Review Committee (2015 – Present)
District Court Jury Committee, Chair (2013 – Present)
Bankruptcy Judge Merit Selection Panel, Chair (2020)
Art and District Court Public Space Committee (2017 – 2019)
D.C. Circuit Judicial Conference Arrangements Committee (2017)
D.C. Circuit Judicial Council (2014 – 2016)

Women's Bar Association of the District of Columbia, Amicus Committee Co-Chair (2006)

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.

Massachusetts, 1996
District of Columbia, 1998

There have been no lapses in membership. I have been an inactive member of both bars (judicial status) since my appointment to the bench in 2013.

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 Fourth Circuit, 2008
United States Court of Appeals for the District of Columbia Circuit, 2005
United States Court of Appeals for the First Circuit, 1998
United States District Court for the District of Columbia, 2009
United States District Court for the District of Massachusetts, 1997
United States Court of Federal Claims, 2008
District of Columbia Court of Appeals, 1998

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.

The Cosmos Club (2019 – Present)

Harvard Alumni Association (1992 – Present)
Elected Director (2004 – 2007)

Harvard Black Alumni Society (2003 – Present)

Harvard Club of Washington, District of Columbia (2002 – 2016)
Local College Interviewer (2004 – 2016)

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.

To the best of my knowledge, none of these organizations currently discriminates on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies. It is my understanding that, more than 30 years prior to my joining, the Cosmos Club intentionally excluded women from membership. The club terminated that policy in 1988.

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.

Judging A Book: Jackson Reviews "When Should Law Forgive?," Law 360 (Sept. 24, 2019). Copy supplied.

With Kathleen Cooper Grilli, *"Carrot and Stick" Philosophy: The History of the Organizational Sentencing Guidelines and the Emergence of Effective Compliance and Ethics Programs*, THE COMPLETE COMPLIANCE AND ETHICS MANUAL (Soc'y of Corporate Compliance & Ethics), Aug. 2012, at 1.25. (Updated and republished annually.) Copy supplied.

Section 10(b) and Rule 10b-5: The U.S. Courts of Appeals Apply Different Legal Tests for Assessing the Primary Liability of Secondary Actors, Securities Litigation, Enforcement, and White Collar Criminal Defense Newsletter (Morrison & Foerster LLP), Spring 2009, at 10–12. Copy supplied.

Letter to the Editor, *Feder's as Racist as Those He Condemns*, Boston Herald, April 10, 1997, at 36. Copy of letter and underlying editorial supplied.

Note, *Prevention Versus Punishment: Toward a Principled Distinction in the Restraint of Released Sex Offenders*, 109 Harv. L. Rev. 1711 (1996). Copy supplied.

Recent Case, *Racketeer Influenced and Corrupt Organizations Act (RICO)—Scope of Liability After Reves v. Ernst & Young*, 108 Harv. L. Rev. 1405 (1995). Copy supplied.

"The Hand Of Oppression": Plea Bargaining Processes and the Coercion of Criminal Defendants (March 1992) (senior thesis on file with the Harvard College Archives). Copy supplied. (Because my thesis was unpublished, it is not responsive to this question but I am including it because it was inadvertently listed in my 2012 Senate Judiciary Questionnaire.)

It's About Time, 4 Progressive Forensics 1, 18 (1987). Copy supplied. (Because this article is from when I was in high school, it is not responsive to this question but I am including it because it was inadvertently listed in my 2012 Senate Judiciary Questionnaire.)

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.

Council for Court Excellence, Strategic Plan 2017 – 2021 (Dec. 14, 2016). Copy supplied.

Council for Court Excellence, Jury Service Revisited: Upgrades for the 21st Century (Dec. 2015). Copy supplied.

During the time that I served as a Commissioner on the United States Sentencing Commission, the Commission issued, on an annual basis, federal sentencing guidelines manuals, sourcebooks of federal sentencing statistics, and yearly reports. The Commission also issued, on a periodic basis, reports on federal sentencing statistics. It is important to note that while members of the Commission contribute to these reports, they are representative of the Commission as a whole and not of any single Commissioner.

I have searched my files and electronic databases in an effort to locate all reports, memoranda, and policy statements responsive to this question. I have located the materials listed below, but it is possible that there are a few that I have been unable to identify.

United States Sentencing Commission, Final Fair Sentencing Act Amendment Retroactivity Data Report (Dec. 2014). Available at http://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/fair-sentencing-act/Final_USSC_Crack_Retro_Data_Report_FSA.pdf.

United States Sentencing Commission, FY 2013 Annual Report and Sourcebook of Federal Sentencing Statistics. Available at https://www.ussc.gov/research/sourcebook/archive/sourcebook-2013.

United States Sentencing Commission, Guidelines Manual (Nov. 2014). Available at http://www.ussc.gov/guidelines-manual/2014/2014-ussc-guidelines-manual.

United States Sentencing Commission, Overview of Federal Criminal Cases, Fiscal Year 2013 (Aug. 2014). Available at http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2014/FY13_Overview_Federal_Criminal_Cases.pdf.

United States Sentencing Commission, FY 2012 Annual Report and Sourcebook of Federal Sentencing Statistics. Available at https://www.ussc.gov/research/sourcebook/archive/sourcebook-2012.

United States Sentencing Commission, Guidelines Manual (Nov. 2013). Available at http://www.ussc.gov/guidelines-manual/2013/2013-ussc-guidelines-manual.

United States Sentencing Commission, Overview of Federal Criminal Cases, Fiscal Year 2012 (July 2013). Available at http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2013/FY12_Overview_Federal_Criminal_Cases.pdf.

United States Sentencing Commission, Report to Congress: The Continuing Impact of *United States v. Booker* on Federal Sentencing (Dec. 2012). Available at http://www.ussc.gov/news/congressional-testimony-and-reports/booker-reports/report-continuing-impact-united-states-v-booker-federal-sentencing.

United States Sentencing Commission, Report to Congress: Federal Child Pornography Offenses (Dec. 2012). Available at http://www.ussc.gov/news/congressional-testimony-and-reports/sex-offense-topics/report-congress-federal-child-pornography-offenses.

United States Sentencing Commission, Guidelines Manual (Nov. 2012). Available at http://www.ussc.gov/guidelines-manual/2012/2012-ussc-guidelines-manual.

United States Sentencing Commission, Overview of Federal Criminal Cases, Fiscal Year 2011 (Sept. 2012). Available at http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2012/FY11_Overview_Federal_Criminal_Cases.pdf.

United States Sentencing Commission, Overview of Federal Criminal Cases, Fiscal Year 2010 (July 2012). Available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2012/FY10_Overview_Federal_Criminal_Cases.pdf.

United States Sentencing Commission, FY 2011 Annual Report and Sourcebook of Federal Sentencing Statistics. Available at https://www.ussc.gov/research/sourcebook/archive/sourcebook-2011.

United States Sentencing Commission, Report to Congress Regarding the Comprehensive Iran Sanctions Accountability and Divestment Act of 2010 (Dec. 14, 2011). Report available at https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/submissions/20111214_Iran_Sanctions_Transmission_0.pdf.

United States Sentencing Commission, Guidelines Manual (Nov. 2011). Available at https://www.ussc.gov/guidelines/archive/2011-federal-sentencing-guidelines-manual.

United States Sentencing Commission, Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System (Oct. 2011). Available at https://www.ussc.gov/research/congressional-reports/2011-report-congress-mandatory-minimum-penalties-federal-criminal-justice-system.

National Institute of Corrections, Report to the Nation FY 2010 (June 2011). Available at https://s3.amazonaws.com/static.nicic.gov/Library/024837.pdf.

United States Sentencing Commission, FY 2010 Annual Report and Sourcebook of Federal Sentencing Statistics. Available at https://www.ussc.gov/research/sourcebook/archive/sourcebook-2010.

United States Sentencing Commission, Overview of Federal Criminal Cases, Fiscal Year 2009 (Dec. 2010). Available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2010/20101230_FY09_Overview_Federal_Criminal_Cases.pdf.

United States Sentencing Commission, Guidelines Manual (Nov. 2010). Available at https://www.ussc.gov/guidelines/archive/2010-federal-sentencing-guidelines-manual.

United States Sentencing Commission, Computation of "Recency" Criminal History Points Under USSG §4A1.1(e) (Aug. 2010). Available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2010/20100818_Recency_Report.pdf.

United States Sentencing Commission, Federal Offenders Sentenced to Supervised Release (July 2010). Available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2010/20100722_Supervised_Release.pdf.

United States Sentencing Commission, Results of Survey of United States District Judges, January 2010 through March 2010 (June 2010). Available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/surveys/20100608_Judge_Survey.pdf.

United States Sentencing Commission, Demographic Differences in Federal Sentencing Practices: An Update of the *Booker Report's* Multivariate Regression Analysis (Mar. 2010). Available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2010/20100311_Multivariate_Regression_Analysis_Report.pdf.

The American Law Institute ("ALI") has released numerous publications, including Restatements of Law, model statutes, and Principles of the Law, a listing of which is available on ALI's website at https://www.ali.org/publications.

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 December 12, 2012, I testified before the United States Senate Judiciary Committee as a nominee to be a District Judge on the United States District Court

for the District of Columbia. Testimony and responses to questions for the record supplied.

On October 7, 2009, I testified before the United States Senate Judiciary Committee as a nominee to be a Member of the United States Sentencing Commission. Testimony and responses to questions for the record supplied.

From 2010 until 2014, I served as a Vice Chair and Commissioner of the United States Sentencing Commission and made various public statements at Commission meetings in that capacity. The Sentencing Commission conducts public meetings and holds public hearings as a part of its annual amendment cycle. Congress also periodically requests information from the Commission, and the Commission provides letters or written statements in response. In addition, the Chair of the Commission periodically testifies on behalf of the Commission before various Congressional committees, and the Commission sometimes files amicus briefs in court. While members of the Commission contribute to the briefs, letters and other statements of the Commission, such statements are representative of the Commission as a whole and not of any single Commissioner.

I have searched my files and electronic databases in an effort to locate all testimony, official statements, or other communications responsive to this question. I have located the materials listed below, but it is possible that there are a few that I have been unable to identify.

United States Sentencing Commission, Public Meeting (Aug. 14, 2014). Notice of meeting available at http://www.ussc.gov/amendment-process/public-hearings-and-meetings/20140814/august-14-2014.

United States Sentencing Commission, Public Meeting (July 18, 2014). Video available at http://www.ussc.gov/videos/public-meeting-july-18-2014 and minutes available at http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20140718/meeting-minutes.pdf.

Prepared Statement of Patti B. Saris, Chair of the United States Sentencing Commission, before the House Committee on the Judiciary (July 11, 2014). Testimony available at http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/testimony/20140711_Saris_Testimony.pdf.

United States Sentencing Commission, Public Hearing on Retroactivity of 2014 Drug Amendment (June 10, 2014). Video available at http://www.ussc.gov/videos/public-hearing-june-10-2014 and transcript available at http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20140610/transcript.pdf.

United States Sentencing Commission, Public Meeting (April 10, 2014). Video available at http://www.ussc.gov/videos/public-meeting-april-10-2014 and minutes available at http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20140410/meeting-minutes.pdf.

United States Sentencing Commission, Public Hearing regarding proposed amendments to the federal sentencing guidelines (March 13, 2014). Video available at http://www.ussc.gov/videos/public-hearing-march-13-2014 and transcript available at http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20140313/transcript.pdf.

United States Sentencing Commission, Public Hearing on Implementing the Violence Against Women Reauthorization Act of 2013 (Feb. 13. 2014). Transcript available at http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20140213/Transcript.pdf.

United States Sentencing Commission, Public Meeting (Jan. 9, 2014). Video available at http://www.ussc.gov/videos/webcast-analysis-drug-trafficking-offenders-and-guidelines and minutes available at http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20140109/meeting-minutes.pdf.

United States Sentencing Commission, Public Meeting (Aug. 15, 2013). Minutes available at http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20130815/meeting-minutes.pdf.

United States Sentencing Commission, Public Meeting (Apr. 10, 2013). Minutes available at http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20130410/Meeting_Minutes.pdf.

United States Sentencing Commission, Public Hearing (March 13, 2013). Transcript available at http://www.ussc.gov/sites/default/files/Transcript.pdf.

United States Sentencing Commission, Public Meeting (Jan. 11, 2013). Minutes available at http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20130111/Meeting_Minutes.pdf.

United States Sentencing Commission, Letter to Senate Judiciary Committee (Nov. 26, 2013). Available at http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/submissions/20131126-Letter-Senate-Judiciary-Committee.pdf

Prepared Statement of Patti B. Saris, Chair of the United States Sentencing Commission, before the Senate Committee on the Judiciary (Sept. 18, 2013). Testimony available at

http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/submissions/20130918_SJC_Mandatory_Minimums.pdf.

United States Sentencing Commission, Report to Congress: The Continuing Impact of *United States v. Booker* on Federal Sentencing (Dec. 2012). Available at http://www.ussc.gov/news/congressional-testimony-and-reports/booker-reports/report-continuing-impact-united-states-v-booker-federal-sentencing.

United States Sentencing Commission, Report to Congress: Federal Child Pornography Offenses (Dec. 2012). Available at http://www.ussc.gov/news/congressional-testimony-and-reports/sex-offense-topics/report-congress-federal-child-pornography-offenses.

United States Sentencing Commission, Letter to Senate Judiciary Committee (Aug. 7, 2012). Available at https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/submissions/20120807_StC_Prison_Costs.pdf.

United States Sentencing Commission, Public Meeting (Apr. 13, 2012). Minutes available at https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20120413/Meeting_Minutes.pdf.

United States Sentencing Commission, Public Hearing on Proposed Amendments to the Federal Sentencing Guidelines (March 14, 2012). Notice of meeting and transcript available at https://www.ussc.gov/policymaking/meetings-hearings/march-14-2012.

United States Sentencing Commission, Public Hearing on Federal Sentencing Options after *Booker* (Feb. 16, 2012). Notice of meeting and transcript available at https://www.ussc.gov/policymaking/meetings-hearings/february-16-2012.

United States Sentencing Commission, Public Hearing on Federal Child Pornography Crimes (Feb. 15, 2012). Notice of meeting and transcript available at https://www.ussc.gov/policymaking/meetings-hearings/february-15-2012.

United States Sentencing Commission, Public Meeting (Jan. 10, 2012). Notice of meeting an minutes available at https://www.ussc.gov/policymaking/meetings-hearings/january-10-2012.

United States Sentencing Commission, Report to Congress Regarding the Comprehensive Iran Sanctions Accountability and Divestment Act of 2010 (Dec. 14, 2011). Report available at https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/submissions/20111214_Iran_Sanctions_Transmission_0.pdf.

Prepared Statement of Patti B. Saris, Chair of the United States Sentencing Commission, before the House Committee on the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security (Oct. 12, 2011). Testimony available at https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/testimony/20111012_Saris_Testimony.pdf.

United States Sentencing Commission, Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System (Oct. 2011). Available at https://www.ussc.gov/research/congressional-reports/2011-report-congress-mandatory-minimum-penalties-federal-criminal-justice-system.

United States Sentencing Commission, Public Meeting (Sept. 15, 2011). Notice of meeting and minutes available at https://www.ussc.gov/policymaking/meetings-hearings/september-15-2011.

United States Sentencing Commission, Public Meeting (June 30, 2011). Notice of meeting, minutes, and transcript available at https://www.ussc.gov/policymaking/meetings-hearings/june-30-2011. Video available at http://www.c-spanvideo.org/program/300289-1.

United States Sentencing Commission, Public Hearing on the Possible Retroactivity of the New Guideline Amendments Implementing the Fair Sentencing Act of 2010 (June 1, 2011). Notice of meeting available at https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20110630/Notice.pdf. Transcript available at https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20110630/Meeting_Transcript.pdf.

United States Sentencing Commission, Public Meeting (Apr. 6, 2011). Notice of meeting and minutes available at https://www.ussc.gov/policymaking/meetings-hearings/april-6-2011.

United States Sentencing Commission, Public Hearing on Proposed Amendments to the Federal Sentencing Guidelines (Mar. 17, 2011). Notice of meeting and transcript available at https://www.ussc.gov/policymaking/meetings-hearings/march-17-2011.

United States Sentencing Commission, Public Hearing on Proposed Amendments to the Federal Sentencing Guidelines (Feb. 16, 2011). Notice of meeting and transcript available at https://www.ussc.gov/policymaking/meetings-hearings/february-16-2011.

United States Sentencing Commission, Public Meeting (Jan. 11, 2011). Notice of meeting and minutes available at https://www.ussc.gov/policymaking/meetings-hearings/january-11-2011.

United States Sentencing Commission, Public Meeting (Oct. 15, 2010). Notice of meeting and minutes available at https://www.ussc.gov/policymaking/meetings-hearings/notice-october-15-2010.

United States Sentencing Commission, Public Meeting (Sept. 16, 2010). Notice of meeting and minutes available at https://www.ussc.gov/policymaking/meetings-hearings/notice-september-16-2010.

United States Sentencing Commission, Public Meeting (Sept. 1, 2010). Notice of minutes available at https://www.ussc.gov/policymaking/meetings-hearings/notice-september-1-2010.

United States Sentencing Commission, Public Hearing on the Issue of Statutory Mandatory Minimum Penalties in Federal Sentencing (May 27, 2010). Notice of meeting, agenda, and transcript available at https://www.ussc.gov/policymaking/meetings-hearings/notice-may-27-2010.

United States Sentencing Commission, Public Meeting (Apr. 13, 2010). Notice of meeting and minutes available at https://www.ussc.gov/policymaking/meetings-hearings/notice-april-13-2010.

United States Sentencing Commission, Public Meeting (Apr. 7, 2010). Notice of meeting and minutes available at https://www.ussc.gov/policymaking/meetings-hearings/notice-april-7-2010.

United States Sentencing Commission, Public Hearing on Proposed Amendments to the Federal Sentencing Guidelines (Mar. 17, 2010). Notice of hearing, minutes Transcript available at https://www.ussc.gov/policymaking/meetings-hearings/notice-march-17-2010.

United States Sentencing Commission, Brief for the Commission as amicus curiae filed in the Supreme Court of the United States in the case of *Percy v. Dillon*, No. 09-6338 (Mar. 2010). Brief supplied.

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.

I have searched my files and electronic databases in an effort to identify all events responsive to this question. I have located the events listed below, but it is possible that there are a few that I have no record of and thus was not able to identify.

March 12, 2021: Honoree, Empowering Women of Color, Columbia Law School, Sixth Annual Constance Baker Motley Gala, Washington, District of Columbia (via Zoom). Copy of speech as prepared supplied.

January 26, 2021: Panelist, "Raising our Hands: Seeking Appointments in the Biden/Harris Administration," Women's White Collar Defense Association, Washington, District of Columbia (via Zoom). I participated in a question and answer session regarding the panelists' career paths and general advice for women attorneys seeking to advance their careers through public service. I have no notes, transcript, or recording. The address for the Women's White Collar Defense Association is 1501 K Street, Northwest, Washington, District of Columbia 20005.

November 18, 2020: Guest Speaker, Harvard Law School, Professor Jonathan Wroblewski's "Government Lawyer" Class, Washington, District of Columbia (via Zoom). I participated in a question and answer session about my experiences with prosecutors as a federal public defender and a district judge. I have no notes, transcript, or recording. The address for Harvard Law School is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

November 18, 2020: Panelist, Georgetown Day School, Benjamin Cooper Memorial Lecture & 75th Anniversary Speaker Series, Washington, District of Columbia (via Zoom). Video is available at https://vimeo.com/491257244.

November 17, 2020: Guest Speaker, George Washington University Law School, Professor Roger Fairfax's Adjudicatory Criminal Procedure Class, Washington, District of Columbia (via Zoom). I served as the judge for a mock sentencing exercise in Professor Fairfax's class and participated in a question and answer session about my legal career. I have no notes, transcript, or recording. The address for George Washington University Law School is 2000 H Street, Northwest, Washington, District of Columbia 20052.

November 12, 2020: Guest Speaker, University of Virginia School of Law, Professor Kimberly Robinson's Seminar in Ethical Values: Women of the Court, Washington, District of Columbia (via Zoom). I spoke to students in Professor Robinson's seminar regarding my legal career. I have no notes, transcript, or recording. The address for the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

November 10, 2020: Presiding Judge, Naturalization Ceremony, United States District Court for the District of Columbia, Washington, District of Columbia. Notes supplied.

October 30, 2020: Speaker, Judges' Forum, United States District Court for the District of Columbia, Washington, District of Columbia (via Zoom). I participated in a question and answer session about my legal career with D.D.C. clerks and interns. I have no notes, transcript, or recording. The address of the Court is 333 Constitution Avenue, Northwest, Washington, District of Columbia 20001.

October 23, 2020: Participant, Fireside Chat with Associate Justice Stephen Breyer, Annual Meeting of National Asian Pacific American Bar Association, Washington, District of Columbia (via Zoom). Video available at https://www.cand.uscourts.gov/about/interview-with-justice-breyer.

October 1, 2020: Guest Speaker, COVID Conversation Series: Conversations with the Judiciary, University of California Berkeley School of Law, Washington, District of Columbia (via Zoom). I participated in a moderated discussion hosted by Professor Amanda Tyler concerning one of my civil procedure cases, and answered questions about my career path and clerking. I have no notes, transcript, or recording. The address for the University of California Berkeley School of Law is 225 Bancroft Way, Berkeley, California 94720.

August 5, 2020: Panelist, *Harvard Law Review* Orientation, Harvard Law School, Cape Cod, Massachusetts (via Zoom). I participated in a panel of Law Review alums that highlighted panelists' experiences as editors. I have no notes, transcript, or recording. The address for Harvard Law School is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

June 17, 2020: Guest Speaker, Boies Schiller Flexner LLP, Washington, District of Columbia (via Zoom). I participated in a question and answer session with the firm's summer associates regarding my career. I have no notes, transcript, or recording. The address for Boies Schiller Flexner is 1401 New York Avenue, Northwest, Washington, District of Columbia 20005.

April 22, 2020: Special Guest, University of Kentucky Rosenberg College of Law, Professor Joshua Douglas's Constitutional Law Class, Washington, District of Columbia (via Zoom). I spoke briefly with Professor Douglas's students, who were preparing for final examinations, to provide encouragement and reflections. I have no notes, transcript, or recording. The address for the Rosenberg College of Law is 620 South Limestone, Lexington, Kentucky 40506-0048.

March 6, 2020: Mock Court Judge, District of Columbia Circuit Historical Society Mock Court Program, Washington, District of Columbia. I judged a high school mock court competition, and answered questions from participants

regarding my background. I have no notes, transcript, or recording. The address of the Historical Society is 333 Constitution Avenue, Northwest, Room 4726, Washington, District of Columbia 20001.

February 24, 2020: Keynote Speaker, Third Annual Judge James B. Parsons Legacy Dinner, "Three Qualities for Success in Law and Life," Black Law Students Association of the University of Chicago School of Law, Chicago, Illinois. Copy of speech as prepared supplied.

February 21, 2020: Speaker, Portrait Ceremony for former Chair of the United States Sentencing Commission, Judge Patti B. Saris, United States Sentencing Commission, Washington, District of Columbia. Copy of speech as prepared supplied.

February 10, 2020: Guest Speaker, Harvard Law School Black Law Students Association, Cambridge, Massachusetts. I participated in a question and answer session with students regarding my career. I have no notes, transcript, or recording. The address for Harvard Law School is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

January 20, 2020: Keynote Speaker, University of Michigan Law School, Martin Luther King Jr. Day Celebration, "Courage / Purpose / Authenticity: Black Women Leaders in the Civil Rights Movement Era and Beyond," University of Michigan Law School, Ann Arbor, Michigan. Copy of speech and slide deck as prepared supplied.

January 20, 2020: Guest Speaker, "Coffee and Clerkships," University of Michigan Law School, Ann Arbor, Michigan. I participated in a small group question and answer session with law students interested in clerking following graduation. I have no notes, transcript, or recording. The address for the University of Michigan Law School is 625 South State Street, Ann Arbor, Michigan 48109.

December 18, 2019: Participant, Reenactment of Supreme Court case *New Jersey v. TLO* for local area high school students, District of Columbia Circuit Historical Society, Washington, District of Columbia. Press coverage supplied. The address of the Historical Society is 333 Constitution Avenue, Northwest, Room 4726, Washington, District of Columbia 20001.

October 10, 2019: Keynote Speaker, "Rising Through the Ranks: A Tale of Hard Work, Big Breaks & Tough Skin," Husch Blackwell Diversity Retreat, Washington, District of Columbia. Copy of speech as prepared supplied.

September 10, 2019: Presiding Judge, Naturalization Ceremony, United States District Court for the District of Columbia, Washington, District of Columbia. Notes supplied.

September 9, 2019: Presiding Judge, Attorney Admission Ceremony, United States District Court for the District of Columbia, Washington, District of Columbia. Notes supplied.

July 10, 2019: Panelist, "How to Land a Clerkship: Practical Advice from Judges," American Constitution Society, Washington, District of Columbia. I participated in a panel discussion regarding the value of clerkships and how to be a competitive candidate. I have no notes, transcript, or recording. The address for the American Constitution Society is 1899 L Street, Northwest, Suite 200, Washington, District of Columbia 20036.

July 8, 2019: Guest Speaker, US-Asia Institute, Szymanski Rule of Law Program, Washington, District of Columbia. I had a discussion with Chinese law students enrolled in this program, who were visiting the District Court, regarding the functioning of the United States federal court system. I have no notes, transcript, or recording. The address for the US-Asia Institute is 232 East Capitol Street, Northeast, Washington, District of Columbia 20003.

June 24, 2019: Mock Argument Judge, "Murder in Mycenae: Did Electra Hold the Knife?," Shakespeare Theatre Company, Washington, District of Columbia. Notes supplied. Video available at https://www.c-span.org/video/?462003-1/justices-breyer-ginsburg-participate-the-oresteia-mock-trial.

June 8 – 9, 2019: Mock Trial Program Judge, National Institute of Trial Advocacy, Washington, District of Columbia. I was a judge for a two-day mock trial program that NITA held at the District of Columbia Superior Court. I have no notes, transcript, or recording. The address for the NITA is 1685 38th Street, Suite 200, Boulder, Colorado 80301-2735.

May 1, 2019: Workshop Participant, Colloquium on Courts and the Legal Process, Columbia Law School, New York, New York. Notes supplied.

May 1, 2019: Guest Speaker, Columbia Law School, New York, New York. I participated in a moderated question and answer session with students interested in my career and clerking on the District Court for the District of Columbia. I have no notes, transcript, or recording. The address for Columbia Law School is 435 West 116th Street, New York, New York 10027.

April 9 – 10, 2019: Guest, David T. Lewis Distinguished Jurist-in-Residence, The University of Utah, S.J. Quinney College of Law, Salt Lake City, Utah. As the jurist-in-residence, I visited classes, participated in a question and answer session about my career that was sponsored by the Minority Bar Association and presided over the Traynor moot court competition. I have no notes, transcript, or recording of the class meetings or question and answer session. Video of the moot court argument is available at

https://www.youtube.com/watch?v=08NAICZJxns&feature=youtu.be. The address for the University of Utah, S.J. Quinney College of Law is 383 South University Street East, Salt Lake City, Utah 84112.

April 3, 2019: Guest Speaker, United States Sentencing Commission, Washington, District of Columbia. I met with a delegation from Taiwan that was visiting the District Court and United States Sentencing Commission, and answered questions about the federal sentencing system. I have no notes, transcript, or recording. The address for the Sentencing Commission is One Columbus Circle, Northeast, Suite 2-500, South Lobby, Washington, District of Columbia 20002-8002.

March 15, 2019: Speaker, Judges' Forum, United States District Court for the District of Columbia, Washington, District of Columbia. I participated in a question and answer session about my legal career with D.D.C. clerks and interns. I have no notes, transcript, or recording. The address of the Court is 333 Constitution Avenue, Northwest, Washington, District of Columbia 20001.

March 7, 2019: Guest Speaker, "Path to the Bench," Harvard Chapter of the American Constitution Society, Harvard Law School, Cambridge, Massachusetts. I participated in a question and answer session with students about my path to the bench. I have no notes, transcript, or recording. The address for Harvard Law School is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

February 8, 2019: Symposium Panelist, "Judicial Independence and Criminal Law," Stanford Law Review, Symposium on The Independence of the American Judicial System, Stanford, California. I participated in a moderated panel that compared the experiences of elected state judicial officers and life-tenured federal judges as part of a symposium concerning judicial independence. I have no notes, transcript, or recording. The address for Stanford Law School is 559 Nathan Abbott Way, Stanford, California 94305-8610.

February 7, 2019: Guest Speaker, Stanford Law School Black Law Student Association, Stanford, California. I participated in a question and answer session with students regarding my career and clerking. I have no notes, transcript, or recording. The address for Stanford Law School is 559 Nathan Abbott Way, Stanford, California 94305-8610.

January 11, 2019: Guest Speaker, Harvard Law School Black Law Student Association, Cambridge, Massachusetts. I participated in a question and answer session with BLSA members regarding my career path and career planning. I have no notes, transcript, or recording. The address for Harvard Law School is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

November 27, 2018: Guest Speaker, George Washington University Law School, Professor Roger Fairfax's Adjudicatory Criminal Procedure Class, Washington,

District of Columbia. I served as the judge for a mock sentencing exercise in Professor Fairfax's class and participated in a question and answer session about my legal career. I have no notes, transcript, or recording. The address for George Washington University Law School is 2000 H Street Northwest, Washington, District of Columbia 20052.

November 15, 2018: Panelist, "Hamilton: The Man, the Musical, and the Law," National Constitution Center, Philadelphia, Pennsylvania. Video available at https://constitutioncenter.org/interactive-constitution/town-hall-video/hamilton-the-man-the-musical-and-the-law.

November 15, 2018: Presiding Judge, "Hamilton & Burr: A Legal Duel," Drexel University Kline School of Law, Philadelphia, Pennsylvania. I presided over a mock trial of Aaron Burr for the murder of Alexander Hamilton. I have no notes, transcript, or recording. Press coverage supplied. The address for Drexel University Kline School of Law is 3320 Market Street, Philadelphia, Pennsylvania 19104.

November 8, 2018: Panelist, "Sentencing," National Association of Criminal Defense Lawyers, 14th Annual White Collar Seminar: Defending the White Collar Case, Washington, District of Columbia. I participated in a panel discussion regarding how judges approach sentencing determinations based on hypothetical scenarios involving white collar defendants. I have no notes, transcript, or recording. The address for the National Association of Criminal Defense Lawyers is 1660 L Street, Northwest, 12th Floor, Washington, District of Columbia 20036.

October 9, 2018: Presiding Judge, Naturalization Ceremony, United States District Court for the District of Columbia, Washington, District of Columbia. Notes supplied.

September 1, 2018: Presiding Judge, Attorney Admission Ceremony, United States District Court for the District of Columbia, Washington, District of Columbia. Notes supplied. I also used the same pro bono notes that were provided for the attorney admission ceremony on September 9, 2019.

June 28, 2018: Guest Speaker, Teachers for National Judicial History, Federal Judicial Center, Washington, District of Columbia. I participated in a question and answer session with teachers who had observed a court proceeding as part of a Federal Judicial Center Program. I have no notes, transcript, or recording. The address for the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, Northeast, Washington, District of Columbia 20002.

June 27, 2018: Guest Speaker, Federal Judicial Center Interns, Federal Judicial Center, Washington, District of Columbia. I participated in a question and answer

session with interns who had observed a court proceeding as part of a Federal Judicial Center Program. I have no notes, transcript, or recording. The address for the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, Northeast, Washington, District of Columbia 20002.

June 14, 2018: Guest Speaker, Metropolitan Police Department Cadets, Metropolitan Police Department of the District of Columbia, Washington, District of Columbia. I participated in a question and answer session in my courtroom with cadets training to be police officers regarding the federal judicial system. I have no notes, transcript, or recording. The address for the Metropolitan Police Department is 300 Indiana Avenue, Northwest, Room 5059, Washington, District of Columbia 20001.

May 3, 2018: Lunchtime Speaker, "Musings at the Midway Point: Reflections on My Journey as a Mother and a Judge," Washington Council of Lawyers' Litigation Skills Training Program, Washington, District of Columbia. Copy of speech as prepared supplied.

March 23, 2018: Speaker, All-School Assembly at Edmund Burke School, Washington, District of Columbia. Notes supplied.

March 16, 2018: Guest Speaker, Florida International University College of Law, Washington, District of Columbia. I participated in a question and answer session with law students who had observed a court proceeding. I have no notes, transcript, or recording. The address for FIU College of Law is 11200 Southwest 8th Street, Rafael Diaz Balart Hall, Miami, Florida 33199.

March 10, 2018: Moderator, Panel on "The Power of Protest and Legal Responses to Threats to Assembly," American Constitution Society 2018 National Student Convention at Northwestern Law School, Chicago, Illinois. I moderated a panel discussion regarding the right to assembly and the regulation of peaceful public protests. I have no notes, transcript, or recording. The address for Northwestern Law School is 375 East Chicago Avenue, Chicago, Illinois 60611.

January 25, 2018: Moot Court Judge, Penn Law Keedy Cup Competition, University of Pennsylvania Carey Law School, Philadelphia, Pennsylvania. I was one of three judges who presided over the final round of Penn Law's internal moot court competition. I have no notes, transcript, or recording. The address for Penn Law is 3501 Sansom Street, Philadelphia, Pennsylvania 19104.

December 14, 2017: Participant, *Tinker v. Des Moines* Reenactment, District of Columbia Circuit Historical Society, Washington, District of Columbia. Video available at https://dcchs.org/tinker-v-des-moines-independent-community-school-district-video-2.

December 11, 2017: Mock Argument Judge, "How Am I Beguiled? The Case of Olivia & Sebastian (*Twelfth Night*)," Shakespeare Theatre Company, Washington, District of Columbia. Video available at https://www.c-span.org/video/?438341-1/shakespeare-theatre-company-presents-twelfth-night-mock-trial.

November 15, 2017: Moot Court Judge, Leahy Moot Court Tournament, Georgetown University Law Center, Washington, District of Columbia. I was one of the judges for the final round of GULC's internal moot court competition. I have no notes, transcript, or recording. The address for GULC is 600 New Jersey Avenue, Northwest, Washington, District of Columbia 20001.

October 26, 2017: Symposium Panel Moderator, "Prosecutorial Power: The Role of Prosecutors in Mass Incarceration, the Need for Transparent Standards, and Lessons from Prosecutions for Police," George Washington University Law Review, Washington, District of Columbia. Video available at https://www.gwlr.org/symposium-2017-the-challenge-of-crime-in-a-free-society-50-years-later/symposium-2017-looking-forward-criminal-justice-policy-and-reform.

October 19, 2017: Dinner Speaker, "Four Lessons My Mother Taught Me," Council Meeting of the American Law Institute, Washington, District of Columbia. Copy of speech as prepared supplied.

October 8, 2017: Speaker, "The Concept of Justice," Bradley Hills Presbyterian Church Adult Education Program, Bethesda, Maryland. Copy of speech as prepared supplied.

July 16, 2017: Guest Speaker, Urban Squash Citizenship Tour, National Urban Squash + Education Association, Washington, District of Columbia. I participated in a question and answer session with a group of high school students regarding my career and the courts. I have no notes, transcript, or recording. The address for the National Urban Squash + Education Association is 555 Eighth Avenue, Suite 1102, New York, New York 10018.

July 11, 2017: Guest Speaker, US-Asia Institute, Szymanski Rule of Law Program, Washington, District of Columbia. I had an informal discussion with Chinese law students enrolled in this program regarding the functioning of the United States federal court system. I have no notes, transcript, or recording. The address for the US-Asia Institute is 232 East Capitol Street, Northeast, Washington, District of Columbia 20003.

July 10, 2017: Presiding Judge, Attorney Admission Ceremony, United States District Court for the District of Columbia, Washington, District of Columbia. Notes supplied. I also used the same pro bono notes that were provided for the attorney admission ceremony on September 9, 2019.

June 16, 2017: Guest Speaker, Wilkinson Walsh & Eskovitz Summer Speaker Series, Washington, District of Columbia. I participated in a question and answer session with the firm's summer associates regarding my career and work as a judge. I have no notes, transcript, or recording. The address for Wilkinson Walsh & Eskovitz (now Wilkinson Stekloff) is 1900 M Street, Northwest, Suite 800, Washington, District of Columbia 20036.

June 8, 2017: Introductory Speaker, "A Conversation with Associate Justice Stephen Breyer," American Constitution Society Annual National Convention, Washington, District of Columbia. Video available at https://www.acslaw.org/video/united-states-supreme-court-justice-stephen-breyer-in-conversation-with-dean-alan-morrison-introduced-by-judge-ketanji-brown-jackson.

June 2, 2017: Panelist, "Tips from the District Court Bench," United States Sentencing Commission National Seminar, Baltimore, Maryland. I participated in a moderated panel regarding how district court judges prepare for sentencing and how counsel can be most effective during sentencing proceedings. I have no notes, transcript, or recording. The address for the Sentencing Commission is One Columbus Circle, Northeast, Suite 2-500, South Lobby, Washington, District of Columbia 20002-8002.

May 27, 2017: Panelist, "'92 World Challenges—A Lesson Learned and Action Moving Forward," Harvard and Radcliffe Class of 1992 25th Reunion, Harvard University, Cambridge, Massachusetts. I participated in a public-service panel discussion at my 25th college reunion about my career choices and challenges. I have no notes, transcript, or recording. The address for Harvard College is University Hall, Cambridge, Massachusetts, 02138.

May 9, 2017: Presiding Judge, Naturalization Ceremony, United States District Court for the District of Columbia, Washington, District of Columbia. Notes supplied.

May 1, 2017: Presiding Judge, Attorney Admission Ceremony, United States District Court for the District of Columbia, Washington, District of Columbia. Notes supplied. I also used the same pro bono notes that were provided for the attorney admission ceremony on September 9, 2019.

April 19, 2017: Mock Argument Judge, Georgetown University Law Center, Judge Patricia Millett's Supreme Court Advocacy course, Washington, District of Columbia. I served as the judge for mock student oral arguments. I have no notes, transcript, or recording. The address of GULC is 600 New Jersey Avenue, Northwest, Washington, District of Columbia 20001.

April 13, 2017: Guest Speaker, George Washington University Law School, Professor Roger Fairfax's Adjudicatory Criminal Procedure Class, Washington,

District of Columbia. I served as the judge for a mock sentencing exercise in Professor Fairfax's class and participated in a question and answer session about my legal career. I have no notes, transcript, or recording. The address for George Washington University Law School is 2000 H Street, Northwest, Washington, District of Columbia 20052.

April 10, 2017: Guest Lecturer on Federal Sentencing Statistics and Processes, George Washington University Law School, Professor Kimberly Robinson's Race, Racism, and American Law Class, Washington, District of Columbia. Notes supplied.

April 8, 2017: Keynote Speaker, Harvard Law Review's 130th Spring Banquet, "Disparity, Discretion, and Debate: Understanding the Federal Sentencing Dilemma," Harvard Club of Boston, Boston, Massachusetts. Copy of speech as prepared supplied.

March 22, 2017: Participant, *Tinker v. Des Moines* Reenactment, District of Columbia Circuit Historical Society, Washington, District of Columbia. I played the role of one of the justices in a reenactment of a Supreme Court oral argument for D.C. public high school students. This event was the same reenactment as the event held on December 14, 2017, the video of which is available at https://dcchs.org/tinker-v-des-moines-independent-community-school-district-video-2.

March 10, 2017: Mock Court Judge, District of Columbia Circuit Historical Society Mock Court Program, Washington, District of Columbia. I judged a high school mock court competition and answered questions from participants regarding my background and being a judge. I have no notes, transcript, or recording. The address of the Historical Society is 333 Constitution Avenue, Northwest, Room 4726, Washington, District of Columbia 20001.

March 9, 2017: Panelist, "Sentencing and Its Collateral Consequences Impact," 31st Annual National Institute on White Collar Crime, American Bar Association White Collar Section, Miami Beach, Florida. I participated in a moderated panel regarding theories of sentencing reform and the ways in which counsel can be most effective during sentencing proceedings. I have no notes, transcript, or recording. The address for the ABA is 321 North Clark Street, Chicago, Illinois 60654.

March 2, 2017: Edith House Lecturer, "Reflections on my Journey as a Mother and a Judge," University of Georgia School of Law, Athens, Georgia. Video available at https://digitalcommons.law.uga.edu/lectures_pre_arch_lectures_house/41.

January 6, 2017: Guest Speaker, Judges' Forum, United States District Court for the District of Columbia, Washington, District of Columbia. I participated in a

question and answer session about my legal career with D.D.C. clerks and interns. I have no notes, transcript, or recording. The address of the Court is 333 Constitution Avenue, Northwest, Washington, District of Columbia 20001.

December 12, 2016: Mock Argument Judge, "Law and *Romeo and Juliet*," Shakespeare Theatre Company, Washington, District of Columbia. Video available at https://www.c-span.org/video/?419930-1/federal-judges-discuss-romeo-juliet.

November 17, 2016: Moot Court Judge, Morris Tyler Moot Court of Appeals Harlan Fiske Stone Prize Moot Court Finals, Yale Law School, New Haven, Connecticut. I was one of three judges who presided over the final round of Yale Law School's internal moot court competition. I have no notes, transcript, or recording. The address for Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

November 17, 2016: Guest Speaker, Yale Law Women, Yale BLSA, and Yale American Constitution Society, New Haven, Connecticut. I participated in career and clerking question and answer sessions with these groups while on campus at Yale Law School to judge the moot court competition. I have no notes, transcript, or recording. The address of Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

July 20, 2016: Panelist, "Perspectives on the Role of Courts in the Continuing Quest for Equality," 2016 NAACP National Convention, Cincinnati, Ohio. I participated in a moderated panel discussion regarding the historical role of the federal courts in protecting civil rights and legal issues that impact communities of color. I have no notes, transcript, or recording. The address for the NAACP is 4805 Mount Hope Drive, Baltimore, Maryland 21215.

June 24, 2016: Mock Trial Judge, American Law Institute, Washington, District of Columbia. I served as a mock trial judge for an environmental litigation mock trial sponsored by the American Law Institute. I have no notes, transcript, or recording. The address of the American Law Institute is 4025 Chestnut Street, Philadelphia, Pennsylvania 19104.

May 10, 2016: Presiding Judge, Naturalization Ceremony, United States District Court for the District of Columbia, Washington, District of Columbia. Notes supplied.

April 10, 2016: Moot Court Judge, Marshall-Brennan National Moot Court Competition, American University Washington College of Law Marshall-Brennan Constitutional Literacy Project, Washington, District of Columbia. I served as a judge for the final round of a national high school moot court competition. I have no notes, transcript, or recording. The address of the AUWCL is 4300 Nebraska Avenue, Northwest, Washington, District of Columbia 20016.

April 4, 2016: Presiding Judge, Attorney Admission Ceremony, United States District Court for the District of Columbia, Washington, District of Columbia. Notes supplied. I also used the same pro bono notes that were provided for the attorney admission ceremony on September 9, 2019.

March 17, 2016: Keynote Speaker, Women's History Month Celebration, "Musings at the Midway Point: Reflections on My Journey as a Mother and a Judge," Administrative Office of United States Courts, Washington, District of Columbia. Copy of speech as prepared supplied.

March 11, 2016: Mock Court Judge, District of Columbia Circuit Historical Society Mock Court Program, Washington, District of Columbia. I judged a high school mock court competition, and answered questions from participants regarding my background and being a judge. I have no notes, transcript, or recording. The address of the Historical Society is 333 Constitution Avenue, Northwest, Room 4726, Washington, District of Columbia 20001.

February 22, 2016: Guest Speaker, Morrison and Foerster LLP, Washington, District of Columbia. As an alumna of the firm, I participated in a moderated question-and-answer presentation for a Black History Month luncheon. I have no notes, transcript, or recording. The address of the firm is 2100 L Street, Northwest, Washington, District of Columbia 20037.

February 13, 2016: Moot Court Judge, William B. Spong, Jr. Moot Court, Tournament, William & Mary Law School, Williamsburg, Virginia. I served as a moot court judge for the Spong National Moot Court Tournament. I have no notes, transcript, or recording. The address of William & Mary Law School is 613 South Henry Street, Williamsburg, Virginia 23185.

October 27, 2015: Judge, Mock Arbitration, ChIPs Network Global Summit, Washington, District of Columbia. I served as a judge for a mock intellectual property arbitration. I have no notes, transcript, or recording. The address of ChIPs Network, Inc. is 660 4th Street, PMB 350, San Francisco, California 94107.

October 23, 2015: Guest Speaker, Equal Justice Works Conference & Career Fair, Washington, District of Columbia. Along with two other federal judges, I participated in a moderated question and answer panel presentation regarding my experiences as an attorney and judge, and provided advice for young attorneys, at a career fair for public interest lawyers. I have no notes, transcript, or recording. The address for Equal Justice Works is 1730 M Street, Northwest #800, Washington, District of Columbia 20036.

October 20, 2015: Panelist, District of Columbia Office of the Attorney General, Washington, District of Columbia. I participated in a panel of D.C. federal trial

court judges attended by employees of the District of Columbia Office of the Attorney General. The panel addressed best practices for litigating in federal court and our experiences as judges. I have no notes, transcript, or recording. The address for the DCOAG is 441 Fourth Street, Northwest, Washington, District of Columbia 20001.

September 16 – 18, 2015: Panelist, United States Sentencing Commission Annual National Seminar on the Federal Sentencing Guidelines, New Orleans, Louisiana. I participated in a panel discussion regarding the application of the Sentencing Guidelines to drug offenses, and the retroactivity of recent Guideline amendments. I have no notes, transcript, or recording. The address for the Sentencing Commission is One Columbus Circle, Northeast, Suite 2-500, South Lobby, Washington, District of Columbia 20002-8002.

September 9, 2015: Speaker, "Fairness in Sentencing: An Examination," Federal Judicial Center National Conference for Pro Se Law Clerks, Santa Fe, New Mexico. Copy of speech as prepared supplied.

April 3, 2015: Distinguished Visiting Jurist, The University of Chicago Law School, Chicago, Illinois. I visited the University of Chicago Law School, where I spoke with various student groups about diversity in the legal profession, attended classes, answered student questions, and gave a lunch talk entitled, "Fairness in Sentencing: An Examination." Copy of speech as prepared supplied.

March 26, 2015: Panelist, Penn Law American Constitution Society, 12th Annual Federal Judge's Panel, University of Pennsylvania Carey Law School, Philadelphia, Pennsylvania. I participated in a panel discussion regarding criminal justice system reforms, including proposed changes to the federal sentencing system. I have no notes, transcript, or recording. The address of Penn Law is 3501 Sansom Street, Philadelphia, Pennsylvania 19104

March 20, 2015: Mock Court Judge, District of Columbia Circuit Historical Society Mock Court Program, Washington, District of Columbia. I judged a high school mock court competition, and answered questions from participants regarding my background and being a judge. I have no notes, transcript, or recording. The address of the Historical Society is 333 Constitution Avenue, Northwest, Room 4726, Washington, District of Columbia 20001.

February 25, 2015: Panelist, "A Conversation on Judging – Then and Now," District of Columbia Circuit Historical Society, Washington, District of Columbia. Video available at https://www.youtube.com/watch?v=QuWMe0IAdv8.

January 4, 2015: Panelist, Association of American Law Schools Annual Meeting, Washington, District of Columbia. I participated in a panel regarding the importance of academic curricula aimed at teaching legal writing and

research. I have no notes, transcript, or recording. The address of the Association of American Law Schools is 1614 20th Street, Northwest, Washington, District of Columbia 20009.

December 9, 2014: Presiding Judge, United States District Court for the District of Columbia, Naturalization Ceremony, Washington, District of Columbia. Notes supplied.

December 3, 2014: Webinar Panelist, United States Sentencing Commission Knowledge Seminar, Washington, District of Columbia. Video available at https://www.youtube.com/watch?v=BaDn3MqIHVA&feature=youtu.be.

December 1, 2014: Presiding Judge, United States District Court for the District of Columbia, Attorney Admission Ceremony, Washington, District of Columbia. Notes supplied. I also used the same pro bono notes that were provided for the attorney admission ceremony on September 9, 2019.

October 27 – 28, 2014: Panelist and Participant, Berkeley Law School Judge Visit, Berkeley, California. I visited Berkeley Law, where I spoke with various student groups about diversity in the legal profession, attended classes, answered student questions, and participated in a panel discussion about the judicial nomination process and my experiences as a judge. I have no notes, transcript, or recording. The address for Berkeley Law is 225 Bancroft Way, Berkeley, California 94720.

September 17, 2014: Panelist, "United States Sentencing Commission: A Year in Review" and Moderator, "Sentencing Forum: Hot Topics in Federal Sentencing," United States Sentencing Commission, Annual National Seminar on the Sentencing Guidelines, Philadelphia, Pennsylvania. Materials available at http://www.ussc.gov/training/annual-national-training-seminar/2014-annual-national-seminar#two.

June 16, 2014: Moderator, Reentry Panel, United States Department of Justice, Smart on Crime Implementation Workshop, Washington, District of Columbia. I moderated an expert discussion of innovative pretrial programs aimed at certain categories of criminal defendants. I have no notes, transcript, or recording. The address for DOJ is 950 Pennsylvania Avenue, Northwest, Washington, District of Columbia 20530-0001.

June 6, 2014: Speaker, Presentation of the Portrait of Chief Judge Patti B. Saris, United States District Court for the District of Massachusetts, Boston, Massachusetts. Copy of speech as prepared supplied.

May 17, 2014: Speaker, Twentieth Anniversary Celebration of Justice Stephen Breyer, Washington, District of Columbia. Copy of speech as prepared supplied.

April 25, 2014: Mock Court Judge, District of Columbia Circuit Historical Society Mock Court Program, Washington, District of Columbia. I judged a high school mock court competition, and answered questions from participants regarding my background and being a judge. I have no notes, transcript, or recording. The address of the Historical Society is 333 Constitution Avenue, Northwest, Room 4726, Washington, District of Columbia 20001.

April 25, 2014: Guest Speaker, Goodwin Procter LLP, Washington, District of Columbia. I gave informal remarks and professional recommendations to a group of minority and women associates and partners during a luncheon sponsored by Goodwin Procter's Diversity Committee. I have no notes, transcript, or recording. The address of Goodwin Procter is 901 New York Avenue, Northwest, Washington, District of Columbia 20001.

April 4, 2014: Panelist, *Arguendo* Discussion, Woolly Mammoth Theater, Washington, District of Columbia. I participated in a post-performance panel discussion of the play and its legal themes. I have no notes, transcript, or recording. The address of the Woolly Mammoth Theater is 641 D Street, Northwest, Washington, District of Columbia 20004.

March 6, 2014: Panelist, "Sentencing Strategies in White Collar Cases," American Bar Association, 28th National Institute on White Collar Crime, Miami, Florida. I participated in a panel discussion regarding the sentencing guideline that governs economic crimes. I have no notes, transcript, or recording. The address for the ABA is 321 North Clark Street, Chicago, Illinois 60654.

February 26, 2014: Speaker, Phase II Orientation Supreme Court Reception, Federal Judicial Center, Washington, District of Columbia. Copy of speech as prepared supplied.

February 22, 2014: Moot Court Judge, William Minor Lile Moot Court Competition, University of Virginia School of Law, Charlottesville, Virginia. I judged the semifinal round of UVA's internal moot court competition. I have no notes, transcript, or recording. The address of the UVA School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

February 20, 2014: Guest Speaker, Close Up Foundation, Juveniles and Life-Without-Parole Sentences Program, Washington, District of Columbia. I participated in a question and answer session with high school students participating in the program regarding my career and sentencing. I have no notes, transcript, or recording. The address for the Close Up Foundation is 1330 Braddock Place #400, Alexandria, Virginia 22314.

February 17, 2014: Panelist, "Perspectives on the Criminal Justice System," Stanford Black Alumni Association, Washington, District of Columbia. I participated in a moderated panel discussion concerning African Americans in the

criminal justice system and proposals for sentencing reforms. I have no notes, transcript, or recording. The address for Stanford in Washington is 2661 Connecticut Avenue, Northwest, Washington, District of Columbia 20008.

February 14, 2014: Guest Speaker, Judges' Forum/Fall & Winter Speaker Series, United States District Court for the District of Columbia, Washington, District of Columbia. I participated in a question and answer session about my legal career with D.D.C. clerks and interns. I have no notes, transcript, or recording. The address of the Court is 333 Constitution Avenue, Northwest, Washington, District of Columbia 20001.

November 21, 2013: Guest Lecturer, George Washington University Law School, Professor Roger Fairfax's Adjudicatory Criminal Procedure Class, Washington, District of Columbia. I used the same notes supplied in relation to the similar lecture on April 2, 2009.

November 1, 2013: Panelist, "Update on Federal Sentencing Law and Policy," American Bar Association, 6th Annual Fall Institute, Washington, District of Columbia. Notes supplied.

October 8, 2013: Presiding Judge, Naturalization Ceremony, United States District Court for the District of Columbia, Washington, District of Columbia. Notes supplied.

October 7, 2013: Presiding Judge, Attorney Admission Ceremony, United States District Court for the District of Columbia, Washington, District of Columbia. I used the same pro bono notes that were provided for the attorney admission ceremony on September 9, 2019.

September 10, 2013: Presiding Judge, Naturalization Ceremony, United States District Court for the District of Columbia, Washington, District of Columbia. I have no notes, transcript, or recording. The address of the District Court is 333 Constitution Avenue, Northwest, Washington, District of Columbia 20001.

September 9, 2013: Presiding Judge, Attorney Admission Ceremony, United States District Court for the District of Columbia, Washington, District of Columbia. I used the same pro bono notes that were provided for the attorney admission ceremony on September 9, 2019.

September 4, 2013: Panelist, Plenary Panel, United States Sentencing Commission, Regional Training Seminar, Miami, Florida. Notes supplied.

August 2, 2013: Panelist, Plenary Panel, United States Sentencing Commission, Regional Training Seminar, Washington, District of Columbia. Notes supplied.

May 15, 2013: Guest Speaker, Reception Honoring Women Judges in the DC Metropolitan Area, Greater Washington Area Chapter, Women Lawyers Division, National Bar Association, Washington, District of Columbia. I gave brief remarks at an evening reception regarding my background, position as a judge, and professional recommendations. I have no notes, transcript, or recording. The address of the Greater Washington Area Chapter, Women Lawyers Division, National Bar Association is P.O. Box 77254, Washington, District of Columbia 20013-7254.

May 9, 2013: Speaker, Investiture of Judge Ketanji Brown Jackson, Washington, District of Columbia. Transcript supplied.

April 30, 2013: Guest Speaker, New York University School of Law, Judge John Gleeson's Sentencing Seminar, New York, New York. I was a guest of Judge Gleeson at his sentencing seminar and answered questions from students about the Commission and sentencing in general. I have no notes, transcript, or recording. The address of NYU School of Law is 40 Washington Square South, New York, New York 10012.

April 4, 2013: Guest Lecturer, George Washington University Law School, Professor Roger Fairfax's Adjudicatory Criminal Procedure Class, Washington, District of Columbia. I used the same notes supplied in relation to the similar lecture on April 2, 2009.

March 11, 2013: Guest Lecturer, George Washington University Law School, Professors Aitan Goelman and Adam Hoffinger's Role of the Federal Prosecutor Class, Washington, District of Columbia. I used the same notes supplied in relation to the similar lecture on March 14, 2011.

March 7, 2013: Panel Moderator, "Sentencing Strategy: Advocacy in White Collar Cases," American Bar Association, 27th Annual National Institute on White Collar Crime, Las Vegas, Nevada. I moderated a panel discussion regarding sentencing issues in white collar crime cases. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

October 26, 2012: Panelist, "Update on Federal Sentencing Law: Supreme Court, Appellate, and Legislation," American Bar Association, Criminal Justice Section, Fifth Annual Fall Institute, Washington, District of Columbia. Notes supplied.

October 23, 2012: Speaker, Health Ethics Trust's 2012 Healthcare Best Compliance Practices Forum (Alexandria, VA). I gave a speech to compliance officers in the health care industry about the historical development of the federal sentencing guidelines applicable to organizations, and the ways in which the guidelines have led to beneficial compliance and ethics standards

in industries such as healthcare. Notes supplied.

October 2, 2012: Speaker, "USSC Plenary Panel: Mandatory Minimum Report," Federal Judicial Center, National Sentencing Institute, Memphis, Tennessee. Notes supplied.

July 26, 2012: Panelist, 35th Annual Training Conference, National Association of Black Narcotic Agents, Washington, District of Columbia. Notes supplied.

June 13 – 15, 2012: Panelist, "United States Sentencing Commission: A Year in Review" and Moderator, "Sentencing Forum: Hot Topics in Federal Sentencing," United States Sentencing Commission, Annual National Seminar on the Sentencing Guidelines, New Orleans, Louisiana. Notes supplied.

May 24, 2012: Panelist, Plenary Session, "The Presentence Report and Departures/Variances," Tampa Bay Chapter of the Federal Bar Association, 21st Annual National Seminar on the Federal Sentencing Guidelines, Saint Petersburg, Florida. Outline supplied.

April 30, 2012: Speaker, "State of the Sentencing Guidelines," Health Care Compliance Association, Annual Compliance Institute, Las Vegas, Nevada. Video available at http://youtu.be/XFQ9DvKqH20.

April 17, 2012: Panelist, "New Frontiers in Race and Criminal Justice," NYU Center on the Administration of Criminal Law, New York, New York. Video available at http://www.youtube.com/watch?v=QSxZd10HovU.

March 12, 2012: Guest Lecturer, George Washington University Law School, Professors Aitan Goelman and Adam Hoffinger's Role of the Federal Prosecutor Class, Washington, District of Columbia. I used the same notes supplied in relation to the similar lecture on March 14, 2011.

February 28, 2012: Guest presenter, D.C. Class Field Trip sponsored by Professor Lisa McElroy of the Earl Mack School of Law at Drexel University, Washington, District of Columbia. I met with approximately 15 students in Professor McElroy's Supreme Court seminar to discuss my career and work-family balance issues. I have no notes, transcript, or recording. The address of the School of Law is 3141 Chestnut Street, Philadelphia, Pennsylvania 19104.

October 28, 2011: Panelist, American Bar Association, Fourth Annual Sentencing & Reentry Institute and Criminal Justice Legal Educators Colloquium (Washington, D.C.). I participated in a panel that provided legislative and case law updates about the state of federal sentencing. I provided data and information regarding recent amendments to the Guidelines Manual (including the guideline amendments made pursuant to the Fair Sentencing Act) and the proposed priorities of the Commission. Notes supplied.

October 24, 2011: Speaker, Health Ethics Trust's 2011 Healthcare Best Compliance Practices Forum, Washington, D.C. I gave a speech to compliance officers in the health care industry about the U.S. Sentencing Commission, its role in developing the federal sentencing guidelines applicable to organizations, and the ways in which the guidelines have led to the development of beneficial compliance and ethics standards in industries such as healthcare. Notes supplied.

September 28, 2011: Presenter, United States Sentencing Commission, Training Program for the probation officers and United States District Judges of the Northern District of Illinois, Chicago, Illinois. I provided data, training, and information about the guideline amendments made pursuant to the Fair Sentencing Act and the procedures related to retroactive application of those amendments. I met informally with Commission staff and the district's chief probation officers to answer questions about the anticipated impact of the guideline changes. I gave a more formal lunchtime presentation to the judges of the United States District Court. Notes supplied.

June 15, 2011: Panelist, "Sentencing in the Sixth Circuit," Sixth Circuit Judicial Conference, Acme, Michigan. Notes supplied.

June 14, 2011: Panelist, "Update on Key Issues Before the United States Sentencing Commission and Criminal Rules Committee," Ninth Circuit Federal Defenders Retreat, Big Fork, Montana. Notes supplied.

May 27, 2011: Commencement Speaker, Montrose Christian School, Rockville, Maryland. Copy of speech as prepared supplied.

May 23, 2011: Guest Speaker, D.C. Attorneys of Color Workshop, Morrison and Foerster LLP, Washington, District of Columbia. Notes supplied.

May 18 – 20, 2011: Panelist, "United States Sentencing Commission: A Year in Review" and Moderator, "Sentencing Forum: Current Issues and the Future of Federal Sentencing," United States Sentencing Commission, Annual National Seminar on the Sentencing Guidelines, San Diego, California. Notes supplied.

May 6, 2011: Panelist, "Update on Federal Sentencing Law," Tampa Bay Chapter of the Federal Bar Association, Annual National Seminar on the Federal Sentencing Guidelines, Orlando, Florida. Notes supplied.

March 14, 2011: Guest Lecturer, George Washington University Law School, Professors Aitan Goelman and Adam Hoffinger's Role of the Federal Prosecutor Class, Washington, District of Columbia. Notes supplied.

March 1, 2011: Guest presenter, D.C. Class Field Trip sponsored by Professor Lisa McElroy of the Earl Mack School of Law at Drexel University, Washington,

District of Columbia. I met with approximately 15 students in Professor McElroy's Supreme Court seminar to discuss my career and work-family balance issues. I have no notes, transcript, or recording. The address of the School of Law is 3141 Chestnut Street, Philadelphia, Pennsylvania 19104.

February 11, 2011: Speaker, training program for federal judges, prosecutors, defense attorneys, and probation officers, United States Sentencing Commission, Macon, Georgia. I gave introductory remarks at the beginning of the guidelines training program. I also answered questions and assisted Commission staff in training participants on how to use the Guidelines Manual. Notes supplied.

November 20, 2010: Panelist, "Bootcamp: Real World Training for Future Success," Women's Bar Association of D.C., Diversity Committee, Washington, District of Columbia. I participated in a panel on professional advancement. I discussed work-family balance issues and provided advice about career development and professional ethics. I have no notes, transcript, or recording. The Women's Bar Association is located at 2020 Pennsylvania Avenue, Northwest, Suite 446, Washington, District of Columbia 20006.

November 5, 2010: Panelist, "United States Sentencing Commission: A Year in Review" and "Update on Sentencing Law," American Bar Association Criminal Justice Section, Sentencing and Reentry Institute, Washington, District of Columbia. Notes supplied.

October 20, 2010: Speaker, training program for federal judges, prosecutors, defense attorneys, and probation officers, United States Sentencing Commission, Saint Thomas, Virgin Islands. I gave introductory remarks at the beginning of the guidelines training program. I also answered questions and assisted Commission staff in training participants on how to use the Guidelines Manual. Notes and brochure supplied.

September 22, 2010: Speaker, training program for the law clerks and Staff Attorneys of the United States Court of Appeals for the Fourth Circuit, United States Sentencing Commission, Richmond, Virginia. I gave introductory remarks at the beginning of the guidelines training program. I also answered questions and assisted Commission staff in training participants on how to use the Guidelines Manual. Notes supplied.

August 4, 2010: Panelist, "Rehabilitation or Restoration in Criminal Punishment: Dead End or Realistic Imperative?" Southeastern Association of Law Schools (SEALS), Annual Meeting and Conference, Palm Beach, Florida. Notes and PowerPoint slides supplied.

June 17, 2010: Panelist, United States Sentencing Commission, Annual National Seminar on the Federal Sentencing Guidelines, New Orleans, Louisiana. I was part of a plenary "year in review" panel featuring the Commissioners of the

United States Sentencing Commission. I have no notes, transcript, or recording. The United States Sentencing Commission is located at One Columbus Avenue, Northeast, Suite 2-500, South Lobby, Washington, District of Columbia 20002.

May 14, 2010: Panelist, "Update on Federal Sentencing Law: Supreme Court, Appellate, and Legislation," Tampa Bay Chapter of the Federal Bar Association, Annual National Seminar on the Federal Sentencing Guidelines, Saint Petersburg, Florida. Notes supplied.

November 10, 2009: Co-Presenter, Parent Encouragement Project, Kensington, MD. PowerPoint slides and notes supplied.

April 2, 2009: Guest Lecturer, Professor Roger Fairfax's Adjudicatory Criminal Procedure Class, George Washington University Law School, Washington, District of Columbia. I provided an overview of the content and structure of the Sentencing Guidelines and the Supreme Court's recent jurisprudence on sentencing, from *Booker* to *Kimbrough*. Notes supplied.

March 19, 2009: Faculty, Minority Corporate Counsel Association, 8th Annual CLE Expo, Chicago, Illinois. I gave a PowerPoint presentation entitled, "Inside the Supreme Court of the United States: An Overview." I also participated in a related panel discussion regarding recent and pending Supreme Court cases of particular interest to business. PowerPoint presentation supplied.

January 9, 2008: Guest Speaker, American University, Professor Carolyn Cox Cohan's course on Women, The Law, & Litigating For Social Change, Washington, District of Columbia. Notes supplied.

December 5, 2007: Panelist, American Constitution Society event at Jones Day, Washington, District of Columbia. I participated in a panel discussion regarding the representation of Guantanamo detainees and amici in cases before the Supreme Court. I have no notes, transcript, or recording. The address of the American Constitution Society is 1899 L Street, Northwest, Suite 200, Washington, District of Columbia 20036.

November 6 – 10, 2006: Presenter, "Recidivist Enhancements: ACCA, Shepard, and Related Issues," Federal Defender Orientation Program, Santa Fe, New Mexico. Outline supplied.

November 26, 2001: Guest Lecturer, "Supreme Court As Gatekeeper: Screening Petitions for Original Writs of Habeas Corpus In The Wake of The AEDPA," Suffolk University Law School, Boston, Massachusetts. Notes supplied.

October 11 – 12, 1987: Original Orator, Sixth Annual William Faulkner Invitational High School Forensics Tournament (Oxford, MI). I delivered "*It's About Time*" in the first of many high school forensics tournaments at a local and

national level as a senior member of the Miami Palmetto Senior High School speech and debate team. Copy of speech as prepared supplied in response to Question 12a.

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.

On November 16, 2020, I provided written answers to interview questions for an alumnae profile that Morrison & Foerster released in connection with the firm's 2021 Black History Month celebration. Copy supplied.

On March 10, 2020, I gave a telephone interview to Colleen Walsh of the Harvard Gazette, in connection with Gazette profiles of selected members of the Harvard Board of Overseers. I do not have a transcript; the resulting article is: Colleen Walsh, *Eight Current Overseers Share Their Unique Stories*, Harvard Gazette (June 16, 2020). Copy supplied.

In the winter of 2019, I answered questions posed by a Georgetown Day School staff member for a profile that was published in the school's magazine in connection with my appointment as a GDS trustee. I do not have a transcript; the resulting article is: *Meet the Trustees 2019–2020*, Georgetown Days Magazine, Winter 2019/20, at 48. Copy supplied.

On January 11, 2019, I gave a telephone interview to Janell Ross of NBC News in connection with a profile of my career for the NBCBLK series *She Thrives: Black Women Making History*. I do not have a transcript; the resulting article is: Adrian Bellet, *Ketanji Brown Jackson: A decisive force applying rules to any and all*, NBC News (Jan. 31, 2019). Copy supplied.

In early 2016, in connection with my candidacy for a position on the Harvard Board of Overseers, I responded to a questionnaire that an advocacy group called "Coalition for a Diverse Harvard" sent to all candidates. On March 28, 2016, Harvard Magazine published an article regarding the election, *Contested Harvard Overseer Election Begins*, Harvard Magazine (Mar. 28, 2016), which quoted my response to the questionnaire. I did not give any interview in connection with the article. Copy supplied.

On April 30, 2012, I was interviewed during a live radio RACMonitor program broadcast from the Health Care Compliance Association's Compliance Institute in Las Vegas and answered prepared questions regarding the United States Sentencing Commission's role in developing the federal sentencing guidelines for organizations. Notes supplied. Podcast information (my segment is 34:05 to 44:04): *Monitor Monday*, RACMonitor (April 30, 2012) (downloaded using Google Chrome).

On November 19, 2008, I gave a telephone interview to Mark Sherman of the Associated Press regarding *Al-Marri v. Pucciarelli*. To my knowledge, there was no resulting article, and I do not have a transcript.

In the summer of 2008, I gave an interview to Elinor J. Brecher in connection with an article that she was writing about the death of my former speech and debate coach. I do not have a transcript; the resulting article is: Elinor J. Brecher, *Dedicated Debate Legend Was an 'Unforgettable Hero,'* Miami Herald (Aug. 7, 2008). Copy supplied.

In the spring of 2007, I gave an interview to Kevin Merida and Michael A. Fletcher in connection with an article that they were writing about Justice Thomas. I do not have a transcript; the resulting article is: Kevin Merida & Michael A. Fletcher, *Justice Thomas's Life: A Tangle of Poverty, Privilege and Race*, Wash. Post (Apr. 22, 2007). Copy supplied.

On December 11, 2000, I was interviewed by CNN host Leon Harris after the United States Supreme Court stayed the Florida state supreme court's order requiring a statewide manual recount of the ballots cast in Florida during the Presidential election. DVD supplied.

In the fall of 1990, I gave an interview to Boston Globe reporter in connection with the newspaper's coverage of a sit-in at Harvard University. I do not have a transcript; the resulting article is: *Harvard Students End Sit-In Protest, Demand More Afro-American Faculty*, Bos. Globe (Nov. 17, 1990). Copy supplied.

In the spring of 1988, Jonathan Karp published an article regarding a program that took place at my high school and quoted statements that I made during the program. I do not recall giving him an interview; the article he wrote is: Jonathan Karp, *Palmetto Students Examine Their Values*, Miami Herald (Apr. 17, 1988). Copy supplied. (Because this article is from when I was in high school, it is not responsive to this question but I am including it because it was inadvertently listed in my 2012 Senate Judiciary Questionnaire.)

In the fall of 1987, Teresa Smith published an article regarding a visit that the Secretary of the Interior made to my high school and quoted a statement that I made during a question-and-answer session with the Secretary. I do not recall giving her an interview; the article she wrote is: Teresa Smith, *Secretary is Grilled on Policies*, Miami Herald (Oct. 4, 1987). Copy supplied. (Because this article is from when I was in high school, it is not responsive to this question but I am including it because it was inadvertently listed in my 2012 Senate Judiciary Questionnaire.)

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.

2013 – Present: United State District Judge, United States District Court for the District of Columbia. This is an appointed position. The district court has jurisdiction that is provided to it by Congress, as set forth in Title 28 of the United States Code, sections 1330 to 1369, which includes cases arising under the Constitution or federal laws, certain cases between citizens of different states, actions against foreign states, and bankruptcy appeals. The district court also has jurisdiction over federal crimes and related violations of the D.C. Code.

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

I have presided over twelve trials: nine jury trials and three bench trials (two of the bench trials involved the same case). The breakdown of the types of trials over which I have presided appears below.

i. Of these cases, approximately what percent were:

jury trials:	75%
bench trials:	25%

ii. Of these cases, approximately what percent were:

civil proceedings:	50%
criminal proceedings:	50%

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

I have searched my files and electronic databases in an effort to locate all of the opinions that I have written. I found a total of 562 opinions: 420 of those opinions were in cases that were assigned to me through the district's court's random assignment system, and 142 opinions related to screening matters that I was assigned to handle while I was on duty as the Motions Judge.

The citations that follow are the opinions that I have written to date in cases that have been randomly assigned to me for decision.

Equal Rights Ctr. v. Uber Techs., Inc., 17-cv-1272, 2021 WL 981011 (D.D.C. March 15, 2021)

Raja v. FDIC, 16-cv-0511, 2021 WL 508578 (D.D.C. Feb. 11, 2021)

United States v. Greene, 71-cr-1913, 2021 WL 354446 (D.D.C. Feb. 2, 2021)

United States v. Terry, 14-cr-00009, 2020 WL 7773389 (D.D.C. Dec. 29, 2020)

Maryland v. U.S. Dep't of Educ., 17-cv-2139, 2020 WL 7773390 (D.D.C. Dec. 29, 2020)

Rae v. Child.'s Nat'l Med. Ctr., 15-cv-0736, 2020 WL 7693612 (D.D.C. Dec. 28, 2020)

Snowden v. Zinke, 15-cv-1382, 2020 WL 7248349 (D.D.C. Dec. 9, 2020)

Lewis v. Allstate Ins. Co., 19-cv-2628, Mem. Op., ECF No. 28 (D.D.C. Nov. 30, 2020)

Las Americas Immigrant Advoc. Ctr. v. Wolf, 19-cv-3640, --- F. Supp. 3d ---, 2020 WL 7039516 (D.D.C. Nov. 30, 2020)

Sourgoutsis v. U.S. Capitol Police, 16-cv-1096, 2020 WL 6887782 (D.D.C. Nov. 24, 2020)

W.S. v. District of Columbia, 19-cv-1390, --- F. Supp. 3d ---, 2020 WL 6611048 (D.D.C. Nov. 12, 2020)

Kiakombua v. Wolf, 19-cv-1872, --- F. Supp. 3d ---, 2020 WL 6392824 (D.D.C. Oct. 31, 2020)

Dockery v. Maidrana, 16-cv-0308, Mem. Op. & Order, ECF No. 41 (D.D.C. Oct. 23, 2020)

United States v. Becton, 07-cr-131-01, Mem. Op. & Order, ECF No. 592 (D.D.C. Oct. 23, 2020)

Baisden v. Barr, 19-cv-3105, 2020 WL 6118181 (D.D.C. Oct. 16, 2020)

Calderón-López v. Wash. Metro. Area Transit Auth., 20-cv-0087, Mem. Op., ECF No. 11 (D.D.C. Oct. 14, 2020)

Yanofsky v. U.S. Dep't of Com., 19-cv-2290, 2020 WL 5944448 (D.D.C. Oct. 6, 2020)

Stotter v. U.S. Agency for Int'l Dev., 14-cv-2156, 2020 WL 5878033 (D.D.C. Oct. 3, 2020)

MVP Sports, Inc. v. Cissna, 19-cv-00742, 2020 WL 5816239 (D.D.C. Sept. 30, 2020)

Raja v. Fed. Deposit Ins. Corp., 16-cv-0511, 2020 WL 5834889 (D.D.C. Sept. 30, 2020)

United States v. Greer, 18-cv-2497, 2020 WL 5834840 (D.D.C. Sept. 30, 2020)

SNH Med. Off. Props. Tr. v. A Bloomin' Sandwich Café, Inc., 19-cv-745, 2020 WL 5834858 (D.D.C. Sept. 30, 2020)

James Madison Project v. CIA, 18-cv-03112, 2020 WL 5653577 (D.D.C. Sept. 23, 2020)

Sickle v. Torres Advanced Enter. Sols., LLC, 11-cv-2224, 2020 WL 5530357 (D.D.C. Sept. 14, 2020)

Salha v. U.S. Dep't of Homeland Sec., 20-cv-1102, 2020 WL 5505350 (D.D.C. Sept. 11, 2020)

Campaign for Accountability v. U.S. Dep't of Just., 16-cv-1068, --- F. Supp. 3d ---, 2020 WL 5505128 (D.D.C. Sept. 11, 2020)

Doe v. Syrian Arab Republic, 18-cv-0066, 2020 WL 5422844 (D.D.C. Sept. 10, 2020)

Pendergrass v. U.S. Dep't of Def., 17-cv-0546, 2020 WL 5406043 (D.D.C. Sept. 9, 2020)

United States v. Dunlap, 17-cr-207, --- F. Supp. 3d ---, 2020 WL 5231359 (D.D.C. Sept. 2, 2020)

United States v. Holland, 14-cr-080, Mem. Op. & Order, ECF No. 58 (D.D.C. Aug. 24, 2020)

Whiteru v. Wash. Metro. Area Transit Auth., 15-cv-0844, --- F. Supp. 3d ---, 2020 WL 4732096 (D.D.C. Aug. 14, 2020)

Bird v. Barr, 19-cv-1581, 2020 WL 4219784 (D.D.C. July 23, 2020)

CEF Energia, B.V. v. Italian Republic, 19-cv-3443, 2020 WL 4219786 (D.D.C. July 23, 2020)

Ross v. Lockheed Martin Corp., 16-cv-2508, 2020 WL 4192566 (D.D.C. July 21, 2020)

Maryland v. U.S. Dep't of Educ., 474 F. Supp. 3d 13 (D.D.C. 2020)

Las Americas Immigrant Advoc. Ctr. v. Wolf, 19-cv-3640, 2020 WL 7319297 (D.D.C. July 8, 2020)

AFL-CIO v. NLRB, 471 F. Supp. 3d 228 (D.D.C. 2020)

United States v. Leake, 19-cr-194, 2020 WL 3489523 (D.D.C. June 26, 2020)

Rogers v. Lumina Solar, Inc., 18-cv-2128, 2020 WL 3402360 (D.D.C. June 19, 2020)

United States v. Sears, 19-cr-21, 2020 WL 3250717 (D.D.C. June 16, 2020)

Evans v. United States, 17-cv-01731, 2020 WL 3250730 (D.D.C. June 15, 2020)

AFL-CIO v. NLRB, 466 F. Supp. 3d 68 (D.D.C. 2020)

Edwards v. United States, 18-cv-2560, 2020 WL 2800605 (D.D.C. May 29, 2020)

Glawson v. Exec. Off. for U.S. Att'ys, 18-cv-2673, 2020 WL 2735615 (D.D.C. May 26, 2020)

Buchanan v. Sony Music Ent., 18-cv-3028, 2020 WL 2735592 (D.D.C. May 26, 2020)

Manus v. Hayden, 18-cv-1146, 2020 WL 2615539 (D.D.C. May 23, 2020)

United States v. Johnson, 464 F. Supp. 3d 22 (D.D.C. 2020)

United States v. Leake, 19-cr-194, 2020 WL 2331918 (D.D.C. May 10, 2020)

United States v. Leake, 19-cr-194, 2020 WL 1905150 (D.D.C. Apr. 17, 2020)

United States v. Dabney, 20-cr-27, 2020 WL 1867750 (D.D.C. Apr. 13, 2020)

United States v. Wiggins, 19-cr-258, --- F. Supp. 3d ---, 2020 WL 1868891 (D.D.C. Apr. 10, 2020)

United States v. Lee, 451 F. Supp. 3d 1 (D.D.C. 2020)

Mohammad Hilmi Nassif & Partners v. Republic of Iraq, 17-cv-2193, 2020 WL 1444918 (D.D.C. Mar. 25, 2020)

Doe v. Wash. Metro. Area Transit Auth., 453 F. Supp. 3d 354 (D.D.C. 2020)

Tomasello v. Greenzweig, 19-cv-0384, 2020 WL 1236645 (D.D.C. Mar. 13, 2020)

Willis v. Gray, 14-cv-1746, 2020 WL 805659 (D.D.C. Feb. 18, 2020)

CapitalKeys, LLC v. Democratic Republic of Congo, 15-cv-2079, Mem. Op. & Order, ECF No. 62 (D.D.C. Feb. 14, 2020)

Sourgoutsis v. U.S. Capitol Police, 16-cv-1096, 2020 WL 109055 (D.D.C. Jan. 9, 2020)

United States v. Fields, 99-cr-0286, 2020 WL 32990 (D.D.C. Jan. 2, 2020)

In re Salas, 18-cv-2318, 2020 WL 32567 (D.D.C. Jan. 2, 2020)

Hammond v. Dep't of Def., 16-cv-0421, Mem. Op. & Order, ECF No. 57 (D.D.C. Dec. 31, 2019)

Brightwell Dispensers Ltd. v. Dongguan ISCE Sanitary Ware Indus. Co. Ltd., 17-cv-1783, 2019 WL 7037493 (D.D.C. Dec. 20, 2019)

Pavement Coatings Tech. Council v. U.S. States Geo. Surv., 436 F. Supp. 3d 115 (D.D.C. 2019)

Comm. on the Judiciary v. McGahn, 407 F. Supp. 3d 35 (D.D.C. 2019)

Comm. on the Judiciary v. McGahn, 415 F. Supp. 3d 148 (D.D.C. 2019)

Schiff v. District of Columbia, 18-cv-1382, 2019 WL 5683903 (D.D.C. Nov. 1, 2019)

Taylor v. Berryhill, 18-cv-0316, 2019 WL 5538560 (D.D.C. Oct. 25, 2019)

Keister v. AARP Benefits Comm., 410 F. Supp. 3d 244 (D.D.C. 2019)

Raja v. Fed. Deposit Ins. Corp., 16-cv-0511, Mem. Op. & Order, ECF No. 103 (D.D.C. Oct. 2, 2019)

Make the Rd. N.Y. v. McAleenan, 405 F. Supp. 3d 1 (D.D.C. 2019)

Ctr. for Biological Diversity v. McAleenan, 404 F. Supp. 3d 218 (D.D.C. 2019)

Kiakombua v. McAleenan, 19-cv-1872, 2019 WL 4051021 (D.D.C. Aug. 27, 2019)

United States v. Johnson, 15-cr-125, 2019 WL 3842082 (D.D.C. Aug. 15, 2019)

Barber v. District of Columbia Gov't, 394 F. Supp. 3d 49 (D.D.C. 2019)

Amos v. Saul, 17-cv-1707, 2019 WL 3451313 (D.D.C. July 31, 2019)

Petition of United States, on behalf of Smithsonian Inst., 13-mc-1454, 2019 WL 3451394 (D.D.C. July 31, 2019)

Horsey v. U.S. Dep't of State, 387 F. Supp. 3d 97 (D.D.C. 2019)

Cause of Action Inst. v. IRS, 390 F. Supp. 3d 84 (D.D.C. 2019)

In re Salas, 18-cv-2318, 2019 WL 2870132 (D.D.C. July 3, 2019)

Huntington Ingalls Inc. v. Ministry of Def. of Bolivarian Republic of Venezuela, 18-cv-0469, 2019 WL 2476629 (D.D.C. June 13, 2019)

Brown v. Gov't of District of Columbia, 390 F. Supp. 3d 114 (D.D.C. 2019)

Willis v. FBI, 17-cv-1959, 2019 WL 2138036 (D.D.C. May 16, 2019)

Lizalde v. Goldberg, 19-cv-0956, 2019 WL 2010640 (D.D.C. May 7, 2019)

Jackson v. Bowser, 18-cv-1378, 2019 WL 1981041 (D.D.C. May 3, 2019)

Willis v. Nat'l Sec. Agency, 17-cv-2038, 2019 WL 1924249 (D.D.C. Apr. 30, 2019)

Gilberti v. Fed. Rsrv. Sys., 19-cv-0738, 2019 WL 1901293 (D.D.C. Apr. 29, 2019)

Yanofsky v. Dep't of Com., 16-cv-951, 2019 WL 5110502 (D.D.C. Apr. 25, 2019)

Mitchell v. Pompeo, 15-cv-1849, 2019 WL 1440126 (D.D.C. Mar. 31, 2019)

Univ. Legal Servs., Inc. v. District of Columbia, 18-cv-0301, 2019 WL 1430045 (D.D.C. Mar. 30, 2019)

Serv. Emps. Int'l Union Nat'l Indus. Pension Fund v. LTP Generations, LLC, 17-cv-0942, 2019 WL 1423686 (D.D.C. Mar. 29, 2019)

Gov't of Guam v. United States, 17-cv-2487, 2019 WL 1003606 (D.D.C. Feb. 28, 2019)

Porter v. U.S. Agency for Int'l Dev., 17-cv-2616, 2019 WL 954812 (D.D.C. Feb. 27, 2019)

Brick v. Dep't of Just., 358 F. Supp. 3d 37 (D.D.C. 2019)

Eagle Tr. Fund v. U.S. Postal Serv., 365 F. Supp. 3d 57 (D.D.C. 2019)

Grigsby v. Thomas, 18-cv-2221, Mem. Op., ECF No. 3 (D.D.C. Jan. 31, 2019)

Markel Am. Ins. Co. v. Metcor Ltd., 14-cv-1899, 2019 WL 396890 (D.D.C. Jan. 31, 2019)

Southerland v. SOC, LLC, 15-cv-0443, 2019 WL 250971 (D.D.C. Jan. 16, 2019)

SEIU Pension Fund v. Palisades Operations, LLC, 17-cv-1664, 2019 WL 211391 (D.D.C. Jan. 16, 2019)

Yoo v. District of Columbia, 17-cv-0184, 2019 WL 117606 (D.D.C. Jan. 7, 2019)

Milner v. U.S. Sup. Ct., 18-cv-2782, 2018 WL 6699744 (D.D.C. Dec. 20, 2018)

Whiteru v. Wash. Metro. Area Transit Auth., 15-cv-0844, 2018 WL 6605427 (D.D.C. Dec. 17, 2018)

Grigsby v. Thomas, 16-cv-1918, Mem. Op., ECF No. 2 (D.D.C. Dec. 14, 2018)

United States v. Fajardo Campos, 16-cr-00154, 2018 WL 6448633 (D.D.C. Dec. 10, 2018)

Graphic Commc'ns Conf. / Int'l Brotherhood of Teamsters, Local 285M v. McDonald & Eudy Printers, Inc., 18-cv-727, 2018 WL 6251009 (D.D.C. Nov. 29, 2018)

In re Air Crash Over S. Indian Ocean, 352 F. Supp. 3d 19 (D.D.C. 2018)

Am. Fed'n of Gov't Emps., AFL-CIO v. Trump, 18-cv-1475, Mem. Op., ECF No. 12 (D.D.C. Nov. 16, 2018)

Azima v. RAK Inv. Auth., 16-cv-1948, 2018 WL 7982473 (D.D.C. Nov. 5, 2018)

Betz v. Aidnest, 18-cv-0292, 2018 WL 5307375 (D.D.C. Oct. 26, 2018)

HealthAlliance Hosps., Inc. v. Azar, 346 F. Supp. 3d 43 (D.D.C. 2018)

Metro. Life Ins. Co. v. Thrower-Clarke, 17-cv-2552, 2018 WL 5122288 (D.D.C. Oct. 22, 2018)

Gov't of Guam v. United States, 341 F. Supp. 3d 74 (D.D.C. 2018)

Miller v. D.C. Water & Sewer Auth., 17-cv-0840, 2018 WL 4762261 (D.D.C. Oct. 2, 2018)

Nagi v. Chao, 16-cv-2152, 2018 WL 4680272 (D.D.C. Sept. 28, 2018)

Limnia, Inc. v. U.S. Dep't of Energy, 347 F. Supp. 3d 25 (D.D.C. 2018)

J & J Sports Prods., Inc. v. Micherie, LLC, 17-cv-1150, 2018 WL 4629301 (D.D.C. Sept. 27, 2018)

Otay Mesa Prop., L.P. v. U.S. Dep't of the Interior, 344 F. Supp. 3d 355 (D.D.C. 2018)

United States v. Young, 330 F. Supp. 3d 424 (D.D.C. 2018)

Azima v. RAK Inv. Auth., 325 F. Supp. 3d 30 (D.D.C. 2018)

Azadeh v. Gov't of Islamic Republic of Iran, 16-cv-1467, 2018 WL 4232913 (D.D.C. Sept. 5, 2018)

Turner v. Fed. Bureau of Prisons, 18-cv-0273, Mem. Op., ECF No. 9 (D.D.C. Aug. 31, 2018)

In re Gemma Calliste, 17-cv-0329, Mem. Op., ECF No. 10 (D.D.C. Aug. 31, 2018)

Am. Fed'n of Gov't Emps., AFL-CIO v. Trump, 318 F. Supp. 3d 370 (D.D.C. 2018)

United States v. $1,071,251.44 of Funds Associated with Mingzheng Int'l Trading Ltd., 324 F. Supp. 3d 38 (D.D.C. 2018)

Inst. for Truth in Marketing v. Total Health Network Corp., 321 F. Supp. 3d 76 (D.D.C. 2018)

Von Drasek v. Azar, 13-cv-0847, 2018 WL 8754165 (D.D.C. Aug. 3, 2018)

Murphy v. Dep't of Air Force, 326 F.R.D. 47 (D.D.C. 2018)

Azadeh v. Gov't of Islamic Republic of Iran, 318 F. Supp. 3d 90 (D.D.C. 2018)

Amobi v. Brown, 317 F. Supp. 3d 29 (D.D.C. 2018)

Healthy Futures of Tex. v. Dep't of Health & Hum. Servs., 315 F. Supp. 3d 339 (D.D.C. 2018)

Healthy Futures of Tex. v. Dep't of Health & Hum. Servs., 326 F.R.D. 1 (D.D.C. 2018)

Feldman v. Bowser, 315 F. Supp. 3d 299 (D.D.C. 2018)

Hall & Assocs. LLC v. U.S. Env't Prot. Agency, 315 F. Supp. 3d 519 (D.D.C. 2018)

Policy & Rsch., LLC v. U.S. Dep't of Health & Hum. Servs., 313 F. Supp. 3d 62 (D.D.C. 2018)

Judicial Watch, Inc. v. CIA, 310 F. Supp. 3d 34 (D.D.C. 2018)

Donato v. Exec. Off. for U.S. Att'ys, 308 F. Supp. 3d 294 (D.D.C. 2018)

Cmty. In-Power & Dev. Ass'n, Inc. v. Pruitt, 304 F. Supp. 3d 212 (D.D.C. 2018)

Williams v. Verizon Wash., D.C. Inc., 304 F. Supp. 3d 183 (D.D.C. 2018)

Yanofsky v. U.S. Dep't of Com., 306 F. Supp. 3d 292 (D.D.C. 2018)

Azima v. RAK Inv. Auth., 305 F. Supp. 3d 149 (D.D.C. 2018)

Lawson v. Sessions, 15-cv-1723, Mem. Op., ECF No. 37 (D.D.C. May 24, 2018)

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c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of 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 (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Committee on the Judiciary v. McGahn*, 415 F. Supp. 3d 148 (D.D.C. 2019)

The Committee on the Judiciary of the House of Representatives filed a lawsuit to compel former White House Counsel Don McGahn to comply with a subpoena to appear and testify before the Committee in connection with the Committee's investigation of foreign interference during the 2016 presidential election. I granted the Committee's motion for partial summary judgment and denied the Department of Justice's cross-motion for summary judgment, finding that the inter-branch subpoena dispute was a justiciable matter that the Committee had Article III standing to pursue in federal court; that the Committee had a cause of action to seek enforcement of its subpoena; and that the President does not have the power to prevent his aides from responding to legislative subpoenas on the basis of absolute testimonial immunity. On appellate review, over the course of two opinions, a divided panel of the D.C. Circuit reversed my rulings on standing and cause of action, but the entire D.C. Circuit granted en banc review twice, and has now vacated both panel reversals. To date, the en banc D.C. Circuit has affirmed my conclusion that the Judiciary Committee has standing to adjudicate its subpoena enforcement claims in federal court notwithstanding the inter-branch nature of the dispute. The cause of action and merits questions remain pending.

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2. *Am. Meat Inst. v. U.S. Dep't of Agric.*, 968 F. Supp. 2d 38 (D.D.C. 2013)

Various meat industry trade associations sought a preliminary injunction to prevent enforcement of a 2013 Agricultural Marketing Service regulation that required country-of-origin labeling on certain meats. I denied the motion, finding that the plaintiffs had failed to demonstrate a likelihood of success on the merits of their claims that the agency's labeling requirements violated their rights under the First Amendment, the Agricultural Marketing Act, and the Administrative Procedure Act, and that the plaintiffs had also failed to establish irreparable harm. A unanimous panel of the D.C. Circuit affirmed my decision on appeal, after which the full court ordered rehearing en banc. The entire D.C. Circuit affirmed my judgment after en banc review.

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3. *Am. Fed. of Gov't Emps., AFL-CIO v. Trump*, 318 F. Supp. 3d 370 (D.D.C. 2018)

Federal employee unions challenged three executive orders that President Donald J. Trump issued, alleging that those orders interfered with the statutorily protected rights of federal employees to engage in collective bargaining. I granted in part and denied in part both the unions' and the defendants' cross-motions for summary judgment, holding that the Court had subject-matter jurisdiction over the case, and that most, but not all, of the provisions in the executive orders conflicted with the collective bargaining rights of federal workers under the Federal Service Labor-Management Relations Act. A panel of the D.C. Circuit determined that the Act required the unions' legal claims to be channeled through administrative processes rather than being brought into federal district court, and vacated my judgment for lack of subject matter jurisdiction.

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4. *In re Air Crash over S. Indian Ocean*, 352 F. Supp. 3d 19 (D.D.C. 2018)

The Judicial Panel on Multidistrict Litigation consolidated forty individual lawsuits that had been filed in federal courts across the United States and assigned them to me for coordinated resolution of the pre-trial proceedings in those matters. The actions arose from the disappearance of Malaysia Airlines Flight MH370 over the Indian Ocean in March 2014, and the plaintiffs sought damages from the airline company, Boeing (the airplane manufacturer), and various insurance companies under tort law and the Montreal Convention, asserting wrongful death and products liability claims. I granted the defendants' threshold motion to dismiss the plaintiffs' complaints based on *forum non conveniens*, determining that Malaysia was an adequate and more convenient forum than the United States for litigation of the claims at issue. The D.C. Circuit affirmed my judgment.

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5. *Make the Rd. N.Y. v. McAleenan*, 405 F. Supp. 3d 1 (D.D.C. 2019)

Immigrant-rights organizations sued the U.S. Department of Homeland Security and filed a preliminary injunction challenging the agency's decision to expand the categories of non-citizens that may be subjected to expedited removal procedures. I granted the preliminary injunction and enjoined the agency from enforcing the expedited removal expansion, finding that the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 likely did not preclude the Court from exercising jurisdiction over the plaintiffs' Administrative Procedure Act ("APA") claims; that the APA likely provided a cause of action for the plaintiffs' claims concerning the procedural defectiveness of DHS's expansion decision; and that the plaintiffs were likely to succeed on the merits of their APA claims. The D.C. Circuit agreed that the Court properly exercised jurisdiction over the plaintiffs' claims, but reversed on the grounds that the expedited removal designation is committed to agency discretion by law, and is thus not reviewable for arbitrary and capricious decision making under the APA or subject to the APA's notice-and-comment rulemaking requirements.

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6. *Ctr. for Biological Diversity v. McAleenan*, 404 F. Supp. 3d 218 (D.D.C. 2019)

Environmental groups challenged the Department of Homeland Security's invocation of the Illegal Immigration Reform and Immigrant Responsibility Act to waive the application of numerous environmental laws in order to facilitate swift construction of a physical barrier along the New Mexico border. The plaintiffs claimed that DHS's actions were ultra vires and unconstitutional, but I denied the plaintiffs' motion for summary judgment, and granted the defendants' cross-motion to dismiss, or in the alternative, for summary judgment, on the grounds that Congress had precluded judicial review of the plaintiffs' ultra vires claims, and that the plaintiffs had failed to state plausible constitutional claims regarding the Presentment Clause, the nondelegation doctrine, and the Take Care Clause. The plaintiffs' petition for certiorari was denied.

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7. *Government of Guam v. United States*, 341 F. Supp. 3d 74 (D.D.C. 2018)

Guam filed a lawsuit against the United States under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), seeking to recover the costs that Guam had incurred in closing and remediating a hazardous waste landfill created by the U.S. Navy. I denied the United States' motion to dismiss Guam's complaint, concluding that an earlier consent decree between the parties did not preclude Guam from maintaining its cost-recovery claim against the United States, based on a reading of the CERCLA that the Sixth

and Seventh Circuits had adopted and the Ninth Circuit had rejected. Siding with the Ninth Circuit's interpretation, the D.C. Circuit reversed, and ordered that Guam's complaint be dismissed. Guam sought certiorari, and the United States Supreme Court granted Guam's petition. The matter is now pending before the Supreme Court.

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8. *United States* v. *Welch*, No. 16-CR-232 (D.D.C. 2017)

Edgar Welch traveled from North Carolina to Washington, D.C., motivated by the "Pizzagate" rumors that a child sex-trafficking ring was being perpetrated at the Comet Ping Pong restaurant. Welch walked into the crowded restaurant openly carrying an assault rifle, and he fired the weapon multiple times at a door inside the restaurant while patrons fled. He also pointed the gun at a frightened restaurant employee. Welch pled guilty to interstate transportation of a firearm and ammunition, in violation of 18 U.S.C. § 924(b), and assault with a dangerous weapon, in violation of D.C. Code § 22-402. Based primarily on the psychological and financial impact of the offenses on the victims and the need to deter others from committing similar crimes, I sentenced Welch to 24 months in prison for the federal offense and 48 months in prison for the D.C. offense, to run concurrently, both of which were within the applicable federal and D.C. sentencing guidelines ranges.

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9. *Campaign for Accountability v. U.S. Dep't of Just.* ("*Campaign for Accountability II*"), --- F. Supp. 3d ---, 2020 WL 5505128 (D.D.C. Sept. 11, 2020); *Campaign for Accountability v. U.S. Dep't of Just.* ("*Campaign for Accountability I*"), 278 F. Supp. 3d 303 (D.D.C. 2017)

A government watchdog organization claimed that all written legal opinions of the Department of Justice's Office of Legal Counsel ("OLC") that have precedential effect within the Executive Branch must be made automatically available to the public under the Freedom of Information Act's rarely litigated reading-room provision. I issued an opinion that rejected the plaintiff's disclosure argument and granted DOJ's motion to dismiss the complaint, but allowed the plaintiff to amend its pleading to allege that certain specified categories of precedential OLC opinions are subject to automatic disclosure under the FOIA. The plaintiff then filed an amended complaint, and DOJ renewed its dismissal motion, arguing that the FOIA's reading-room provision is categorically inapplicable to OLC opinions, such that no category of OLC opinions must be disclosed automatically. I wrote a second opinion that granted in part and denied in part DOJ's motion to dismiss, rejecting DOJ's contention but holding that only one of the categories of legal opinions that the plaintiff had identified (written opinions relating to inter-agency disputes) was plausibly disclosable under the FOIA's reading-room provision. The matter is still pending in my court.

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10. *United States v. Wolfe*, No. 18-cr-170 (D.D.C. 2018)

Following an unauthorized disclosure of classified information to the media by an unknown leaker, James Wolfe, the former Director of Security at the United States Senate Select Committee on Intelligence, was criminally charged with making a false statement to the FBI, in violation of 18 U.S.C. § 1001, in connection with the FBI's investigations into Wolfe's contacts with reporters. During pretrial proceedings, Wolfe sought a court order that prevented President Trump, among others, from making public comments about his case, and I denied the motion, finding that Wolfe had failed to demonstrate that the President's public comments prevented him from receiving a fair trial. After Wolfe pled guilty, I rejected the government's request for an upward departure at sentencing, on the ground that the request was based on Wolfe's non-criminal prior conduct rather than the offense of conviction, and I imposed a sentence of two months of imprisonment, which was within the applicable sentencing guidelines range.

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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.

I have presided over many cases that have resulted in significant written opinions. Ten such opinions are listed below.

1. *Kiakombua v. Wolf*, --- F. Supp. 3d ---, No. 19-cv-1872, 2020 WL 6392824 (D.D.C. Oct. 31, 2020)

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2. *Am. Fed'n of Labor & Cong. of Indus. Organizations v. Nat'l Labor Relations Bd.*, 466 F. Supp. 3d 68, 73 (D.D.C.), order amended on reconsideration, 471 F. Supp. 3d 228 (D.D.C. 2020)

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3. *Committee on the Judiciary v. McGahn*, 415 F. Supp. 3d 148 (D.D.C. 2019)

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4. *Otay Mesa Prop., L.P. v. U.S. Dep't of the Interior*, 344 F. Supp. 3d 355 (D.D.C. 2018)

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5. *United States v. Young*, 330 F. Supp. 3d 424 (D.D.C. 2018)

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6. *Am. Fed. of Gov't Emps., AFL-CIO v. Trump*, 318 F. Supp. 3d 370 (D.D.C. 2018)

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7. *Alliance of Artists & Recording Cos. v. Gen. Motors Co.*, 306 F. Supp. 3d 422 (D.D.C. 2018)

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8. *Pierce v. District of Columbia*, 128 F. Supp. 3d 250 (D.D.C. 2015)

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9. *Sierra Club v. U.S. Army Corps of Eng'rs*, 64 F. Supp. 3d 128 (D.D.C. 2014)

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10. *Z St., Inc. v. Koskinen*, 44 F. Supp. 3d 48 (D.D.C. 2014)

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

Unless it is a direct appeal to the Supreme Court, I am not officially notified when certiorari is sought in one of my cases. I have searched electronic databases to determine whether certiorari was requested or granted in any of my cases.

My research has revealed that Supreme Court has granted certiorari in the following case of mine, and the matter is currently pending before the Supreme Court and has been scheduled for oral argument on April 26, 2021:

Guam v. United States, No. 17-cv-2487 (D.D.C.)

My research has revealed that a party requested certiorari in the following seven other cases of mine, although I may have missed a few:

Gilberti v. Fed. Rsrv. Sys., No. 19-cv-0738, 2019 WL 1901293 (D.D.C. Apr. 29, 2019), *aff'd*, No. 19-5264, 2020 WL 1487738 (D.C. Cir. Mar. 3, 2020), *cert. denied*, No. 20-386, 2020 WL 6829081 (U.S. Nov. 23, 2020)

Ctr. for Biological Diversity v. McAleenan, 404 F. Supp. 3d 218, *cert. denied*, No. 19-975, --- S. Ct. --- (June 29, 2020)

Eagle Tr. Fund v. U.S. Postal Serv., 365 F. Supp. 3d 57 (D.D.C. 2019), *aff'd*, 811 F. App'x 669 (D.C. Cir. 2020). Petition for writ of certiorari filed on Jan. 25, 2021, as No. 20-126.

In re Air Crash over S. Indian Ocean on Mar. 8, 2014, 352 F. Supp. 3d 19 (D.D.C. 2018), *aff'd*, 946 F.3d 607 (D.C. Cir.), *cert. denied sub nom. Wood v. Boeing Co.*, 141 S. Ct. 451 (2020)

Mackinac Tribe v. Jewell, 87 F. Supp. 3d 127 (D.D.C. 2015), *aff'd*, 829 F.3d 754 (D.C. Cir. 2016), *cert. denied*, 137 S. Ct. 638 (2017)

Rothe Dev., Inc. v. Dep't of Def., 107 F. Supp. 3d 183, 188 (D.D.C. 2015), *aff'd sub nom. Rothe Dev., Inc. v. U.S. Dep't of Def.*, 836 F.3d 57 (D.C. Cir. 2016), *cert. denied*, 138 S. Ct. 354 (2017)

Von Kahl v. Bureau of Nat'l Affairs, No. 09-cv-0635, Mem. Op. & Order, ECF No. 87 (D.D.C. Sept. 30, 2014), *rev'd*, 856 F.3d 106, 109 (D.C. Cir.), *cert denied*, 128 S. Ct. 366 (2017)

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.

I have searched my files and electronic databases concerning the 562 opinions that I have written in cases that have been assigned to me, either as the presiding judge or as the motions judge. I found nine decisions of mine that the D.C. Circuit reversed, either in whole or in part; two decisions of mine that the D.C. Circuit vacated and remanded; and three decisions of mine in which the D.C. Circuit affirmed my judgment but criticized my substantive rulings.

1. The D.C. Circuit reversed my rulings in the following nine cases.

Make the Rd. N.Y. v. McAleenan, 405 F. Supp. 3d 1 (D.D.C. 2019): I granted a motion for a preliminary injunction and preliminarily enjoined a Department of Homeland Security rule that expanded the categories of non-citizens subject to expedited removal from the United States, on the ground that plaintiffs were likely to be able to establish that the agency's decision violated the Administrative Procedure Act ("APA"). The D.C. Circuit held that, while the Court had jurisdiction to issue such an order, the plaintiffs did not have a cause of action under the APA because the expedited removal designation is committed to agency discretion by law.

Gov't of Guam v. United States, 341 F. Supp. 3d 74 (D.D.C. 2018): I denied the government's motion to dismiss a complaint that the Government of Guam had filed under the Comprehensive Environmental Response, Compensation, and Liability Act, seeking to recover costs associated with the clean-up of a landfill that the U.S. Navy had created on the island. The United States maintained that Guam had previously executed a Consent Decree that resolved all liability of the United States with respect to the landfill, but I concluded, in line with precedent from the Sixth and Seventh Circuits, that the prior Consent Decree plainly left the issue of liability for the costs associated with the landfill cleanup unresolved. On interlocutory appeal, the D.C. Circuit reversed, adopting the conflicting reasoning

of the Ninth Circuit in such cases; the Circuit panel thereby decided that the prior Consent Decree resolved the liability of the United States for clean-up costs associated with the landfill. The Supreme Court has granted Guam's petition for certiorari and will hear the case this Term.

Am. Fed'n of Gov't Emps., AFL-CIO v. Trump, 318 F. Supp. 3d 370 (D.D.C. 2018): I granted in part and denied in part the cross-motions for summary judgment that a group of labor unions and the Department of Justice filed, and enjoined implementation of some, but not all, of the provisions of three executive orders that concerned the collective bargaining rights of federal workers. I found that certain provisions of the challenged orders conflicted with the Federal Service Labor-Management Relations Statute ("FSLMRS") and were thus unlawful. The D.C. Circuit reversed on the threshold issue of subject-matter jurisdiction, without reaching the merits of my determination concerning the lawfulness of the orders under the FSLMRS. The Circuit held that the unions could not bring a legal action in federal district court to challenge the executive orders and were instead required to petition the Federal Labor Relations Authority and seek administrative review of their legal claims.

Azima v. RAK Inv. Auth., 305 F. Supp. 3d 149 (D.D.C. 2018): I denied a motion to dismiss that the defendant filed on a variety of grounds, including forum non conveniens. The plaintiff was an American citizen and resident who brought a claim for violation of the Computer Fraud and Abuse Act against the defendant (a commercial investment entity that was one of the emirates within the United Arab Emirates), alleging that the defendant had unlawfully hacked his laptop computer. The defendant denied the hacking, and argued in the motion that, in any event, the dispute had to be litigated in England pursuant to a forum-selection clause in a prior settlement agreement between the parties. I found that the prior settlement agreement related to an entirely different dispute, and that the parties did not intend for the forum selection clause to extend to unforeseeable and unrelated future acts such as the alleged hacking activity. The D.C. Circuit reversed, finding that the language of the settlement agreement covered the hacking claims notwithstanding the fact that the agreement was executed in a different context and before the actions that gave rise to the claims at issue, and ruled that the complaint had to be dismissed pursuant to the forum selection clause.

Clarian Health W., LLC v. Burwell, 206 F. Supp. 3d 393 (D.D.C. 2016): I granted the plaintiff-hospital's cross-motion for summary judgment, where defendant Centers for Medicare and Medicaid Services ("CMS") had used a newly created reconciliation process to require the hospital to repay more than $2 million in Medicare reimbursement funds that the hospital had previously received from the government under the Medicare program. I agreed with the hospital that the new reconciliation guidelines that CMS had used to demand the recoupment qualified as a "rule" for the purpose of the Administrative Procedure Act's notice-and-comment rulemaking requirement, and vacated the guidelines on the ground that the rule was promulgated in a procedurally defective manner. The

D.C. Circuit reversed, and remanded the case for further proceedings, holding that notice-and-comment rulemaking was not necessary for the guidelines at issue.

Crawford v. Johnson, 166 F. Supp. 3d 1 (D.D.C. 2016): I granted the Department of Homeland Security's motion to dismiss the plaintiff's employment discrimination claims, finding that the plaintiff had failed to exhaust administrative remedies, as Title VII of the Civil Rights Act requires. The legal claims that plaintiff brought were based upon three alleged instances of discrimination or retaliation that were not listed in the formal EEO complaint that plaintiff filed with the EEOC, and those instances were also not added to plaintiff's administrative complaint when the EEOC gave plaintiff the opportunity to amend the list of alleged discriminatory or retaliatory acts that the agency intended to investigate. I determined that the fact that the three incidents may have been referenced in the attachments to the EEOC complaint was insufficient to alert the agency to those claims under these circumstances, and thus did not qualify as exhaustion. The D.C. Circuit affirmed in part and reversed in part, finding that the references in the attachments to plaintiff's formal administrative complaint with respect to two of the three alleged instances of discrimination or retaliation were sufficient to establish administrative exhaustion despite plaintiff's failure to clarify that those particular claims existed during the administrative complaint-evaluation process.

XP Vehicles, Inc. v. U.S. Dep't of Energy, 156 F. Supp. 3d 185 (D.D.C. 2016), *amended on denial of reconsideration*, 2016 WL 11066678 (D.D.C. July 21, 2016): I granted the Department of Energy's ("DOE's") motion for a voluntary remand to the agency to facilitate that agency's renewed consideration of applications for loan assistance that plaintiffs had sought to file under a DOE program that made loans available to manufacturers of clean energy vehicles. In the lawsuit, the plaintiffs claimed that agency officials had been motivated by political bias with respect to the agency's treatment of the plaintiffs' loan applications, and when the agency moved for a voluntary remand, I accepted the DOE's representation that, with respect to the Administrative Procedure Act claim, agency officials were presently able to conduct a new and unbiased review of any loan application that plaintiffs sought to file, due to turnover of agency staff and the passage of time. Over the plaintiffs' objection, I remanded the matter to the agency for a renewed evaluation of the plaintiffs' loan request in light of current application requirements. The D.C. Circuit partially reversed, finding that voluntary remand was inappropriate unless the DOE expressed its intention to revisit the precise loan applications that the plaintiffs originally sought to submit, rather than proceeding to evaluate plaintiff'' entitlement to a loan based on a new loan application with up-to-date information.

Von Kahl v. Bureau of Nat'l Affairs, Inc., 09-cv-0635, Mem. Op. & Order, ECF No. 87 (D.D.C. Sept. 30, 2014) (copy supplied): The plaintiff in this defamation case (which had been transferred to me after four years of litigation before then-Chief Judge Richard Roberts) was an inmate who filed a lawsuit against the

Bureau of National Affairs ("BNA"), claiming that BNA had defamed him by publishing false and defamatory statements of fact regarding him in a "summary report" about a petition for certiorari that the plaintiff had filed with the Supreme Court. I denied a motion for reconsideration of Chief Judge Roberts's decision granting BNA's motion for summary judgment with respect to the plaintiff's claim for libel per se, and denied the parties' cross-motions for summary judgment, finding in part that there were issues of material fact regarding whether BNA acted with actual malice. The D.C. Circuit reversed, holding that BNA was entitled to summary judgment with respect to all of the plaintiff's claims, because the plaintiff had produced insufficient evidence of actual malice.

Sickle v. Torres Advanced Enter. Sols., LLC, 17 F. Supp. 3d 10 (D.D.C. 2013): I granted the defendants' motion to dismiss all of plaintiffs' claims, which had been brought under a federal workers' compensation statute for defense contractors known as the Defense Base Act, 33 U.S.C. §948a, and common law. The plaintiffs alleged that they were improperly terminated from their positions as military contractors in retaliation for one of the plaintiffs having filed a worker's compensation claim due to an on-the-job injury, which the second plaintiff medically treated and documented. Among other things, I found that plaintiffs had failed to exhaust administrative remedies with respect to their DBA retaliation claims, and that their common law tort and contract claims were preempted by federal law. On appellate review, over the course of two decisions, the D.C. Circuit affirmed my exhaustion determination but partially reversed my conclusions concerning preemption, holding that the injured plaintiff's tort claims were preempted, but that the DBA did not preempt the contract claims or the tort claims of the non-injured plaintiff.

2. The D.C. Circuit vacated and remanded my rulings in the following two cases.

Maryland v. U.S. Dep't of Educ., 474 F. Supp. 3d 13 (D.D.C. 2020): I granted the Department of Education's ("DOE's") motion to dismiss claims that had been brought under the Administrative Procedure Act by the attorneys general of eighteen States, finding that the States lacked Article III standing for the legal claims that they sought to assert. The States' complaint claimed that the DOE and its Secretary Betsy Devos had unlawfully delayed implementing certain regulations that the prior administration had promulgated to counteract the allegedly deceptive marketing practices of certain for-profit colleges and universities. When the matter was pending before me, the States vigorously disputed that the impending effective date of a rescission rule that DOE had issued would moot their claims. But in the context of their subsequent appeal of my decision regarding standing, the States argued that the matter had become moot as of the effective date of new regulation, and asked the D.C. Circuit to dismiss the appeal and vacate my judgment. The D.C. Circuit granted the States' *Munsingwear* motion, vacated my opinion summarily on mootness grounds (without specifically addressing mootness or standing), and remanded the case for further proceedings. I explained the circumstances of this vacatur when the

matter returned to me on remand, in *Maryland v. U.S. Dep't of Educ.*, No. 17-cv-2139, 2020 WL 7773390 (D.D.C. Dec. 29, 2020).

Hall & Assocs. v. Env't Prot. Agency, 315 F. Supp. 3d 519 (D.D.C. 2018): I granted the Environmental Protection Agency's ("EPA's") motion for summary judgment in this FOIA case, finding that its withholding of documents based on an invocation of the deliberative process privilege was appropriate. The plaintiff had submitted a FOIA request to the EPA seeking records relating to the agency's "nonacquiescence" decision regarding an adverse ruling from the Eighth Circuit (i.e., the agency's decision to not adhere to that ruling outside of the Eighth Circuit). The EPA had invoked the deliberative process privilege to withhold all records reflecting agency deliberations that predated its announcement of the nonacquiesence decision, and after reviewing the records *in camera*, I concluded that, for purposes of determining whether the withheld records were pre-decisional and thus subject to the privilege, the EPA should be deemed to have made the nonacquiescence determination on the date that the agency announced that decision. A panel of the D.C. Circuit vacated my grant of summary judgment to the agency with respect to the withholdings, and remanded, finding that the EPA must have reached its decision concerning nonacquiescence internally prior to the date of the announcement, and that the timing of its decision was a disputed issue of material fact that could not be determined on summary judgment.

3. The D.C. Circuit affirmed my judgment, while criticizing my substantive rulings, in the three cases below.

Rothe Dev., Inc. v. U.S. Dep't of Def., 107 F. Supp. 3d 183 (D.D.C. 2015): I upheld the facial constitutionality of Section 8(a) of the Small Business Administration Act, which establishes a business-development program that provides technical, financial, and practical assistance to small businesses that qualify as "socially and economically disadvantaged." 15 U.S.C. § 637(a)(1)(B). The plaintiff claimed that the Section 8 program was an unconstitutional delegation of authority to the Small Business Administration to make racial classifications concerning the program aid, and that the statutory definition of "socially disadvantaged individuals" amounts to a racial classification that violates the equal protection component of the Fifth Amendment's Due Process Clause. In reaching this conclusion, I adopted the legal analysis of a substantially similar prior case in our district, *Dynalantic Corp. v. Department of Defense*, 885 F. Supp. 2d 237 (D.D.C. 2012), which had applied strict scrutiny to the challenged, seemingly race-conscious provisions of Section 8(a), and, as in *Dynalantic*, I held that the Section 8(a) program is not unconstitutional on its face because it was narrowly tailored to satisfy compelling government interests. The D.C. Circuit affirmed my judgment upholding the constitutionality of the statute, but rejected the application of strict scrutiny, finding that the Small Business Administration Act does not contain a racial classification that warrants application of that heightened legal standard.

United States v. Kaufman, 14-cr-10 (D.D.C.): After the defendant pled guilty to embezzling from an organization that receives federal funds pursuant to a written plea agreement that contained a waiver of his right to appeal, I sentenced him to a term of imprisonment of 24 months. The defendant appealed his sentence, and the D.C. Circuit ruled that certain statements I had made during the plea colloquy, when I was orally explaining the provision of the plea agreement concerning the appeal waiver, changed the scope of the waiver in a manner that authorized the defendant to appeal his sentence notwithstanding the language of the agreement. The D.C. Circuit otherwise affirmed the sentence that I imposed, finding that it was "within-Guidelines, reasonable, and thoroughly explained." (I did not issue a written decision in this matter. The D.C. Circuit's opinion on appeal is available at 791 F.3d 86 (D.C. Cir. 2015)).

Watervale Marine Co., Ltd. v. U.S. Dep't of Homeland Sec., 55 F. Supp. 3d 124 (D.D.C. 2014): I granted the Coast Guard's motion for summary judgment with respect to legal claims that the plaintiffs had brought under the Administrative Procedure Act. The plaintiffs alleged that the Coast Guard was not legally authorized to impose non-financial conditions for the release of a foreign-flagged vessel that plaintiffs owned or operated (the agency had detained plaintiffs' vessel at a United States port due to suspected violations of federal and international environmental laws), and I concluded that the statute governing the Coast Guard's detention authority committed entirely to the agency's discretion the matter of when and under what circumstances the Coast Guard may grant departure clearance to a detained vessel, which meant that the plaintiffs' claims were nonjusticiable. The D.C. Circuit disagreed with my ruling regarding non-justiciability, finding that the question of whether the Coast Guard can impose non-financial conditions is suitable for judicial review. Yet, the panel ultimately affirmed my grant of the defendants' motion for summary judgment on the grounds that the governing statute allowed the Coast Guard to impose financial as well as non-financial conditions for the release of ships suspected of violating environmental laws.

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.

To my knowledge, when I issue a Memorandum Opinion via the court's electronic filing system (CM/ECF), it is automatically posted on the district court's website as a recently-issued decision. The publishing services get decisions from that website, and those services make a determination regarding whether to report any such decision in the Federal Reporter or merely make it available electronically, as an unpublished decision. To the extent that I have issued decisions that have not been posted and picked up by the publishing services, they are maintained in the Court's CM/ECF system.

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 have searched my files and electronic databases in an effort to locate all of my significant opinions on federal or state constitutional issues in response to this question. My research revealed that I have written significant opinions concerning the separation of powers, Article III standing, due process and equal protection, search and seizure (Fourth Amendment), free speech (First Amendment), and alleged violations of criminal procedure rights that are protected by the Fifth and Sixth Amendments. The significant opinions of mine that concern constitutional issues are listed below.

Maryland v. U.S. Dep't of Educ., 474 F. Supp. 3d 13 (D.D.C. 2020), vacated and remanded, 20-5268, 2020 WL 7868112 (D.C. Cir. Dec. 22, 2020), *on remand*, 17-cv-2139, 2020 WL 7773390 (D.D.C. Dec. 29, 2020)

Las Americas Immigrant Advoc. Ctr. v. Wolf, 19-cv-3640, --- F. Supp. 3d ----, 2020 WL 7039516 (D.D.C. Nov. 30, 2020)

United States v. Leake, No. 19-cr-194, 2020 WL 3489523 (D.D.C. June 26, 2020)

Committee on the Judiciary v. McGahn, 415 F. Supp. 3d 148 (D.D.C. 2019), *vacated and remanded*, 951 F.3d 510 (D.C. Cir. 2020), *reh'g en banc granted, opinion vacated sub nom. United States House of Representatives v. Mnuchin*, No. 19-5176, 2020 WL 1228477 (D.C. Cir. Mar. 13, 2020), *and on reh'g en banc*, 968 F.3d 755 (D.C. Cir. 2020), *and aff'd in part, remanded in part*, 968 F.3d 755 (D.C. Cir. 2020), *and rev'd and remanded*, 973 F.3d 121 (D.C. Cir. 2020), *reh'g en banc granted, opinion vacated* (Oct. 15, 2020)

Make the Rd. N.Y. v. McAleenan, 405 F. Supp. 3d 1 (D.D.C. 2019), *rev'd and remanded sub nom. Make the Rd. N.Y. v. Wolf*, 962 F.3d 612 (D.C. Cir. 2020)

Ctr. for Biological Diversity v. McAleenan, 404 F. Supp. 3d 218 (D.D.C. 2019)

Barber v. D.C. Gov't, 394 F. Supp. 3d 49 (D.D.C. 2019)

Brown v. Gov't of District of Columbia, 390 F. Supp. 3d 114 (D.D.C. 2019)

Eagle Tr. Fund v. U.S. Postal Serv., 365 F. Supp. 3d 57 (D.D.C. 2019), *aff'd*, 811 F. App'x 669 (D.C. Cir. 2020)

Jackson v. Bowser, No. 1:18-cv-1378, 2019 WL 1981041 (D.D.C. May 3, 2019)

United States v. Fajardo Campos, 16-cr-00154, 2018 WL 6448633 (D.D.C. Dec. 10, 2018)

Miller v. D.C. Water & Sewer Auth., No. 17-cv-0840, 2018 WL 4762261 (D.D.C. Oct. 2, 2018), *aff'd*, 790 F. App'x 218 (D.C. Cir. 2019)

Am. Fed. of Gov't Emps., AFL-CIO v. Trump, 318 F. Supp. 3d 370 (D.D.C. 2018), *rev'd and vacated*, 929 F.3d 748 (D.C. Cir. 2019)

Feldman v. Bowser, 315 F. Supp. 3d 299 (D.D.C. 2018)

Tapp v. Wash. Metro. Area Transit Auth., 306 F. Supp. 3d 383 (D.D.C. 2016)

Robinson v. Farley, 264 F. Supp. 3d 154 (D.D.C. 2017)

Nucor Steel-Ark. v. Pruitt, 246 F. Supp. 3d 288 (D.D.C. 2017)

United States v. Hillie, 227 F. Supp. 3d 57 (D.D.C. 2017)

Pollard v. District of Columbia, 191 F. Supp. 3d 58 (D.D.C. 2016), *aff'd*, 698 F. App'x 616 (D.C. Cir. 2017)

New England Anti-Vivisection Soc'y v. U.S. Fish & Wildlife Serv., 208 F. Supp. 3d 142 (D.D.C. 2016)

Mobarez v. Kerry, 187 F. Supp. 3d 85 (D.D.C. 2016)

Kyle v. Bedlion, 177 F. Supp. 3d 380 (D.D.C. 2016)

United States v. Miller, No. 16-cr-0072, 2016 WL 8416761 (D.D.C. Nov. 11, 2016), *aff'd*, 739 F. App'x 6 (D.C. Cir. 2018)

Otay Mesa Prop., L.P. v. U.S. Dep't of the Interior, 144 F. Supp. 3d 35 (D.D.C. 2015)

Smith v. United States, 121 F. Supp. 3d 112 (D.D.C. 2015), *aff'd*, 843 F.3d 509 (D.C. Cir. 2016)

Austin-Spearman v. AARP & AARP Servs. Inc., 119 F. Supp. 3d 1 (D.D.C. 2015) (duplicate citation at 113 F. Supp. 3d 1 (D.D.C. 2015))

Am. Fed'n of Gov't Employees, AFL-CIO v. Vilsack, 118 F. Supp. 3d 292 (D.D.C. 2015), *aff'd*, 672 F. App'x 36 (D.C. Cir. 2016)

XP Vehicles, Inc. v. Dep't of Energy, 118 F. Supp. 3d 38 (D.D.C. 2015)

Rothe Dev., Inc. v. Dep't of Def., 107 F. Supp. 3d 183 (D.D.C. 2015), *aff'd on other grounds*, 836 F.3d 57 (D.C. Cir. 2016)

Brewer v. District of Columbia, 105 F. Supp. 3d 74 (D.D.C. 2015)

Cal. Clinical Lab'y Ass'n v. Sec'y of Health & Human Servs., 104 F. Supp. 3d 66 (D.D.C. 2015)

Fed. Forest Res. Coal. v. Vilsack, 100 F. Supp. 3d 21 (D.D.C. 2015)

FiberLight, LLC v. Nat'l R.R. Passenger Corp., 81 F. Supp. 3d 93 (D.D.C. 2015)

Food & Water Watch, Inc. v. Vilsack, 79 F. Supp. 3d 174 (D.D.C. 2015), *aff'd*, 808 F.3d 905 (D.C. Cir. 2015)

United States v. Richardson, 36 F. Supp. 3d 120 (D.D.C. 2014)

Kretchmar v. F.B.I., 32 F. Supp. 3d 49 (D.D.C. 2014), *aff'd*, No. 14-5178 (D.C. Cir. Jan. 16, 2015)

Patterson v. United States, 999 F. Supp. 2d 300 (D.D.C. 2013)

Page v. Mancuso, 999 F. Supp. 2d 269 (D.D.C. 2013)

Am. Meat Inst. v. U.S. Dept. of Agric., 968 F. Supp. 2d 38 (D.D.C. 2013), *aff'd*, 746 F.3d 1065 (D.C. Cir. 2014), *reh'g en banc granted*, No. 13-5281, 2014 WL 2619836 (D.C. Cir. Apr. 4, 2014), *judgment reinstated*, 760 F.3d 18 (D.C. Cir. 2014) (en banc)

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.

I have not sat by designation on a federal court of appeals.

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:

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.

The United States District Court for the District of Columbia has a system that flags newly assigned cases based on recusal criteria that each judge identifies. This system permits a judge to identify potential conflicts ex ante, and then decide whether to recuse *sua sponte* in a newly assigned case.

I recused myself *sua sponte* in the following twelve cases, for the reasons described below.

I recused myself from *Jacobs v. Reliance Standard Life Insurance Co.*, 21-cv-0323, because the plaintiff in the case was previously employed as a doctor at Medstar Georgetown University Hospital, and the complaint asserted that the plaintiff's claim for disability benefits under a group plan that the hospital provides was improperly denied. My husband is a surgeon who is employed by Medstar Georgetown University Hospital. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. I therefore returned the case to the Calendar Committee for reassignment.

I recused myself from *Clark v. Environmental Protection Agency*, 18-cv-0075, because the case arose from EPA's failure to respond to a FOIA request that the plaintiff, a university research librarian, had submitted. At the time the matter was assigned to me, I was a member of the board of the university that employed the plaintiff, and after reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. I therefore returned the case to the Calendar Committee for reassignment.

I recused myself from *Pulphus v. Ayers*, 17-cv-310, because I have a personal and familial relationship with a material witness named in the complaint whose actions were challenged in the complaint. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. I therefore returned the case to the Calendar Committee for reassignment.

I recused myself from *Callas v. Callas*, 17-mc-127, because it involved a motion to quash a non-party subpoena, and I have a personal and familial relationship with the lawyer who was representing the movant. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. I therefore returned the case to the Calendar Committee for reassignment.

I recused myself from *Van Allen v. Gibson*, 16-cv-1426, because the plaintiff filed an amended complaint that named as defendants all judges who had been appointed by President Barack Obama, including me.

I recused myself from *Doe v. Lhamon*, 16-cv-1158, because the complaint challenged the Department of Education's sexual assault guidelines for colleges and universities, and at the time that the matter was assigned to me, I was serving on the board of a university that was evaluating its own potential response to those guidelines. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. I therefore returned the case to the Calendar Committee for reassignment.

I recused myself from *National Railroad Passenger Corp. v. 3.44 Acres More or Less of Land and Building*, No. 15-cv-1088, and two related cases, *National Railroad Passenger Corp. v. Casco Second Street, LLC*, No. 15-cv-1020 and *National Railroad Passenger Corp. v. 1.45 Acres More or Less of Air Space Above Land Located at 900 2nd Street NE*, 15-cv-1021, because these are civil cases that involve potential money damages, and my husband's brother is an equity partner at a law firm that had entered its appearance as counsel for one of the defendants. Canon 3(C)(1)(d)(ii) of the Code of Conduct for United States Judges appears to require recusal in such circumstances.

I recused myself from *Sandza v. Barclays Bank PLC*, 15-cv-0732, because these are civil cases that involve potential money damages, and my husband's brother is an equity partner at a law firm that represented defendants in this matter. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned in light of this connection with defense counsel, and that this issue was incurable. I therefore returned the case to the Calendar Committee for reassignment.

I recused myself from *Williams v. United States of America*, 15-mc-0283, because the firm representing the petitioner had previously represented my husband in two civil matters arising out of his employment as a surgeon, and had also consulted with my husband regarding medical matters and medical legal matters over time. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned, and that this issue was incurable. I therefore returned the case to the Calendar Committee for reassignment.

I recused myself from *Arrington v. Federal Public Defender of the District of Columbia*, 14-cv-1557, because I previously worked for the Federal Public Defender of the District of Columbia, and because one of the named defendants was my supervisor when I worked in that office and remains a personal friend of mine. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned in light of my

personal relationship with one of the parties, and that this issue was incurable. I therefore returned the case to the Calendar Committee for reassignment.

I recused myself from *Zaidi v. United States Sentencing Commission*, 14-cv-1308, because the plaintiff in this case alleged that certain policies that the United States Sentencing Commission had promulgated were unlawful and unconstitutional. I was serving as Vice Chair of the Sentencing Commission at the time this matter came before me. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. I therefore returned the case to the Calendar Committee for reassignment.

I recused myself from *Chenari v. George Washington University*, 14-cv-0929, because the plaintiff alleged that George Washington University improperly terminated his enrollment at the school for honor code violations, and at the time this matter came before me, I was affiliated with George Washington University Law School as an adjunct professor. Given G.W.U. Law School's relationship to the University—the defendant in this matter—I reviewed the Code of Conduct for United States Judges, and I determined both that my impartiality might reasonably be questioned and that this issue was incurable. I therefore returned the case to the Calendar Committee for reassignment.

I recused myself from the following case when the matter was assigned to me, after being asked to do so by the parties.

Defense counsel in *Wilson v. Cope*, No. 14-cv-1434, filed a consent motion asking me to transfer this matter to another judge because his firm had previously represented my husband in two civil matters arising out of his employment as a surgeon, and had also consulted with my husband regarding medical matters and medical legal matters over time. I was not aware of this relationship before the parties brought it to my attention by filing the motion. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. I therefore granted the motion and returned the case to the Calendar Committee for reassignment.

I denied motions for recusal, and did not recuse myself, in the following cases.

The pro se plaintiff in *Cannady v. Hogan*, 20-cv-2141, requested that I recuse myself because of a ruling I had made and an order I had issued in his case. Before taking any action on the merits, I transferred the case to another district for improper venue and, as a result, I denied the plaintiff's recusal request as moot.

The pro se plaintiff in *Humphries v. Newman*, 18-cv-2036, requested that I recuse myself primarily because she believed that my husband was the son of the founder of the firm representing defendant Children's National Medical Center ("CNMC"), and that my husband was employed by CNMC. Her assertions about

my husband were factually incorrect. The plaintiff also sought recusal because of certain rulings I had made concerning her case; however, adverse rulings in a matter are not an appropriate reason to seek recusal. I denied her recusal request.

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.

In September 2005, I was appointed to the Commission on Juvenile Justice in Montgomery County, Maryland by then-Montgomery County Executive Douglas Duncan and approved by the Montgomery County Council. I withdrew from the Commission shortly after my appointment due to a health issue involving a family member and never served.

On July 23, 2009, President Barack Obama nominated me to be a Commissioner on the United States Sentencing Commission. On February 12, 2010, following my confirmation by the United States Senate, President Obama appointed me to be a Vice Chair of the Commission.

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 2008, I was an election poll monitor for both the primary and general elections on behalf of Lawyers for Change, Obama for America Presidential Campaign.

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;

I served as a law clerk to three federal judges:

Hon. Patti B. Saris
United States District Court for the District of Massachusetts
1996 – 1997

Hon. Bruce M. Selya
United States Court of Appeals for the First Circuit
1997 – 1998

Associate Justice Stephen G. Breyer
Supreme Court of the United States
1999 – 2000

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;

1998 – 1999
Miller, Cassidy, Larroca & Lewin, LLP (now defunct)
2599 M Street, Northwest
Washington, District of Columbia 20007
Associate

2000 – 2002
Goodwin Procter, LLP
Exchange Place
53 State Street
Boston, Massachusetts 02109
Associate

2002 – 2003
The Feinberg Group, LLP (now known as Feinberg Rozen, LLP)
1455 Pennsylvania Avenue, Northwest
Washington, District of Columbia 20004
Associate

2003 – 2005
United States Sentencing Commission
One Columbus Circle, Northeast
Washington, District of Columbia 20002
Assistant Special Counsel

2005 – 2007
Office of the Federal Public Defender
625 Indiana Avenue, Northwest
Washington, District of Columbia 20004
Assistant Federal Public Defender

2007 – 2010
Morrison & Foerster, LLP
2000 Pennsylvania Avenue, Northwest, 6th Floor
Washington, District of Columbia 20006
Of Counsel

2010 – 2014
United States Sentencing Commission
One Columbus Avenue, Northeast
Washington, District of Columbia 20002
Vice Chair & Commissioner

2013 – Present
United States District Court for the District of Columbia
E. Barrett Prettyman United States Courthouse, Room 6309
333 Constitution Avenue, Northwest
Washington, District of Columbia 20001
United States District Judge

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 not 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.

The nature of my law practice has varied widely over the years. From 1998 to 1999, I worked as a litigation associate at Miller, Cassidy, Larroca & Lewin LLP, a trial litigation boutique firm in the District of Columbia. My work there involved a variety of civil subject matters, including commercial breach of contract actions, bankruptcy litigation, just compensation, and defense of corporate employment discrimination and retaliation claims.

In 2000, after my Supreme Court clerkship, I moved to Boston, Massachusetts and returned to private practice, joining Goodwin Procter

LLP's litigation department as an associate. While at Goodwin, I worked on a variety of trial-stage litigation matters, drafting pleadings and handling discovery in cases involving federal securities fraud allegations, personal injury claims, breach of contract actions, and alleged violations of the Anti-Kickback statute. I also did pro bono work that involved assisting an organization in investigating and challenging high stakes testing in education, and drafting an amicus brief in a free speech case in the First Circuit.

In 2002, I returned to the District of Columbia and joined The Feinberg Group, a small arbitration and mediation practice, as an associate. While at the Feinberg Group, I assisted in the negotiated (non-litigation) resolution of mass tort claims. I attended arbitration proceedings and advised client corporations regarding trust payment structures for resolving mass-tort liability, such as asbestos claims.

From 2003 to 2007, I focused primarily on criminal law and criminal justice related issues. As an Assistant Special Counsel to the United States Sentencing Commission from 2003 to 2005, I drafted proposed amendments to the Sentencing Guidelines Manual, analyzed federal law and sentencing policies in regard to certain crimes, and worked on the development of various guideline-sentencing proposals prior to, and in anticipation of, *Booker*. Then, from 2005 to 2007, I served as an Assistant Federal Public Defender in the District of Columbia, during which I represented indigent criminal appellants in the United States Court of Appeals for the District of Columbia Circuit. I filed briefs and motions in the court of appeals, argued cases, and monitored criminal law developments nationwide.

In 2007, I joined Morrison & Foerster LLP in the District of Columbia and worked as an appellate litigator with a practice that can generally be characterized as a national appellate practice involving a wide range of legal issues. I drafted and filed briefs and petitions in the Supreme Court and in other appellate courts around the country. The cases that I worked on involved such matters as statutory interpretation, federal preemption, personal injury claims, federal wiretapping and fraud prosecutions, and civil contempt sanctions imposed by an administrative body. I also worked on pro bono matters involving complex legal issues, including an asylum application and briefs regarding the Fourth Amendment, federal habeas, and the right to an attorney in civil cases under state constitutional law.

My practice on the Sentencing Commission from 2010 to 2014 can generally be characterized as criminal justice policy. As a Commissioner of the federal agency that develops sentencing policy for the federal courts, I evaluated, drafted, and enacted proposed changes to the federal

sentencing guidelines. I also participated in administrative hearings and meetings to assess the operation of the federal sentencing system.

Since 2013, I have served as a district judge on the federal district court in Washington, D.C.

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

During my years in private practice at Miller, Cassidy, Larroca & Lewin, from 1998 to 1999, and Goodwin Procter, from 2000 to 2002, my clients were typically United States corporations, corporate executives, and non-profit organizations. I specialized in civil litigation, including trial-stage practice and procedure such as pleadings, motions practice, and discovery. My cases involved a variety of subject matters, including securities fraud, mortgage fraud, product liability, breach of contract, property law, the Fifth Amendment's takings clause, and Title VII.

When I was at The Feinberg Group from 2002 to 2003, my typical clients were large corporations facing mass tort liability. I specialized in mediation and arbitration procedures and in the evaluation of trust structures for the settlement of current and potential (future) tort claims.

As an Assistant Federal Public Defender from 2005 to 2007, I represented indigent individuals who had been convicted of federal crimes. I specialized in criminal law and procedure, the Fourth and Fifth Amendments, and federal appellate practice.

While at Morrison & Foerster from 2007 to 2010, I represented corporations, non-profit organizations, and a few individuals, all of whom were making legal arguments in state and federal courts of appeals. Typically, my clients were corporations or organizations that filed briefs on the merits of a case as parties to an appeal or amicus briefs in support of a party in a case. I had the opportunity to work on both civil and criminal appeals, and appeals in courts throughout the country, including the Supreme Court of the United States.

In my work as a Commissioner on the United States Sentencing Commission from 2010 to 2014, I represented the federal criminal justice system as a whole. The same is true of my former work as a Commission staffer from 2003 to 2005. I did not have clients, but I regularly consulted with federal judges, members of Congress, prosecutors, defense counsel, and other criminal justice stakeholders nationwide about the structure and operation of the federal sentencing system. I specialized in criminal law and in the procedures of a federal district court judge during sentencing proceedings. I also developed expertise in administrative procedure and

the specific regulations (the federal sentencing guidelines) that federal district court judges use at sentencing.

I do not have any clients in my role as a United States District Judge.

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.

At Miller, Cassidy, Larroca & Lewin, from 1998 to 1999, and Goodwin Procter, from 2000 to 2002, my practice was entirely civil litigation, but I did not appear in court. I appeared in court on a few occasions while at Morrison & Foerster from 2007 to 2010, including to argue a motion for summary judgment in a case in the United States Court of Federal Claims in 2009, to argue an appeal in the District of Columbia Court of Appeals in 2008, and to argue an appeal in the United States Court of Appeals for the District of Columbia Circuit in 2007.

As an Assistant Federal Public Defender, my practice was entirely criminal litigation in federal court. I appeared in court approximately ten times from 2005 to 2007, arguing appeals in the United States Court of Appeals for the District of Columbia Circuit.

At The Feinberg Group from 2002 to 2003, I assisted with mediations and arbitrations but did not appear in court. Likewise, as a Commissioner on the United States Sentencing Commission, from 2010 to 2014, I did not appear in court, nor did I appear in court in my work as a Commission staffer from 2003 to 2005.

Since becoming a United States District Judge in 2013, I appear in court frequently, as I routinely preside over motion and plea hearings, status conferences, sentencings, and trials.

i. Indicate the percentage of your practice in:
   1. federal courts: 95%
   2. state courts of record: 5%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 60%
   2. criminal proceedings: 40%

These percentages approximate the overall breakdown of my court appearances throughout my career to date.

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.

When I was in private practice, I was not primarily responsible for trying cases and did not handle any matters that were tried to verdict while I worked on them. From 1998 to 1999 and from 2000 to 2002, I was associate counsel in approximately 15 cases being litigated in state and federal courts. My responsibilities included pre-trial preparation (e.g., managing discovery, taking depositions, and drafting pre-trial pleadings and dispositive motions), and I also assisted with drafting motions in limine, proposed jury instructions, and proposed findings of fact and conclusions of law for cases that were scheduled to be tried.

i. What percentage of these trials were:
   1. jury:
   2. non-jury:

Not applicable

I have presided over twelve trials as a United States District Judge—nine jury trials and three bench trials—as indicated in response to question 13a.

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 not argued before the Supreme Court, but I have appeared as counsel in the following Supreme Court cases:

Bloate v. United States, 130 S. Ct. 1345 (2010) (amicus brief on behalf of the National Association of Criminal Defense Lawyers in support of petitioner, 2009 WL 1864008).

Arizona v. Gant, 556 U.S. 332 (2009) (amicus brief on behalf of the National Association of Federal Defenders in support of respondent, 2008 WL 2958118).

Al-Marri v. Spagone, No. 08-368 (amicus brief on behalf of The Constitution Project, The Rutherford Institute, and the Cato Institute in support of petitioner on the merits, 2009 WL 230960; and amicus brief on behalf of The Constitution Project and The Rutherford Institute in support of petition for certiorari, 2008 WL 4735243).

Boumediene v. Bush and *Al-Odah v. United States*, 553 U.S. 723 (2008) (amicus brief on behalf of former federal judges in support of petitioners, 2007 WL 2441585).

Quanta Computer, Inc, et al. v. LG Electronics, Inc., 553 U.S. 617 (2008) (amicus brief on behalf of Gen Probe, Inc. in support of petitioners, 2007 WL 3407025).

United States v. Bussell, No. 07-1262 (Apr. 3, 2008) (petition for certiorari, 2008 WL 960667; and reply brief, 2008 WL 2472925).

Hall Street Associates LLC v. Mattel Inc., 552 U.S. 576 (2008) (respondent's merits brief, 2007 WL 2731409; supplemental brief, 2007 WL 4244685; and reply brief, 2007 WL 4254419).

Clark County, Nevada v. Vacation Village, Inc., No. 07-373 (Nov. 19, 2007) (amicus brief on behalf of five air transportation-industry associations in support of petition for certiorari, 2007 WL 4142597).

Kosh v. United States, No. 06-6128 (Aug. 23, 2006) (petition for certiorari). Copy supplied.

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.

    The ten most significant matters that I handled while in private practice are listed below.

    1. *Washington Gas Light Co. v. Public Service Commission of D.C.*, 982 A.2d 691 (D.C. 2009) (Farrell, Glickman, Kramer, JJ.)

    I successfully represented Washington Gas Light Company with respect to a petition to the District of Columbia Court of Appeals seeking review of a $350,000 civil forfeiture sanction that the Public Service Commission of the District of Columbia had imposed during the discovery phase of a rate proceeding

as punishment for Washington Gas's alleged refusal to disclose documents as ordered by the Commission. I wrote the brief for petitioner and the reply brief, as well as two supplemental briefs after oral argument. I also argued the case before a panel of judges on the District of Columbia Court of Appeals. The court concluded that the exhaustion requirements of the District of Columbia Code did not prevent its exercise of jurisdiction, and it reversed the Public Service Commission's forfeiture order on the ground that the agency lacked the statutory authority to adjudicate and impose the forfeiture penalty.

Co-counsel
Bernice K. McIntyre (formerly with Washington Gas Light Company)
The BKM Group
Address and phone number unknown

Sherri N. Blount (formerly with Morrison & Foerster LLP)
Fitch, Even, Tabin & Flannery LLP
1250 23rd Street, Northwest, #410
Washington, DC 20037
(202) 419-7000

Opposing counsel
Christopher Lipscombe
D.C. Public Service Commission
1333 H Street, Northwest, #200W
Washington, DC 20005
(202) 626-9185

2. *Ladd v. United States*, No. 1:07-cv-271 (Fed. Cl., Oct. 14, 2009) (Hodges, J.)

I represented non-profit Rails-to-Trails Conservancy at a hearing on cross motions for summary judgment in a physical takings case in which the plaintiff landowners sought a legal declaration of ownership with respect to an abandoned railroad corridor. After being granted leave to participate, I prepared detailed exhibits and demonstratives and argued the motion for summary judgment on behalf of Rails-to-Trails as an amicus in support of the federal government. The court granted the government's motion for summary judgment, and denied the plaintiffs' cross motion, ruling that the railroad may negotiate with trail operators to transfer the corridor for public use pursuant to federal "railbanking" statutes without effecting a physical taking of plaintiff's reversionary rights in the property.

Co-counsel
Andrea Ferster
Rails-to-Trails Conservancy
2121 Ward Court, Northwest, 5th Floor
Washington, DC 20037
(202) 974-5142

James David Gette
United States Department of Justice
Environment and Natural Resources Division
Ben Franklin Station, Post Office Box 7415
Washington, DC 20044
(202) 514-2701

Opposing counsel
Mark F. ("Thor") Hearn, II (formerly with Arent Fox LLP)
True North Law
112 South Hanley Road, Suite 200
St. Louis, MO 63105
(314) 296-4000

3. *United States v. Littlejohn*, No. 05-3081, 489 F.3d 1335 (D.C. Cir. 2007) (Sentelle, Tatel, Brown, JJ.)

I successfully represented an individual defendant convicted of unlawful possession of a firearm in violation of 18 U.S.C. § 922(g) in an appeal in the United States Court of Appeals for the District of Columbia Circuit. I argued, *inter alia*, that the evidence presented at trial was legally insufficient to support the conviction and that the trial court had conducted an improper and prejudicial jury *voir dire*. I wrote the brief for appellant and the reply brief and argued the case before a panel of judges on the D.C. Circuit. The judgment was vacated as a result of the district court's improper use of compound questions during *voir dire* and the case was remanded for a new trial.

Opposing counsel
Sarah T. Chasson (formerly with the U.S. Attorney's Office for the District of Columbia)
Deputy General Counsel
Aledade, Inc.
4550 Montgomery Avenue, #950N
Bethesda, MD 20814
(202) 803-7979

4. *United States v. Ponds*, Nos. 03-3134, 03-3135, 454 F.3d 313 (D.C. Cir. 2006) (Rogers, Tatel, Brown, JJ.)

I successfully represented a former attorney convicted of tax evasion in an appeal that argued that the government's use of documents that it had compelled from the defendant pursuant to a subpoena and a grant of act-of-production immunity was improper under *United States v. Hubbell*, 530 U.S. 27 (2000). I wrote the brief for appellant and the reply brief, and I argued the case before a panel of judges on the United States Court of Appeals for the District of Columbia Circuit. The court vacated the judgment of conviction on the ground that my client's document production was sufficiently testimonial to implicate his Fifth Amendment rights, and remanded the case to the district court for a determination of the extent of the government's impermissible use of the immunized material.

Opposing counsel
John P. Mannarino
Deputy Chief, Appellate Division
U.S. Attorney's Office for the District of Columbia
555 Fourth Street, Northwest, Room 8104
Washington, DC 20530
(202) 252-6781

5. *Khiali-Gul v. Bush*, No. 1:05-cv-877 (D.D.C., 2005) (Robertson, J.)

From 2005 to 2007, I represented a detainee seeking habeas review of his classification as an "enemy combatant" and his resulting detention at the United States Naval Station in Guantanamo Bay, Cuba. I drafted the petition for a writ of habeas corpus and filed it on behalf of the detainee. I also drafted and filed a series of substantive and procedural motions related to the matter, including a motion for a protective order, an opposition to the government's motion seeking permission to review privileged materials seized from detainees, and a motion for reconsideration of the court's order dismissing the case for lack of subject matter jurisdiction. I applied for and was granted Secret security clearance and reviewed classified documents related to this representation at a secure facility. The case was ultimately consolidated with other similar habeas actions and transferred to a different district court judge for coordination and management.

Co-counsel
Mary Manning Petras
Office of the Federal Public Defender for the District of Columbia
625 Indiana Avenue, Northwest, Suite 550
Washington, DC 20004
(202) 208-7500

Opposing counsel
Terry Marcus Henry
United States Department of Justice, Civil Division
Post Office Box 883
20 Massachusetts Avenue, Northwest
Washington, DC 20044
(202) 514-2000

6. *Council of the District of Columbia v. Washington Development Group*, No. 1998 CA 009875 (D.C. Super. Ct., 1998) (Mize, J.)

I co-defended a District of Columbia property developer and his development company in an action brought by the City Council of the District of Columbia to enjoin the planned build-out of an historic building that the Council had leased as part of a real-estate development deal. I drafted pleadings, including the defendants' opposition to the plaintiff's motion for a preliminary injunction, and prepared related affidavits. I managed discovery, including witness statements and deposition testimony, and deposed a D.C. Councilmember during the discovery period. The parties ultimately settled and the case was dismissed with prejudice.

Co-counsel
Stephen Braga (formerly with Miller, Cassidy, Larroca & Lewin)
Bracewell LLP
2001 M Street, Northwest, Suite 900
Washington, DC 20036
(202) 828-5840

Opposing counsel
Eva Petko Esber
Williams & Connolly LLP
725 12th Street, Northwest
Washington, DC 20005
(202) 434-5106

7. *Rattley-Lewis v. National Public Radio*, No. 1997 CA 006678 (D.C. Super. Ct., 1998) (Gardner, J.)

I was on a litigation team that defended National Public Radio in an action brought in the Superior Court of the District of Columbia by a former senior-level executive of the company who claimed discriminatory and retaliatory treatment in violation of the District of Columbia Human Rights Act. I assisted with managing fact and expert discovery. I also drafted the memorandum of law and supporting affidavits that were filed in support of defendant's motion for summary judgment. The case ultimately settled during trial.

Co-Counsel
Joe Caldwell (formerly with Miller, Cassidy, Larroca & Lewin)
Steptoe & Johnson LLP
1299 Pennsylvania Avenue, Northwest
Washington, DC 20004
(202) 429-6455

Bradford Berry (formerly with Miller, Cassidy, Larroca & Lewin)
Lawyers' Committee for Civil Rights Under Law
Vice President, Legal Partnerships
1500 K Street, Northwest
Washington, DC 20005
(202) 662-8600

Professor Richard Schragger (formerly with Miller, Cassidy, Larroca & Lewin)
University of Virginia Law School
580 Massie Road, Room WB177E
Charlottesville, VA 22903
(434) 924-3641

Opposing counsel
Devki K. Virk
Bredhoff & Kaiser PLLC
805 Fifteenth Street, Northwest
Washington, DC 20005
(202) 842-2600

Warren Gary Kohlman (formerly with Bedhoff & Kaiser PLLC)
Office of the Attorney General for the District of Columbia
400 Sixth Street, Northwest
Washington, DC 20001
(202) 727-3400

8. *United States v. McCants*, No. 04-3064, 434 F.3d 557 (D.C. Cir. 2006) (Randolph, Griffith, Edwards, JJ.)

I successfully represented an individual fraud defendant in an appeal in the United States Court of Appeals for the District of Columbia Circuit that challenged the district court's failure to make findings on contested factual issues at sentencing. I authored the brief for appellant and the reply brief and argued the case before a panel of judges on the D.C. Circuit. The judgment was reversed on the grounds that the district court's sentencing judgment failed to adhere to the requirements of the Federal Rules of Criminal Procedure and the case was remanded for resentencing.

Opposing counsel
Lisa H. Schertler (formerly with the U.S. Attorney's Office for the District of Columbia)
Schertler Onorato Mead & Sears
901 New York Avenue, Northwest, #500
Washington, DC 20001
(202) 628-4199

9. *Hall Street Associates LLC v. Mattel Inc.*, 552 U.S. 576 (2008) (Souter, J., wrote the opinion for the Court)

From 2007 to 2008, I was part of a litigation team that represented respondent Mattel in a Supreme Court case involving the section of the Federal Arbitration Act that grants expedited judicial review to confirm, vacate, or modify an arbitration award. I was responsible for reviewing the factual record related to the subject matter of the underlying arbitration, and I drafted parts of both the primary brief for respondent and two supplemental briefs on specified issues the Supreme Court ordered. I also assisted in the preparation of oral argument counsel. The Supreme Court ultimately agreed with Mattel's argument that the Act's grounds for vacatur and modification of arbitration awards are exclusive for parties seeking expedited review under the FAA, but remanded the case for a determination regarding whether the parties did, in fact, intend for the arbitration proceeding at issue to be governed by the FAA.

Co-counsel
Beth S. Brinkmann (formerly with Morrison & Foerster LLP)
Covington & Burling LLP
One City Center
850 Tenth Street, Northwest
Washington, DC 20001-4956
(202) 662-5312

Seth Galanter (formerly with Morrison & Foerster LLP)
National Center for Youth Law
1313 L Street, Northwest
Washington, DC 20005
(202) 868-4781

Peter Hsiao (formerly with Morrison & Foerster LLP)
King & Spalding LLP
633 West Fifth Street, Suite 1600
Los Angeles, CA 90071
(213) 443-4379

Opposing counsel
Carter Phillips
Sidley Austin LLP
1501 K Street, Northwest
Washington, DC 20005
(202) 736-8270

Michael T. Garone
Schwabe, Williamson & Wyatt, P.C.
1211 Southwest Fifth Avenue, Suite 1900
Portland, OR 97204
(503) 796-2401

10. *Salvini v. Ski Lifts, Inc.*, 147 Wash. App. 1005 (Oct. 20, 2008) (Lau, Appelwick, Cox, JJ.)

I assisted in the representation of a defendant ski-area operator in its appeal of a $14 million personal injury judgment won by a plaintiff who was injured while ski jumping in the operator's terrain park. I drafted parts of the brief for appellant and the reply brief, which argued, *inter alia*, that the trial court had improperly admitted prejudicial evidence of prior accidents and had erred in instructing the jury regarding the operator's duty, inherent risk, and adequate warnings. The judgment was affirmed.

Co-counsel
James W. Huston (formerly with Morrison & Foerster LLP)
Deceased

Opposing counsel
John Robert Connelly, Jr.
Drazin and Warshaw, P.C.
25 Reckless Place
Red Bank, NJ 07701
(732) 747-3730

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.)

The most significant legal activities that I have pursued are my service as a United States District Judge from 2013 to the present, and my work at the United States Sentencing

Commission, both as an Assistant Special Counsel on the staff from 2003 to 2005, and more recently as Vice Chair and Commissioner from 2010 to 2014.

As a United States District Judge, I am responsible for resolving a wide range of disputes concerning criminal and civil matters that are assigned to me through the court's random case assignment system. My work involves hearing and considering motions (including requests for emergency relief), addressing discovery disputes, holding settlement conferences, managing a criminal case docket, writing opinions, and presiding over bench and jury trials. I also enter guilty pleas and impose sentences on defendants who are convicted of criminal offenses.

As a Vice Chair and Commissioner of the United States Sentencing Commission, I worked with Commission staff to evaluate, draft, and enact proposed changes to the federal sentencing guidelines that federal district court judges use to impose sentences on defendants in federal court. I prepared and delivered speeches and presentations about the federal sentencing system for criminal justice conferences and sentencing-related meetings, and I received feedback from United States district judges, federal probation officers, and prosecutors and defense counsel regarding operation of the guidelines as applied. I also questioned witnesses at Commission hearings based on my review of submitted testimony, and analyzed data regarding operation of the guidelines system, including judicial guideline compliance and variance rates.

As an Assistant Special Counsel on the United States Sentencing Commission, my primary role was to draft specific legislative proposals for amending the Sentencing Guidelines Manual and to prepare drafts of the reports and statements that the Commission published in the Federal Register. I met regularly with other Commission staff members as a member of various policy development teams that evaluated potential guideline amendments related to crimes involving hazardous materials, unsolicited commercial e-mail, and controlled substances. I attended the Commission's public meetings and assisted in the preparation of materials for the Commissioners. I also evaluated case law developments and crafted a series of alternative guideline-sentencing proposals prior to, and in anticipation of, the Supreme Court's decision in *Booker v. United States*, 543 U.S. 220 (2005).

I have not performed lobbying activity on behalf of any client or organization, and I am not and have never been a registered lobbyist.

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 served as part of a team of instructors who teach a one-week Trial Advocacy Workshop at Harvard Law School. I taught this course during the Law School's Winter Terms in 2018 and 2019. Syllabi supplied.

I created and taught a Federal Sentencing Seminar at the George Washington University Law School in the Spring of 2011, 2012, and 2014. This course examines various aspects of federal sentencing policy and procedure. Syllabi supplied.

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 have no anticipated receipts or expected future benefits or compensation of any kind.

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.

    If confirmed, I do not have any plans, commitments, or agreements to pursue outside 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).

    When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that 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.

        No family members or other persons, parties, categories of litigation or financial arrangements are likely to present potential conflicts of interest for me.

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

I do not anticipate any conflicts of interest. If confirmed, I would handle any matters involving actual or potential conflicts of interest by applying the Code of Conduct for United States Judges and any other relevant ethical canons or rules.

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.

From 2005 to 2007, I served as an Assistant Federal Public Defender, and as such, 100% of my time was devoted to the disadvantaged. In addition, approximately 15 to 20% of the time that I spent at each of the general litigation firms that I have been affiliated with involved *pro bono* litigation work or services. As an example, I represented the American Bar Association in the filing of an amicus brief in a state supreme court case involving an indigent parent's right to counsel in child custody proceedings. I also successfully assisted in the preparation of an asylum petition for a pregnant juvenile who was a victim of sexual assault and illegal human trafficking, represented a civil rights organization in its evaluation of the effects and implications of high-stakes testing on the educational opportunities of students in low-income communities, and represented an indigent criminal defendant in filing appeal-related motions in the United States Court of Appeals for the Fourth Circuit.

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 January 26, 2021, White House Counsel Dana Remus contacted me concerning my potential nomination to the D.C. Circuit to fill the anticipated vacancy that would arise from then-Judge Merrick Garland's confirmation as Attorney General of the United States. Since that date, I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice regarding my potential nomination and the nominations process. On February 24, 2021, I met with President Biden and Dana Remus at the White House concerning the nomination, and on March 30, 2021, the President announced his intent to nominate me.

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.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Candace Rae Jackson-Akiwumi (née Candace Rae Jackson). I continue to use Candace Rae Jackson for the Virginia bar, the Illinois bar, and court admissions.

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

   United States Circuit Judge for the Seventh 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.

   Zuckerman Spaeder LLP
   1800 M Street Northwest, Suite 1000
   Washington, District of Columbia 20036

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

   1979; Norfolk, Virginia

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.

   2002 – 2005, Yale Law School; J.D., 2005

   2001, University of Namibia; no degree received (audited courses during post-graduate fellowship)

   1996 – 2000, Princeton University; A.B. (with honors), 2000

   1998, University of Cape Town; no degree received (college semester abroad)

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.

2020 – Present
Zuckerman Spaeder LLP
1800 M Street Northwest, Suite 1000
Washington, District of Columbia 20036
Partner

2010 – 2020
Federal Defender Program for the Northern District of Illinois, Inc.
55 East Monroe Street, Suite 2800
Chicago, Illinois 60603
Staff Attorney

2007 – 2010
Skadden, Arps, Slate, Meagher & Flom LLP
155 North Wacker Drive
Chicago, Illinois 60606
Associate

2006 – 2007
United States Court of Appeals for the Fourth Circuit
1000 East Main Street
Richmond, Virginia 23219
Law Clerk for the Honorable Roger L. Gregory

2005 – 2006
U.S. District Court for the Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois 60604
Law Clerk for the Honorable David H. Coar

Fall 2004 Semester
Yale Law School
127 Wall Street
New Haven, Connecticut 06511
Teaching Assistant for Professor and Dean Harold Koh

Fall 2004 Semester
Yale University Resource Office on Disabilities (now Student Accessibility Services)
35 Broadway, Room 222
New Haven, Connecticut 06511
Note-taker

Summer 2004
Jenner & Block LLP
1099 New York Avenue Northwest, Suite 900

Washington, District of Columbia 20001
Summer Associate

Summer 2004
O'Melveny & Myers LLP
1625 Eye Street Northwest
Washington, District of Columbia 20006
Summer Associate

Spring 2004 Semester
Yale Law School
127 Wall Street
New Haven, Connecticut 06511
Teaching Assistant for Professor Robert Harrison

Spring 2003 Semester
Yale University Resource Office on Disabilities (now Student Accessibility Services)
35 Broadway, Room 222
New Haven, Connecticut 06511
Note-taker

Summer 2002
Oakmont Community Development Corporation
7010-M Auburn Avenue
Norfolk, Virginia 23513
Summer Camp Director

2001 – 2002
Chiang Mai University
239 Huay Kaew Road
Chiang Mai, Thailand 50200
Lecturer, Department of English

Winter 2000 Semester
Norfolk State University, Ethelyn R. Strong School of Social Work
G.W.C. Brown Hall, Room 335
Norfolk, Virginia 23504
Research Assistant

Summer 2000
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Intern

Uncompensated Affiliations:

2012 – 2020
Federal Bar Association, Chicago Chapter
Post Office Box 1200
Chicago, Illinois 60690
Board Member

2010 – 2020
Princeton Club of Chicago
Post Office Box 350
Kenilworth, Illinois 60043
Vice President for Alumni Schools (2013 – 2017)
Director (2010 – 2013; 2017 – 2020)

Fall 2018 Semester
Northwestern University Pritzker School of Law
375 East Chicago Avenue
Chicago, Illinois 60611
Adjunct Professor

2013 – 2015
Black Women Lawyers' Association of Greater Chicago, Inc.
321 South Plymouth Court, Suite 600
Chicago, Illinois 60604
Board Member at Large

2014 – 2015
Black Women Lawyers' Association of Greater Chicago Scholarship Fund Board
321 South Plymouth Court, Suite 600
Chicago, Illinois 60604
Board Member

2009 – 2013
Just The Beginning Foundation (now Just The Beginning - A Pipeline Organization)
70 West Madison Street, Suite 2900
Chicago, Illinois 60602
Associate Board Member (2009 – 2010; 2011 – 2013)
Associate Board Secretary (2010 – 2011)

Summer 2003
U.S. Attorney's Office for the Northern District of California
450 Golden Gate Avenue, 11th Floor
San Francisco, California 94102
Extern

Summer 2003

Lawyers' Committee for Civil Rights of the San Francisco Bay Area
131 Steuart Street, Suite 400
San Francisco, California 94105
Law Clerk

Spring 2001
Legal Assistance Centre
4 Marlen Ngouabi Street
Windhoek, Namibia
Volunteer Intern

Fall 2000
The Minerva Center for Human Rights
Faculty of Law, Hebrew University of Jerusalem
Mount Scopus, Jerusalem, Israel 9190501
Volunteer Intern

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 was not required to register for the 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.

   Phenomenal Woman Award, Black Women's Expo (2019)

   Leading with Virtue Award, Ladies of Virtue (2019)

   IMPACT Leadership Development Fellow, Chicago Urban League and University of Chicago Booth Graduate School of Business (2016 – 2017)

   Lawyers of Color Hot List Recognizing 100 Early-to-Mid-Career Attorneys in the Midwest Region (2013)

   Dedicated Service Award, Black Women Lawyers' Association of Greater Chicago, Inc. (2013 and 2010)

   Temple Bar Scholar, American Inns of Court (2007)

   Yale Law School
   Yale Law Journal, Volume 113 and 114 Senior Editor (2003 – 2005)
   Yale Law Journal, Volume 114 Admissions Committee (2004)

Earl Warren Legal Scholar, NAACP Legal Defense and Educational Fund, Inc. (2002 – 2005)

Ambassadorial Scholar, Rotary Foundation (2000 – 2001)

Princeton University
Graduated with Honors (2000)
Norfleet-Simpson Book Prize, Program in African American Studies (2000)
Robert W. van de Velde Award for best performance in a Woodrow Wilson School Policy Junior Policy Task Force (1999)
Jackie Robinson Foundation Scholar, Jackie Robinson Foundation (1996 – 2000)
Herbert Lehman Education Fund Scholar, NAACP Legal Defense and Educational Fund, Inc. (1996 – 2000)
National Achievement Scholar, National Merit Scholarship Corporation (1996)
Harry F. Byrd, Jr. Leadership Award (1995 – 1996)

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.

American Bar Association

Black Women Lawyers' Association of Greater Chicago, Inc.
Member, Nominating Committee (2018)
Co-Director, BWLA Directors' Institute (2017 – 2018)
Chair, Government Services Committee (2015 – 2017)
Board Member at Large (2013 – 2015)
Board Member, Scholarship Fund (2014 – 2015)
Chair, Community Service Committee (2011 – 2013)
Member, Spring Fundraising Committee (2009)
Mock Trial Coach (2009, 2010, 2015)

Federal Bar Association
Board Member, Chicago Chapter (2012 – 2020)
Member, Chicago Chapter Annual Criminal Practice Program Planning Committee (2013 – 2020)
Chair, Chicago Chapter Legal Prep Charter Academy Partnership (2016 – 2020)
Member, Chicago Chapter Nominating Committee (2018 – 2019)
Mentor, Chicago Chapter Law Student Mentoring Program (2018)

National Association of Federal Defenders

Women's White Collar Defense Association

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.

Virginia, 2005
Illinois, 2007
District of Columbia (application pending)

There have been no lapses in membership. After five years of Active status in Virginia, I assumed Associate status from 2010 to 2020 because I had been living and practicing law in Illinois since 2007. I returned to Active status in Virginia in 2021.

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.

United States Court of Appeals for the Seventh Circuit, 2008
United States District Court for the Northern District of Illinois, 2008

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.

Chicago Coalition for Law-Related Education Volunteer Mock Trial Coach (2009, 2010, 2015)

Diasporal Rhythms (art collectors' organization) (2013 – 2020)

Edward J. Lewis II Lawyers in the Classroom Volunteer (2005 – 2006)

Election Protection Chicago Legal Committee (2008)

Ladies of Virtue (girls' mentoring organization) Annual Fundraiser Host Committee (2017, 2018)

Princeton Club of Chicago
Director (2010 – 2013; 2017 – 2020)
Co-Chair, Awards Committee (2018 – 2019)

50th Anniversary of Undergraduate Coeducation Committee (2019)
Member, Princeton Prize in Race Relations Chicago Committee (2018)
Vice President for Alumni Schools (2013 – 2017)
Vice-Chair, City of Chicago Alumni Schools Committee (2010 – 2015)
Co-Vice Chair, City of Chicago Alumni Schools Committee (2008 – 2009)
Alumni Interviewer (2006 – 2020)

Princeton Club of Washington
Alumni Interviewer (2020 – Present)

Princeton University Alumni Council
Member, Nominations Committee (2020 – Present)
Member, Committee on Regional Associations (2019 – 2020)
Member, Princeton Schools Committee (2015 – 2018)

Princeton University Class of 2000 Millennial Lecture Series Committee (2010)

West Point Missionary Baptist Church
Member, Legal Ministry (2013 – 2019)
Writer, *The Point* (2013 – 2014)

Yale Law School Association of Illinois Steering Committee (2008 – 2020)

Yale Law School Class of 2005
Fifteenth Reunion Social Chair (2020)
Fifth Reunion Co-Chair (2010)

Yale Law School Executive Committee Term Member (2009 – 2012)

Yale Law Women Summer Alumni Mentor (2013 – 2015)

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.

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.

Fed. Crim. Prac. Ch. 3, Release & Det. Under the Bail Reform Act of 1984 (Ill. Inst. for Continuing Legal Educ. 2019 ed.). Copy supplied.

Statement on Humility as a Virtuous Characteristic, Ladies of Virtue, Oct. 11, 2019. Copy supplied.

Yale Law School Alumni Profile, 2017. Copy supplied.

With Carol A. Brook, *Fed. Crim. Prac. Ch. 3, Release & Det. Under the Bail Reform Act of 1984* (Ill. Inst. for Continuing Legal Educ. 2011 ed. Supp. 2014).

Ferguson and the Feds: How the Federal Government Is a Part of the Problem and the Solution, The Point Newsletter (West Point Missionary Baptist Church), Oct. – Dec. 2014, at 41–43. Copy supplied.

Free Fall Fun: Open House Chicago and the Chicago Cultural Center, The Point Newsletter (West Point Missionary Baptist Church), Oct. – Dec. 2014, at 51–52. Copy supplied.

Reflections on the 60th Anniversary of Brown v. Board of Education, The Point Newsletter (West Point Missionary Baptist Church), Third Quarter 2014. Copy supplied.

Summer Festival Season is Here!, The Point Newsletter (West Point Missionary Baptist Church), Summer 2014. Copy supplied.

Culture Calendar, The Point Newsletter (West Point Missionary Baptist Church), Apr. – June 2014, at 27–28. Copy supplied.

Questions and Answers about Stand Your Ground Laws and Justice for Trayvon Martin After George Zimmerman's Trial, The Point Newsletter (West Point Missionary Baptist Church), Jan. 2014. Copy supplied.

With Carol A. Brook, *Fed. Crim. Prac. Ch. 3, Release & Det. Under the Bail Reform Act of 1984* (Ill. Inst. for Continuing Legal Educ. 2011 ed.). Copy supplied.

Temple Bar Scholarship Report, American Inns of Court (2007). Copy supplied.

Exhibit of African-American art features contemporary works, Daily Princetonian, Feb. 24, 2000, at 8. Copy supplied.

Checking Motives Before Giving Away To Homeless, Daily Princetonian, Dec. 15, 1999, at 4. Copy supplied.

Community-based learning, Princeton Weekly Bulletin, May 3, 1999, at 8.

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.

I do not recall or have a record of any reports, memoranda or policy statements I prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which I was a member.

I understand that I am included as a "contributor" to a report entitled "Unequal Justice: Mobilizing the Private Bar to Fight Mass Incarceration," available at https://lawyerscommittee.org/wp-content/uploads/2015/07/0553.pdf. My only involvement with that report was to attend, on behalf of the Federal Defender Program for the Northern District of Illinois, Inc., a listening session conducted by the Lawyers' Committee for Civil Rights Under Law on May 7, 2014. I was not involved in researching or drafting the report.

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.

With Carol A. Brook, Letter to Clerk of Court Tom Bruton with the Federal Defender Program's comments regarding the Court's proposed amendment to Local Criminal Rule 32.1, Jan. 31, 2018. Copy Supplied.

Carol A. Brook, Daniel Hesler, Candace Jackson, Mary Judge, William Theis, Letter to Judge Rebecca Pallmeyer with the Federal Defender Program's comments regarding possible amendment to Local Criminal Rule 32.1, May 13, 2013. Copy supplied.

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.

September 17, 2020: Guest Speaker, University of North Carolina at Chapel Hill School of Law (Virtual Appearance). I spoke to Professor John F. Coyle's first-year Contracts class about my career as a federal public defender. I have no notes, transcript, or recording. The University of North Carolina at Chapel Hill School of Law is located at Van Hecke-Wettach Hall, 160 Ridge Road, CB #3380, Chapel Hill, NC 27599.

June 6, 2019: Faculty, Administrative Office of the U.S. Courts, Defender Services Office, Training Division, Fundamentals of Federal Criminal Defense Seminar II (Baltimore, MD). PowerPoint presentation supplied.

April 27, 2019: Moderator, Coeducation Through the Decades, 50th Anniversary Celebration of Undergraduate Coeducation at Princeton, Princeton Club of Chicago (Chicago, Illinois). Notes supplied.

January 11, 2019: Faculty, Administrative Office of the U.S. Courts, Defender Services Office, Training Division, Fundamentals of Federal Criminal Defense Seminar (Miami, FL). PowerPoint presentation supplied.

August 13 – 15, 2018: Faculty, Administrative Office of the U.S. Courts, Defender Services Office, Training Division, Persuasive Writing Workshop (Los Angeles, CA). I co-led small group breakout sessions throughout a three-day workshop for criminal defense attorneys from around the country. I have no notes, transcript, or recording. The address for Defender Services Office, Training Division, Administrative Office of the U.S. Courts is One Columbus Circle, Northeast, Suite 4-200, Washington, District of Columbia 20544.

May 29, 2018: Co-Host, "$100,000 Pyramid for Trial Attorneys," Federal Bar Association, Chicago Chapter, Federal Criminal Practice Program (Chicago, Illinois). Notes supplied.

May 11, 2018: Panelist, 5th Annual "Building a Community of Legal Professionals: Professionalism in the Legal Workplace," Loyola University Chicago School of Law (Chicago, Illinois). I participated on a panel featuring the work of public interest and government attorneys. I have no notes, transcript, or recording. The address for Loyola University Chicago School of Law is 1 East Pearson Street, Chicago, Illinois 60611.

February 2, 2018: Moderator, "Lawyering in a Broken Justice System," 15th Annual Norman C. Amaker Public Interest and Social Justice Retreat, Loyola University Chicago School of Law (Chicago, Illinois). Notes supplied.

June 29, 2017: Panelist, "Supreme Court Watchers: An Annual Discussion of the Supreme Court Term," Yale Law School Association of Illinois (Chicago, Illinois). Notes supplied.

January 26, 2017: Moderator, "Careers in Federal Government: A Lunchtime Discussion," Black Women Lawyers' Association of Greater Chicago, Inc. (Chicago, Illinois). Notes supplied.

December 6, 2016: Co-Presenter, "Regional Associations + Alumni Schools Committees = A Dynamic (Alumni Community Building) Duo," Princeton University Committee on Regional Association & Princeton Schools Committee Joint Webinar (Webinar). Notes supplied.

April 13, 2016: Co-Host, "Evidence! A Game Show for Trial Attorneys," Federal Bar Association, Chicago Chapter, Federal Criminal Practice Program. Notes supplied.

August 6, 2015: Panelist, Jumpstart Federal Court Day, Just The Beginning Foundation (Chicago, Illinois). I participated with a judge and prosecutor on a panel for middle or high school students about careers at the federal courthouse. I have no notes, transcript, or recording. The address for the Just The Beginning Foundation, now known as Just The Beginning - A Pipeline Organization, is 70 West Madison Street, Suite 2900, Chicago, Illinois 60602.

April 21, 2015: Panelist, "Federal Bar Association, John Marshall Law School Division Kick-Off Event" (Chicago, Illinois). I participated on a panel reflecting on Federal Bar Association service. I have no notes, transcript, or recording. The address for the Federal Bar Association is Post Office Box 1200, Chicago, Illinois 60690.

February 6, 2015: Presenter, Annual Black History Month Courthouse Tour, Circuit Court of Cook County (Chicago, Illinois). I addressed elementary school students about the practice of law. I have no notes, transcript, or recording. The address for Circuit Court of Cook County is Richard J. Daley Center, 50 West Washington, Chicago, Illinois 60602.

November 21, 2014: Panelist, "What the War on Drugs Has Wrought: Challenges to Racial Profiling in Stash House Cases, Strategies to Fight Against Mass Incarceration, Tips on Filing Clemency Petitions," 2014 Criminal Justice Act Annual Fall Criminal Defense Seminar. PowerPoint presentation supplied.

September 5, 2014: Panelist, "Federal Criminal Defense: Raising Creative Defenses in Phony Stash House Ripoff Cases and Analyzing Ways to Reduce Federal Drug Prison Sentences," National Lawyers Guild Annual Convention, (Chicago, Illinois). PowerPoint presentation supplied.

June 28, 2014: Panelist, Youth Legal Summit, West Point Missionary Baptist Church (Chicago, Illinois). I addressed parents about what to expect if their children have encounters with the criminal legal system. I have no notes, transcript, or recording. The address for West Point Missionary Baptist Church is 3566-72 South Cottage Grove Avenue, Chicago, Illinois 60653.

April 21, 2014: Speaker, Christ the King Career Day, Christ the King Jesuit College Preparatory School (Chicago, Illinois). I addressed elementary school students about the practice of law. I have no notes, transcript, or recording. The address for Christ the King Jesuit College Preparatory School is 5088 West Jackson Boulevard, Chicago, Illinois 60644.

2014 [month and date unknown]: Speaker, KIPP Ascend Charter School Federal Criminal Court Day (Chicago, Illinois). I addressed elementary school students about the practice of law. I have no notes, transcript, or recording. The address for KIPP Ascend Charter School is 2007 South Halsted Street, Chicago, Illinois 60608.

2013 – 2015 [months and dates unknown]: Panelist, Public Service Presentations for Princeton Project 55 Fellows/Princeton AlumniCorps Fellowships Chicago, Illinois). For three years in a row, I participated on a panel addressing post-college public interest fellows about federal legal practice. I have no notes, transcript, or recording. The address for Princeton AlumniCorps is Princeton AlumniCorps, 12 Stockton Street, Princeton, NJ 08540.

April 14, 2012: Panelist, Saturday Morning Career Breakfast, Black Women Lawyers' Association of Greater Chicago, Inc. National Summit (Chicago, Illinois). I participated on a panel featuring attorneys with various career paths. I have no notes, transcript, or recording. The address for the Black Women Lawyers' Association of Greater Chicago, Inc. is 321 South Plymouth Court, Suite 600 Chicago, Illinois 60604.

October 4, 2011: Moderator, "Sentencing Blagojevich," Yale Law School Association of Illinois (Chicago, Illinois). Outline supplied.

July 19, 2011: Panelist, "Life as a Criminal Law Attorney," Just The Beginning Foundation Middle School Law Camp (Chicago, Illinois). I addressed students about the practice of criminal law. I have no notes, transcript, or recording. The address for the Just The Beginning Foundation, now known as Just The Beginning - A Pipeline Organization, is 70 West Madison Street, Suite 2900, Chicago, Illinois 60602.

January 26, 2011: Panelist, "Q&A with Lawyers from the Black Women Lawyers' Association," DePaul Black Law Students' Association (Chicago, Illinois). I spoke on a panel featuring attorneys with various career paths. I have

no notes, transcript, or recording. The address for the Black Women Lawyers' Association of Greater Chicago, Inc. is 321 South Plymouth Court, Suite 600 Chicago, Illinois 60604.

August 25, 2010: Panelist, "What Can You Do With a Law Degree?" Just The Beginning Foundation Middle School Law Camp (Chicago, Illinois). I addressed students about the practice of criminal law. I have no notes, transcript, or recording. The address for the Just The Beginning Foundation, now known as Just The Beginning - A Pipeline Organization, is 70 West Madison Street, Suite 2900, Chicago, Illinois 60602.

April 21, 2009: Moderator, "Will Judicial Discretion Triumph? Reflections on the Supreme Court's Ongoing Federal Sentencing Revolution," Yale Law School Association of Illinois (Chicago, Illinois). Outline supplied.

June 5, 2001: Guest Speaker, Norfolk Rotary Club (Norfolk, Virginia). Speech supplied.

April 28, 2001: Guest Speaker, Rotary District 9350 Conference (Windhoek, Namibia). Speech supplied.

March 8, 2001: Guest Speaker, Windhoek Rotary Club (Windhoek, Namibia). Speech supplied.

December 27, 2000: Guest Speaker, Princess Anne Rotary Club (Virginia Beach, Virginia). Speech supplied.

December 2, 2000: Guest Speaker, Rotary Williamsburg Foundation Seminar (Williamsburg, Virginia). Speech 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.

Sarah Jarvis, *Former Federal Public Defender Joins Zuckerman Spaeder*, Law360, Dec. 1, 2020. Copy supplied.

Yale Law Women, Alumni Spotlight, June 26, 2014. Copy supplied.

Alumni of the Fortnight, Princeton-in-Asia, Mar. 22, 2006. Copy supplied.

Candace Jackson: Experimenting with the Law, Yale Law Report, Summer 2005, at 15. Copy supplied.

Candace Jackson, a Jackie Robinson Scholar, Talks about Her Post-Graduate

Plans and about the Foundation That Made Her Education Possible, The Early Show, CBS News, Mar. 13, 2000. Transcript supplied.

Lee Williams, *University, Town Officials Gauge Progress of Experiential Learning*, Daily Princetonian, Apr. 19, 1999, at 1. 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 cases, approximately what percent were:

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

ii. Of these cases, approximately what percent were:

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 (4) 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.

I have not held public office. Nor have I had 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.

On one occasion in 2008, I volunteered at a phone bank for Barack Obama's campaign for President of the United States. My responsibility was to call voters. I did not have a title.

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;

From 2005 to 2006, I clerked for the Honorable David H. Coar of the United States District Court for the Northern District of Illinois.

From 2006 to 2007, I clerked for the Honorable Roger L. Gregory of the United States Court of Appeals for the Fourth Circuit.

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

I have not 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;

2007 – 2010
Skadden, Arps, Slate, Meagher & Flom LLP
155 North Wacker Drive
Chicago, Illinois 60606
Associate

2010 – 2020
Federal Defender Program for the Northern District of Illinois, Inc.
55 East Monroe Street, Suite 2800
Chicago, Illinois 60603
Staff Attorney

2020 – Present
Zuckerman Spaeder LLP
1800 M Street Northwest, Suite 1000
Washington, District of Columbia 20036

Partner

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 not 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.

My law practice has involved a mix of civil and criminal, trial and appellate, and federal court and state court litigation.

After completing my federal district court and court of appeals clerkships, I joined Skadden, Arps, Slate, Meagher & Flom LLP as a litigation associate in 2007. I engaged in complex civil litigation in both state and federal court, at the trial and appellate level. My billable matters involved contracts, tax, privacy, securities, and patent infringement. My pro bono matters involved adoption, civil rights, criminal law, tort law, and immigration at the trial and appellate level, in federal and state court, and before administrative bodies. I tried one jury trial in state court, for which I was my client's sole counsel at trial. I briefed and argued one appeal in the United States Court of Appeals for the Seventh Circuit.

In 2010, I joined the Federal Defender Program for the Northern District of Illinois, Inc., as a staff attorney. During my decade as a federal defender, I represented over 400 clients accused of federal crimes at every stage of the process, from investigation to trial and pre-trial proceedings, sentencing, and appeal, including petitions for writ of certiorari to the United States Supreme Court. In case types ranging from fraud to firearms, I successfully advised grand jury witness appearances, negotiated pleas, and achieved hundreds of mitigated sentences. I tried seven federal jury trials. I briefed and argued five more appeals in the United States Court of Appeals for the Seventh Circuit. In the hundreds of cases where my clients ultimately chose not to go trial or chose not to appeal their conviction or sentence, I nonetheless evaluated and advised on potential trial issues and potential appellate issues throughout the pre-trial, trial, and sentencing phases of the case. I drafted and argued a large number of substantive motions at the trial level including motions to dismiss and motions to suppress. I also litigated hundreds of contested hearings, ranging from bond hearings to revocation hearings, suppression hearings, and sentencing hearings. Additionally, in many of my cases I supervised teams that assisted me in investigating facts, developing

sentencing mitigation, and securing resources for clients with mental health, substance abuse, housing, and other needs.

In 2020, I joined Zuckerman Spaeder LLP as a partner. My practice has broadened again to include civil work, and I continue to represent clients needing criminal defense, chiefly in white collar matters. I have also added government and internal investigations to my caseload.

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

Since my return to private practice in November 2020, my clients have been individuals and organizations. I specialize in civil litigation, white collar criminal litigation, and government and internal investigations. I also assist with a monitorship. My cases involve business disputes, ethics, telecommunications, antitrust, state law tort claims, and a variety of federal tort, computer, and communications statutes. The matters are pending before state and federal courts and administrative agencies.

When I was a federal public defender from 2010 to 2020, my clients were individuals charged with, under investigation for, or approached as witnesses to federal crimes. I specialized in criminal law and procedure, the Fourth and Fifth Amendments, federal trial practice, and federal appellate practice. My cases involved a panoply of fraud, narcotics, firearms, bank robbery, sex offenses, immigration offenses, and computer crimes.

When I was in private practice from 2007 to 2010, my clients were companies, nonprofit organizations, and individuals. I specialized in complex civil litigation, including pleadings, motions practice, and discovery at the trial stage, and appeals. My cases involved contracts, tax, privacy, securities, and patent infringement. My pro bono docket was unspecialized: it involved adoption, civil rights, criminal, immigration, and tort matters at the trial and appellate level, in federal court and state court, and before administrative bodies.

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.

Since November 2020 when I returned to private practice, approximately 68% of my practice has involved litigation and approximately 32% has involved government investigations and monitorships. The proceedings are 85% civil and 15% criminal. I have not yet appeared in court.

From 2010 to 2020, the decade I was a federal public defender, 100% of my

practice involved criminal litigation. I appeared in court frequently.

From 2007 to 2010, when I was first in private practice, 100% of my practice involved litigation. The proceedings were 97.5% civil and 2.5% criminal. I appeared in court frequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 80%
   2. state courts of record: 17%
   3. other courts: 0%
   4. administrative agencies: 3%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 34%
   2. criminal proceedings: 66%

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.

I have tried eight cases to verdict: seven in federal court and one in state court. I was sole counsel in one of the eight cases, chief counsel in four cases, and co-counsel in three cases. I have also litigated hundreds of contested hearings in federal court. Additionally, I have briefed and argued six federal appeals.

i. What percentage of these trials were:
   1. jury: 100%
   2. non-jury: 0%

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 not argued before the Supreme Court of the United States, but I have filed petitions for a writ of certiorari in the following cases:

United States v. Common, No. 16-5850 (Sept. 1, 2016) (petition for certiorari). Copy supplied.

United States v. Wade, No. 14-8877 (Mar. 13, 2015) (petition for certiorari). Copy supplied.

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. Brown*, No. 12 CR 632-1, 2018 WL 1278577 (N.D. Ill. Mar. 12, 2018) (Castillo, J.)

From 2012 to 2018, I represented Mr. Brown, who was charged with, among other things, conspiracy to rob a fictitious drug stash house. In 2013, I and two attorneys in a related case began challenging the pattern of the Bureau of Alcohol, Tobacco, Firearms, and Explosives in bringing these cases largely against African-American and Latino defendants. The groundbreaking discovery litigation we initiated attracted the attention of the University of Chicago's Federal Criminal Justice Clinic. In 2014, the clinic joined the effort and spearheaded (1) the filing of a Motion to Dismiss for Racially Selective Law Enforcement in 12 pending cases on behalf of 43 defendants and (2) the retention of an expert statistician to support defendants' position and testify at an unprecedented nine-judge evidentiary hearing in 2017. In 2018, the district court denied defendants' Motion to Dismiss. Nonetheless, the course of events resulted in favorable plea offers to all defendants and my client was sentenced to time served. The litigation also resulted in the U.S. Attorney's Office for the Northern District of Illinois no longer charging fictitious stash house cases.

Co-counsel
Daniel J. Hesler
Federal Defender Program for the Northern District of Illinois, Inc.
55 East Monroe Street, Suite 2800
Chicago, IL 60603
(312) 621-8300

Opposing counsel
Yasmin Best (former Assistant United States Attorney)
1800 Century Park East, Suite 1500
Los Angeles, CA 90067
(310) 500-2166

2. *United States v. Webster*, No. 13 CR 103-5, reported in:

United States v. Paxton, et al., 2014 WL 3807965 (N.D. Ill. July 31, 2014) (Gettleman, J.)
United States v. Paxton, et al., 2015 WL 493958 (N.D. Ill. Feb. 3, 2015) (Gettleman, J.)
United States v. Paxton, et al., 848 F.3d 803 (7th Cir. 2017) (Posner, Ripple, Rovner, JJ.)
United States v. Paxton, et al., 2018 WL 4504160 (N.D. Ill. Sep. 20, 2018) (Gettleman, J.)

From 2013 to 2018, I represented Mr. Webster, who was charged with, among other things, conspiracy to rob a fictitious drug stash house. In addition to raising the challenge described in the case summary above (*United States v. Brown*), I along with two attorneys with related cases challenged the practice of the Bureau of Alcohol, Tobacco, Firearms and Explosives of surreptitiously recording suspects in an enclosed police van after their arrest but failing to provide *Miranda* warnings. I filed a motion to suppress objecting to this practice on behalf of my client and his four co-defendants; conducted direct and cross examination at a suppression hearing that turned into multiple suppression hearings; filed a motion to reconsider when the district court granted our motion only in part (agreeing that the characteristics of the van supported a reasonable expectation of privacy in defendants' conversations); wrote and filed the appellee brief when the prosecution filed an interlocutory appeal (No. 14-2913); filed a cross-appeal (No. 15-1294); wrote and filed the cross-appellant brief; and argued the appeal before a panel of judges on the Seventh Circuit. The Seventh Circuit reversed the district court's decision granting in part the motion to suppress and denied Mr. Webster's cross-appeal as moot. In 2018, the district court sentenced my client to a time served sentence of six days in prison.

Opposing trial counsel
Dylan Smith (former Assistant United States Attorney)
Freeborn & Peters LLP
311 South Wacker Drive, Suite 3000
Chicago, IL 60606
(312) 360-6394

Jennie Levin (former Assistant United States Attorney)
DraftKings Inc.
222 Berkeley Street, 5th Floor
Boston, MA 02116
(312) 859-0000

Opposing appellate counsel
Debra Riggs Bonamici
United States Attorney's Office for the Northern District of Illinois
219 South Dearborn Street
Chicago, IL 60604
(312) 353-3741

3. *United States v. French*, No. 14 CR 318 (N.D. Ill.) (Feinerman, J.)

From 2014 to 2017, I represented Mr. French, who pled guilty to hacking, among other places, colleges, government agencies, and telecommunication companies. The case involved voluminous, technical discovery relating to computer fraud and the hacking world. I retained a cyber security expert to successfully challenge the prosecution's position that my client's hacking was especially complex or intricate and therefore warranted a sentencing guidelines enhancement. I hired a psychiatrist as part of a much larger mitigation presentation to advocate for a sentence far lower than the prosecution requested, and I was successful. The case also involved significant litigation during the pretrial release phase to (1) garner court orders for the U.S. Marshals to transport my indigent client between his home in the southeastern part of the United States and court in Chicago, and (2) advocate for the best outcome for my client when he violated the terms of his bond because of mental health and substance abuse issues.

Opposing counsel
William Ridgway (former Assistant United States Attorney)
Skadden, Arps, Slate, Meagher & Flom LLP
155 North Wacker Drive, Chicago, IL 60606
(312) 407-0449

4. *United States v. Common*, No. 12 CR 893 (N.D. Ill.) (Gettleman, J.), reported in: *United States v. Common*, 818 F.3d 323 (7th Cir. 2016) (Flaum, Ripple, Peterson, JJ.), *cert. denied*, 137 S. Ct. 323 (2016)

From 2012 to 2016, I represented Mr. Common, who was charged with possessing a firearm as a felon and was subject to a 15-year-mandatory minimum sentence under the Armed Career Criminal Act. As lead counsel, along with my co-counsel, I completed the core trial tasks: investigating the case, developing trial strategy, preparing witnesses (this was a rare care where we had multiple defense witnesses), drafting motions in limine, conducting direct and cross examination of witnesses, and writing and delivering closing arguments. Mr. Common's case was unique in that we secured a hung jury not once, but twice. The third jury voted to convict. After the conviction, I prepared post-trial motions and, when the court denied those, I wrote the brief for the appellant (my client) and the reply brief and argued the case before a panel of judges on the Seventh Circuit (Appeal No. 14-3480). The Seventh Circuit affirmed the third jury's verdict and the trial decisions of the district court. Next, I filed a petition for certiorari to the Supreme Court (No. 16-5850), which was denied. As a final step to assist my client, I secured habeas counsel for him.

Co-counsel
John F. Murphy, Executive Director
Federal Defender Program for the Northern District of Illinois, Inc.
55 East Monroe Street, Suite 2800

Chicago, IL 60603
(312) 621-8352

Opposing trial and appellate counsel
Timothy Storino
United States Attorney's Office for the Northern District of Illinois
219 South Dearborn Street, 5th Floor
Chicago, IL 60604
(312) 353-5347

R. Matthew Hiller (former Assistant United States Attorney)
DLA Piper LLP
444 West Lake Street, Suite 900
Chicago, IL 60606
(312) 368-2198

5. *United States v. Garcia-Garcia*, 633 F.3d 608 (7th Cir. 2011) (Ripple, Rovner, St. Eve, JJ.)

From 2009 to 2011, I represented Mr. Garcia-Garcia on appeal. The Seventh Circuit appointed me to represent Mr. Garcia-Garcia after he was convicted of illegally re-entering the United States following deportation and transporting illegal aliens. Mr. Garcia-Garcia had pled guilty to the offenses and been sentenced, but had reserved the right to challenge the denial of his motion to suppress on appeal. I undertook the appointment on a pro bono basis while I was an associate at Skadden, Arps, Slate, Meagher & Flom LLP. The issue presented was whether the traffic stop that led to my client's arrest was supported by probable cause, a predicate question in determining whether the traffic stop violated my client's rights under the Fourth Amendment. The Seventh Circuit affirmed the judgment of the district court.

Opposing appellate counsel
Linda L. Mullen (former Assistant United States Attorney)
Generation Spirit, Inc.
352 Russell Slade Blvd.
Coralville, IA 52241
(563) 940-5181

6. *United States v. Diehl*, No. 12 CR 245 (N.D. Ill.) (Kendall, J.)

From 2012 to 2015, I represented Mr. Diehl, who pled guilty to the multiple types of fraud charged in a ten-count indictment: bank fraud, mail fraud, access device fraud, identity theft, and bankruptcy fraud. The breadth of the charges and the extensiveness of my client's criminal history made the case a challenge for sentencing advocacy. However, with the help of subpoena power and a certified public account expert I retained, I was able to mount arguments that the district court found meritorious, including an objection regarding the loss amount for my client's bankruptcy fraud

that lowered his sentencing guidelines. I also managed a team including a mitigation specialist and social work intern to help explain the dysfunction in my client's upbringing that contributed to his history of fraudulent behavior.

Opposing counsel
Madeleine Murphy
United States Attorney's Office for the Northern District of Illinois
219 South Dearborn Street, 5th Floor
Chicago, IL 60604
(312) 886-2070

7. *United States v. Biles*, No. 14 CR 343-1 (N.D. Ill.) (Ellis, J.)

From 2014 to 2018, I represented Mr. Biles, who was charged with selling firearms without a federal firearms dealer license. As lead counsel, along with my co-counsel, I completed the core trial tasks: investigating the case, developing trial strategy, preparing witnesses, drafting motions in limine, conducting direct and cross examination of witnesses, and writing and delivering closing arguments. The case required significant legwork outside of the courtroom, however, because my client suffered from end-stage renal disease and was on a three-to-five-year waitlist to receive a kidney transplant. A prison sentence would have caused him to have to start on the list over again. The case required navigating my client's medical universe and bringing these collateral consequences to light along with the other mitigation in the case in oral and written sentencing presentations to the court. The court delayed my client's sentencing and surrender dates, and imposed a below guidelines sentence, as a result.

Co-counsel
Daniel J. Hesler
Federal Defender Program for the Northern District of Illinois, Inc.
55 East Monroe Street, Suite 2800
Chicago, IL 60603
(312) 621-8300

Opposing counsel
Elizabeth Pozolo
United States Attorney's Office for the Northern District of Illinois
219 South Dearborn Street, 5th Floor
Chicago, IL 60604
(312) 469-6131

Christopher Parente
United States Attorney's Office for the Northern District of Illinois
219 South Dearborn Street, 5th Floor
Chicago, IL 60604
(312) 886-2247

8. *United States v. Smart*, No. 13 CR 96 (N.D. Ill.) (Guzmán, J.), reported in: *United States v. Smart*, 603 F. App'x 500 (7th Cir. 2015) (Posner, Kanne, Sykes, JJ.)

From 2013 to 2017, I represented Mr. Smart, who pled guilty to possessing a firearm as a felon. After representing my client in the district court from his arrest through sentencing, I wrote the brief for the appellant (my client) and the reply brief and argued the case before a panel of judges on the Seventh Circuit (Appeal No. 14-3053). The issue presented was whether the district court committed procedural error in failing to address one of my client's principal sentencing arguments. The Seventh Circuit affirmed the judgment of the district court.

Opposing trial and appellate counsel
Nathalina A. Hudson (former Assistant United States Attorney)
Office of the Attorney General
100 West Randolph Street
Chicago, IL 60601
(312) 814-5023

9. *United States v. Wade*, No. 12 CR 442 (N.D. Ill.) (Norgle, J.), reported in: *United States v. Wade*, 579 F. App'x 520 (7th Cir. 2014) (Bauer, Posner, Tinder, JJ.), *cert. denied*, 135 S. Ct. 1874 (2015)

From 2012 to 2014, I represented Mr. Wade, who pled guilty to possessing with the intent to deliver a controlled substance. After representing my client in the district court from his arrest through sentencing, I wrote the brief for the appellant (my client) and the reply brief and argued the case before a panel of judges on the Seventh Circuit (Appeal No. 14-3053). The issue presented was whether the district court committed procedural error in failing to consider unwarranted sentencing disparities when it imposed an upward variance sentence for my client, whether the district court's sentence was substantively unreasonable, and whether the district court unreasonably relied on my client's juvenile criminal history in imposing sentence. After the Seventh Circuit affirmed the judgment of the district court, I filed a petition for writ of certiorari in the Supreme Court (Petition No. 14-8877) which was denied.

Opposing trial and appellate counsel
Lindsay Jenkins
United States Attorney's Office for the Northern District of Illinois
219 South Dearborn Street, 5th Floor
Chicago, IL 60604
(312) 353-0962

10. *United States v. Baca-Baca*, No. 11 CR 364 (N.D. Ill.) (Norgle, J.), reported in: *United States v. Baca-Baca*, 519 F. App'x 933 (7th Cir. 2013) (Manion, Rovner, Wood, JJ.)

From 2011 to 2012, I represented Mr. Baca-Baca, who pled guilty to reentering the country without permission after having been previously deported. After representing my client in the district court from his writ into federal custody through sentencing, I wrote the brief for the appellant (my client) and the reply brief and argued the case before a panel of judges on the Seventh Circuit (Appeal No. 11-3470). The issue presented was whether the district court abused its discretion by stating that it could not consider my client's argument for rejecting 16–level upward adjustment under the illegal reentry sentencing guidelines and refused to impose a sentence below the guidelines range on that basis. The Seventh Circuit agreed with my position. Consequently, it vacated the judgment of the district court and remanded the case for resentencing. Upon resentencing, the district court sentenced my client to time served.

Opposing trial counsel
Seth Fitter (Retired)
Special Assistant United States Attorney/Department Homeland Security
United States Attorney's Office for the Northern District of Illinois
219 South Dearborn Street, 5th Floor
Chicago, IL 60604
(312) 353-5300

Opposing appellate counsel
Mirta Woodall (former Special Assistant United States Attorney)
Department of Homeland Security, Immigration and Customs Enforcement
Mail Stop 5900
500 12th Street Southwest
Washington, DC 20536
(202) 732-5376

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.)

During my decade as a federal public defender, litigation that did not progress to trial but nonetheless involved substantial motions to dismiss or motions to suppress often required significant investment. For example, in *United States v. Crockett*, No. 17 CR 762 (N.D. Ill.) (Lee, J.), I represented a client charged with possessing a firearm as a felon. After investigating the case, I wrote a motion to suppress the firearm, arguing that it was obtained in violation of my client's Fourth Amendment rights. I also moved to suppress certain post-arrest statements, arguing that my client did not validly waive his *Miranda* rights before giving them. I conducted witness examinations at a two-day evidentiary hearing and delivered oral argument on the motion to suppress. In another case, *United*

States v. Taylor, No. 14 CR 680 (N.D. Ill.) (Bucklo, J.), the quickly changing state of the law in the courts on the question of whether certain prior felonies qualified as crimes of violence under the Armed Career Criminal Act required nimbleness during five years of litigation. I attempted to negotiate my client's guilty plea with the prosecution, filed a motion to dismiss when negotiations failed, advised my client to enter a conditional plea, successfully secured stays of the sentencing hearing pending developments in the Seventh Circuit and Supreme Court, filed extensive sentencing objections and arguments, and preserved multiple issues for appeal. Against this backdrop, I succeeded in the fifth year of the case in negotiating a new plea for my client that was as favorable as our initial plea request at the case's outset five years earlier.

As a federal public defender, cases where I was able to divert deserving clients from prosecution also qualified as significant. As one example, I successfully advocated for pretrial diversion for a retired scientist with no criminal history whose severe post-traumatic stress disorder led him to report a false bomb threat to a federal building when he was unusually nervous about his first-ever Internal Revenue Service audit. As another example, I successfully advocated for pretrial release and drug rehabilitation housing for a client with a history of severe drug dependence borne of trauma, sexual abuse, and poverty. I then secured her admission to our district court's alternatives-to-sentencing program. She successfully completed the program and, upon her graduation, earned dismissal of her drug case.

Teaching and training was another significant activity I undertook during my years as a defender. At the invitation of the Administrative Office of the United States Courts, Defender Services, Training Division, I began traveling to train federal defenders and private criminal defense practitioners around the country. In 2018, I served as faculty for a national seminar on persuasive writing. In 2019, I twice served as faculty for national seminars where I instructed attendees on plea negotiations, proffers, and cooperators. These trainings complemented the teaching I did in other contexts. For example, in 2015, I taught the Federal Defender Program's intensive Introduction to Federal Criminal Law course for summer interns. In 2018, I co-taught a seminar at Northwestern Law School. The last training I conducted as a defender was in 2019 before an audience of fellow public defenders and private criminal defense attorneys. I presented a primer on filing motions for compassionate release under the new First Step Act.

I have not performed any lobbying activities or registered as a lobbyist.

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 co-taught Advanced Legal Reasoning: Topics in Criminal Law at Northwestern University Pritzker School of Law during Fall 2018. The seminar explored aspects of federal criminal law, such as conspiracy and related defenses, as a vehicle for strengthening students' analytical and legal writing skills. Syllabus supplied.

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 have no anticipated receipts, expected future benefits, or arrangements to be compensated in the future 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, commitments, or agreements to pursue outside employment during service with the court if I am confirmed.

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).

    When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that 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.

        If confirmed, I would scrupulously follow the Code of Conduct for United States Judges, the standards set forth in 28 U.S.C. § 455, and all other applicable principles governing recusal. I would do so in cases involving or affecting The Board of Governors of the Federal Reserve System, where my husband is employed. I would do the same for any case arising out of the Federal Defender Program for the Northern District of Illinois, Inc., on which I had previously worked. I am not aware of any other persons, parties, categories of litigation, and

financial arrangements that are likely to present potential 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 evaluate and resolve any potential conflicts of interest by applying the rules and standards set forth in 28 U.S.C. § 455 and the Code of Conduct for United States Judges. I would also consult relevant judicial decisions and opinions by the Judicial Conference of the United States.

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.

From 2010 until 2020, I was a federal public defender and, as such, 100% of my practice served the disadvantaged.

When I was in private practice before becoming a defender, approximately 30% of my time involved pro bono legal services. I represented families in adoption proceedings and a state prisoner with a health care lawsuit. I briefed and argued a criminal appeal in the U.S. Court of Appeals for the Seventh Circuit and secured early termination of federal supervised release for another defendant. I won protection under the Violence Against Women Act and lawful permanent residency for a woman and her two children. I represented an employment discrimination plaintiff in a successful Equal Employment Opportunity Commission mediation. I helped another claimant successfully settle her parental discrimination claims. As a final example, I won a jury verdict for the elderly victim of an automobile accident.

In my civic life as a lawyer, I have consistently served the disadvantaged. As some examples, I volunteered as a mock trial coach at public schools with underserved populations; spearheaded a bar association partnership with a high school in an underserved neighborhood; volunteered as a lawyer in underserved elementary school classrooms; helped plan a pop-up community legal clinic; served as administrator for a program designed to assist new, under-resourced law students; volunteered for a pipeline program for middle school and high school students interested in legal careers; and twice chaired a bar association's community service committee.

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 December 30, 2020, staff for Senator Dick Durbin contacted me regarding the vacancy on the United States Court of Appeals for the Seventh Circuit. On January 11, 2021, officials from the incoming White House Counsel's Office contacted me and the following day, on January 12, 2021, inquired whether I was interested in being considered for nomination to the United States Court of Appeals for the Seventh Circuit. Since that time, I have been in contact with officials from the White House Counsel's Office. On January 25, 2021, I interviewed with attorneys from the White House Counsel's Office. Since February 2, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 4, 2021, I met with President Biden and White House Counsel Dana Remus at the White House concerning the nomination. On March 30, 2021, the President announced his intent to nominate me.

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.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Julien Xavier Neals

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

   United States District Judge for the District of New Jersey

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.

   Office of County Counsel
   One Bergen County Plaza, Room 580
   Hackensack, New Jersey 07601

   Residence: East Orange, New Jersey

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

   1965; Newark, New Jersey

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.

   1988 – 1991, Emory University School of Law; J.D., 1991

   1982 – 1986, Morehouse College; B.A., 1986

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.

   2015 – present
   County of Bergen
   One Bergen County Plaza, Room 580

Hackensack, New Jersey 07601
Acting County Administrator (June 1, 2016 – present)
County Counsel (January 2015 – present)

2014 – 2015; 1992 – 2006,
Chasan Leyner & Lamparello, PC
300 Harmon Meadow Boulevard
Secaucus, New Jersey 07094
Partner (2003 – 2006; October 2014 – January 2015)
Associate (1993 – 2003)
Law Clerk (1992 – 1993)

2008 – 2014
City of Newark
920 Broad Street
Newark, New Jersey 07102
Business Administrator (2010 – 2014)
Corporation Counsel (2008 – 2010)

2006 – 2008
Newark Municipal Court
31 Green Street
Newark, New Jersey 07102
Chief Judge

1991 – 1992
Hon. Seymour Margulies
Superior Court of New Jersey
Hudson County, Civil Division
William J. Brennan Courthouse
483 Newark Avenue
Jersey City, New Jersey 07306
Law Clerk

1986 – 1991
Musician, self-employed
(part-time during law school, 1988 – 1991)

Other Affiliations (uncompensated)

2008 – present
Volunteer Lawyers for Justice
Gateway One
100 Mulberry Street, Sixth Floor
Newark, New Jersey 07102
Board of Trustees (2008 – present)

Chairman (2011 – 2013)

2011 – 2014
Newark Downtown District
15 Clinton Street
Newark, New Jersey
Board Member

2010 – 2011
New Jersey State Bar Foundation
One Constitution Square
New Brunswick, New Jersey 08901
Trustee

2002 – 2006
Hudson County Bar Association
Brennan Courthouse
583 Newark Avenue
Jersey City, New Jersey 07306
Trustee

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 did not serve in the military. I have 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.

   Certificate of Appreciation, New Jersey Reentry Corporation (2019)
   Trailblazer Award, NAACP of Bergen County (2017)
   Mel Narol Excellence in Diversity Award, New Jersey State Bar Association (2016)
   Gibbons Trendsetter Award (2014)
   Black History Month Celebration Recognition Award, Essex County Prosecutor's Office (2014)
   Greater Newark Conservancy Special Recognition Award (2014)
   Outstanding Public Service Award, Caribbean American Heritage & Cultural Foundation of New Jersey (2013)
   Pro Bono Leader Award, Volunteer Lawyers for Justice (2011)
   Administrator's Award, Honorable Luis A. Quintana, Councilman at Large, 17th Annual Breakfast (2011)
   Guest of Honor Award, Newark Firefighters Union (2011)

Certificate of Appreciation Walk for Community Empowerment, Urban League of Essex County (2011)
Walter A. Lucas Special Merit Award, Essex County Bar Association (2010)
Men of Vision, Famous Fathers Famous Sons Recognition, Newark Municipal Council President Mildred C. Crump (2010)
New Jersey Business Community Award, Caribbean American Business Association (2009)
Flame Award, Second Annual Comprehensive Summer Internship Program, City of Newark Law Department (2008)
Inaugural Essence of Inspiration Award, Newark Emergency Services for Families (2008)
Recognition Award, Essex County Municipal Court Judges Association (2008)
Certificate of Appreciation Annual Men's Career Day, Rutgers University (2007)
Benjamin E. Mays Excellence in Community Service Award, United Negro College Fund (2007)
Certificate of Special Recognition Career Day, First Avenue School Newark (2007)
Certificate of Appreciation Urban League of Essex County Career Day, Dr. Martin Luther King, Jr., Elementary School (2007)

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.

American Association for Justice (formerly American Trial Lawyers Association)
    Associate Member (2005 – 2011)
American Bar Association (2016 – present)
Bergen County Bar Association (2015 – present)
District VI Ethics Committee, Hudson County (2002 – 2006)
    Model Civil Jury Charge Committee (2002 – 2006)
Essex County Bar Association
    Nominating Committee (2014 – present)
    Delegate to New Jersey State Bar Association General Council (2014)
    Co-Chair, Bar Goes Local Newark Gala Event (2009 – 2010)
Federal Bar Association
Hudson American Inn of Court
Hudson County Bar Association
    Trustee (2002 – 2006)
    Diversity Committee (2002 – 2006)
    Professionalism Committee (1994 – 2002)
New Jersey State Bar Association
    Committee on Racial Equality in the Law (2020 – present)
    Executive Committee of the Section on Labor & Employment Law (2008 – 2012)
New Jersey State Bar Foundation
    Trustee (2010 – 2012)
    Fellowship Committee (2010 – 2012)
New York State Bar Association

Superior Court of New Jersey, Hudson County
Early Settlement Panel (2003)
Supreme Court of New Jersey
Committee on Character and Fitness (2006)

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.

New Jersey, 1993
New York, 1993

There have been no lapses in my New Jersey Bar admission. I inadvertently did not renew my New York Bar admission and my admission lapsed in 2013 and 2014. I had not practiced in the State of New York while my admission lapsed, and I renewed my membership in 2015 by making the required annual payments for those years. I served as business administrator for the City of Newark, New Jersey during those years.

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.

United States Court of Appeals for the Third Circuit, 1996
United States District Court for the District of New Jersey, 1993

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.

Bergen County African American Advisory Committee
Member (2018 – present)
Fugitive Safe Surrender Newark Program, New Jersey, November 7 – 9, 2009
Planning Committee Member (2009)
New Jersey Association of Counties
Board Member (2016 – present)
New Jersey League of Municipalities

Legislative Committee Member (2014)
New Jersey Volunteer Lawyers for the Arts
Steering Committee Member (2005)
Newark Downtown District
Board Member (2011 – 2014)
Newark Reentry Legal Services (ReLeSe)
Steering Committee Member (2007 – 2008)
Volunteer Lawyers for Justice
Board of Trustees (2008 – present)
Chairman (2011 – 2013)
Immediate Past Chair (2013 – 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.

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.

Emory Lawyer, Class Notes, Emory University School of Law, Summer 2011. Available at https://issuu.com/emorylaw/docs/2011_summer_emory_lawyer/1?e=1526073/2210570.

With Karen Sacks, *Help VLJ Help Others*, Volunteer Lawyers for Justice, December 2010. Copy supplied.

With Ralph Lamparello, *The Role of the Expert Witness in Sexual Harassment Cases*, *in* A Handbook of Cultural, Social Science, Management and Legal Perspectives (2003). Copy supplied.

With Ralph Lamparello, *The Use of Experts in Sexual Harassment Litigation*, New Jersey Lawyer, April 1999, at 48. 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.

2016, 2017, 2018, 2019 and 2020 Budget Documents and Memoranda. During my tenure as County Counsel and Acting Business Administrator for Bergen County, my name has appeared on annual budgets, personnel documents and legal memoranda that have been made available to the public. Although I did not personally prepare these documents, I approved presentation of these documents to the Bergen County Board of Chosen Freeholders and the County Executive. Copies of these documents are available at https://www.co.bergen.nj.us/fiscal-operations/county-budgets.

2014 Newark Zoning and Land Use Regulations. During my tenure as business administrator for the City of Newark my name appeared on reports and other documents that were made available to the public. Although I did not personally prepare this document, I approved the presentation of the document to the Newark Municipal Council for consideration for adoption. Copy supplied.

2013 City of Newark's Division of Traffic & Signals 2013 Annual Report. During my tenure as business administrator for the City of Newark my name appeared on reports and other documents that were made available to the public. Although I did not personally prepare this document, I approved the presentation of the document to the mayor prior to the document being made publicly available. Copy supplied.

2012 and 2013 Annual Reports, Newark Downtown District. Although, as a board member, my name appeared on the reports, to the best of my knowledge, I did not participate or consult in any way in their preparation, and the board was never asked to vote on or approve the contents. Copies supplied.

2012 Newark's Master Plan, Our City, Our Future, Volume 2. During my tenure as business administrator for the City of Newark my name appeared on reports and other documents that were made available to the public. Although I did not personally prepare this document, I approved the presentation of the document to the Newark Municipal Council for consideration for adoption. Available at http://tinyurl.com/k65urdh.

2011 Newark's Emerging Developments: State of the City 2011. During my tenure as business administrator for the City of Newark my name appeared on

reports and other documents that were made available to the public. Although I did not personally prepare this document, I approved the presentation of the document to the mayor for use in connection with the 2011 State of the City Address. Copy supplied.

2011 How to Do Business with the City of Newark, New Jersey. Although as business administrator my name appeared on the document, I did not prepare the document but consulted with the City's purchasing department in its preparation. Copy supplied.

2010 Pequannock and Wanaque Water Systems Annual Water Quality Report. During my tenure as business administrator for the City of Newark my name appeared on reports and other documents that were made available to the public. Although my name appears on this document, I did not personally prepare or approve the document. Copy supplied.

During my tenure as county counsel and as county administrator for Bergen County, my name may have appeared on reports and other documents that were made available to the public that I did not personally prepare or review prior to the documents being made publicly available.

During my tenure as corporation counsel and as business administrator for the City of Newark, my name may have appeared on reports and other documents that were made available to the public that I did not personally prepare or review prior to the documents being made publicly available.

While a member of the Supreme Court of New Jersey District VI Ethics Committee, Hudson County (2002 – 2006), I investigated a number of ethics grievances against attorneys. At the conclusion of each investigation, I prepared a report to the committee chair that recommended a particular disposition, which included the filing of a formal complaint, dismissal or other alternatives. During my tenure, the grievance process was entirely confidential and the reports to the chair were not subject to public disclosure.

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 September 30, 2015, I testified before the United States Senate Judiciary Committee as a nominee to be a District Judge on the United States District Court for the District of New Jersey. Testimony and responses to questions for the record supplied.

As a board member for Newark Downtown District from 2011 to 2014, I attended several quarterly board of trustee meetings wherein the executive director and

subcommittee chairs reported on various aspects of Newark Downtown District operations. The board discussed the subcommittee reports and other meeting agenda items and took any necessary action. The board meetings were not open to the public but meeting minutes are sent to the Municipal Council and are then available for public view. I was present at the following meetings:

February 6, 2014, Meeting. Minutes supplied.

June 20, 2013, Meeting. Minutes supplied.

January 31, 2013, Meeting. Minutes supplied.

As County Counsel and as Acting County Administrator for Bergen County (2015 – present), I regularly appear at Board of Chosen Freeholders pre-meetings, regular meetings, and special meetings and provided commentary on the record on the policy basis and legal basis for legislative items on the meeting agendas. I also often provide legal interpretation and legal advice to the Freeholder Board in closed session on pending litigation, personnel matters, and other confidential issues. I provide similar advice to the County Executive and other executive branch officials. In my absence, assistant county counsel provide advice and interpretation on my behalf. The minutes and transcripts of these appearances are voluminous, and they are maintained at the Office of the Clerk to the Freeholder Board in hard copy, video, or audio format only. On occasion, my remarks at Freeholder meetings may have been quoted or summarized in press coverage, and where I am aware of such coverage, I have supplied copies of the articles in Q12e.

As County Counsel and as Acting County Administrator for the Bergen County (2015 – present), I provided formal and informal legal opinions on various matters. After searching my records, the records of the office of the City Clerk and the Internet, I have compiled the following formal opinions, although it is possible that additional opinions may exist.

Letter from County Counsel of Bergen County to the New Jersey Law Revision Commission providing comment on Tentative Report Relating to the use of the word "Workhouse" in New Jersey Statutes, January 21, 2021, dated March 22, 2021. Copy supplied.

Letter Opinion of the County Counsel of Bergen County regarding efficacy and legality of Bergen County refunding bond purchase, dated December 28, 2017. Copy supplied.

Memorandum of the County Counsel for Bergen County regarding retirement benefits of Bergen County Sheriff's Officers pursuant to PBA Collective Bargaining Agreement, April 3, 2017. Copy supplied.

Memorandum of the County Counsel for Bergen County regarding the

history of park agreements, dated April 21, 2016. Copy supplied.

Memorandum of the County Counsel for Bergen County regarding political speech in County Parks, dated March 4, 2016. Copy supplied.

Letter Opinion of the County Counsel for Bergen County to the Honorable Bonnie J. Mizdol, A.J.S.C., regarding subject matter jurisdiction of the Bergen County central Municipal Court, dated October 15, 2015. Copy supplied.

Opinion 15-0316 of the County Counsel for Bergen County regarding the effect of realignment of police services on Central Municipal Court operations, March 17, 2015. Copy supplied.

As corporation counsel and as business administrator for the City of Newark (2008 – 2014), I regularly appeared at Municipal Council pre-meetings, regular meetings, and special meetings and provided commentary on the record on the policy basis and legal basis for legislative items on the meeting agendas. I also often provided legal interpretation and legal advice to the Council in closed session on pending litigation, personnel matters, and other confidential issues. I provided similar advice to the mayor and other executive branch officials. In my absence, assistant corporation counsel provided advice and interpretation on my behalf. The minutes and transcripts of the Council appearances are voluminous, and they are maintained at the City Clerk's office in hard copy, video, or audio format only. On occasion, my remarks at Council meetings have been quoted or summarized in press coverage, and where I am aware of such coverage, I have supplied copies of the articles in Q12e.

As corporation counsel for the City of Newark (2008 – 2010), I provided formal and informal legal opinions on various matters. After searching my records, the records of the office of the City Clerk and the Internet, I have compiled the following formal opinions, although it is possible that additional opinions may exist.

Opinion of the Corporation Counsel of the City of Newark regarding police ordinances and rank demotions, dated November 10, 2010. Copy supplied.

Opinion of the Corporation Counsel of the City of Newark regarding payment for qualifying election goods and services, dated May 10, 2010. Copy supplied.

Opinion of the Corporation Counsel of the City of Newark regarding the duration of a tax exemption under the New Jersey Housing and Mortgage Finance Agency Law, dated February 3, 2010. Copy supplied.

Opinion of the Corporation Counsel of the City of Newark regarding statutory salary provisions, dated July 25, 2009. Copy supplied.

Opinion of the Corporation Counsel of the City of Newark regarding installation of surveillance cameras in work areas, June 30, 2009. Copy supplied.

Opinion of the Corporation Counsel of the City of Newark regarding the authority of council investigative committees, dated January 8, 2009. Copy supplied.

Opinion of the Corporation Counsel of the City of Newark regarding the appearance of council members before boards and bodies, dated November 13, 2008. Copy supplied.

Opinion of the Corporation Counsel of the City of Newark regarding five-year tax abatements, dated October 15, 2008. Copy supplied.

Opinion of the Corporation Counsel of the City of Newark regarding financial disclosure filing requirements, dated October 8, 2008. Copy supplied.

Opinion of the Corporation Counsel of the City of Newark regarding eligibility for specific 5-year tax abatements, dated May 15, 2008. Copy supplied.

Opinion of the Corporation Counsel of the City of Newark regarding legal ability to pay for video services dated April 23, 2008. Copy supplied.

As county counsel and also as acting county administrator for Bergen County, I was involved in the execution of financial documents for notes and bonds for the County. These financial documents are voluminous and are maintained in the offices of the Clerk of the Freeholder Board, the County's finance department and the offices of bond counsel primarily in hard copy and to a much lesser degree electronic format.

In addition, as corporation counsel and also as business administrator for the City of Newark, I was involved in the execution of financial documents for notes and bonds for the City of Newark and various city agencies. These financial documents are voluminous and are maintained in the offices of the City Clerk, the City's finance department and the offices of bond counsel primarily in hard copy and to a much lesser degree electronic format.

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.

I have not maintained a comprehensive list of the speeches or talks that I have delivered. The following list is the product of a search of available records, files, and publicly available information. It is possible that there are additional presentations for which I did not maintain records.

March 10, 2021: Panelist, "Mandatory COVID-19 Vaccination and Testing by Employers," New Jersey Association of Counties, Webcast. I spoke on guidance promulgated by the U.S. Equal Opportunity Commission (EEOC), which provides employers with the discretion to require that employees receive COVID-19 vaccinations as a workplace safety measure. I have no notes, transcripts, or recordings. The address and contact for the New Jersey Association of Counties John G. Donnadio, Esq., Executive Director, New Jersey Association of Counties, Government Finance Officers Association of New Jersey, 150 West State Street, Trenton, New Jersey 08844.

February 11, 2021: Panelist, "From Battleground to Alliance – How Newark and Jersey City Transformed our Court System and Adapted to Today's Rapidly Changing World," New Jersey State Bar Association, Webcast. I spoke on legal issues faced by governmental institutions in response to questions posed by the seminar moderator. The topics included financial issues, the COVID-19 pandemic, and racial equality. I have no notes, transcripts, or recordings. The address for the New Jersey State Bar Association is One Constitution Square, New Brunswick, New Jersey 08901.

August 20, 2020: Panelist, "Race and the Law," New Jersey State Bar Association, Symposium, Committee on Racial Equality, Webcast. I spoke on legal issues that involve race, including employment matters, diversity in hiring practices and related topics in response to questions posed by the seminar moderator. I have no notes, transcripts, or recordings, but press coverage is supplied. The address for the New Jersey State Bar Association is One Constitution Square, New Brunswick, New Jersey 08901.

October 21, 2017: Speaker, Recipient of 2017 Freedom Fund Trailblazer Award, NAACP of Bergen County, Paramus, New Jersey. As the award recipient, I spoke on my personal background and experiences in the legal profession. I have no notes, transcripts, or recordings. The address for NAACP of Bergen County #2079, is P.O. Box 1136, Teaneck, New Jersey 07666.

February 16, 2017: Speaker, "Black History Month Ceremony the Crisis in Black Education," Bergen County, Hackensack, New Jersey. Video supplied.

July 9, 2015: Master of Ceremony, Installation of Esther Suarez as Hudson County Prosecutor, Office of the Hudson County Prosecutor. I served as master of ceremony for the swearing-in ceremony. I have no notes, transcripts, or recordings, but press coverage is supplied. The Office of the Hudson County Prosecutor is 595 Newark Avenue, Jersey City, New Jersey 07306.

February 10, 2015: Speaker, "An Affair To Remember, A Valentine's Gala Celebration of Our First Decade," New Jersey Volunteer Lawyers for the Arts, Newark, New Jersey. I made remarks about the musical and legal abilities of board chair and honoree, attorney Nicholas Stevens, Esq. I have no notes, transcripts, or recordings. The address for New Jersey Volunteer Lawyers for the Arts is Post Offce Box 2265, Flemington, New Jersey, 08822.

September 12, 2014: Speaker, Installation Ceremony of Honorable Victoria F. Pratt as Chief Judge, Office of the Mayor, Newark, New Jersey. Video supplied.

August 21, 2014: Speaker, Installation Ceremony of Honorable Bahir Kamil as Superior Court Judge, Office of the Mayor, Newark, New Jersey. Video supplied.

May 9, 2014: Speaker, Groundbreaking for Ironbound Stadium, Greater Newark LISC, Newark, New Jersey. I made remarks on the progress of the development of contaminated properties throughout the City of Newark and commended the project developers. I have no notes, transcripts, or recordings. The address for Greater Newark LISC is 17 Academy Street, Suite 912, Newark, New Jersey 07102.

May 8, 2014: Speaker, Ribbon Cutting and Dedication Ceremony for Tichenor Park, Office of the Mayor, Newark, New Jersey. Video supplied.

April 7, 2014: Master of ceremony, Wynona's House First Child Advocacy Center National Summit on Child Abuse & Neglect: Invisible No More, Wynona's House Child Advocacy Center, Newark, New Jersey. I served as master of ceremony for the first day of a summit on child advocacy, which featured testimonials and speeches by various educators and elected officials. I have no notes, transcripts, or recordings. The address for Wynona's House Child Advocacy Center is 185 Washington Street, Newark, New Jersey 07102.

March 28, 2014: Speaker, Recipient of Gibbons Trendsetter Award, Gibbons, PC, Newark, New Jersey. As the award recipient, I spoke on my personal background and experiences in the legal profession. I have no notes, transcripts, or recordings. The address for Gibbons, PC, is One Gateway Center, Newark, New Jersey 07102.

March 13, 2014: Master of ceremony, State of the City Address, Office of the Mayor, 920 Broad Street, Newark, New Jersey 07102. Video supplied ("Neals 1" at 00:00).

February 20, 2014: Speaker, Swearing in of the 43rd Fire Recruit Class, Newark Fire Department, Newark, New Jersey. Video supplied ("Neals 1" at 13:32).

January 30, 2014 – February 1, 2014: Advisory Group Panel Member, Project on Municipal Innovation Advisory Group, 11th Convening, Living Cities, Cambridge, Massachusetts. The panel was on the challenges that large cities in the United States experience in the areas of crime, development, housing, and technology, among other issues. I discussed the different initiatives implemented in the City of Newark and some of the practical and legal challenges experienced in connection with those initiatives. I have no notes, transcripts, or recordings. The address for Living Cities is 1730 M Street Northwest, Suite 400, Washington, District of Columbia 20036.

January 29, 2014: Master of ceremony, City of Newark 26th Anniversary Celebration of "Sing In Praise Of King" Observance, Office of the Mayor, Newark, New Jersey. I served as master of ceremony for the City of Newark's annual Dr. Martin Luther King, Jr., Day celebration. I made remarks about the contributions of the keynote speaker and the importance of diversity in American society. I have no notes, transcripts, or recordings. The address for the Office of the Mayor is 920 Broad Street, Newark, New Jersey 07102.

December 18, 2013: Speaker, Ceremony to Welcome the 43rd Fire Recruit Class and to Open Renovated Chestnut Street Firehouse, Office of the Mayor, Newark, New Jersey. I made remarks about the challenges that firefighters face on a daily basis and congratulated the new recruits. I have no notes, transcripts, or recordings. The address for the Office of the Mayor is 920 Broad Street, Newark, New Jersey 07102.

November 28, 2013: Speaker, Annual Tree Lighting, Office of the Mayor, Newark, New Jersey. Video is available at https://www.youtube.com/watch?v=Mr0KhaJxrOU.

November 11, 2013: Speaker, Seminar Under the Tuscan Sun: How Public Entity Law Shines a Light on Public Employees, New Jersey State Bar Association, Rome, Italy. Course materials supplied.

November 2, 2013: Speaker, "Rebuilding the Dream" Public Policy Summit, Leadership Newark, Newark, New Jersey. I was the topic speaker on the progress of the development of the City of Newark, news coverage and perception of the City. I have no notes, transcripts, or recordings, but press coverage is supplied. The address for Leadership Newark is 494 Broad Street, Suite LL10, Newark, New Jersey 07102.

October 19, 2013: Speaker, 16th Annual "Making Strides against Breast Cancer Walk," American Cancer Society, Newark, New Jersey. I made welcoming remarks at the event and spoke about being a cancer survivor and the importance of showing support for those battling the disease. I have no notes, transcripts, or recordings. The address for the American Cancer Society is 986 South Springfield Avenue, Springfield, New Jersey 07081.

October 8 – 10, 2013: Participant, Living Cities Learning Community Conference, The Strong Healthy Communities Initiative, Chicago, Illinois. As a conference attendee, I participated in panel and work group discussions about health-based initiatives in cities throughout the United States. I have no notes, transcripts, or recordings, but press coverage is supplied. The address for the Strong Healthy Communities Initiative is Dryden Mansion, 59 Lincoln Park, Suite 210, Newark, New Jersey 07102.

October 2, 2013: Speaker, Annual Stakeholder Luncheon and Newark Downtown District's 15th Anniversary Celebration, Newark Downtown District, Newark, New Jersey. I made remarks on the City's accomplishments in the areas of development and overall quality of life. I have no notes, transcripts, or recordings. The address for Newark Downtown District is 15 Clinton Street, Newark, New Jersey 07102.

June 24, 2013: Speaker, Caribbean Heritage Month Flag-Raising Ceremony, Office of the Mayor, Newark, New Jersey. I made remarks about the contributions of the Caribbean business community to Newark's economic development after being acknowledged for my work as business administrator. I have no notes, transcripts, or recordings. The address for the Office of the Mayor is 920 Broad Street, Newark, New Jersey 07102.

June 19, 2013: Speaker, Newark Fire officials Promotional Ceremony, Office of the Mayor, Newark, New Jersey. I made remarks about the special characteristics of firefighters and the qualifications of the promotional candidates. I have no notes, transcripts, or recordings, but press coverage is supplied. The address for the Office of the Mayor is 920 Broad Street, Newark, New Jersey 07102.

January 29, 2013: Master of ceremony, City of Newark's Annual Celebration of "Sing In Praise Of King" Observance, Office of the Mayor, Newark, New Jersey. I served as master of ceremony for the City of Newark's annual Dr. Martin Luther King, Jr., Day celebration. I made remarks about Dr. King's background and his contributions that helped shape civil rights in America. I have no notes, transcripts, or recordings, but press coverage is supplied. The address for the Office of the Mayor is 920 Broad Street, Newark, New Jersey 07102.

January 10, 2013: Panelist, Building Leadership: Past, Present & Future, Leadership Newark, Newark, New Jersey. I made remarks as a panel member on

the need to develop leaders among youth to help shape a positive future for the City of Newark and society as a whole. I have no notes, transcripts, or recordings. The address for Leadership Newark is 494 Broad Street Suite LL10 Newark, New Jersey 07102.

December 4, 2012: Speaker, Annual "Arts & Eats for Justice Gala," Volunteer Lawyers for Justice, Montclair, New Jersey. I made remarks about the importance of pro bono work by attorneys while I presented the 2012 Pro Bono Firm Award. I have no notes, transcripts, or recordings. The address for Volunteer Lawyers for Justice is Gateway One, 100 Mulberry Street, Sixth Floor, Newark, New Jersey 07102.

October 21, 2012: Speaker, "Making Strides Against Breast Cancer," American Cancer Society, Newark, New Jersey. I made welcoming remarks at the event and spoke about the importance of events that bring attention to the battle against cancer and other diseases. I have no notes, transcripts, or recordings, but press coverage is supplied. The address for the American Cancer Society is 986 South Springfield Avenue, Springfield, New Jersey 07081.

October 3, 2012: Speaker, Annual Stakeholder Luncheon of the Newark Downtown District, Newark Downtown District, Newark, New Jersey. I made remarks on the status of the City's financial situation and development. I have no notes, transcripts, or recordings. The address for Newark Downtown District is 15 Clinton Street, Newark, New Jersey 07102.

October 2012: Panelist, Collaboration for Transformation Forum, Resident Minister's Alliance, Newark, New Jersey. I participated in a panel question and answer session about the status of the City of Newark's infrastructure and development. I have no notes, transcripts, or recordings. The address for the Resident Minister's Alliance is Metropolitan Baptist Church, 149 Springfield Avenue, Newark, New Jersey 07103.

July 20, 2012: Speaker, Newark Raises the Flag to Honor Gay Pride, Office of the Mayor, Newark, New Jersey. I made remarks at this annual event about the importance of acceptance in our society and the need to respect the rights of others. I have no notes, transcripts, or recordings, but press coverage is supplied. The address for the Office of the Mayor is 920 Broad Street, Newark, New Jersey 07102.

April 2012: Speaker, Metro Urban Search and Rescue Strike Team's Fifth Annual Training Exercise, Newark Fire Department, Newark, New Jersey. I made remarks about the importance of joint training between municipalities to prepare for natural disasters and other significant events. I have no notes, transcripts, or recordings, but press coverage is supplied. The address for the Newark Fire Department is 1010 18th Avenue, Newark, New Jersey 07106.

December 20, 2011: Speaker, Promotional Ceremony for Fire Officers and Swearing In of Recruits at City Hall Ceremony, Office of the Mayor, Newark, New Jersey. I gave remarks about the importance of the mission of the Newark Fire Department and the City's efforts to keep the department fully staffed despite budget issues. I have no notes, transcripts, or recordings, but press coverage is supplied. The address for the Office of the Mayor is 920 Broad Street, Newark, New Jersey 07102.

December 6, 2011: Speaker, Seventh Annual "Arts & Eats for Justice Gala," Volunteer Lawyers for Justice, Montclair, New Jersey. I gave remarks as recipient of the 2011 Pro Bono Award. I have no notes, transcripts, or recordings, but press coverage is supplied. The address for Volunteer Lawyers for Justice is Gateway One, 100 Mulberry Street, Sixth Floor, Newark, New Jersey 07102.

December 1, 2011: Panelist, "Professionalism for the Municipal Bench and Bar," Essex County Bar Foundation, Newark, New Jersey. I spoke on ethics and professionalism issues that had resulted in disciplinary action against municipal court judges and attorneys, and ethics and professionalism issues in defending and prosecuting municipal court cases. I have no notes, transcripts, or recordings. The address for the Essex County Bar Foundation is Essex County Historic Courthouse, 470 Dr. Martin Luther King, Jr. Boulevard, Room B01, Newark, New Jersey 07102.

October 27, 2011: Speaker, Meeting of the Newark Youth Court, Newark Municipal Court, Newark, New Jersey. I made remarks welcoming the Mayor of Camden, New Jersey, and Camden elementary school students to a Newark Youth Court proceeding. I have no notes, transcripts, or recordings. The address for the Newark Municipal Court is 31 Green Street, Room 301, Newark, New Jersey 07102.

July 26, 2011: Speaker, Installation Ceremony of Diana E. Montes and Dion J. Williams as Municipal Court Judges, Office of the Mayor, Newark, New Jersey. I made remarks on the contributions that Judge Montes and Judge Williams made to the efficiency of the Newark Municipal Court and the importance of the court as the third branch of government. I have no notes, transcripts, or recordings, but press coverage is supplied. The address for the Office of the Mayor is 920 Broad Street, Newark, New Jersey 07102.

July 20, 2011: Speaker, "Overview of Potential Concerns of a Municipality Concerning 42 U.S.C. § 1983 Litigation," 11th Annual Municipal Law Institute, Practising Law Institute, New York, New York. Course materials supplied.

June 22, 2011: Master of ceremony, Installation of Richard E.A. Nunes as Chief Judge, Office of the Mayor, Newark, New Jersey. I served as master of ceremony for the swearing-in ceremony and made remarks about Judge Nunes' abilities and the administration's support of the court's operations. I have no notes, transcripts,

or recordings, but press coverage is supplied. The address for the Office of the Mayor is 920 Broad Street, Newark, New Jersey 07102.

June 16, 2011: Speaker, Opening Ceremony of Newark Community Solutions Court, Newark Municipal Court, Newark, New Jersey. I made remarks about the tremendous effort it took on behalf of many stakeholders to bring the court to reality, and thanked all of those who participated in the process. I have no notes, transcripts, or recordings, but press coverage is supplied. The address for the Newark Municipal Court is 31 Green Street, Room 301, Newark, New Jersey 07102.

May 29, 2011: Speaker, 45th Annual African-American Heritage Parade, City of Newark, Newark, New Jersey. I gave welcoming remarks to the attendees. I have no notes, transcripts, or recordings, but press coverage is supplied. The address for the City of Newark is 920 Broad Street, Newark, New Jersey 07102.

March 18, 2011: Remarks, African Commission's Second Annual African Women's Day Conference, Municipal Council of the City of Newark, Newark, New Jersey. I gave welcoming remarks on behalf of the Administration to the attendees. I have no notes, transcripts, or recordings. The address for the Municipal Council of the City of Newark is 920 Broad Street, Newark, New Jersey 07102.

February 9, 2011: Remarks, Installation Ceremony for New Fire Chief and Officers, Office of the Mayor, Newark, New Jersey. I made remarks at the installation ceremony about the contributions of the promoted officers and the importance of fire service. I have no notes, transcripts, or recordings, but press coverage is supplied. The address for the Office of the Mayor is 920 Broad Street, Newark, New Jersey 07102.

January 19, 2011: Remarks, Installation Ceremony for Fateen Ziyad as Fire Director, Office of the Mayor, Newark, New Jersey. I made remarks at the installation ceremony about the administration's commitment to work with and support the fire department and the importance of fire service. I have no notes, transcripts, or recordings, but press coverage is supplied. The address for the Office of the Mayor is 920 Broad Street, Newark, New Jersey 07102.

December 2, 2010: Speaker, Installation Ceremony of Julien X. Neals, Esq., as Business Administrator of the City of Newark, Office of the Mayor, Newark, New Jersey. Video supplied ("Neals 1" at 20:30).

November 22, 2010: Panelist, "Top 10 Employment Law Cases of 2010," New Jersey Institute for Continuing Legal Education, New Brunswick, New Jersey. I spoke on the impact of recent holdings in employment law cases and provided practice tips. I have no notes, transcripts, or recordings. The address for the New

Jersey Institute for Continuing Legal Education is One Constitution Square, New Brunswick, New Jersey 08901.

November 12, 2010: Speaker, Meeting of the Association of Black Law Students, Rutgers Law School, Newark, New Jersey. I spoke on the importance of diversity in the legal profession. I have no notes, transcripts, or recordings. The address for Rutgers Law School is 123 Washington Street, Newark, New Jersey 07102.

October 19, 2010: Speaker, "Jazz for Justice" Dinner, Rutgers Law School, Newark, New Jersey. I served as keynote speaker at a dinner honoring distinguished jurists and Rutgers-Newark Law Alums Betty Lester, Renee Weeks, and Michael Wright. I spoke about the importance of the legal profession in American society. I have no notes, transcripts, or recordings. The address for Rutgers Law School is 123 Washington Street, Newark, New Jersey 07102.

July 21, 2010: Speaker, "Anatomy of a Quality of Life Initiative," Tenth Annual Municipal Law Institute Meeting, Practising Law Institute, New York, New York. Outline supplied.

July 12, 2010: Speaker, Fourth Annual Comprehensive Summer Internship Program, Department of Law of the City of Newark, Newark, New Jersey. I made welcoming remarks to the incoming participants of the annual internship program sponsored by Newark's Department of Law. I have no notes, transcripts, or recordings. The address for the Department of Law of the City of Newark is 920 Broad Street, Room 316, Newark, New Jersey 07102.

July 1, 2010: Speaker, Administration of Oath of Office, Office of the City Clerk of the City of Newark, Newark, New Jersey. I administered the oath of office to Cory A. Booker, for his second term as mayor of Newark. Video available at https://www.youtube.com/watch?v=_XF2B6vpBz8.

May 24, 2010: Speaker, 45th Annual African-American Heritage Parade, City of Newark, Newark, New Jersey. I gave welcoming remarks to the attendees. I have no notes, transcripts, or recordings. The address for the City of Newark is 920 Broad Street, Newark, New Jersey 07102.

April 21, 2010: Speaker, Newark Youth Court Graduation and Induction Ceremony, Center for Court Innovation, Newark, New Jersey. I spoke on the importance of developing youth in society and outlined the efforts of those who contributed to the success of the youth court initiative. I have no notes, transcripts, or recordings, but press coverage is supplied. The address for the Center for Court Innovation is 520 Eighth Avenue, 18th Floor, New York, New York 10018.

April 8, 2010: Speaker, Bar Goes Local, The Newark Gala Event, Essex County Bar Association, Newark, New Jersey. I made welcoming remarks at an annual

breakfast for attorneys, judges, and others. I have no notes, transcripts, or recordings. The address for the Essex County Bar Association is Essex County Historic Courthouse, 470 Dr. Martin Luther King, Jr. Boulevard, Room B01, Newark, New Jersey 07102.

February 24, 2010: Panelist, "Dreams of our Fathers" Panel Discussion, 2010 Black History Month forum, Newark Public Library, Newark, New Jersey. I spoke on being the son of an attorney and answered questions from the moderator and those in attendance about the legal profession. I have no notes, transcripts, or recordings. The address for the Newark Public Library is 5 Washington Street, Newark, New Jersey 01702.

November 17, 2009: Speaker, Fourth Annual "Arts and Eats for Justice" Gala, Volunteer Lawyers for Justice, Newark, New Jersey. I served as the co-chair for the annual fundraising dinner and made remarks during the program about the pro bono services of the awardees. I have no notes, transcripts, or recordings. The address for Volunteer Lawyers for Justice is Gateway One, 100 Mulberry Street, Sixth Floor, Newark, New Jersey 07102.

November 6 – 11, 2009: Panelist, "Top Ten Cases in Employment Law," Mid-Year Meeting, New Jersey State Bar Association, San Francisco, California. The panel featured New Jersey employment law practitioners and their views on the impact of recent court decisions. I discussed the holdings in significant employment law cases. I have no notes, transcripts, or recordings. The address for the New Jersey State Bar Association is New Jersey Law Center, One Constitution Square, New Brunswick, New Jersey 08901.

August 13, 2009: Panel Judge, Mock Trial, Law Department City of Newark, Newark, New Jersey. I served as mock trial judge and provided oral feedback on the presentation for the law department summer interns. I have no notes, transcripts, or recordings. The address of the Law Department of the City of Newark is 920 Broad Street, Room 316, Newark, New Jersey 07102.

July 21, 2009: Speaker, "Public Interest Law – The Ins and Outs of Practice," Young Lawyers Section event, Essex County Bar Association, Newark, New Jersey. I provided an overview of various aspects of the practice of law in the public sector. I have no notes, transcripts, or recordings. The address for the Essex County Bar Association is Essex County Historic Courthouse, 470 Dr. Martin Luther King, Jr. Boulevard, Room B01, Newark, New Jersey 07102.

July 7, 2009: Speaker, Fourth Annual Comprehensive Summer Internship Program, Department of Law of the City of Newark, Newark, New Jersey. I made welcoming remarks to the incoming participants of the annual internship program sponsored by Newark's Department of Law. I have no notes, transcripts, or recordings, but press coverage is supplied. The address for the Department of Law of the City of Newark is 920 Broad Street, Room 316, Newark, New Jersey

07102.

May 29, 2009: Speaker, Ivy Hill Middle School Mock Trials, Newark Municipal Court, Newark, New Jersey. I made welcoming remarks and spoke about the important role of the Municipal Court in the lives of Newark residents and society. I have no notes, transcripts, or recordings. The address for the Newark Municipal Court is 31 Green Street, Room 301, Newark, New Jersey 07102.

May 23, 2009: Speaker, Caribbean American Business Association Fourth Annual Awards Banquet, Caribbean American Business Association, Newark, New Jersey. I made remarks as an award recipient as corporation counsel for the City of Newark regarding my interaction with members of the Essex County business community. I have no notes, transcripts, or recordings. The address for the Caribbean American Business Association is 71 South Orange Avenue, Suite 392, South Orange, New Jersey 07079.

April 2, 2009: Speaker, Bar Goes Local, The Newark Gala Event, Essex County Bar Association, Newark, New Jersey. I made welcoming remarks as the co-chair of the 2009 annual breakfast for attorneys, judges, and others, and commented on the importance of meetings of the bench and bar. I have no notes, transcripts, or recordings. The address for the Essex County Bar Association is Essex County Historic Courthouse, 470 Dr. Martin Luther King, Jr. Boulevard, Room B01, Newark, New Jersey 07102.

March 17, 2009: Speaker, City of Newark, McCarter & English Law Firm Mentoring Recruitment Breakfast, Office of the Mayor, Newark, New Jersey. I made remarks about the importance of the participation of businesses in the development of young people's lives through mentoring. I have no notes, transcripts, or recordings, but press coverage is supplied. The address for the Office of the Mayor is 920 Broad Street, Newark, New Jersey 07102.

February 26, 2009: Speaker, Meeting of the Bloomfield College Pre-Law Community, Bloomfield College, Bloomfield, New Jersey. I spoke on the topic of "Law and Morality, Navigating Among the Ethically Challenged." I have no notes, transcripts, or recordings. The address for Bloomfield College is 467 Franklin Street, Bloomfield, New Jersey 07003.

February 26, 2009: Speaker, Black History Month celebration, Samuel R. Donald Elementary School, Bloomingdale, New Jersey. I spoke to elementary school students about the importance of diversity in American culture and the contributions of African-Americans to American history. I have no notes, transcripts, or recordings. The address for Samuel R. Donald Elementary School is 29 Captolene Avenue, Bloomingdale, New Jersey 07403.

December 18, 2008: Panel Judge, Citizen School's Mock Trial Program, McCarter and English, Newark, New Jersey. I presided over the mock trial

proceeding held at the Newark Municipal Court, which involved fifth, sixth and seventh grade students. I also provided feedback on the presentation for the program participants. I have no notes, transcripts, or recordings. The address for McCarter and English is Four Gateway Center, 100 Mulberry Street, Newark, New Jersey 07102.

October 17, 2008: Speaker, "Gang Violence: How Attorneys Can Be Part of the Solution," 2008 General Council Meeting, New Jersey State Bar Association, New Brunswick, New Jersey. The panel discussion was on the rise in gang membership. I discussed urban and suburban gang membership and educational programs geared toward youth in which attorneys could participate. I have no notes, transcripts, or recordings. The address for the New Jersey State Bar Association is New Jersey Law Center, One Constitution Square, New Brunswick, New Jersey 08901.

May 13, 2008: Speaker, A Night of Inspiration, 30th Anniversary Celebration Gala, Newark Emergency Services for Families, Newark, New Jersey. I made remarks about the importance of the services provided by the sponsor after receiving the Inaugural Essence of Inspiration Award. I have no notes, transcripts, or recordings. The address for the Newark Emergency Services for Families is 982 Broad Street, Newark, New Jersey 07102.

May 7, 2008: Speaker, "The Rule of Law, Foundation for Communities of Opportunity and Equity," Hudson County Bar Association, Jersey City, New Jersey. I was the keynote speaker at a Law Day event. I did not use prepared text and spoke about the importance of diversity in the enrichment of society and the need for all citizens to be law abiding. I have no notes, transcripts, or recordings. The address for the Hudson County Bar Association is Brennan Courthouse, Fourth floor, 583 Newark Avenue, Jersey City, New Jersey 07306.

April 11, 2008: Speaker, Installation Ceremony of Julien X. Neals, Esq., as Corporation Counsel, Office of the Mayor, Newark, New Jersey. Video supplied.

March 12, 2008: Panelist, "From Wannabes to Youth Offenders: How Gangs Are Permeating New Jersey Communities and What Intervention Efforts Can Stem the Violence," New Jersey State Bar Foundation and New Jersey State Bar Association, New Brunswick, New Jersey. The panel was on the development of youth programs to provide alternatives to gang membership. I discussed the youth court initiative started in the Newark Municipal Court and the relationship between truancy and juvenile delinquency. I have no notes, transcripts, or recordings. The address for the New Jersey State Bar Association is New Jersey Law Center, One Constitution Square, New Brunswick, New Jersey 08901.

October 30, 2007: Panelist, "Municipal Court Update," Essex County Bar Foundation, Newark, New Jersey. I spoke on recent court decisions in municipal court and offered practice tips when handling municipal court cases. I have no

notes, transcripts, or recordings. The Essex County Bar Foundation is located at Essex County Historic Courthouse, 470 Dr. Martin Luther King, Jr. Boulevard, Room B01, Newark, New Jersey 07102.

October 2007: Moderator, "Municipal Court Law: Municipal Court Judges on the New Court Rules & More," New Jersey Institute for Continuing Education, Edison, New Jersey. I moderated a question and answer session with a panel of municipal court judges on the impact of recent court rule changes. I have no notes, transcripts, or recordings. The address for the New Jersey Institute for Continuing Legal Education is One Constitution Square, New Brunswick, New Jersey 08901.

June 11, 2007: Speaker, "Municipal Court Law: Top Issues in the Busiest Courtrooms," New Jersey Institute for Continuing Education, West Orange, New Jersey. The presentation was on the biggest challenges facing the Newark Municipal Court, the State of New Jersey's largest municipal court, and municipal court practice tips. I have no notes, transcripts, or recordings. The address for the New Jersey Institute for Continuing Legal Education is One Constitution Square, New Brunswick, New Jersey 08901.

May 18, 2007: Panelist, New Jersey State Bar Association Annual Meeting, New Jersey State Bar Association, Atlantic City, New Jersey. I served as a panel member on a symposium about gang violence and juvenile delinquency. I have no notes, transcripts, or recordings, but press coverage is supplied. The address for the New Jersey State Bar Association is New Jersey Law Center, One Constitution Square, New Brunswick, New Jersey 08901.

December 6, 2006: Speaker, Installation Ceremony of Anna P. Pereira as Municipal Court Judge, Office of the Mayor, Newark, New Jersey. I made remarks on the qualifications of Judge Pereira, the anticipation of her positive contributions to the Newark Municipal Court and the importance of the court as the third branch of government. I have no notes, transcripts, or recordings, but press coverage is supplied in response to Question 12e. The address for the Office of the Mayor is 920 Broad Street, Newark, New Jersey 07102.

November 30, 2006: Speaker, Installation Ceremony of Richard E.A. Nunes as Municipal Court Judge, Office of the Mayor, Newark, New Jersey. I made remarks on the qualifications of Judge Nunes, the anticipation of his positive contributions to the Newark Municipal Court and the importance of the court as the third branch of government. I have no notes, transcripts, or recordings, but press coverage is supplied in response to Question 12e. The address for the Office of the Mayor is 920 Broad Street, Newark, New Jersey 07102.

November 3, 2006: Speaker, Installation Ceremony of Diana E. Montes-Infante as Municipal Court Judge, Office of the Mayor, Newark, New Jersey. I made remarks on the contributions that Judge Montes made to the efficiency of the

Newark Municipal Court and the importance of the court as the third branch of government. I have no notes, transcripts, or recordings, but press coverage is supplied. The address for the Office of the Mayor is 920 Broad Street, Newark, New Jersey 07102.

September 5, 2006: Speaker, Installation Ceremony of Julien X. Neals, Esq., as Chief Judge, Newark Municipal Court, Office of the Mayor, Newark, New Jersey. I gave brief remarks at my installation ceremony when appointed Chief Judge of the Newark Municipal Court. I have no notes, transcripts, or recordings, but press coverage is supplied. The address of the Office of the Mayor is 920 Broad Street, Newark, New Jersey 07102.

February 19, 2004: Speaker, Civil Practice Committee, A Tale of Two Thresholds – From the Best of Times to the Worst of Times: An Update on Title 39 and 59 Threshold Issues, Hudson County Bar Association, Jersey City, New Jersey. I provided comments on the legal cases impacting the thresholds for insurance claims and claims against municipalities in New Jersey. I have no notes, transcripts, or recordings. The address for the Hudson County Bar Association is Brennan Courthouse, 583 Newark Avenue, Jersey City, New Jersey 07306.

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.

Terence T. McDonald, *Bergen County Gets Ok for $150M Borrowing Plan,* NorthJersey.com, Hackensack Chronicle (Hackensack, N.J.), December 18, 2020. Copy supplied.

United States: AECOM partners with Bergen County Utilities Authority and Columbia University on COVID-19 Wastewater Testing, Tendersinfo-News (Mumbai, India), December 16, 2020. Copy supplied.

Nicholas Katzban, *Bergen Begins Testing Wastewater for Virus*, The Record (Hackensack, N.J.), November 21. 2020. Copy supplied.

Rodrigo Torrejon, *Sewage Test Aims to Predict Virus Outbreaks*, South Jersey Times (N.J.), November 21, 2020. Copy Supplied.

Geospatial Analytics, *Bergen County Adopts Geospatial Analytics ® Industry-Leading Real Estate Management Program*, PR Newswire (USA), November 13, 2020. Copy supplied.

Zach C. Cohen, *The Judges Trump Won't Get to Appoint This Year*, National Journal Daily AM, September 15, 2020. Copy supplied.

Intersection Construction Not Possible for 2020, Says County, Real Estate Monitor Worldwide, December 31, 2019. Copy supplied.

Steve Janoski, *Rutgers to Provide Coroners to Bergen-Deal Bolsters County Examiner's Manpower*, The Record (Hackensack, N.J.), June 20, 2018. Copy supplied.

Charles Toutant, *$625,000 Accord Ends Suit Over Ex-Prosecutor's Order for Psych Test of Employee*, New Jersey Law Journal, May 14, 2018. Copy supplied.

Tom Nobile, *Bergen County Gun Range Gets $2.3 Million Overhaul after Lead Removal Woes*, NorthJersey.com (N.J.), March 14, 2018. Copy supplied.

Richard Cowen, *Bergen Will Buy Emerson Golf Course*, The Record (Hackensack, N.J.), October 19, 2017. Copy supplied.

Daniel Hubbard, *New $140M Bergen County Justice Center Opens*, Patch.com (Mahwah, N.J.), March 15, 2017. Copy supplied.

New $140 Million Justice Center Designed by RSC Architects Opens on Historic Site in Hackensack, New Jersey, PRWeb (USA), March 6, 2017. Copy supplied.

Todd South, *Bergen County Officials Raise Gay-Pride Flag*, The Record (Bergen, N.J), June 28, 2016. Copy supplied.

Mary Jo Layton, *Bergen Acts to Bolster Hospital Oversight - County Administrator Will Work There, Manage Possible Changes*, Herald News (Woodland Park, N.J.), May 26, 2016. Copy supplied.

Star-Ledger Editorial Board, *To Save Newark Cops, Fix the Budget: Editorial*, NJ.com, October 16, 2014. Copy supplied.

Naomi Nix, *Newark City Council Members Shuffle around Budget Introduction*, NJ.com, June 24, 2014. Copy supplied.

Michelle Kaske and Terrence Dopp, *Diamond in a Rough Patch: Sitting Empty, Riverfront Stadium Continues to Cost Newark Millions*, Star-Ledger, June 15, 2014. Copy supplied.

Naomi Nix, *Newark Budget Woes Make State Takeover More Likely*, NJ.com, May 4, 2014. Copy supplied.

Barry Carter, *Newark Homes Not So Sweet with Toxic Vapors Seeping Inside*, NJ.com, April 13, 2014. Copy supplied.

David Giambusso, *State Ratchets up Talk of Newark Takeover*, NJ.com, March 12, 2014. Copy supplied.

City of Newark Communications Office Interview at Police Director Retirement, March 2014. Video supplied ("Neals 1" at 13:12).

January 27, 2014: I participated in a press conference where I made remarks on the importance of alternative health programs to encourage employee involvement. I have no notes, transcripts, or recording.

David Giambusso, *Newark Seeks Budget Numbers to Avoid Depending on State Aid*, Star-Ledger, January 9, 2014. Copy supplied.

David Giambusso, *Newark Budget May Face A Deficit In 2014*, NJ.com, December 22, 2013. Copy supplied.

David Giambusso, *State Warns Newark Mayor His Staff Moves May Not Fly*, NJ.com, December 5, 2013. Copy supplied.

David Cruz, *State Audit Blasts Newark Council, Clerk, City Hall Spending*, NJTV News (Interview), December 4, 2013. Video available at http://www.njtvonline.org/news/video/state-audit-blasts-newark-council-clerk-city-hall-spending.

David Cruz, *Audit: Newark's City Council Spending Is High*, NJTV News, December 3, 2013. Copy supplied.

David Giambusso, *Comptroller Slams Newark Council Spending in Audit*, NJ.com, December 3, 2013. Copy supplied.

Terrence Dopp and Elise Young, *Booker Goes to D.C. as Zuckerberg Money Follows Mayor*, Bloomberg.com, October 30, 2013. Copy supplied.

David Cruz, *Newark's Teachers Village Opens Phase One with Much Fanfare*, September 25, 2013. Video available at http://www.njtvonline.org/news/video/newark's-teachers-village-opens-phase-1-with-much-fanfare.

Excellence in Leadership; Lamparello to Serve as 115th President of State Bar Association, New Jersey Law Journal, May 13, 2013. Copy supplied.

Star-Ledger Staff, *City Council Gives Approval to a Deal with the Devils*, Star-Ledger, February 27, 2013. Copy supplied.

David Cruz, *Devils Deal Gets Newark City Council Approval, Despite Some Reservations*, NJTV Online (Interview), February 26, 2013. Video available at

http://www.njtvonline.org/news/video/devils-deal-gets-newark-city-council-approval-despite-some-reservations.

Making Newark's Intersections Safer, February 20, 2013. Video available at https://www.youtube.com/watch?v=jSp83u0R0aU and https://www.youtube.com/watch?v=c4MqMETVOKo.

Paul Milo, *Booker Urges Residents to Prepare for Nemo*, Newark Patch, February 8, 2013. Copy supplied.

David Giambusso, *Booker Appeals Ruling on Contentious Vote*, Star-Ledger, February 7, 2013. Copy supplied.

Paul Milo, *Property Tax Amnesty Ending Thursday, Program Set Up To Aid Victims of Hurricane Sandy*, Newark Patch, January 28, 2013. Copy supplied.

David Giambusso, *A Tighter Grip on Newark's Spending: State Imposes New Restrictions for Aid*, Star-Ledger, January 13, 2013. Copy supplied.

Michael Calderone, *Cory Booker: New York Times Story 'Factually Wrong,'* HuffingtonPost.com, December 17, 2012. Copy supplied.

David Giambusso, *Judge to Decide Clash Between Booker, City Council Over Tie-Breaking Vote*, Star-Ledger, November 29, 2012. Copy supplied.

Comedian Kevin Hart Delivers Heartfelt Goods, Jetmag.com, November 13, 2012. Copy supplied.

David Ariosto, *As City Cutbacks Cause Police Layoffs, Bullets in Night Claim Young Mother's Life*, CNN.com, October 29, 2012. Copy supplied.

David Giambusso, *Newark Set to Pass Budget amid State Tensions $615.6M Plan Shows Slight Drop In Spending Despite Big Decrease in State Aid*, Star-Ledger, October 14, 2012. Copy supplied.

David Giambusso, *Gov. Christie Keeps Promise to Cut Newark Aid; City Will Receive $10M*, NJ.com, October 6, 2012. Copy supplied.

Max Pizarro, *Newark Source: Christie Trying to Change Subject More than Fire a Shot at Booker*, PolitickerNJ.com, October 2, 2012. Copy supplied (reprinted in multiple outlets).

October 2012: I participated in a press conference providing an update on Hurricane Sandy. Video supplied.

Julien X. Neals, Esq.: Your Business Is His Business in Newark, The Positive

Community, October 2012. Copy supplied.

Community Justice in Newark, Planning A Community Court, Community Engagement, WMBC News, October 22, 2012. Video available at http://newarkcs.blogspot.com/2012/10/planning-community-justice-initiative_22.html.

Newark Council Approves Putting Revised M.U.A. Question on Ballot, Local Talk News.com, September 17, 2012. Copy supplied.

David Giambusso, *Battle over Newark Water Agency Continues to Flow*, NJ.com, September 16, 2012. Copy supplied.

David Giambusso, *Watershed Agency Votes to Sever Ties with Newark Opponents Say Group Overreached in Move to Split from the City*, Star-Ledger, September 14, 2012. Copy supplied.

David Giambusso, *Council Oks Public Vote on Water Newark Authority Could Be Created*, Star-Ledger, September 12, 2012. Copy supplied (reprinted in multiple outlets).

Paul Milo, *Council Questions Booker Staffing Levels*, Newark Patch, August 16, 2012. Copy supplied.

New Jersey Towns Borrowing Millions To Pay For Retirees' Sick Leave, Bloomberg News, NJ.com, August 10, 2012. Copy supplied.

Paul Milo, *Council Grants Booker Aide Tax Abatement Last Week*, Newark Patch, August 6, 2012. Copy supplied.

David Cruz, *Newark Council's MUA Vote Highlights Divisions with Booker Administration*, NJTV Online, August 2, 2012. Video available at http://www.njtvonline.org/news/video/newark-councils-mua-vote-highlights-divisions-with-booker-administration.

David Giambusso, *Newark City Council Nixes Mayor Cory Booker's Water Plan*, NJ.com, July 24, 2012. Copy supplied.

Lia Eustachewich, *Children Died in Fire as Mother Gave Birth*, Newark Patch, July 22, 2012. Copy supplied.

Richard Khavkine, *Three Children, Teen Among Five Killed in Early Morning Newark Blaze More Than 15 Left Homeless; Cause Not Yet Determined*, Star-Ledger, July 21, 2012. Copy supplied.

Star-Ledger Staff, *Girl, Three, and Boy, Four, Are among Victims of Newark*

Fire, NJ.com, July 20, 2012. Copy supplied.

Andrew Meyer, *Newark Today with Mayor Cory Booker*, WBGO radio station (Interview), July 15, 2012. Video supplied ("Neals 1" at 16:08).

Herbert Glenn, *Newark B.A. Julian [sic] X. Neals, Makes His Case on Municipal Utility Proposal*, July 11, 2012. Video available at https://www.youtube.com/watch?v=_E0wJ58rYEw.

David Giambusso, *Contract Foul-Up Muddies Water at Treatment Plant Service Plan Ended Midnight Yesterday*, Star-Ledger, June 1, 2012. Copy supplied.

Barry Carter, *Read All About It: Newsstand Owner Gains Support in His Standoff with Newark*, Star-Ledger, April 25, 2012. Copy supplied.

Heather Haddon, *Newark, Devils Walked Away From Fee Deals; Mayor Booker, Team Owner Trade Blame*, The Wall Street Journal Online, April 16, 2012. Copy supplied.

Bottom to Top Process Changes, An Interview with Julien X. Neals, Esq., Business Administrator for the City of Newark, Leaders Magazine, April 2, 2012. Copy supplied.

Paul Milo, *Council Members Say Public Vehicles Misused*, Newark Patch, March 13, 2012. Copy supplied.

Kirk Victor, *Struggling Cities Strike Deals to Solve Fiscal Problems*, Governing Magazine, March 2012. Copy supplied.

Lia Eustachewich, *Whitney Houston Celebrated in Rousing Funeral Service*, Newark Patch, February 19, 2012. Copy supplied.

Kobie Brown, *From Fatherless to Fatherhood*, 2012. Video supplied.

Joan Whitlow, *Facing A Shortfall, Can Newark Afford These Raises?*, NJ.com, December 30, 2011. Copy supplied.

Joan Whitlow, *Arena Deal Was Left on the Table*, Star-Ledger, December 23, 2011. Copy supplied.

David Giambusso, *Newark Tax Ad Blunder Costs City $72K, Sparks Panic and Outrage among Residents*, NJ.com, December 2, 2011. Copy supplied.

Joshua Wilwohl, *Councilman Pushes for 'Ban the Box' Legislation in Newark*, Newark Patch, November 22, 2011. Copy supplied.

Mark Spivey, *'Dreamers' Headline I Have a Dream Foundation Fundraiser in Scotch Plains*, Courier News, October 26, 2011. Copy supplied.

Joshua Wilwohl, *Senator Calls for Newark Audit*, Newark Patch, October 6, 2011. Copy supplied.

David Giambusso, *City Council Adopts Budget with 4.6% Tax Hike, Deficit*, Star-Ledger, September 30, 2011. Copy supplied.

Joshua Wilwohl, *Newark Council Adopts Budget*, Newark Patch, September 30, 2011. Copy supplied.

Tomás Dinges, *$32M Loan for Newark Comes with a Catch – A State Monitor*, Star-Ledger, September 21, 2011. Copy supplied.

Not Making the Grade: Workers Who Skip Civil Service Test Should Be Booted, Star-Ledger, September 3, 2011. Copy supplied.

David Giambusso, *Anger Lingers after 'Provisionals' with Ties to Booker Survive Jobs Purge*, Star-Ledger, August 28, 2011. Copy supplied.

Joan Whitlow, *Some of These Salary Increases Don't Add Up*, Star-Ledger, July 24, 2011. Copy supplied.

Star-Ledger Staff, *Newark Council Rejects Mayor Cory Booker's Proposed Budget*, NJ.com, July 20, 2011. Copy supplied.

Joshua Wilwohl, *Newark Police, Fire Departments Partner to Combat Emergencies in New Training Effort*, Newark Patch, July 14, 2011. Copy supplied.

Andrew Meyer, *Newark Today with Mayor Cory Booker*, WBGO radio station (Interview), July 14, 2011. Video available at https://www.youtube.com/watch?v=ifwxqEpQ0l4.

Joshua Wilwohl, *Newark Mayor Cory Booker to Introduce Budget with No Layoffs, Furloughs*, Newark Patch, July 8, 2011. Copy supplied.

David Giambusso, *City Seeks Ways to Close $45 Million Budget Gap*, Star-Ledger, July 7, 2011. Copy supplied.

David Giambusso, *Newark Officials More Optimistic as City Reduces Deficit; Council Could Receive 2011 Budget by July 7: Property Taxes Expected to Rise By 6 Percent*, Star-Ledger, June 26, 2011. Copy supplied.

Richard E.A. Nunes Sworn in as 12th Chief Judge of Newark Municipal Court,

Local Talk News.com, June 22, 2011. Copy supplied.

David Giambusso, *In Newark, No Budget Plan, But a Battle all the Same: Outlook Is Just Slightly Less Gloomy than Last Year*, Star-Ledger, May 22, 2011. Copy supplied.

David Giambusso, *Council Balks at Paying Bills without a Budget*, Star-Ledger, May 20, 2011. Copy supplied.

Joan Whitlow, *Council Kills Emergency Funds Request, But City Still Open*, Star-Ledger, May 20, 2011. Copy supplied.

April 27, 2011: I participated in a press conference discussing how the Newark Fire Department was awarded a $7 million grant. Video available at https://www.youtube.com/watch?v=9SMwlsxuaOI.

James Queally, *Newark Fire Department Receives $7.1M Federal Grant to Be Spread Out over Next Two Years*, NJ.com, April 27, 2011. Copy supplied.

David Giambusso, *Spending Cap Looms over Newark's Financial Picture, City Officials Fear Proposed State Mandate Will Force Layoffs*, Star-Ledger, March 6, 2011. Copy supplied.

Volunteer Lawyers for Justice Appoints Five New Members to Its Board of Trustees, Volunteer Lawyers for Justice, February 17, 2011. Copy supplied.

Star-Ledger Editorial Board, *In Newark, It's Six Degrees of Sanitation*, Star-Ledger, January 14, 2011. Copy supplied.

David Giambusso, *Newark Council Dumps on the Man Responsible for Clearing City Streets*, Star-Ledger, December 31, 2010. Copy supplied.

On-Air Telephone Interview, WNBC-TV, December 26, 2010. I answered questions about the snow-removal resources and strategy employed by the City of Newark during the December 2010 blizzard. I have no notes, transcripts, or recordings.

David Giambusso, *Newark Reaches Deal To Save Nearly 200 Sanitation Jobs*, NJ.com, December 17, 2010. Copy supplied.

Terry Dopp, *Moody's Downgrades Newark's Credit Rating as City Faces $30.5M Deficit*, NJ.com, December 8, 2010. Copy supplied.

Julien Neals: Newark's Business Administrator, December 7, 2010. Video available at https://www.youtube.com/watch?v=vudTa2l-GI0.

167 Newark Police Officers Laid Off, Local Talk News.com, December 2, 2010. Copy supplied.

Joan Whitlow, *In Newark, Everything's for Sale this Holiday Season*, Star-Ledger, November 26, 2010. Copy supplied.

David Giambusso and James Queally, *Bid to Spare 167 Newark Cop Jobs Stirs Rancor, Frustration: Questions Raised over Decision by Police Union's Executive Board*, Star-Ledger, November 24, 2010. Copy supplied.

Newark FOP Leadership Rejects City's Proposal to Save Police Jobs, November 23, 2010. Video available at https://www.youtube.com/watch?v=5lh1qJxYyCA.

David Giambusso and James Queally, *11th-Hour Deal Aims to Avert City Police Layoffs: Newark Suspends Cuts Until Nov. 30 as FOP Agrees to Let Its Board Weigh a Full Union Vote*, Star-Ledger, November 21, 2010. Copy supplied.

Rohan Mascarenhas, *Newark Extends Amnesty Program For Overdue Tax, Water, Sewer Bills*, NJ.com, November 17, 2010. Copy supplied.

Newark Mayor Cory Booker Names Top Lawyer to Be Business Administrator, NJ.com, November 12, 2010. Copy supplied.

Chris Megerian, *Police Director Expresses Frustration, McCarthy Defends Efforts at Reform*, Star-Ledger, September 16, 2010. Copy supplied.

City of Newark Teams Up with Volunteer Lawyers for Justice to Expand Expungement Services for Essex County Residents with Criminal Records, Volunteer Lawyers for Justice, September 9, 2010. Copy supplied.

Chris Megerian, *ACLU Accuses Newark Police of False Arrests, Excessive Force*, NJ.com, September 8, 2010. Copy supplied.

Youth Court, Due Process, NJN Public Television and Radio, July 25, 2010. Video available at https://www.youtube.com/watch?v=EH0pjd5NsUs.

Sarah Wallace, *Newark Responds to Officer DWI Controversy*, ABC News, July 12, 2010. Copy supplied.

Volunteer Lawyers for Justice Appoints Hon. Julien X. Neals, Esq. as New Chair of Board of Directors, PrLog.org, June 28, 2010. Copy supplied.

David Giambusso, *Newark Council Candidate Asks for Review of Demolition Contract with FBI Informant*, NJ.com, March 10, 2010. Copy supplied.

Joan Whitlow, *Gaps Linger in the Defense against Pay-to-Play*, Star-Ledger, February 26, 2010. Copy supplied.

Rohan Mascarenhas, *ACLU: Newark Police Harassed Transgender Woman, Organization Files Suit, Calls For Improved Complaint Procedures*, Star-Ledger, February 18, 2010. Copy supplied.

Cross-Examination: Reflecting on Generations of Black Lawyers, New Jersey Law Journal, February 12, 2010. Copy supplied.

Joan Whitlow, *Newark Plays 'Let's Make a Deal' for $6 Million*, Star-Ledger, January 8, 2010. Copy supplied.

Mary Pat Gallagher, *Shakedown Artist Smeared*, New Jersey Law Journal, October 19, 2009. Copy supplied.

Kate Coscarelli, *A Jury of One's Peers: Foundation Backs Newark Youth Court*, New Jersey State Bar Foundation Forum, Fall 2009. Copy supplied.

Joan Whitlow, *Is Booker Keeping Lid on Free Speech by Police?*, Star-Ledger, August 7, 2009. Copy supplied.

Ralph Ortega, *ACLU Criticizes Newark Mayor Cory Booker's Handling of Police Policies*, NJ.com, July 13, 2009. Copy supplied.

Star-Ledger Staff, *Nuisance Crimes to Murder, Newark Can Do Better*, Star-Ledger, June 12, 2009. Copy supplied.

Star-Ledger Editorial Board, *New Jersey, Stop Idling over Old Law*, NJ.com, June 4, 2009. Copy supplied.

City of Newark Gives Work Comp New Structure, CCMSI Matters Newsletter, Summer 2009. Copy supplied.

Sharon Adarlo, *27 Years after Court Ruling, Newark Axes Loitering Law*, Star-Ledger, May 27, 2009. Copy supplied.

Crisis in the Cellblock – Parts One and Two, NJN Public Television and Radio, February 25, 2009. Video supplied.

Joan Whitlow, *Glad Tidings for Some Who Received Parking Tickets*, Star-Ledger, January 9, 2009. Copy supplied.

Jeffery C. Mays, *Newark Oks Pact It Once Rejected to Fix Website*, The Star Ledger, October 22, 2008. Copy supplied.

Katie Wang, *Newark Theater Gets a Needed Bailout, NEDC Riverfront Pledges $500,000 to Keep Movie Complex Open*, Star-Ledger, September 20, 2008. Copy supplied.

Jeffery C. Mays, *Judge Reopens Pru Center after 'Technical' Closure*, Star-Ledger, July 12, 2008. Copy supplied.

David Porter, *Judge Lets Pru Center to Reopen after Code Dispute*, The Associated Press, July 12, 2008. Copy supplied.

Jeffery C. Mays, *Prudential Center Will Reopen Today, Newark Officials Say*, NJ.com, July 11, 2008. Copy supplied.

Jeffery C. Mays, *Setting a Better Example for Teen Workers: Chaos of '07 Pushes Newark to Organize Jobs Program*, Star-Ledger, July 8, 2008. Copy supplied.

Jeffery C. Mays, *Newark OKs $5.8 Million Settlement in '04 Accident: Two Drowned as Their Car Plunged into the Passaic*, Star-Ledger, July 3, 2008. Copy supplied.

Joan Whitlow, *Ex-City Official Should Give All of It Back*, Star-Ledger, June 13, 2008. Copy supplied.

Donna Leinwand, *Alternative Courts Gain Ground for Petty Crimes*, USA TODAY, June 10, 2008. Copy supplied.

Chanta L. Jackson, *Newark's Top Lawyer Wins Award*, NJ.com, May 13, 2008. Copy supplied.

Newark Seeks Students to Serve as Summer Interns in Law Department, Star-Ledger, April 17, 2008. Copy supplied.

Jeffery C. Mays, *Booker Nominates Pair to Fill New Vacancies*, Star-Ledger, January 5, 2008. Copy supplied.

Bruno R. Tedeschi, *Newark Mayor Booker Replaces Top Aides*, Jaffe Communications, NJ.com, January 4, 2008. Copy supplied.

Jeffery C. Mays, *Outreach Helps City to Create New Court: Community Effort Will Be Newark's First*, Star-Ledger, December 5, 2007. Copy supplied.

Around the Counties, Star-Ledger, December 5, 2007. Copy supplied.

Kristy Barry, *Bon Jovi Rocks "The Rock" to a Packed House on Opening Night in Newark*, Kristynabarry.blogspot.com, October 30, 2007. Copy supplied.

Katie Wang, *A Line in Cupid's Corridor*, Star-Ledger, February 15, 2007. Copy supplied.

Carmen Juri, *Bringing Culture to the Bench*, Star-Ledger, December 7, 2006. Copy supplied.

Katie Wang, *Newark Court System Tries People's Patience: But Sometimes Lax Ways Work in a Defendant's Favor*, Star-Ledger, October 15, 2006. Copy supplied.

Jeffery C. Mays, *Booker Praises Newark Chief Judge as a New 'Kind'*, The Star Ledger, September 6, 2006. Copy supplied.

Meghan Gill, *Officer Greg Kasko Suspended; Charged with Lying Under Oath*, Westfield Leader, July 20, 2006. Copy supplied.

Lisa Brennan, *$575,000 for Drowning Accident*, New Jersey Law Journal, April 24, 2006. Copy supplied.

Julia M. Scott, *Another Westfield Police Case Argued: Cop Accused of Insubordination in His Criticism of Former Chief*, Star-Ledger, March 21, 2006. Copy supplied.

Anna Bogdanowicz, *Tracy Denies Claims of Illegal Criminal Checks*, Record-Press, December 9, 2005. Copy supplied.

Julia M. Scott, *Officer Sues Westfield over Criminal Checks, He Says Chief Retaliated against Him over Complaint*, Star-Ledger, December 1, 2005. Copy supplied.

Press Releases:

In an effort to inform the public of current events, the County of Bergen and City of Newark routinely issued press releases on matters that may not have been otherwise reported in other media. The following list represents what I believe to be a complete list of such press releases in which I was quoted or went out under my name, except for those previously supplied in response to 12d, which I was able to locate.

City of Newark Offering Tax Amnesty Program from May 1, 2014, through May 30, 2014, April 30, 2014. Copy supplied.

Mayor Cory A. Booker Reminds Residents: Be Prepared When Hurricane Season Starts June 1, May 29, 2013. Copy supplied.

Hurricane Sandy Headed Towards New Jersey, October 26, 2012. Copy supplied.

Mayor Booker Reminds Residents Who Were Affected by Hurricane Irene to Apply for Federal Disaster Assistance, October 11, 2011. Copy supplied.

City of Newark Swears in Samuel A. DeMaio as Police Director and Sheila A. Coley as Police Chief, August 19, 2011. Copy supplied.

City of Newark Holds Installation Ceremony for New Fire Chief, February 9, 2011. Copy supplied.

Newark Launches Debt Recovery Program to Help Residents with Water Bills, Targeted News Service, January 11, 2011. Copy supplied (reprinted in multiple outlets).

Mayor Booker Announces Appointment of Deputy Chief Fateen Ziyad as Acting Fire Director, December 14, 2010. Copy supplied.

Julien X. Neals, Esq., Takes Oath as City of Newark's Business Administrator, December 3, 2010. Copy supplied.

Mayor Booker Swears in City of Newark's First Portuguese-American Corporation Counsel, December 1, 2010. Copy supplied.

City of Newark Reminds Residents of December 2010 Furlough Days, December 1, 2010. Copy supplied.

City of Newark Announces Police Layoffs Are Effective as of Tuesday, November 30, November 30, 2010. Copy supplied.

City of Newark Announces Police Layoffs, Targeted News Service, November 23, 2010. Copy supplied (reprinted in multiple outlets).

Mayor Booker Announces City of Newark Will Offer Its Annual Amnesty Program, November 15, 2010. Copy supplied (reprinted in multiple outlets).

Mayor Booker and Corporation Counsel Julien Neals Welcome Summer Law Interns to City of Newark, July 14, 2010. Copy supplied.

Newark Law Department Launches Student Internship Program, US Federal News, April 4, 2009. Copy supplied.

Newark Gains Two New Municipal Judges, Targeted News Service LLC, December 6, 2006. Copy supplied.

Newark Municipal Court Goes High-Tech to Improve Customer Service and Efficiency, November 3, 2006. 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 was appointed chief judge of the Newark Municipal Court on September 5, 2006, and served through March 2008.

The jurisdiction of the Newark Municipal Court extends to disorderly persons offenses, motor vehicle and traffic violations, truancy matters, housing and code violations and any criminal matters downgraded by the superior court. All municipal court proceedings were non-jury in nature. The Newark Municipal Court handles approximately 500,000 matters per year. As chief judge, I supervised the court's 11 full-time judges. My primary responsibilities were administrative in nature. I presided over truancy cases on a regular basis, and cases that involved traffic, disorderly persons and code violations in the absence of the assigned judges. In total, I presided over more than 6,000 cases. The municipal prosecutor prosecuted the matters on behalf of the state. The municipal public defender handled the defense in a large number of cases. By court rule, the court was required to dispose of matters within a 60-day period. Due to the summary nature of the proceedings, municipal cases generally resolved quickly.

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

I presided over approximately 20 municipal court matters that went to verdict or judgment.

i. Of these cases, approximately what percent were:

jury trials:	0 %
bench trials:	100 %

ii. Of these cases, approximately what percent were:

civil proceedings:	0 %
criminal proceedings:	100 %

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

I did not write any opinions. In the approximately 20 matters referenced, I rendered verdicts directly from the bench at the conclusions of the trials. These decisions were recorded but not memorialized in a written opinion.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of 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 (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

I do not have records of specific cases. The Newark Municipal Court adjudicates approximately 500,000 cases per year. The records are maintained in the database of the Administrative Office of the Courts. The municipal court has limited access to the database and cannot search these records by a judge's name. I have been unable to obtain records from the Administrative Office of the Courts that contain information responsive to Q13(c).

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.

Due to the summary nature of municipal court proceedings, I rendered verdicts and other rulings directly from the bench and did not author written opinions.

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

I did not preside over any case 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.

I did not author any opinion that was reversed by a reviewing court or where my judgment was affirmed with criticism of my substantive or procedural rulings.

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.

I did not issue any written unpublished opinions. Of the approximately 20 matters that I presided over to verdict, I rendered an oral opinion in 100% of them. The opinions were not reduced to writing (unless a transcript was ordered). The Newark Municipal Court utilized a digital system that recorded the entire proceedings. These recordings are filed and stored in the court according to state mandated retention schedules.

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 did not author any opinions on federal or state constitutional issues.

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.

I never had the occasion to preside over a matter by designation on a federal court of appeals.

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:

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.

During my tenure as chief judge of the Newark Municipal Court, the court employed a system whereby a municipal court judge was required to recuse him or herself from any case in which a potential or actual conflict of interest was presented. A recusal request could be raised by any party or by the judge *sua sponte*. The court employed an automatic recusal system whereby court staff could reassign matters where a conflict based upon an apparent familial relationship or known association to a judge was evident. To the best of my recollection, I was not required to recuse myself from any case.

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.

Corporation Counsel for the City of Newark, March 2008 to November 2010, appointed by the Honorable Cory A. Booker, mayor for the City of Newark, approved by the Newark Municipal Council.

Business Administrator, City of Newark, November 2010 to July 2014, appointed by the Honorable Cory A. Booker, mayor for the City of Newark, approved by the Newark Municipal Council.

County Counsel, Bergen County, New Jersey, January 12, 2015 to present, appointed by the Honorable James J. Tedesco, III, county executive for Bergen County, approved by the Board of Chosen Freeholders.

Acting County Administrator, Bergen County, New Jersey, June 1, 2016 to present, appointed by the Honorable James J. Tedesco, III, county executive for Bergen County.

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.

I have not held any memberships in any political party or election committee. In 2006, in connection with Cory A. Booker's mayoral campaign and in support of his slate of municipal council candidates for the City of Newark, I volunteered to assign election-day attorneys to various polling sites to monitor polling activities within the South Ward of the City of Newark. I also attended several planning meetings in preparation for these election-day poll monitoring 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;

I served as a law clerk to the Honorable Seymour Margulies in the Civil Division, Hudson County Superior Court. The clerkship term was from September 1991 to August 1992.

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

I have not engaged in the solo practice of law at any time.

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;

1992 – 2006; October 2014 – January 2015
Chasan Leyner & Lamparello, PC
300 Harmon Meadow Boulevard
Secaucus, New Jersey 07094
Law Clerk (1992 – 1993)
Associate (1993 – 2003)
Partner (2003 – 2006; October 2014 – January 2015)

2008 – 2014
City of Newark
920 Broad Street
Newark, New Jersey 07102
Corporation Counsel (2008 – 2010)
Business Administrator (2010 – 2014)

January 2015 – present
County of Bergen
One Bergen County Plaza
Hackensack, New Jersey 07601
County Counsel

June 1, 2016 – present
County of Bergen
One Bergen County Plaza, Room 580
Hackensack, New Jersey 07601
Acting County Administrator

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.

As a judicial law clerk, early in my career, I received certification as a mediator and regularly mediated cases as part of my duties. I do not recall any of the matters that I mediated. The number of cases that I mediated would have been approximately 25 and typically involved small claims. In my legal practice, I did not serve as an arbitrator or mediator in alternative dispute resolution proceedings.

b. Describe:

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

I started my legal career with the firm of Chasan Leyner & Lamparello, PC, in 1992. I served as a law clerk from 1992 to 1993. In 1993, I became an associate assigned to the firm's litigation department. I primarily handled matters in the areas of general litigation, which involved civil, criminal, family, contracts, copyright and trademark law, and some real estate matters. In 1997, my practice area became concentrated primarily in municipal defense work in federal and state courts. From 1997 to 2006, my primary focus was the defense of 42 U.S.C. § 1983 actions in federal court. I continued to handle other general litigation matters also. I regularly appeared in federal, state, municipal and administrative forums. I became a partner with the firm in 2003 and continued to handle the same practice areas and began to supervise associates in these areas.

In 2006, I was appointed as chief judge of the Newark Municipal Court, where I served until 2008. As chief judge, I supervised all court operations and the court's 11 full-time judges. I sat regularly in truancy court and in the traffic, criminal, and housing courts in an assigned judge's absence.

In 2008, I became the corporation counsel for the City of Newark. In that capacity, I supervised the city's law department, which consisted of 45 attorneys and support staff. The law department handled civil litigation, workers' compensation, labor, real estate, tax abatements, contracts and legislation, and municipal prosecutions. I served as corporation counsel until 2010, at which time I was appointed the city's business administrator.

I returned to Chasan Leyner & Lamparello, PC, as a partner in October 2014. I resumed practice in the firm's litigation department. My practice focused on municipal defense and civil litigation.

In January 2015, I was appointed as county counsel for Bergen County, New Jersey. In this capacity I serve as the director of the county's law department and serve as legal counsel to the county executive, the eight county government departments, the county sheriff, county clerk, county surrogate and county prosecutor's office. As county counsel, I supervise affirmative litigation brought on behalf of any county entities and the defense of any claims brought against the county.

ii. your typical clients and the areas at each period of your legal career, if

any, in which you have specialized.

From approximately 1993 to 1997, I primarily represented individuals and small businesses in litigated cases, which included civil, criminal, and family law cases. From 1997 to 2006, the typical clients I represented were public entities and individuals in federal civil rights cases. While corporation counsel for the City of Newark from 2008 to 2010, I served as director of the city's law department and provided legal counsel to the mayor, department directors and other executive branch officials, the municipal council members and other municipal employees as circumstances dictated. Upon returning to private practice from October 2014 to January 2015, my practice focused on representation of municipal entities in general litigation. From January 2015 to the present, I have served as county counsel for Bergen County, New Jersey. During my legal career I developed considerable experience and training in employment law, copyright and trademark matters, and federal civil rights litigation.

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.

During my tenure at Chasan Leyner & Lamparello, PC, I appeared in court frequently. As corporation counsel for the City of Newark I appeared in court on significant motions and settlement conferences, however, my primary role was to supervise the handling of all of the litigation, legislation, contracts and other legal matters involving the City of Newark. I served in a primarily consultative role and appeared in court occasionally. Similarly, as county counsel for Bergen County, I serve in a primarily consultative and supervisory role and appear in court occasionally. I estimate that 85 to 90% of my practice has involved litigation.

i. Indicate the percentage of your practice in:
   1. federal courts: 80%
   2. state courts of record: 15%
   3. other courts: 3%
   4. administrative agencies: 2%

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 career in private practice I handled approximately 35 matters that were tried to verdict, judgment, or final decision in various forums. I handled seven jury trials, one in the federal court and six in the superior court of New Jersey. Of the seven trials by jury I handled, I served as sole counsel in one, chief defense counsel in four, and co-defense counsel in two. I handled approximately 15 to 20 municipal court non-jury trials and tried approximately eight administrative law matters. I served as sole counsel in all of the municipal court and administrative matters.

i. What percentage of these trials were:
   1. jury: 20%
   2. non-jury: 80%

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 not appeared before the Supreme Court of the United States.

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. *Laufgas v. Bramson*, 2:04-cv-00387-JLL-CCC, 2006 WL 1805884 (D.N.J. June 29, 2006).

Pro se plaintiff Laufgas filed many complaints against the City of Paterson and its officials on a regular basis for violations of his constitutional rights. This matter involved extensive claims against the City, a number of its public officials and the state of New Jersey. I served as lead counsel on the matter conferred with the plaintiff on aspects of pre-trial discovery and motion practice. The matter was disposed of by way of summary judgment on behalf of all defendants.

Dates of representation: 2004 – 2006

Presiding Judges: Hon. Jose L. Linares & Hon. Claire C. Cecchi (Magistrate)

Counsel for Co-Defendant Price
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Lite Depalma Greenberg, LLC
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Counsel for Co-Defendant Kane
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Lisa F. Nemeth, Esq.
Office of the New Jersey Attorney General
New Jersey Department of Law & Public Safety
RJ Hughes Justice Complex
25 Market Street, Post Office Box 112
Trenton, NJ 08625
(609) 777-3609

2. *Rossmorrey v. City of Paterson*, 2:97-cv-03964-JLL-RJH (D.N.J.).

This matter involved claims of unlawful arrest and excessive force resulting from a riot that occurred at a Peruvian Day festival in the City of Paterson. Approximately 15 plaintiffs sued the City of Paterson and multiple defendants. My firm represented the City of Paterson. I was the attorney of record and lead defense counsel. I coordinated the extensive motion practice and pre-trial discovery, which involved over 25 depositions. The parties agreed to dispose of the matter by way of binding arbitration. The Honorable Stewart J. Pollock, retired Justice of the New Jersey Supreme Court, served as arbitrator. After an approximately six-month arbitration proceeding, Justice Pollock found in favor of all of the defendants.

Presiding Judges Hon. Jose L. Linares & Hon. Ronald J. Hedges (Magistrate)

Dates of representation: 1997 – 2006

Arbitrator
Hon. Stewart Pollock (former Justice, Supreme Court of New Jersey)
Riker, Danzig, Scherer, Hyland, Perretti LLP
One Speedwell Avenue
Headquarters Plaza
Morristown, NJ 07962
(973) 451-8490

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Ginarte, O'Dwyer & Winograd
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Counsel for Defendants
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Ricci, Fava & Scaracino, LLC
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Totowa, NJ 07512
(973) 741-1800
(Defendant Rizzo)

Raymond A. Reddin, Esq.
999 McBride Avenue, Suite B201
West Paterson, NJ 07424
(973) 812-7599
(Defendant DeAngelis)

Gerald Sean Keegan, Esq.
948 McBride Avenue
West Paterson, NJ 07424
(973) 256-3700
(Defendant Heerbrandt)

Robert James Galluccio, Esq.
Goodman, Galluccio & Chessin
337 Park Avenue, Post Office Box 2037
Paterson, NJ 07509
(973) 742-1077
(Defendant Malfa)

James Joseph Frega, Esq.
Perconti & Cook, Esqs.
886 Belmont Avenue
North Haledon, NJ 07508
(973) 427-5549
(Defendant Avila)

Patrick J. Caserta, Esq.
Patrick J. Caserta, Esq. LLC
1428 State Route 23
Wayne, NJ 07470
(973) 632-2100

(Defendant Oquendo)

Joseph T. Afflitto, Sr., Esq.
Afflitto, Raimondi & Afflitto
500 Valley Road, Post Office Box 3097
Wayne, NJ 07470
(973) 633-8700
(Defendant Spagnola)

3. *Estate of Wild v. County of Bergen*, 2:03-cv-01278-PS (D.N.J.).

This matter involved a wrongful death claim by the deceased's minor children alleging excessive force by a Bergen County police officer who shot and killed the deceased following a high-speed police pursuit. The claims were based upon 42 U.S.C. § 1983 and state statutory claims. My firm represented defendant Bergen County. I served as lead counsel for the defense and coordinated all defense counsel pre-trial actions. The matter resolved by way of settlement.

Presiding Judges: Hon. Faith Hochberg & Hon. Patty Shwartz (Magistrate)

Dates of representation: 2003 – 2005

Counsel for Plaintiffs
Christian P. Stueben, Esq.
1386 Palisade Avenue
Fort Lee, NJ 07024
(201) 461-1111

Counsel for Defendant Bergen County Police Department
Rodman E. Honecker, Esq.
Windels, Marx, Lane & Mittendorf, LLP
120 Albany Street Plaza
New Brunswick, NJ 08901
(732) 846-7600

4. *Gibson v. Barnes*, 2:99-cv-01029-FSH-PS (D.N.J.).

Plaintiff, the Tax Collector for the City of Paterson, brought this claim against the mayor and numerous public officials alleging that she was subjected to adverse employment actions after disclosing certain tax issues related to properties owned by the mayor. The matter was transferred to our firm from corporation counsel to handle the trial. I served as lead defense counsel and represented the City of Paterson and numerous public officials. The matter was tried to verdict before Judge Hochberg. The jury found in favor of the plaintiff and awarded damages in the approximate amount of $400,000 plus counsel fees.

Presiding Judges: Hon. Faith S. Hochberg & Hon. Patty Schwartz (Magistrate)

Dates of representation: 2002 – 2005

Counsel for Plaintiff
Lisa M. Fittipaldi, Esq.
Difrancesco, Bateman, Coley, Yospin, Kunzman, David & Lehrer
15 Mountain Boulevard
Warren, NJ 07059
(908) 757-7800

Counsel for Defendant Barnes
William J. De Marco, Esq. (deceased)
James J. Frega, Esq.
Biscaglie & De Marco LLC
365 Rifle Camp Road
West Paterson, NJ 07424
(973) 742-8900

Corporation Counsel for Defendant City of Paterson
Susan Champion, Esq. (former corporation counsel)
Hunziker Jones & Sweeney, P.A.
Wayne Plaza II
155 Route 46 West
Wayne, NJ 07470

5. *Rivers v. Paterson Police Dep't*, PAS-L-5117-02 (N.J. Super. Ct.).

Plaintiff was a correctional officer who alleged constitutional rights violations under 42 U.S.C. § 1983 and state law in connection with a stop by Paterson Police officers for suspicion of DWI. My firm represented an individual police officer. The matter resolved by way of a jury verdict of no cause of action on behalf of all the defendants.

Presiding Judge: Hon. Burrell Ives Humphreys

Dates of representation: 2002 – 2004

Counsel for Plaintiff
Brian W. Banasiak, Esq.
Steven P. Haddad, PC
618 Newark Avenue
Jersey City, NJ 07306
(201) 798-3200

Counsel for Defendant Ungarian

Victor A. Afanador, Esq.
Lite, Depalma, Greenberg, LLC
Two Gateway Center, 12th Floor
Newark, NJ 07102
(973) 623-3000

6. *Rivera v. County Of Passaic*, 2:97-cv-05898-DRD (D.N.J.).

Plaintiff filed this action under 42 U.S.C. § 1983 and state law, based upon claims of excessive force and wrongful arrest. The plaintiff sued the City of Paterson, County of Passaic, and other individual defendants. I served as lead defense counsel and the attorney of record for the City of Paterson and other public officials and handled the case throughout the entire proceeding. The matter involved extensive pre-trial discovery and motion practice. During the course of the litigation, the plaintiff's counsel filed a disqualification motion, which raised the issue whether a municipal attorney may represent both the municipality and individual officials or employees of that municipality when all have been sued as co-defendants in a civil rights action under 42 U.S.C. § 1983. We prevailed on the motion and defended multiple similarly situated defendants, saving significant public funds. The matter resolved by way of settlement.

Presiding Judge: Hon. Dickinson R. Debevoise

Dates of representation: 1997 – 2003

Counsel for Plaintiffs
Frank V. Burke, Esq.
Jersey City Law Department
Suite 302
280 Grove Street
Jersey City, NJ 07302
(201) 547-5229

Nancy E. Lucianna, Esq.
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Fort Lee, NJ 07024
(201) 947-6484

Counsel for Defendant Margeotes
Dennis Frank Calo, Esq.
Hartmann Doherty Rosa Berman & Bulbulia LLC
65 Route 4 East, Suite 6
River Edge, NJ 07661
(201) 441-9056

Counsel for Defendant County of Passaic

William T. Connell, Esq.
Dwyer, Connell & Lisbona
100 Passaic Avenue, Post Office Box 629
Fairfield, NJ 07004
(973) 276-1800

Counsel for Third Party Defendant City of Paterson
Anthony Benevento, Esq.
Fontanella & Benevento
246 Union Boulevard
Totowa, NJ 07512
(973) 942-6500

7. *Bhuiyan v. Nargiso*, 2:99-cv-02559-WGB (D.N.J).

Plaintiff, a sergeant with the Paterson Police Department, filed this action under 42 U.S.C. § 1983 and state law claims alleging discriminatory treatment and civil rights violations. The plaintiff sued the City of Paterson, and other individual defendants and alleged substantial *Monell* claims against the municipality. My firm represented the City of Paterson and other public officials. I served as the attorney of record and lead counsel for the defendants throughout the entire proceeding. The case required significant policy and custom analysis of the City's policies and procedures and training practices. It also involved extensive pre-trial discovery and motion practice. The matter resolved by way of settlement following arbitration.

Presiding Judge: Hon. William G. Bassler

Dates of representation: 1999 – 2002

Counsel for Plaintiffs
Kenneth W. Elwood, Esq.
Blume, Goldfaden, Berkowitz, Donnelly, Fried & Forte
One Main Street
Chatham, NJ 07928
(973) 635-5400

Counsel for Co-Defendants
Patrick J. Caserta, Esq.
Patrick J. Caserta, Esq. LLC
1428 State Route 23
Wayne, NJ 07470
(973) 632-2100

Adolph J. Galluccio, Esq.
Benevento, Galluccio, & Smith, Esqs.

246 Union Boulevard
Totowa, NJ 07512
(973) 942-7636

Arbitrator
Drew M. Hurley, Esq.
17 East High Street
Somerville, NJ 08876
(908) 429-1118

8. *Mitchell v. Chandler*, 2:97-cv-01562-JAP (D.N.J.).

Plaintiffs brought this 42 U.S.C. § 1983 civil rights action against individual sheriff officers, Essex County, and other defendants alleging constitutional rights violations arising from claims of excessive force. The firm represented an individual defendant in the action. I served as attorney-of-record and was responsible for all aspects of the litigation. The matter concluded by way of settlement.

Presiding Judges: Hon. Joel A. Pisano

Dates of representation: 1997 – 2002

Counsel for Plaintiff
Frederick Grayer, Esq.
Kent, Grayer & Rosenberg
8 Rockland Drive
Willingboro, NJ 08046
(609) 877-4000

Anthony Joseph Iacullo, Esq.
Iacullo Martino, LLC
247 Franklin Avenue
Nutley, NJ 07110
(973) 235-1550

Counsel for Defendant Essex County
Hon. Steven C. Mannion, U.S. Magistrate Judge
United States District Court, District of New Jersey
Martin Luther King, Jr. Federal Building & Courthouse
50 Walnut Street
Newark, NJ 07102
(973) 645-3827

9. *M&R Marking Sys. v. Top Stamp, Inc.*, 26 F. Supp. 466 (D.N.J. 1996).

This case involved alleged infringement of two patents, a design patent for a handle top for a hand stamp and a mechanical patent for a hand stamp itself. Plaintiff alleged that defendants, Top Stamp, Inc. and two of its officers, willfully infringed both patents. I represented the defendants as local counsel and handled all aspects of pre-trial discovery and extensive pre-trial motion practice. The matter was resolved in part by summary judgment and settlement.

Presiding Judge: Hon. Katharine S. Hayden

Dates of representation: 1996 – 2000

Counsel for Plaintiff
Gregory S. Gewirtz, Esq.
Lerner, David, Littenberg, Krumholz & Mentlik
600 South Avenue West, Suite 300
Westfield, NJ 07090
(908) 654-5000

Co-Counsel for Defendants
Donald A. Kaul, Esq.
Jerold I. Schneider, Esq.
John E. Giust, Esq.
Dorsey & Whitney L.L.P.
1801 K Street, Northwest, Suite 750
Washington, District of Columbia 20006
(202) 442-3000

10. *Kulowski v. Messano*, 2:97-cv-03238-AMW (D.N.J.).

This matter involved a multi-count complaint against numerous public officials and entities alleging violations of the plaintiff's constitutional rights. The claim arose out of the plaintiff's treatment in connection with criminal charges previously pending against the plaintiff in the Municipal Court of Jersey City and the Township of North Bergen, among other venues. The plaintiff filed claims against the local and county prosecutors, the presiding judge, the municipality and the county. I was the attorney of record and responsible for the preparation and filing of all pleadings. I filed a successful motion to dismiss on behalf of our municipal defendant clients, which was affirmed on appeal, bearing docket number 98-5130(NR).

Presiding Judge: Hon. Alfred M. Wolin

Dates of representation: 1997 – 1998

Counsel for Co-Defendants
Michael L. Dermody, Esq.

34-36 Jones
Jersey City, NJ 07306
(201) 659-2666

Counsel for Co-Defendants
Daniel W. Sexton, Esq.
329 Pacific Avenue
Jersey City, NJ 07304
(201) 332-5455

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.)

In my capacity as Acting County Administrator/County Counsel for Bergen County, I participated in the oversight of a process to find a new operator for Bergen County's safety-net Hospital. The 1,070-bed hospital is the largest in New Jersey and the fourth largest public hospital in the country. The prior for-profit operator managed the hospital for 19 years. After collaboration with the New Jersey State Comptroller, the New Jersey State Department of Health and other health professionals, a partnership formed between a state medical teaching institution, the County, and non-profits focused on behavioral health and addiction services. The venture, reportedly the first of its kind, preserves the hospital's safety-net status and expands acute care services in a manner that the institution can adapt to future changes in healthcare.

Under my direction in my capacity as Newark's corporation counsel, the City of Newark launched its first youth court. The youth court initiative started while I was chief judge of the Newark Municipal Court and continued into my tenure as corporation counsel. I was responsible for coordinating all activities related to the development of the youth court. I also served as the liaison between the administration, the superior court, the Administrative Office of the Courts, and the New Jersey State Bar Association to obtain the necessary support and approval for the program. The youth court concept uses positive peer pressure to fight low-level youth crime and school discipline issues, providing local teenagers with the tools to establish and enforce acceptable standards of behavior for their peers. In Newark's youth court model, cases which could include low-level offenses like truancy, shoplifting, or school fighting, are heard by other community youth who have been trained to perform the roles of judge, jury, and advocate. The compliance rate with the jury's sanctions ranges from 85 to 95 percent, far beyond compliance rates for other alternative sanction programs for youth.

While chief judge of the Newark Municipal Court, I oversaw the initiative to start an alternative solutions program in the municipal court. My involvement in the program

continued through my terms as corporation counsel and business administrator. Like the youth court, I was initially responsible for coordinating all activities related to the development of Newark Community Solutions (NCS). Similarly, I also served as the liaison between the administration, the superior court, the Administrative Office of the Courts, the Newark Municipal Court, and the New Jersey State Bar Association to obtain the necessary support and approval for NCS. This program offers the judges of the Newark Municipal Court a broad range of sentencing options – community service, short-term group counseling and treatment readiness classes, educational assessments, and monitored placement in community-based treatment.

During my term as corporation counsel for the City of Newark, I managed litigation to reclaim $35 million in city assets, including two downtown parking garages, a warehouse, and at least $3 million in liquid assets from a development corporation. I determined to follow a course of action to engage the principal of the development corporation in direct discussions in an attempt to avoid protracted litigation. The City reclaimed all of the assets, with the exception of an interest in a parking garage to be returned at a later date. This was accomplished without further litigation and with minimal additional expenditure of public funds.

During my tenures as corporation counsel and business administrator, I supervised the re-negotiation of lease terms regarding the City's sports arena. As a result, the City recouped additional revenues over the life of the lease that helped offset municipal expenses related to the venue. Also, the City and the arena tenant avoided protracted litigation, which saved significant public and private funds.

I have not performed any lobbying activities on behalf of any clients or organizations.

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 other than continuing education courses or seminars.

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 expect to derive anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts or other future benefits from previous business relationships, professional services, firm memberships, former employers, clients, or customers.

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, commitments, or agreements to pursue outside 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).

    When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that 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.

       I serve as County Counsel and Acting County Administrator to Bergen County and served as corporation counsel to the City of Newark. Any matters in which the County and the City of Newark were a party would likely present a potential conflict-of-interest. Any matters in which my wife or I may have a financial interest or where I have a significantly close relationship with counsel, parties, or witnesses (family, business or social) would present conflicts-of-interest. If any conflict were to arise, I would immediately recuse myself from the matter. I would advise all counsel and parties, the chief judge, court staff and clerk of the conflict as soon as possible. This would ensure that the proceedings could continue without unnecessary delay.

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

       The inquiry whether a conflict exists should be continued throughout the course of litigation as new parties, counsel or witnesses may be added as litigation progresses. Once a conflict or potential conflict is presented the matter must be addressed immediately to preserve the integrity of the proceedings and to avoid any undue delay. If confirmed, I would resolve any potential conflicts of interest

by adhering to the Code of Conduct for United States Judges, 28 U.S.C. § 455, and all applicable policies and procedures of the United States Courts. I would recuse myself in any matter in which my spouse or any family member is a party, where my wife or I hold a financial interest, or where I have a sufficiently close connection with counsel or the parties (family, business, or social). In the event of any uncertainty, I would err on the side of disqualification or recusal.

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.

In the State of New Jersey, an attorney employed by a governmental entity is exempt from further mandatory *pro bono* service. In my role as County Counsel, I oversee the County Law Department, which includes the Mental Health Law Project, which coordinates the *pro bono* representation of persons with mental challenges. Also, as an attorney in the public sector since 2006, I have been actively involved with Volunteer Lawyers for Justice as a trustee and former board chair to coordinate the pro bono representation of litigants throughout Essex County. In addition, I was a steering committee member of Newark Reentry Legal Services, which coordinated the *pro bono* legal representation of former incarcerated individuals. Also, while chief judge of the Newark Municipal Court, the court developed an alternative sentencing program that provided for social services for defendants and constructive program participation in lieu of fines or jail time. The program, entitled Newark Community Solutions, was fully implemented in 2011 and remains a successful initiative to date. I participate in an initiative to implement a program for alternatives to criminal prosecution in Bergen County.

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 September 26, 2014, I sent my resume and a completed judicial questionnaire to the Chair of Senator Cory A. Booker's Advisory Group, for consideration for the position of United States District Judge. On September 30, 2014, I interviewed with the Advisory Group at Senator Booker's Newark office. On or about October 3, 2014, I interviewed with the Senator's staff at the Newark office.

On November 7, 2014, Senator Booker advised me that he would be referring my name to President Barack H. Obama for consideration.

On November 21, 2014, I was first contacted by officials from the Office of Legal Policy at the Department of Justice. On January 13, 2015, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On February 27, 2015, the President submitted my nomination to the Senate.

On September 30, 2015, I received a hearing before the United States Senate Committee on the Judiciary. On November 5, 2015, the nomination was reported out of committee. The nomination expired on January 3, 2017, with the end of the 114th Congress.

I am advised that Senator Booker referred my name to former President Donald J. Trump. On May 4, 2017, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C.

On February 18, 2021, I was contacted by attorneys from the White House Counsel's Office. On Friday, February 19, 2021, I interviewed via videoconference with attorneys from the White House Counsel's Office. Since February 20, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 30, 2021, the President announced his intent to nominate me.

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.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Zahid Nisar Quraishi

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

   United States District Judge for the District of New Jersey

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.

   Office: United States District Court
   Clarkson S. Fisher Building & U.S. Courthouse
   402 East State Street, Suite 7000
   Trenton, New Jersey 08608

   Residence: New Brunswick, New Jersey

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

   1975; New York, New York

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.

   1997 – 2000, Rutgers Law School (Newark); J.D., 2000
   1993 – 1997, John Jay College of Criminal Justice; B.A. (*magna cum laude*), 1997

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.

   2020 – present
   Rutgers Law School (Newark)
   123 Washington Street

Newark, New Jersey 07102
Adjunct Professor

2019 – present
United States District Court
District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608
United States Magistrate Judge

2013 – 2019
Riker Danzig Scherer Hyland & Perretti LLP
One Speedwell Avenue
Morristown, New Jersey 07962
Partner (2016 – 2019)
Chief Diversity Officer (2019)
Associate (2013 – 2016)

2008 – 2013
United States Attorney's Office
District of New Jersey
970 Broad Street
Newark, New Jersey 07102
Assistant United States Attorney

2007 – 2008
United States Department of Homeland Security
26 Federal Plaza
New York, New York 10278
Assistant Chief Counsel

2007
Update Legal
400 Connell Drive
Berkeley Heights, New Jersey 07922
Contract Attorney

2003 – 2007
United States Army
Schweinfurt, Germany
Tikrit, Iraq (February 2004 – September 2004)
Ramadi, Iraq (August 2006 – February 2007)
Judge Advocate, Captain

2001 – 2003

LeBoeuf, Lamb, Greene & MacRae LLP
One Riverfront Plaza
Newark, New Jersey 07102
Associate

2000 – 2001
New Jersey Superior Court, Appellate Division
158 Headquarters Plaza
Morristown, New Jersey 07960
Law Clerk to the Honorable Edwin H. Stern, P.J.A.D.

1999
Jamieson, Moore, Peskin & Spicer
300 Alexander Park
Princeton, New Jersey 08540
Summer Associate

1998
Rutgers Law School (Newark)
123 Washington Street
Newark, New Jersey 07102
Research Assistant

Other Affiliations (uncompensated):

1998
New Jersey Superior Court, Appellate Division
Honorable Edwin H. Stern, P.J.A.D., Retired
158 Headquarters Plaza
Morristown, New Jersey 07960
Judicial Intern

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.

   2003 – 2007
   United States Army
   Captain, Judge Advocate General's Corps
   Honorably Discharged in 2007

   I have 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.

Rutgers Law School (Camden) Asian Pacific American Law Student Association Lunar Banquet Honoree (2020)

Rutgers Law School (Newark) Muslim Law Student Association Gala Honoree (2020)

Asian Pacific American Lawyers Association of New Jersey Professional Achievement Award (2019)

South Asian Bar Association of New Jersey Standing Ovation Award (2019)

New Jersey Muslim Lawyers Association Trailblazer of the Year Award (2019)

Recognized by *Chambers USA: America's Leading Lawyers for Business*, *Best Lawyers in America*, and *Super Lawyers* in the area of white collar criminal defense (2018)

Rutgers Law School (Newark) Asian Pacific American Law Student Association Alumni Award (2017)

New Jersey Law Journal Leader of the Bar (2014)

United States Army, Judge Advocate General's Corps (2003 – 2007)
Bronze Star
Combat Action Badge
Army Commendation Medal x 2
Army Achievement Medal x 2
Global War on Terrorism Expeditionary Medal
Global War on Terrorism Service Medal
Overseas Service Ribbon
National Defense Medal
New Jersey Distinguished Service Medal
Distinguished Honor Graduate, Judge Advocate General's Criminal Law Advocacy Course

Rutgers Law School (Newark)
Computer & Technology Law Journal, Managing Business Editor (1998 – 2000)
Moot Court Board, Member (1998 – 2000)

John Jay College of Criminal Justice
Magna Cum Laude
Dean's List (1993 – 1997)
Honors Program (1995 – 1997)
Distinguished Freshman Program (1994)

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.

Asian Pacific American Lawyers Association of New Jersey

Association of Criminal Defense Lawyers of New Jersey
Trustee (2017 – 2019)

Association of the Federal Bar of New Jersey
Advisory Board Member (2019 – present)
Trustee (2016 – 2019)

C. Willard Heckel Inn of Court
Executive Committee Member (2016 – 2019)

New Jersey State Bar Association

United States Attorney's Office Alumni Association
Trustee (2018 – 2019)

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.

New Jersey, 2001
New York, 2003

There have been no 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.

United States Court of Appeals for the Third Circuit, 2018
United States District Court for the District of New Jersey, 2001

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.

Veterans of Foreign Wars (2007)

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.

To the best of my knowledge, none of the organizations that I have been a member of currently discriminate on the basis of race, sex, religion, or national origin. It is my understanding that the VFW formerly excluded women from its organization.

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.

Client Update from the Riker Danzig Cannabis Law Group, Riker Danzig Scherer Hyland & Perretti, LLP, 2018. 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.

None.

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.

Prior to my selection as a United States Magistrate Judge, I served as a trustee of the Association of the Federal Bar of New Jersey. As a trustee, my name appears on the letterhead of the organization. I did not author the letters listed below and I

do not have any specific recollection of any discussions concerning the content of the letters.

Letter from the Association of the Federal Bar of New Jersey to White House Counsel, March 14, 2019. Copy supplied.

Letter from the Association of the Federal Bar of New Jersey to U.S. Senator Cory Booker, March 14, 2019. Copy supplied.

Letter from Association of the Federal Bar of New Jersey to White House Counsel, March 15, 2018. Copy supplied.

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.

March 4, 2021: Panelist, Rutgers Law School, Annual Judicial Reception, Virtual Presentation. Recording available at https://youtu.be/9mrUD03MpoQ.

March 1, 2021: Panelist, Seton Hall Law School, Judicial Panel, Virtual Presentation. I discussed the value of judicial clerkships in my chambers and generally with the federal and state judiciary. I have no notes, transcript, or recording. The address for Seton Hall Law School is One Newark Center, Newark, New Jersey 07102.

February 2, 2021: Panelist, Columbia Law School, Office of Judicial Clerkships, A Discussion with Muslim American Federal Magistrate Judges, Virtual Presentation. Recording available at https://columbiauniversity.zoom.us/rec/play/rCEUUmjwwqNRQNvxiqFBvM0_1BqGJix_SV7VT910l6jnN4c13Vlpar-XkAyGPoCSS7VuIIAnWKkfBo_J.cCPJuv749bZfa7lW.

January 28, 2021: Presenter, South Asian Bar Association of New Jersey (SABA-NJ), Installation Dinner, Virtual Presentation. Recording available at https://drive.google.com/file/d/1eEnkhU6jnOdBC54FSszQKsV5hHD86VEL/edit. Press coverage supplied.

January 26, 2021: Panelist, New York Muslim Bar Association, Pathway to Becoming Federal a Magistrate Judge, Virtual Presentation. Recording available at https://open.spotify.com/show/16uD9Ijrn06r2MpFGxjsII.

November 23, 2020: Panelist, New Jersey State Bar Association, Recent Developments in Professional Responsibility and Ethics, Virtual Presentation. Notes supplied.

November 19, 2020: Presenter, New Jersey Muslim Lawyers Association (NJMLA), Gala, Virtual Presentation. I briefly made remarks thanking the NJMLA board members and trustees for their time and effort and then issued the oath of office to incoming officers. I have no notes, transcript, or recording. The address for the NJMLA is 1075 Easton Avenue, Suite 11-302, Somerset, New Jersey 08873.

November 18, 2020: Panelist, Rutgers Law School (Camden), Asian Pacific American Law Student Association, "To the Federal Bench," Virtual Presentation. I spoke about my background and experience leading to my selection as a United States Magistrate Judge. I have no notes, transcript, or recording. The address for Rutgers Law School (Camden) is 217 North 5th Street, Camden, New Jersey 08102.

October 8, 2020: Panelist, New Jersey State Bar Association (NJSBA), "Leadership from the Bench," Virtual Presentation. I spoke about my background and experience leading to my selection as a United States Magistrate Judge. I have no notes, transcript, or recording. The address for the NJSBA is 1 Constitutional Square, New Brunswick, New Jersey 08901.

June 30, 2020: Panelist, Asian Pacific American Lawyers Association of New Jersey (APALA-NJ), "United States Magistrate Judge Application Process," Virtual Presentation. I spoke about my background and experience leading to my selection as a United States Magistrate Judge. I have no notes, transcript, or recording. The address for APALA-NJ is 494 Broad Street, Suite 210, Newark, New Jersey 07102.

February 20, 2020: Speaker, United States District Court (District of New Jersey), Naturalization Ceremony, Trenton, New Jersey. Transcript supplied.

February 7, 2020: Award Recipient, Rutgers Law School (Camden), Asian Pacific American Law Student Association, Camden, New Jersey. I made brief remarks acknowledging the organization and the award. I have no notes, transcript, or recording. The address for Rutgers Law School (Camden) is 217 North 5th Street, Camden, New Jersey 08102.

January 30, 2020: Presenter, South Asian Bar Association of New Jersey (SABA-NJ), Installation Dinner, New Brunswick, New Jersey. I briefly made remarks thanking the SABA-NJ board members and trustees for their time and efforts and then issued the oath of office to incoming officers. I have no notes, transcript, or recording. The current President of SABA-NJ is Bhaveen R. Jani and his

employment address is Stark & Stark, 993 Lenox Drive, Building 2, Lawrenceville, New Jersey 08648.

November 18, 2019: Award Recipient, New Jersey Muslim Lawyers Association (NJMLA), Trailblazer Award, New Brunswick, New Jersey. I made brief remarks acknowledging the organization and the award. I have no notes, transcript, or recording. The address for the NJMLA is 1075 Easton Avenue, Suite 11-302, Somerset, New Jersey 08873.

November 7, 2019: Panelist, Association of the Federal Bar of New Jersey (AFBNJ), "Federal Civil Jury Trial Practice," Trenton, New Jersey. I addressed areas of civil trial practice before members of the federal bar. I have no notes, transcript, or recording. The address for the AFBNJ is 970 Broad Street, Newark, New Jersey 07102.

November 7, 2019: Award Recipient, Rutgers Law School (Newark), Muslim Law Student Association Gala, Newark, New Jersey. I made brief remarks acknowledging the organization and the award. I have no notes, transcript, or recording. The address for Rutgers Law School (Newark) is 123 Washington Street, Newark, New Jersey 07102.

October 15, 2019: Panelist, New Jersey State Bar Association, Insights for the Federal Practitioner, New Brunswick, New Jersey. I addressed areas of civil trial practice before members of the state bar. I have no notes, transcript, or recording. The address for the NJSBA is 1 Constitutional Square, New Brunswick, New Jersey 08901.

September 19, 2019: Speaker, United States District Court (District of New Jersey), Investiture Ceremony, Trenton, New Jersey. Transcript supplied.

September 18, 2019: Award Recipient, South Asian Bar Association of New Jersey, Standing Ovation Award, Somerset, New Jersey. I made brief remarks acknowledging the organization and the award. I have no notes, transcript, or recording. The current President of SABA-NJ is Bhaveen R. Jani and his employment address is Stark & Stark, 993 Lenox Drive, Building 2, Lawrenceville, New Jersey 08648.

June 13, 2019: Award Recipient, Asian Pacific American Lawyers Association of New Jersey (APALA-NJ), Professional Achievement Award, West Orange, New Jersey. I made brief remarks acknowledging the organization and the award. I have no notes, transcript, or recording. The address for APALA-NJ is 494 Broad Street, Suite 210, Newark, New Jersey 07102.

April 3, 2019: Moderator, Riker Danzig Scherer Hyland & Perretti LLP (Riker Danzig), Seminar on Implicit Bias, Morristown, New Jersey. I moderated a panel discussion on the subject of implicit bias in the workplace. I have no notes,

transcript, or recording. The address for Riker Danzig is One Speedwell Avenue, Morristown New Jersey 07962.

December 5, 2018: Speaker, New York City Bar Association (NYCBA), "Bridging the Gap on Criminal Practice," New York, New York. I addressed the nuts and bolts of New Jersey criminal practice before members of the New York bar. I have no notes, transcript, or recording. The address for the NYCBA is 42 West 44th Street, New York, New York 10036.

November 15, 2018: Moderator, New Jersey Association for Justice (NJAJ), Seminar on Federal Criminal Practice, New Brunswick, New Jersey. I moderated a discussion on the nuts and bolts of federal criminal practice. I have no notes, transcript, or recording. The address for the NJAJ is 150 West State Street, Trenton, New Jersey 08608.

October 24, 2018: Panelist, New Jersey Cannabis Media (NJCM) Summit, "ATC Application Process," Monroe Township, New Jersey. I addressed the application process for those seeking to operate an alternative treatment center. I have no notes, transcript, or recording. Press coverage supplied. The NJCM does not have a mailing address. The speaking engagement took place at Forsgate Country Club, 375 Forsgate Drive, Monroe Township, New Jersey 08831.

August 22, 2018: Panelist, New Jersey Institute for Continuing Legal Education (NJICLE), "Ethical Decision-Making at Every Stage of Litigation," New Brunswick, New Jersey. I addressed ethical issues concerning representation in criminal cases. I have no notes, transcript, or recording. The address for the NJICLE is 1 Constitutional Square, New Brunswick, New Jersey 08901.

May 17, 2018: Panelist, New Jersey State Bar Association (NJSBA), "Financial Fraud Update," Atlantic City, New Jersey. I addressed new developments in the law concerning financial fraud cases. I have no notes, transcript, or recording. The address for the NJSBA is 1 Constitutional Square, New Brunswick, New Jersey 08901.

April 12, 2018: Speaker, Inspector General Criminal Investigator Academy (IGCIA), "Defense Perspective on Public Corruption Investigations," Washington, D.C. I addressed the defense counsel's perspective on public corruption investigations before an audience of federal agents. I have no notes, transcript, or recording. The address for the IGCIA is 384 Marana Circle, Glynco, Georgia 31524.

March 29, 2018: Moderator, Association of the Federal Bar of New Jersey (AFBNJ), "Navigating Corporate Internal Investigations: Perspectives from the Company, Private Counsel, and the Government," West Orange, New Jersey. I moderated a discussion on corporate internal investigations before members of the federal bar. I have no notes, transcript, or recording. Press coverage supplied.

The address for the AFBNJ is 970 Broad Street, Newark, New Jersey 07102.

January 11, 2018: Speaker, Inspector General Criminal Investigator Academy (IGCIA), "Defense Perspective on Public Corruption Investigations," Charleston, South Carolina. I addressed the defense counsel's perspective on public corruption investigations before an audience of federal agents. I have no notes, transcript, or recording. The address for the IGCIA is 384 Marana Circle, Glynco, Georgia 31524.

December 6, 2017: Speaker, New York City Bar Association (NYCBA), "Bridging the Gap on Criminal Practice," New York, New York. I addressed the nuts and bolts of New Jersey criminal practice before members of the New York bar. I have no notes, transcript, or recording. The address for the NYCBA is 42 West 44th Street, New York, New York 10036.

August 23, 2017: Panelist, New Jersey Institute for Continuing Legal Education (NJICLE), "Ethical Decision-Making at Every Stage of Litigation," New Brunswick, New Jersey. I addressed ethical issues concerning representation in criminal cases. I have no notes, transcript, or recording. The address for the NJICLE is 1 Constitutional Square, New Brunswick, New Jersey 08901.

August 10, 2017: Speaker, Office of Inspector General, "Defense Perspective on Public Corruption Investigations," Tampa, Florida. I addressed the defense counsel perspective on public corruption investigations before an audience of federal agents. I have no notes, transcript, or recording. The address for the IGCIA is 384 Marana Circle, Glynco, Georgia 31524.

May 25, 2017: Panelist, South Asian Bar Association of New Jersey (SABA-NJ), "Partnership Track," Parsippany, New Jersey. I addressed my background and path to becoming a partner at my law firm. I have no notes, transcript, or recording. The current President of SABA-NJ is Bhaveen R. Jani and his employment address is Stark & Stark, 993 Lenox Drive, Building 2, Lawrenceville, New Jersey 08648.

April 28, 2017: Panelist, New Jersey Association for Justice (NJAJ), Prosecuting and Defending Public Officials: Lessons from the Bridgegate Investigation and Trial, Atlantic City, New Jersey. I addressed issues that arose during my representation of witnesses in a high-profile public corruption investigation. I have no notes, transcript, or recording. The address for the NJAJ is 150 West State Street, Trenton, New Jersey 08608.

April 27, 2017: Panelist, New Jersey Association for Justice (NJAJ), Speedy Trial and Excludable Time: Practical and Constitutional Concerns When Defendants are Incarcerated, Atlantic City, New Jersey. I addressed issues concerning a defendant's right to a speedy trial. I have no notes, transcript, or recording. The address for the NJAJ is 150 West State Street, Trenton, New

Jersey 08608.

April 20, 2017: Award Recipient, Rutgers Law School (Newark), Asian Pacific American Law Student Association, Alumni Award, Newark, New Jersey. I made brief remarks acknowledging the organization and the award. I have no notes, transcript, or recording. Press coverage supplied. The address for Rutgers Law School (Newark) is 123 Washington Street, Newark, New Jersey 07102.

October 27, 2016: Panelist, Riker Danzig Scherer Hyland & Perretti, LLP, "Hot Ethical Topics Faced by In-House Counsel," Morristown, New Jersey. I addressed ethical issues and conflicts concerning in-house counsel and corporate internal investigations. I have no notes, transcript, or recording. The address for Riker Danzig is One Speedwell Avenue, Morristown New Jersey 07962.

Summer 2016: Speaker, United States District Court (District of New Jersey), "Nuts and Bolts of Federal Criminal Practice," Newark, New Jersey. I addressed areas of federal criminal practice before judicial law clerks. I have no notes, transcript, or recording. The address for the Court is 50 Walnut Street, Newark, New Jersey 07102.

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.

Elizabeth Moore, *Law Students Learn Trial Skills This Fall in Hybrid Course*, Rutgers Law Media, Sept. 22, 2020. Copy supplied.

Elizabeth Moore & Mike Sepanic, *Rutgers Law Grad Becomes First Asian American Federal Judge in New Jersey*, Rutgers Law Media, July 30, 2019. Copy supplied.

Carl Glassman, *Nisar Quraishi, 73, Longtime Tribeca MD, 'Gave His Life to What He Loved'*, The Tribeca Trib, Apr. 19, 2020. Copy supplied.

Zahid Quraishi, NJBIZ, Mar. 4, 2019. Copy supplied. Reprinted in multiple media outlets.

Riker Danzig Appoints Partner as Chief Diversity Officer, New Jersey Law Journal, Feb. 27, 2019. Copy supplied.

Jessica Perry, *Riker Danzig Names First Chief Diversity Officer*, NJBIZ, Feb. 26, 2019. Copy supplied. Reprinted in multiple media outlets.

Riker Danzig Names First Chief Diversity Officer, New Jersey Business Magazine, Feb. 26, 2019. Copy supplied.

When the Smoke Clears, Cannabis Will Be the Garden State's New Cash Crop, Commerce Magazine, Feb. 7, 2019. Copy supplied.

Zahid N. Quraishi Assumes Leadership of White Collar Criminal Practice, NJB News Now, Feb. 1, 2019. Copy supplied.

Bill Wichert, *Ex-Apple Worker Gets 3 Years For Stealing From Company*, Law 360, June 1, 2018. Copy supplied.

Tom Bergeron, *Riker Danzig feels it has every issue of cannabis covered with 'new' practice group*, ROI-NJ, Apr. 10, 2018. Copy supplied.

Jeanie O'Sullivan, *Riker Danzig, Cole Schotz Launch NJ Cannabis Practices*, Law 360, Mar. 5, 2018. Copy supplied.

S.P. Sullivan, *AG Acts to Pull Doctor's License Over Payments*, The Star Ledger, Oct. 20, 2017. Copy supplied. Reprinted in multiple outlets.

Jeanie O'Sullivan, *NJ Wants To Yank Doc's License For Overprescribing Opioids*, Law 360, Oct. 19, 2017. Copy supplied. Reprinted in multiple outlets.

S.P. Sullivan, *'Keep Them Rolling:': N.J. Doctor Accused of Pushing Dangerous Painkiller on Patients*, NJ.com, Oct. 19, 2017. Copy supplied.

Michael Booth, *Doctor Linked to Opioid Maker Sued By State Is Subject of Revocation Action*, New Jersey Law Journal, Oct. 19, 2017. 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.

United States Magistrate Judge (June 2019)
United States District Court for the District of New Jersey

The District Court has jurisdiction over civil matters raising federal questions, civil matters with diversity of citizenship, and federal criminal matters. As a magistrate judge, I oversee pre-trial proceedings, including discovery, non-dispositive motion practice, and settlement negotiations in civil cases referred to me by District Judges. Where all parties consent to magistrate judge jurisdiction, I am authorized to preside over the entire civil case. I conduct initial appearances and bail hearings in certain felony criminal cases and oversee criminal cases in full when they involve petty offenses and misdemeanor charges.

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

None. I have not presided over any cases that have gone to verdict or judgment.

i. Of these cases, approximately what percent were:

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

ii. Of these cases, approximately what percent were:

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

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

Sullivan v. Borough of Atlantic City Highlands, et al., No. 19-19510 (MAS)(ZNQ), Dkt. No. 56 (D.N.J. Mar. 10, 2021).

Wang v. New Jersey State Police, et al., No. 18-11933 (BRM)(ZNQ), Dkt. No. 47 (D.N.J. Mar. 1, 2021).

Dealer Computer Services, Inc., et al. v. Muller Automotive Group, Inc., d/b/a Muller Toyota, No. 19-20768 (FLW)(ZNQ), Dkt. No. 41 (D.N.J. Feb. 26, 2021).

Freeman v. McDonnell, M.D., et al., No. 18-7802 (BRM)(ZNQ), 2021 WL 395875 (D.N.J. Feb. 4, 2021).

Doe v. Middlesex Cnty., New Jersey, et al., No. 20-8626 (MAS)(ZNQ), 2021 WL 130480 (D.N.J. Jan. 14, 2021).

Meehan v. Bath Auth. LLC, et al., No. 18-17444 (FLW)(ZNQ), 2021 WL 130483 (D.N.J. Jan. 14, 2021).

Uber Driver Partner Emery v. Uber Tech. Inc., et al., No. 20-05156 (FLW)(ZNQ), 2020 WL 7770248 (D.N.J. Dec. 30, 2020).

Takata v. Riot Blockchain, Inc. et al., No. 18-2293 (FLW)(ZNQ), 2020 WL 7640924 (D.N.J. Dec. 23, 2020).

Nicholson v. Brennan, No. 17-07144 (PGS)(ZNQ), 2020 WL 7398663 (D.N.J. Dec. 17, 2020).

Sullivan v. Borough of Atlantic City Highlands, et al., No. 19-19510 (MAS)(ZNQ), 2020 WL 6525465 (D.N.J. Nov. 11, 2020).

Liberty Stone & Aggregates-Clinton Quarry, LLC v. Penn Jersey Machinery, LLC, et al., No. 19-9911 (FLW)(ZNQ), 2020 WL 6523451 (D.N.J. Nov. 5, 2020).

Shah v. Caesars Ent. Corp., et al., No. 18-14108 (FLW)(ZNQ), 2020 WL 5912349 (D.N.J. Oct. 6, 2020).

M.A. v. Wall Twp. Bd. of Educ., No. 20-5218 (FLW)(ZNQ), 2020 WL 5760427 (D.N.J. Sept. 28, 2020).

Cunningham v. Heraeus Inc., No. 19-13014 (MAS)(ZNQ), 2020 WL 5253565 (D.N.J. Sept. 3, 2020).

Goldfinch Design Studio LLC, et al. v. Collector's Universe, Inc., et al., No. 20-2542 (MAS)(ZNQ), 2020 WL 5017351 (D.N.J. Aug. 25, 2020).

Magnani v. Maddaluna, et al., No. 18-12930 (ZNQ), 2020 WL 4756571 (D.N.J. Aug. 17, 2020).

Davis v. DeJoy, No. 16-4473 (ZNQ), 2020 WL 4756273 (D.N.J. Aug. 17, 2020).

United States v. Steven Weiner, et al., No. 18-16034 (MAS)(ZNQ), 2020 WL 4596926 (D.N.J. Aug. 11, 2020).

Testa v. Doe Potato, et al., No. 20-5511 (FLW)(ZNQ), 2020 WL 4449003 (D.N.J. Aug. 3, 2020).

Hatikvah Int'l Acad. Charter Sch. v. East Brunswick Twp. Bd. of Educ., et al., No. 20-2382 (AET)(ZNQ), 2020 WL 4448988 (D.N.J. Aug. 3, 2020).

Academy Hill, Inc., et al., v. City of Lambertville, et al., No. 19-426 (BRM)(ZNQ), 2020 WL 3642694 (D.N.J. July 6, 2020).

Williams v. Miles, et al., No. 18-12973 (BRM)(ZNQ), 2020 WL 3546808 (D.N.J. June 30, 2020).

La Stella v. Aquion, Inc., et al., No. 19-10082 (FLW)(ZNQ), 2020 WL 3489528 (D.N.J. June 26, 2020).

Albino, et al. v. Home Depot, No. 20-2626 (FLW)(ZNQ), 2020 WL 2932946 (D.N.J. June 6, 2020).

Kazmi Trading Corp. v. Lukoil N.A. LLC, No. 19-15634 (FLW)(ZNQ), 2020 WL 2319315 (D.N.J. May 11, 2020).

Murguly v. United States of America, et al., No. 19-14471 (MAS)(ZNQ), 2020 WL 2401354 (D.N.J. May 11, 2020).

Symetra Life Ins. Co. v. JJK 2016 Ins. Trust, No. 18-12350 (MAS)(ZNQ), 2020 WL 833062 (D.N.J. Feb. 18, 2020).

Doe v. College of New Jersey, No. 19-20674 (FLW)(ZNQ), 2020 WL 360719 (D.N.J. Jan. 22, 2020).

Metropolitan Life Ins. Co. v. Lawless, et al., No. 19-13688 (MAS)(ZNQ), 2019 WL 6050755 (D.N.J. Nov. 15, 2019).

Mason, et al. v. Roman Catholic Archdiocese of Trenton, et al., No. 18-10733 (MAS)(ZNQ), 2019 WL 5906837 (D.N.J. Nov. 8, 2019).

Regan v. Ace Accounting Services, LLC, et al., No. 18-17290 (FLW)(ZNQ), 2019 WL 5569081 (D.N.J. Oct. 29, 2019).

Shah v. Caesars Ent. Corp., et al., No. 18-14108 (FLW)(ZNQ), 2019 WL 5558356 (D.N.J. Oct. 28, 2019).

Fragoso v. Piao, et al., 433 F. Supp. 3d 623 (D.N.J. 2019).

Symetra Life Ins. Co. v. JJK 2016 Ins. Trust, No. 18-12350 (MAS)(ZNQ), 2019 WL 4931231 (D.N.J. Oct. 7, 2019).

Doe v. Trishul Consultancy, LLC, et al., No. 18-16468 (FLW)(ZNQ), 2019 WL 4750078 (D.N.J. Sept. 30, 2019).

Plastic Surgery Ctr., LLC v. Oxford Health Ins., Inc., No. 18-2608 (MAS)(ZNQ), 2019 WL 4750010 (D.N.J. Sept. 30, 2019).

Barbot v. Clowney, No. 18-11947 (FLW)(ZNQ), 2019 WL 4259700 (D.N.J. Sept. 9, 2019).

Anyclo Int'l Inc. v. Cha, et al., No. 18-5759 (PGS)(ZNQ), 2019 WL 4169002 (D.N.J. Sept. 3, 2019).

Barbot v. Clowney, No. 18-11947 (FLW)(ZNQ), 2019 WL 3754443 (D.N.J. Aug. 8, 2019).

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of 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 (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Doe v. Middlesex Cnty., New Jersey, et al.*, No. 20-8626 (MAS)(ZNQ), 2021 WL 130480 (D.N.J. Jan. 14, 2021)

Plaintiff, a pregnant inmate, filed this lawsuit against Defendants alleging that they handcuffed her while transporting her to and from prenatal visits, en route to the hospital while she was in labor, during labor, and during post-natal recovery. Plaintiff filed a motion to proceed with a pseudonym. I granted Plaintiff's request, finding that the *Megless* factors, on balance, weighed in favor of proceeding with a pseudonym. Specifically, I found that Plaintiff would be forced to relive her alleged trauma and that proceeding pseudonymously would allow Plaintiff to control the time and manner in which her son would learn of the circumstances of his birth. As a result, I found that protecting Plaintiff's identity outweighed the public's interest in knowing it based upon the specific circumstances of the case. The case is currently pending.

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2. *Takata v. Riot Blockchain, Inc., et al.*, No. 18-2293 (FLW)(ZNQ), 2020 WL 7640924 (D.N.J. Dec. 23, 2020)

Plaintiff, on behalf of himself and others similarly situated, filed a complaint against Defendants alleging violations of Section 10(b) of the Securities and Exchange Act of 1934, Rule 10b-5, 15 U.S.C. § 78j(b), 17 C.F.R. § 240.10b-5, and various counts of vicarious liability for certain defendants. Plaintiff's complaint was dismissed without prejudice, and I allowed Plaintiff to seek leave to file an amended complaint, which cured the deficiencies in his first complaint. Plaintiff filed a motion for leave to file his consolidated second amended complaint, which I granted. The case is currently pending.

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3. *Nicholson v. Brennan*, No. 17-07144 (PGS)(ZNQ), 2020 WL 7398663 (D.N.J. Dec. 17, 2020)

Defendant Louis DeJoy, Postmaster General of the United States Postal Service, moved for summary judgment against Plaintiff's claims alleging violations of Title VII of the Civil Rights Act of 1964, and the Rehabilitation Act of 1974. The parties consented to Magistrate Judge jurisdiction over the dispositive motion. Plaintiff alleged disability discrimination and that he suffered retaliation for his engagement in protected activity during his employment with the United States Postal Service. Plaintiff did not present any dispute of material fact to withstand Defendant's summary judgment motion. Plaintiff failed to establish a claim for retaliation under Title VII, and also failed to establish a prima facie case of disability discrimination under the Rehabilitation act. Accordingly, I granted summary judgment in favor of Defendant.

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Counsel for Defendant:

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4. *Shah v. Caesars Ent. Corp., et al.*, No. 18-14108 (FLW)(ZNQ), 2020 WL 5912349 (D.N.J. Oct. 6, 2020)

Plaintiff brought this action against Defendants Caesars Interactive Entertainment, Caesars Entertainment Corporation, and 888 Holdings PLC. Defendants moved for summary judgment as to all of Plaintiff's claims. Plaintiff alleged that Defendants engaged in fraud and manipulations in making their online poker game, and alleged violations of the New Jersey Consumer Fraud Act, common law fraud, 18 U.S.C. § 1962(c) (the federal RICO statute), civil conspiracy, and the Unlawful Internet Gaming Act. I found that Plaintiff failed to establish a showing of unlawful conduct by Defendants. Plaintiff also failed to show that Defendants made misrepresentations regarding the online game. Moreover, Plaintiff could not bring forth a private cause of action under the federal RICO statute and the Unlawful Internet Gaming Act, and Plaintiff failed to establish that

Defendants violated either of those statutes. Accordingly, I granted summary judgment in favor of Defendants as to all claims.

Plaintiff:

Pro Se

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5. *Donald J. Trump for President, Inc., et al. v. Murphy, et al.*, No. 20-10753 (MAS)(ZNQ), 2020 WL 6573382 (D.N.J. Sept. 23, 2020)

Plaintiffs filed this action challenging the validity of NJ A4475, which provided for universal mail-in voting, claiming it violated 3 U.S.C. § 1, 2 U.S.C. §§ 1, 7, the right to vote, and the Equal Protection Clause. Specifically, Plaintiffs

challenged NJ A4475 because it permitted election officials to begin canvassing mail-in ballots, but not in-person ballots, ten days before the election, allowed ballots that were not postmarked to be counted if received two days after election day, and required automatic mailing of ballots to all registered persons. The League of Women Voters of New Jersey and the NAACP of New Jersey both sought to intervene, either by right or permissively. I granted the intervenors' motion to permissively intervene. The District Judge ultimately resolved the matter by granting Defendants' motion to dismiss the complaint on an expedited basis.

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6. *Cunningham v. Heraeus Inc.*, No. 19-13014 (MAS)(ZNQ), 2020 WL 5253565 (D.N.J. Sept. 3, 2020)

Defendant was a wholly-owned subsidiary of a German company. Defendant operated a North American Shared Service Center, which performed financial-related services and functions for its various subsidiary companies and business units throughout North America. Plaintiff, an employee of Defendant, alleged that Defendant violated the Fair Labor Standards Act ("FLSA"), engaged in discriminatory compensation practices, and committed acts of racial and gender discrimination against him. Defendant sought partial judgment on the pleadings and summary judgment dismissing the Complaint, alleging that Plaintiff failed to state an FLSA or whistleblower claim and failed to provide evidence sufficient to support his retaliation claim. I granted summary judgment and judgment on the pleadings in favor of Defendant as to all claims except Plaintiff's claim for unpaid overtime for which Plaintiff had not been compensated. Although Plaintiff's complaint lacked critical allegations necessary to state a plausible FLSA overtime claim, I permitted Plaintiff the opportunity to file an amended complaint with respect to Plaintiff's uncompensated overtime. Defendant's motion to strike was granted in part and denied in part. The entire case ultimately settled before Plaintiff was required to file an amended complaint.

Plaintiff:

Pro Se

Counsel for Defendant:

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7. *Brady v. Berman*, No. 20-05797(MAS)(ZNQ), Dkt. No. 15, (D.N.J. Aug. 18, 2020). Copy supplied.

Plaintiff brought a thirty-count complaint against Defendant alleging, among other things, that Defendant, while he served as a United States Attorney, engaged in a conspiracy with former partners at his law firm, various New York State Judges, and others. Plaintiff alleged this conspiracy was designed to ruin his and his wife's lives, careers, reputations, and abilities to make a living. Plaintiff filed for default because Defendant did not answer or otherwise file a responsive pleading to Plaintiff's complaint. Defendant then sought to vacate the clerk's entry of default claiming that Plaintiff had not properly served Defendant in his official capacity. Plaintiff argued that default should not be vacated because he was not suing Defendant in his official capacity. I granted Defendant's motion and found that at least some of Plaintiff's claims as alleged were against Defendant in his official capacity as a United States Attorney, and therefore, Plaintiff was required to properly serve the complaint pursuant to the Federal Rules of Civil Procedure in order for the action to commence. Plaintiff subsequently withdrew his case without prejudice.

Counsel for Plaintiff:

Pro Se

Counsel for Defendant:

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8. *Magnani v. Maddaluna, et al.*, No. 18-12930 (ZNQ), 2020 WL 4756571 (D.N.J. Aug. 17, 2020)

Plaintiff was a teacher at a school district who was initially offered a ten-month employment contract by Defendants, the school district's board and its members. Defendants then renewed Plaintiff's contract for the upcoming school year and granted her a full-time teaching position. Following that year, Plaintiff received notice that her teaching contract would not be renewed. The district's Superintendent concluded that Plaintiff was not a good fit and recommended against renewing her contract. Plaintiff, who is approximately forty-five years old, was ultimately replaced by a teacher younger than her. Plaintiff filed this action against Defendants seeking damages for unlawful termination. Defendants moved for summary judgment. I granted summary judgment in favor of Defendants as to all claims.

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9. *Davis v. DeJoy*, No. 16-4473 (ZNQ), 2020 WL 4756273 (D.N.J. Aug. 17, 2020)

Plaintiff, a United States Postal Service employee, brought this action against the Postmaster General of the United States Postal Service, Louis DeJoy, alleging that she was retaliated against for engaging in protected activity when she filed five different complaints with the Equal Employment Opportunity Commission over a nine-year period. In addition, Plaintiff alleged that her supervisors, among other things, verbally harassed her, dismantled her workstation, and did not change her work schedule when requested. Plaintiff was never demoted, her pay was not decreased, nor was she disciplined by her supervisors. She was also never denied sick or annual leave. Defendant moved for summary judgment. I granted summary judgment in favor of Defendant on all claims.

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10. *Mason, et al. v. Roman Catholic Archdiocese of Trenton, et al.*, No. 18-10733 (MAS)(ZNQ), 2019 WL 5906837 (D.N.J. Nov. 8, 2019)

Plaintiffs brought this action on behalf of their minor son, who was a student at St. Joseph Grade School. Plaintiffs alleged that while attending school, as the only African American student in the class, their son was continuously bullied by his classmates, and the school acted with deliberate indifference in response. Plaintiffs sought damages for several claims, and requested certain school records

regarding prior allegations, complaints, or incidents of harassment and bullying directed toward any student and based on, among other things, race. Plaintiffs also requested information and documents relating to the school's applications for admission, admission rates, graduation rates, un-enrollment rates, and related non-Caucasian student statistics. I granted Plaintiffs' request for school records but required that they be redacted to protect the identities of students. I further sustained Defendants' objection to Plaintiffs' request for information regarding admission, graduation, un-enrollment, and other statistics because Defendants claimed that they were not in possession of such information, and I found no reason to think otherwise. The case ultimately settled.

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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.

1. *Doe v. Middlesex Cnty., New Jersey, et al.*, No. 20-8626 (MAS)(ZNQ), 2021 WL 130480 (D.N.J. Jan. 14, 2021)

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2. *Takata v. Riot Blockchain, Inc., et al.*, No. 18-2293 (FLW)(ZNQ), 2020 WL 7640924 (D.N.J. Dec. 23, 2020)

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Lowenstein Sandler, PC
65 Livingston Avenue
Roseland, New Jersey 07068
973-597-6172

Kate Elizabeth Janukowicz
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One Gateway Center
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973-596-4913

Kevin Gerard Walsh
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One Gateway Center
Newark, New Jersey 07102
973-596-4500

Laura Mary Lestrade
Dorsey & Whitney
250 Park Avenue
New York, New York 10177
212-415-9227

3. *Nicholson v. Brennan*, No. 17-07144 (PGS)(ZNQ), 2020 WL 7398663 (D.N.J. Dec. 17, 2020)

Counsel for Plaintiff:

John Robert Tatulli
Law Offices of John R. Tatulli
621 Shrewsbury Avenue
Suite 219
Shrewsbury, New Jersey 07702
732-842-4646

Counsel for Defendant:

Allan B.K. Urgent
United States Attorney's Office
District of New Jersey
970 Broad Street
Suite 700
Newark, New Jersey 07102
973-645-2700

4. *Shah v. Caesars Ent. Corp., et al.*, No. 18-14108 (FLW)(ZNQ), 2020 WL 5912349 (D.N.J. Oct. 6, 2020)

Plaintiff:

Pro Se

Counsel for Defendant:

Dexter Ryan Hamilton
Cozen O'Connor
Libertyview Building
457 Haddonfield Road
P.O. Box 5459
Suite 300
Cherry Hill, New Jersey 08002
856-910-5000

Leigh Ann Benson
Cozen O'Connor
One Liberty Place
1650 Market Street
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215-665-4708

Mark Soifer
Cooper Levenson, P.A.
1125 Atlantic Avenue
Third Floor
Atlantic City, New Jersey 08401
609-344-3161

Russell L. Lichtenstein
Cooper Levenson, P.A.
1125 Atlantic Avenue
Third Floor
Atlantic City, New Jersey 08401
609-344-3161

5. *Donald J. Trump for President, Inc., et al. v. Murphy, et al.*, No. 20-10753 (MAS)(ZNQ), 2020 WL 6573382 (D.N.J. Sept. 23, 2020)

Counsel for Plaintiffs:

Michael L. Testa, Jr.

Testa Heck Testa & White, P.A.
424 West Landis Avenue
Vineland, New Jersey 08360
856-691-2300

Counsel for Defendants:

Matthew Jon Lynch
State of New Jersey
Office of the Attorney General
Division of Law
25 Market Street
P.O. Box 112
Trenton, New Jersey 08625
609-376-2964

Counsel for Intervenor Democratic Congressional Campaign Committee:

Angelo Joseph Genova
Genova Burns LLC
494 Broad Street
Newark, New Jersey 07102
973-533-0777

Rajiv D. Parikh
Genova Burns LLC
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Newark, New Jersey 07102
973-533-0777

Counsel for Intervenors LWVNJ and NAACPNJ:

B. John Pendleton, Jr.
DLA Piper LLP (US)
51 John F. Kennedy Parkway
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Short Hills, New Jersey 07078
973-520-2561

Henal Patel
New Jersey Institute for Social Justice
60 Park Place
Suite 511
Newark, New Jersey 07102
973-755-9897

Ryan Paul Haygood
New Jersey Institute for Social Justice
60 Park Place
Suite 511
Newark, New Jersey 07102
917-400-4027

6. *Cunningham v. Heraeus Inc.*, No. 19-13014 (MAS)(ZNQ), 2020 WL 5253565 (D.N.J. Sept. 3, 2020)

Plaintiff:

Pro Se

Counsel for Defendant:

Michael W. O'Hara
Bisgaier Hoff, LLC
25 Chestnut Street
Suite 3
Haddonfield, New Jersey 08033
856-795-0150

7. *Brady v. Berman*, No. 20-05797(MAS)(ZNQ), Dkt. No. 15, (D.N.J. Aug. 18, 2020). Copy supplied in response to Q13c.

Counsel for Plaintiff:

Pro Se

Counsel for Defendant:

Allan B.K. Urgent
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970 Broad Street
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973-645-2700

Kristin Lynn Vassallo
United States Attorney's Office
District of New Jersey
970 Broad Street
Suite 700
Newark, New Jersey 07102

973-645-2835

8. *Magnani v. Maddaluna, et al.*, No. 18-12930 (ZNQ), 2020 WL 4756571 (D.N.J. Aug. 17, 2020)

Counsel for Plaintiff:

Marco Mario Benucci
Marco Benucci, LLC
1130 Route 202
Raritan, New Jersey 08869
908-393-6445

Counsel for Defendants:

Eric L. Harrison
Methfessel & Werbel, Esqs.
2025 Lincoln Highway
Suite 200
PO Box 3012
Edison, New Jersey 08818
732-248-4200

Leslie Anne Koch
Methfessel & Werbel, Esqs.
2025 Lincoln Highway
Suite 200
PO Box 3012
Edison, New Jersey 08818
732-248-4200

9. *Davis v. DeJoy*, No. 16-4473 (ZNQ), 2020 WL 4756273 (D.N.J. Aug. 17, 2020)

Counsel for Plaintiff:

Jose Luis Ongay
600 West Germantown Pike
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Plymouth Meeting, Pennsylvania 19462
484-681-1117

Counsel for Defendant:

Kruti D. Dharia
United States Attorney's Office

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970 Broad Street
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Newark, New Jersey 07102
973-645-2891

Susan John Pappy
United States Attorney's Office
District of New Jersey
970 Broad Street
Suite 700
Newark, New Jersey 07102
973-645-2700

10. *Mason, et al. v. Roman Catholic Archdiocese of Trenton, et al.*, No. 18-10733 (MAS)(ZNQ), 2019 WL 5906837 (D.N.J. Nov. 8, 2019)

Counsel for Plaintiffs:

Peter Ginsberg
Ginsberg & Burgos
12 East 49th Street
30th Floor
New York, New York 10017
646-374-0029

Warren Anthony Paul Koshofer
Michelman & Robinson, LLP
800 Third Avenue
24th Floor
New York, New York 10022
212-659-6007

Counsel for Defendants:

Scott L. Puro
Backes & Hill, LLP
3131 Princeton Pike
Building 5, Suite 114
Lawrenceville, New Jersey 08648
609-396-8257

Christine Marie Pickel
Backes & Hill, LLP
3131 Princeton Pike
Building 5, Suite 114

Lawrenceville, New Jersey 08648
609-396-8257

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

I have searched electronic databases to determine whether certiorari was requested or granted in any of my cases. I did not find any 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.

I have searched my files and electronic databases regarding the decisions I have written in the cases assigned to me. I did not find any in which I was reversed or affirmed with significant criticism.

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.

As a magistrate judge, the majority of my decisions are unpublished opinions although some may be reported by Westlaw/Lexis. All my opinions and orders are filed with our court's electronic case filing system.

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 have not written any significant opinions on federal or state constitutional issues.

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.

I have not sat by designation on a federal court of appeals.

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:

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.

No litigant or party has ever requested that I recuse myself due to an asserted conflict of interest. As a magistrate judge, I made the decision to recuse myself from all cases involving my former law firm for a period of twelve months. My determination was based upon the time period with which my former law firm may return a portion of my capital contribution. Any such funds have since been returned so there is no current financial tie to my former law firm.

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.

I have not held public office other than judicial 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.

I have not held any offices in or rendered services to any political party or election committee. I have not held a position or played a role in a political campaign.

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;

From August 2000 to August 2001 I served as a law clerk for the Honorable Edwin H, Stern of the New Jersey Superior Court, Appellate Division.

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

I have not 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;

2000 – 2001
New Jersey Superior Court, Appellate Division
Honorable Edwin. H. Stern P.J.A.D., Retired
158 Headquarters Plaza
Morristown, New Jersey 07960
Judicial Law Clerk

2001 – 2003
LeBoeuf, Lamb, Greene, & MacRae LLP
One Riverfront Plaza
Newark, New Jersey 07102
Associate

2003 – 2007
United States Army
Schweinfurt, Germany
Tikrit, Iraq
Ramadi, Iraq
Judge Advocate, Captain

2007
Update Legal
400 Connell Drive
Berkeley Heights, New Jersey 07922
Contract Attorney

2007 – 2008
United States Department of Homeland Security
26 Federal Plaza
New York, New York 10278
Assistant Chief Counsel

2008 – 2013

United States Attorney's Office
District of New Jersey
970 Broad Street
Newark, New Jersey 07102
Assistant United States Attorney

2013 – 2019
Riker Danzig Scherer Hyland & Perretti LLP
One Speedwell Avenue
Morristown, New Jersey 07962
Partner and Chief Diversity Officer

2019 – present
United States District Court
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608
United States Magistrate Judge

2020 – present
Rutgers Law School (Newark)
123 Washington Street
Newark, New Jersey 07102
Adjunct Professor

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 not 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.

My prior practice focused on criminal defense, complex civil litigation, and internal investigations.

After graduating from law school in 2000, I clerked for the Honorable Edwin H. Stern, Presiding Judge, Superior Court of New Jersey, Appellate Division (retired). Thereafter, I served as a litigation associate at LeBoeuf, Lamb, Greene & MacRae LLP until I joined the United States Army in 2003.

In the Army, I served as a judge advocate with the First Infantry Division stationed in Germany. I deployed to Iraq in support of Operation Iraqi Freedom in 2004 and 2006 before being honorably discharged in 2007.

Upon returning home from the military to New Jersey in 2007, I served as an Assistant Chief Counsel with the Department of Homeland Security, Immigration and Customs Enforcement, where I represented the United States in political asylum matters.

In 2008, I joined the United States Attorney's Office in the District of New Jersey and served as an Assistant U.S. Attorney until 2013. In that role, I tried numerous federal criminal cases involving public corruption, financial fraud, perjury, firearms and narcotics offenses within the Special Prosecutions Division, as well as the Organized Crime Drug Enforcement Task Force and Government Fraud Units of the Criminal Division.

I returned to private practice in 2013 as Counsel at Riker Danzig Scherer Hyland & Perretti LLP. There, I gained extensive experience representing clients with government enforcement and compliance issues involving potential criminal charges. I regularly managed complex federal and state court litigation on behalf of corporations, and their officers, directors, and employees. I represented both companies and individuals in connection with criminal investigations involving violations of securities law, healthcare fraud, money laundering, computer crimes, environmental statutes, public corruption, and tax laws among other white collar areas of law. My practice also extended to representing both corporations and individuals in complex federal and state civil litigation. In 2016, I was promoted to Partner and in 2019, I served as Chairperson of the firm's White Collar Criminal Defense and Investigations practice group and the firm's first Chief Diversity Officer. As Chief Diversity Officer, I provided leadership in advancing the firm's diversity and inclusion values, and assumed overall responsibility for overseeing its diversity and inclusion goals.

On June 3, 2019, I was appointed as a United States Magistrate Judge for the District of New Jersey in the Trenton Vicinage. This past year, I also joined the faculty at Rutgers Law School (Newark) as an adjunct professor, teaching Trial Presentation to second- and third-year law students.

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

In private practice, my typical clients included individuals and corporations in connection with criminal litigation, civil litigation, government investigations, or internal investigations. As an Assistant

Chief Counsel and Assistant U.S. Attorney, I represented the United States in immigration proceedings and federal criminal cases respectively.

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.

Prior to my appointment to the federal bench, I regularly appeared in federal and state court between 2008 and 2019. As a practitioner, I typically appeared in court at least once per month, with the majority of my appearances in federal court.

i. Indicate the percentage of your practice in:
   1. federal courts: 65%
   2. state courts of record: 25%
   3. other courts: 5%
   4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 35%
   2. criminal proceedings: 65%

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.

I have tried eight cases to verdict in which I served as lead counsel or co-lead counsel.

i. What percentage of these trials were:
   1. jury: 75%
   2. non-jury: 25%

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 not practiced before the United States Supreme Court.

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. *People v. Hammonds*, Indictment No. 5635/20176 (N.Y. Sup. Ct. Kings Cnty. 2017) (Chun, J.)

Along with co-counsel, I was responsible for the defense of my client, a former Special Forces medic and physician assistant, who was charged with a scheme to defraud his employer by falsifying timesheets, thereby misrepresenting the amount of hours he worked for his employer. The case was prosecuted by the New York Attorney General's Office and led to a bench trial. I served as lead counsel during the investigation and during the trial communicating with the prosecutor's office, managing all aspects of pre-trial discovery, providing the opening statement, conducting certain direct and cross examinations, and handling the sentencing hearing. The judge acquitted my client of the felony charge but found him guilty of a misdemeanor offense. At sentencing, the Court issued a non-custodial sentence of probation.

Judge:
Honorable Danny K. Chun
Kings County Supreme Court (New York)

Co-counsel for Client:
Ryan M. Magee
Riker Danzig Scherer Hyland & Perretti LLP
One Speedwell Avenue
Morristown, New Jersey 07962
973-451-8613

Counsel for New York State:
Gerard Murphy
New York State Attorney General's Office
28 Liberty Street
New York, New York 10005
800-771-7755

Sean Courtney
New York State Attorney General's Office
28 Liberty Street
New York, New York 10005

800-771-7755

Dates of representation: August 2, 2017 through March 13, 2019

2. *United States v. A Total of $3,397,230.97 in United States Currency, et al.*, No. 2:15-cv-03952-MCA (D.N.J. 2015) (Arleo, J.)

Along with co-counsel, I represented a company in a civil forfeiture proceeding based on allegations of money laundering. The representation presented numerous challenges, especially with internal issues concerning the future operations of the company. I served as lead counsel handling all negotiations with the U.S. Attorney's Office and advice to the client. We successfully represented the company's interests by avoiding any criminal charges and the company was permitted to continue operations despite individual officers and board members facing pending criminal cases.

Co-counsel for Client:
Samuel P. Moulthrop
Riker Danzig Scherer Hyland & Perretti LLP
One Speedwell Avenue
Morristown, New Jersey 07962
973-451-8471

Counsel for the United States:
Marion Percell
United States Attorney's Office
District of Hawaii
300 Ala Moana Boulevard, #6-100
Honolulu, HI 96850
808-541-2850

Dates of representation: June 11, 2015 through March 22, 2016

3. *Ruiz, et al. v. Stack, et al.*, Nos. HUD- L-971-14, HUD-L-937-14, HUD-L-3119-16, (N.J. Super. L. 2014) (Isabella, J.)

Along with co-counsel, I defended a not-for-profit organization against allegations of public corruption. Several police officers, through consolidated cases, alleged that they were passed over for promotion for failing to support the organization, which had been founded by a public official. I served as lead counsel managing all pre-trial discovery, appearing in court on behalf of the client, and managing all written work product submitted to the court. The judge ultimately granted summary judgment in favor of the defendants.

Judge:
Honorable Joseph V. Isabella
New Jersey Superior Court, Hudson Vicinage

Co-counsel for Client:
Samuel P. Moulthrop
Riker Danzig Scherer Hyland & Perretti LLP
One Speedwell Avenue
Morristown, New Jersey 07962
973-451-8471

Counsel for Plaintiffs:
Lou Zayas (Deceased)
8901 John F, Kennedy Boulevard
North Bergen, New Jersey 07047
201-977-2900

Dates of representation: March 4, 2014 through April 26, 2017

4. *United States v. Patela, et al.*, No. 11-cr-00491-NLH-1 (D.N.J. 2011) (Hillman, J.)

Along with co-counsel, I prosecuted a Newark Police Officer for bank fraud and bank bribery. I served as lead counsel managing pre-trial discovery, providing the opening statement, conducting certain direct and cross examinations, and handling the sentencing hearing. The case went to trial and the defendant was convicted on all counts by a jury. The defendant was sentenced to 48 months in prison.

Judge:
Honorable Noel L. Hillman, U.S.D.J.
United States District Court for the District of New Jersey

Co-counsel for the United States:
Vikas Khanna
Katten Muchin Rosenman LLP
575 Madison Avenue
New York, New York 10022
212-940-8808

Counsel for Defendant:
Anna G. Cominsky
New York Law School
185 West Broadway
New York, New York 10013
212-431-2100

Dates of representation: February 23, 2011 through April 10, 2013

5. *United States v. Bryant, et al.*, No. 10-cr-646-FLW (D.N.J. 2010) (Wolfson, J.)

Along with co-counsel, I prosecuted a former state senator for bribery. I served as lead

counsel handling certain direct and cross examinations and providing the closing argument. The case went to a bench trial and the judge acquitted the defendant of the charged offenses.

Judge:
Honorable Freda L. Wolfson, Chief Judge
United States District Court for the District of New Jersey

Co-counsel for the United States:
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Krieger Kim & Lewin
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New York, New York 10110
212-390-9552

Counsel for Defendant:
Henry Klingeman
Klingeman Cerimele
60 Park Place
Newark, New Jersey 07102
973-714-3474

Dates of representation: October 24, 2011 through May 8, 2012

6. *United States v. Salahuddin, et al.*, No. 10-cr-104-FLW (D.N.J. 2010) (Wolfson, J.)

Along with co-counsel, I prosecuted a public official and a business owner on public corruption charges, including conspiracy to commit extortion. I served as co-counsel providing the opening statement and handling certain direct and cross examinations. The case went to jury trial and resulted in a conviction. The public official was sentenced to one year and a day in prison. The business owner was sentenced to probation.

Judge:
Honorable Freda L. Wolfson, Chief Judge
United States District Court for the District of New Jersey

Co-counsel for the United States:
James Nobile
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District of New Jersey
970 Broad Street
Newark, New Jersey 07102
973-645-2700

Harvey Bartle IV
Morgan Lewis

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Philadelphia, Pennsylvania 19103
215-963-5521

Counsel for Defendants:
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The Law Offices of Thomas R. Ashley
50 Park Place
Newark, New Jersey 07102
973-623-0501

Alan Zegas
Zegas Law
60 Morris Turnpike
Summit, New Jersey 07901
973-524-7645

Dates of representation: August 23, 2010 through March 4, 2013

7. *United States v. Angulo, et al.*, No. 09-cr-703-RMB (D.N.J. 2009) (Bumb, J.)

Along with co-counsel, I prosecuted an individual drug courier for smuggling cocaine from Costa Rica in shampoo bottles. I served as co-counsel handling certain direct and cross examination and providing the closing argument. The case went to jury trial and the jury found the defendant guilty. The defendant was sentenced to 60 months in prison.

Judge:
Honorable Renee Marie Bumb, U.S.D.J.
United States District Court for the District of New Jersey

Co-counsel for the United States:
Eric W. Moran
Epstein Becker Green
875 Third Avenue
New York, New York 10022
212-351-4510

Counsel for Defendant:
Anna G. Cominsky
New York Law School
185 West Broadway
New York, New York 10013
212-431-2100

Dates of representation: August 25, 2009 through December 9, 2010

8. *United States v. Brown*, No. 2:09-cr-00677-FSH-1 (D.N.J. 2009) (Hochberg, J.)

Along with co-counsel, I prosecuted an individual drug courier for smuggling cocaine in suitcases from Jamaica. I served as co-counsel managing pre-trial discovery, providing the opening statement, and handling certain direct and cross examinations. The case went to jury trial, but prior to jury deliberations, and despite the co-defendant pleading guilty and testifying at trial, the judge acquitted the defendant, determining there was insufficient evidence to find that the defendant knew that the contraband she was smuggling was a controlled substance.

Judge:
Honorable Faith S. Hochberg, U.S.D.J. (Retired)
United States District Court for the District of New Jersey

Co-counsel for the United States:
Charlton A. Rugg
Obermeyer Wood Investment Counsel LLP
200 Columbine Street
Denver, Colorado 80206
303-321-8188

Counsel for Defendant:
Paulette Pitt
97 Main Street
Woodbridge, New Jersey 07095
908-421-0276

Dates of representation: December 12, 2008 through January 13, 2010

9. *United States v. Langforddavis, et al.*, No. 2:08-cr-00779-PGS-2 (D.N.J. 2009) (Sheridan, J.)

I prosecuted a convicted felon for possession of a firearm. The firearm was the off-duty firearm of a United States Deputy Marshal who was tried separately. I served as co-counsel conducting certain direct and cross examinations, providing the closing argument, and handling the sentencing hearing. The case went to jury trial and the defendant was convicted by the jury. The defendant was sentenced to 115 months in prison.

Judge:
Honorable Peter. G. Sheridan, U.S.D.J.
United States District Court for the District of New Jersey

Co-counsel for the United States:
Thomas R. Calcagni
Calcagni Kanefsky LLP

One Newark Center
1085 Raymond Boulevard
Newark, New Jersey 07102
862-397-1796

Counsel for Defendant:
Marc E. Leibman
Kaufman Semeraro & Leibman
Fort Lee Executive Park
2 Executive Drive
Fort Lee, New Jersey 07024
201-947-8855

Dates of representation: November 24, 2008 through July 21, 2010

10. *United States v. Dobson, et al.*, No. 2:08-cr-00779-PGS-2 (D.N.J. 2009) (Sheridan, J.)

Along with co-counsel, I prosecuted a Deputy United States Marshal for providing a firearm to a convicted felon. The defendant also was charged with perjury based on false testimony he provided to a grand jury. This was the companion case to *United States v. Langforddavis*. I served as co-counsel providing the opening statement and closing argument, conducting certain direct and cross examinations, and handling the sentencing hearing. The case went to jury trial and the jury convicted the defendant on both charges. Subsequent to the jury verdict, the district judge vacated the conviction on the perjury charge, finding that no reasonable jury could have found the defendant guilty on that charge. We appealed the district court's ruling and the Court of Appeals for the Third Circuit reinstated the perjury conviction. The defendant was sentenced to 45 months in prison.

Judge:
Honorable Peter G. Sheridan, U.S.D.J.
United States District Court for the District of New Jersey

Co-counsel for the United States:
Thomas R. Calcagni
Calcagni Kanefsky LLP
One Newark Center
1085 Raymond Boulevard
Newark, New Jersey 07102
862-397-1796

Counsel for Defendant:
Chester Keller
First Assistant Federal Public Defender
Federal Public Defender's Office
1002 Broad Street

Newark, New Jersey 07102
973-645-6347

Dates of representation: November 24, 2008 through October 14, 2010

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 a magistrate judge, I volunteered to assist a colleague in overseeing my courthouse's federal reentry program in Trenton, New Jersey. In this role, we work with a team consisting of members of the U.S. Probation Office, Federal Public Defender's Office, U.S. Attorney's Office, and community and business leaders. The goal of the program is to provide participants with needed services, support, and guidance along with heightened supervision in an effort to prevent recidivism.

As a practitioner, in addition to trials, I have been involved in substantial government investigations, which involved preparing clients for law enforcement interviews and trial testimony. I have also conducted numerous confidential internal investigations involving complex matters, including but not limited to, alleged financial fraud, public corruption, and environmental and other regulatory violations.

I have not performed any lobbying activities or registered as a lobbyist.

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 currently teach Trial Presentation at Rutgers Law School in Newark, New Jersey. I taught this course initially during the Fall 2020 semester and again in the Spring 2021 semester as well. This course was the first hybrid class offered by the law school during the Covid-19 pandemic. The students review the different aspects of trial presentation and perform exercises on opening statements, direct and cross examinations, and closing arguments. The course concludes with a mock trial. Syllabi supplied.

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 have no anticipated income or benefits from uncompleted contracts, prior professional services, clients, or business interests.

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.

    My only commitment is to complete teaching the Trial Presentation course this semester at Rutgers Law School (Newark), which concludes on April 21, 2021.

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).

    When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that 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.

       None.

    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 as a district court judge, I would continue to resolve any potential conflict of interest by adhering to the Code of Conduct for United States Judges, 28 U.S.C. § 455, and all applicable policies and procedures of the United States Courts.

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.

As a magistrate judge, although I am not permitted to represent clients in any capacity, I routinely contribute my time to continuing legal education organizations and participate in educational seminars sponsored by local bar associations and law schools.

Prior to my judicial appointment, I was heavily involved in the United States District Court for the District of New Jersey's Federal Reentry Court Program (ReNew Court) as a mentor and later as a volunteer attorney. In this capacity, I spent several hours per year supporting participants in the program who recently served their federal prison sentences and sought support as they reintegrated into society. I also previously supervised associates assigned pro bono work at my law firm.

I also spent several years representing indigent criminal defendants in federal court as a member of the Criminal Justice Act ("CJA") Panel. In doing so, I served as court-appointed counsel with the privilege of providing representation to those who could not afford my legal services.

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.

I first communicated with Senator Cory Booker's office regarding an opening on the United States District Court in my district in February 2020. I later interviewed with members of Senator Booker's Federal Selection Committee, his staff, and Senator Booker himself. I also interviewed with Senator Robert Menendez. I first received an email communication from attorneys from the White House Counsel's Office on January 27, 2021, to further discuss my potential candidacy with them. I spoke with attorneys from White House Counsel's Office that same day and was advised that I was being considered for one of the district judge vacancies in my district. Since January 27, 2021, I have been in contact with officials from White House Counsel's Office and the Office of Legal Policy at the Department of Justice. On March 30, 2021, the President announced his intent to nominate me.

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.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Regina Marie Rodriguez
   Regina Woods
   "Gina"

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

   United States District Judge for the District of Colorado

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.

   Wilmer, Cutler, Pickering, Hale & Dorr LLP
   1225 17th Street, Suite 2600
   Denver, Colorado 80202

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

   1963; Gunnison, Colorado

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.

   1985 – 1988, University of Colorado School of Law; J.D., 1988
   1981 – 1984, University of Iowa; B.S. (with honors), 1985

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.

   2019 – Present
   Wilmer, Cutler, Pickering, Hale & Dorr LLP
   1225 17th Street, Suite 2600
   Denver, Colorado 80202

Partner

2016 – 2019
Hogan Lovells US LLP
1601 Wewatta Street, Suite 900
Denver, Colorado 80202
Partner

2002 – 2016
Faegre Baker Daniels LLP
n/k/a Faegre Drinker Biddle & Reath LLP
1144 15th Street, Suite 3400
Denver, Colorado 80202
Partner (2005 – 2016)
Special Counsel (2002 – 2005)

1987 – 1988; 1995 – 2002
United States Attorney's Office for the District of Colorado
1801 California Street, Suite 1600
Denver, Colorado 80202
Chief, Civil Division (1999 – 2002)
Deputy Chief, Civil Division (1998 – 1999)
Deputy Senior Counsel to the Associate Attorney General, United States Department of Justice (four-month detail, 1997 – 1998)
Assistant United States Attorney (1995 – 2002)
Law Clerk (1987 – 1988)

1988 – 1994
Cooper & Kelly, P.C.
Now defunct
Denver, Colorado 80202
Associate Attorney

Summer 1988
Law Firm of Darrell S. Elliot, P.C.
1600 North Pennsylvania Street
Denver, Colorado 80203
Law Clerk

Fall 1986
Paul Harris Stores
Now defunct
Boulder, Colorado 80303
Sales Clerk

Summer 1986

Cajun's Wharf
Now defunct
Aurora, Colorado 80303
Server

Summer 1986
Broomfield Community Center
300 Community Park
Broomfield, Colorado 80020
Lifeguard

1985
Oppenheimer Asset Management Corporation
3410 South Galena
Denver, Colorado 80231
Legal Correspondent

1984 – 1985
Oakland University
2200 North Squirrel Road
Rochester, Michigan 48309
Assistant to Dean of Student Services

Approximately 1982 – 1984
Campus Theaters
Now defunct
Iowa City, Iowa
Cashier/Ticket Taker

Summer and Fall 1984
University of Iowa
Department of Psychological & Brain Sciences
El 1 Seashore Hall
Iowa City, Iowa 52242
Research Assistant to Dr. John Cacioppo

Summer 1984
T.J. Maxx
2511 Corridor Way
Coralville, Iowa 52241
Sales Clerk

Summer 1984
Mr. Steak
Now defunct
Iowa City, Iowa

Server

Other Affiliations (uncompensated):

2020 – Present
Colorado Supreme Court Nominating Commission
2 East 14th Avenue
Denver, Colorado 80203
Commissioner

2018 – Present
Metro Denver Chamber of Commerce
1445 Market Street
Denver, Colorado 80202
Board of Directors

2017 – Present
Denver School of Science and Technology
3401 Quebec Street, Suite 2000
Denver, Colorado 80207
Board of Directors

2014 – 2015
National Hispanic Bar Association
1020 19th Street Northwest, #505
Washington, District of Columbia 20036
Deputy General Counsel

2013 – 2015
Colorado Hispanic Bar Association
P.O. Box 8895
Denver, Colorado 80201
Board of Directors

Approximately 2003 – 2004; 2013 – 2014
Denver Bar Association
1900 North Grant Street, Suite 1114
Denver, Colorado 80203
Board of Trustees Representative (Approximately 2003 – 2004)
Board of Governors Representative (2013 – 2014)

2003 – 2010
Family Star Montessori and Head Start
2940 Curtis Street
Denver, Colorado 80202
Board of Directors (2003 – 2010)

Secretary (2005 – 2008)

Approximately 2003 – 2005
Colorado Bar Association
1900 Grant Street, Ninth Floor
Denver, Colorado 80203
Board of Governors

Approximately 2000 – 2003
Faculty of Federal Advocates
P.O. Box 12025
Denver, Colorado 80212
Board of Directors

Approximately 1997 – 2003
Colorado Youth at Risk
Now defunct
Denver, Colorado 80205
Founding Member and Board of Directors (1997 – 2003)
Chair, Board of Directors (1999 – 2000)

Approximately 1990 – 1997
Open Door Youth Gang Alternatives
1615 California Street #712
Denver, Colorado 80202
Board of Directors

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.

   None. I was not required to register 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.

   5280 Magazine's Top Lawyers List, Civil Litigation and Commercial Litigation (2020, 2021)

   Latino Leaders Magazine, Top Latino Lawyer (Winter 2016, 2018, 2019, 2020)

   Law Week Colorado, Barrister's Best: People's Choice, Overall Litigator (2019, 2020)

   Denver Business Journal 2019 Outstanding Women in Business Award (2019)

Acritas Star, Acritas Star Independently Rated Lawyers (2018 – 2020)

Chambers USA, Litigation: General Commercial (Colorado) (2018 – 2020)

Denver Business Journal, Power Book Awards Finalist (2016)

Colorado Diversity Council, Most Powerful and Influential Women (2015)

Law Week Colorado, Top Women Lawyers (2011); Top Litigator (2015)

Colorado Super Lawyers, Personal Injury Defense: Products Liability (2009, 2012 – 2020); Medical Devices (2015)

Hispanic National Bar Association, Latina Lawyer of the Year (2013)

Colorado Hispanic Bar Association, Chris Miranda Outstanding Hispanic Lawyer (2013)

University of Colorado School of Law, Distinguished Alumni Award for Achievement in Private Practice (2013)

Girl Scouts of Colorado, Women of Distinction Honoree (2013)

Colorado Corporate Community Award, Faegre Baker Daniels, Colorado Hispanic Bar Association (2012) (team award for pro bono work on congressional redistricting litigation)

Inaugural Member, Latina Executive Leadership Program, Hispanic National Bar Association and Association of Corporate Counsel (2011 – 2012)

Rated AV® Preeminent by Martindale-Hubbell (2003 – Present)

Department of Justice, Special Service Awards (1996, 1997, 1998)

Justice Wiley B. Rutledge Scholarship, University of Colorado Law School (1985 – 1986)

Dean's List and Honor Student, University of Iowa (1981 – 1985)

Special Support Student Achievement Award, University of Iowa (1981 – 1985)

Psi Chi, Psychology Honors Society, University of Iowa (1983 – 1984)

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.

ADR Advisory Committee to District Court, appointed by former Chief Judge, Richard Matsch (Approximately 1997 – 1998)

Asian Pacific American Bar Association (Approximately 2008 – Present)

Attorney General's Civil Chief Working Group (Approximately 2001 – 2002)

Colorado Bar Association (1988 – Present)
- Board of Governors (Approximately 2003 – 2005)
- Bill of Rights Committee (2007 – 2008)
- CBA Diversity in the Legal Profession Committee (2009 – Present)
- Civil Rights Committee (2009 – Present)

Colorado Defense Lawyers Association (Approximately 1988 – 2002)

Colorado Hispanic Bar Association (Approximately 1988 – 1995; 2003 – Present)
- Public Policy Committee (Approximately 2003 – 2008)
- Board of Directors (2013 – 2015)

Colorado Inns of Court, Rhone-Brackett Inn of Court (1994)

Colorado Supreme Court Nominating Commission (2020 – Present)

Colorado Women's Bar Association (Approximately 1988 – 1995; approximately 2002 – Present)
- Judicial Nominations Committee (Approximately 2011 – 2014)

Corporate Counsel Women of Color (Approximately 2008 – Present)

Denver Bar Association (Approximately 1988 – Present)
- Board of Trustees Representative (Approximately 2003 – 2004)
- Board of Governors Representative (2013 – 2014)
- Diversity in the Legal Profession Committee Representative (Approximately 2008 – 2009)

Department of Justice, Former Early Evaluation Program Mediator (Approximately 1996 – 2002)

Faculty of Federal Advocates (Approximately 1997 – Present)
- Board of Directors (Approximately 2000 – 2003)

Hispanic National Bar Association (Approximately 2008 – Present)
- Deputy General Counsel (2014 – 2015)
- Commissioner (2013 – 2014)

Law Enforcement Reform and Racial Justice Committee (2020 – Present)

International Association of Defense Counsel, approximately 1995 – 2003; 2010 – Present

Vice Chair of Webinars Toxic Tort Committee, approximately 2012 – 2013
Diversity Committee, approximately 2010 – Present
Product Liability Committee, approximately 2011 – Present
Midyear Meeting CLE Program Subcommittee, 2011

Magistrate Judge Merit Selection Panel, Panel Member (Approximately 2005 – 2008)

Office of Legal Education for the Department of Justice, Faculty Instructor (Approximately 1996 – 2002)

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.

Colorado, 1988

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.

United States Court of Appeals for the Tenth Circuit, 1990
United States District Court for the District of Colorado, 1988

There have been no lapses in membership.

I have been admitted pro hac vice in several other districts.

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.

Colorado Commission on Higher Education, State of Colorado, Seventh Congressional District (2009 – 2015)

Colorado Girl Scouts, Troop 2285 (2009 – approximately 2017)
Governance Committee (2014 – approximately 2016)

Colorado Lawyers Committee – CLC Racial Justice Task Force
Co-Chair, Education Committee (2020 – 2021)

Colorado Youth at Risk (Approximately 1997 – 2003)
Founding Member and Board of Directors (Approximately 1997 – 2003)
Chair, Board of Directors (1999 – 2000)

Denver Ballet Guild, Pro Bono Legal Counsel (2010 – 2015)

Family Star Montessori and Head Start (2003 – 2010)
Board of Directors (2003 – 2010)
Secretary (2005 – 2008)

International Association of Defense Counsel (Approximately 2011 – Present)

Infrastructure Priorities Task Force, City and County of Denver, Subcommittee Member (2006 – 2007)

Latinas First Foundation, Advisor (2015 – 2018)

Open Door Youth Gang Alternatives Board of Directors (Approximately 1990 – 1997)

University of Colorado Law Alumni Board (2014 – 2017)

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 Girl Scouts of Colorado is and has always been an organization for girls. The Girl Scouts does not discriminate, to my knowledge, when it comes to troop leadership, board membership or other volunteer assignments. To the best of my knowledge, none of the other 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. **Public 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.

With John Walsh, Michael Hazel and Mairead Dolan, *COVID-19: Colorado Transition to 'Safer at Home,'* WilmerHale, Apr. 27, 2020. Copy supplied.

With Shelby Martin, *Discovery in Colorado – First Edition*, CBA-CLE (CLE in Colorado, Inc.), Chapter 6 – Ex Parte Contact with Witnesses 2018, 2019 and 2020. Copy supplied.

With Shelby Martin, *Who's Liable and How to Protect Yourself*, ColoradoBiz, Oct. 4, 2017. Copy supplied.

With Shelby Martin, *Managing Cybersecurity Threats: Still More Questions Than Answers*, International Product Liability Review, Issue 66, Mar. 2017. Copy supplied.

With Scott Martinez and Shelby Myers, *Denver: An Opportunity for True Inclusiveness in the Legal Profession*, Law Week Colorado, Mar. 23, 2015. Copy supplied.

With Victoria Calhoon, *Supreme Court to Answer Question of Whether Evidence Is Required for Removal to Federal Court*, Faegre Baker Daniels Website, Sept. 22, 2014. Copy supplied.

With Allegra Haynes, *The Changing Face of Higher Education*, The Hill, June 6, 2013. Copy supplied.

Co-Author, *Another Cautionary Tale to Consider when Voluntarily Disclosing Documents to the Government*, Indiana Manufacturers Association: Executive Memo, Nov. 2012. Copy supplied (reprinted in multiple outlets).

With Nadia G. Malik, *Corporate Counsel Beware: Federal Government Still Wants You to Waive Attorney-Client Privilege*, Faegre Baker Daniels Website, July 7, 2009. Copy supplied.

With Jeffrey S. Roberts, *Preserving Attorney-Client Privilege in Internal Investigations*, TRENDs, May 2006. Copy supplied.

With Jeffrey S. Roberts, *The Attorney-Client Privilege in Internal Investigations*, Faegre Baker Daniels, 2006. Copy supplied.

With John T. Cacioppo, Richard E. Petty, and Chuan Feng Kao, *Central and Peripheral Routes to Persuasion: An Individual Difference Perspective*, Journal of Personality and Social Psychology, 1986. Copy supplied.

The above-listed publications are those that I was able to locate through a search of my own files and an extensive Internet search. There may, however, be other publications that I was unable to remember or identify.

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.

None that I am able to remember or identify.

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.

I serve as a member of the board of directors at the Denver School of Science & Technology (2017 – Present). DSST is a public education entity governed by the Open Meetings Regulations. DSST board minutes are available to the public at https://www.dsstpublicschools.org/board.

From 2009 to 2015, I served on the Colorado Commission for Higher Education. I was officially confirmed by the Colorado State Senate to serve on the Commission on March 11, 2010, after answering questions at a confirmation hearing before the Senate Education Committee. I have no notes, transcript or recording, but a summary of the relevant portion of the meeting is supplied.

The Colorado Commission on Higher Education published a Master Plan in October 2012. I did not draft, edit, or approve the specific contents of the Master Plan, but I was part of the strategic process that led to the Commission's adoption of and publication of the Master Plan. Similarly, the Commission published a Funding Allocation Report in 2015. I did not draft, edit, or approve the specific contents, but the Commission unanimously issued this funding allocation model. Copies supplied.

The Commission also held public meetings where it was required to vote on and approve certain matters at each meeting. Periodically the Commission also considered and voted on resolutions and other matters. Minutes are available at http://highered.colorado.gov/CCHE/Meetings. In addition, although I did not draft or edit the documents, I voted on and approved letters and memoranda, and the

Commission as a whole passed resolutions and issued statements in support of legislation. Copies supplied.

The above-listed statements or communications are those that I was able to locate through a search of my own files and an extensive Internet search. There may, however, be other statements or communications that I was unable to remember or identify.

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.

I have attempted to maintain a record of my speeches or talks and I have also conducted a search of my records and an extensive Internet search and contacted likely sponsoring organizations of my presentations to provide a list that is as complete as possible. Nonetheless, there may be speeches or talks I have given that I do not remember or have been unable to identify. I typically speak without prepared text or outlines. However, where PowerPoints have been used, where I could locate them, I have included them.

October 29, 2020: Speaker, "CHBA & Redistricting in Colorado CLE: From Fighting Gerrymandering to the New Redistricting Commission," Colorado Hispanic Bar Association, webinar. I have no notes, transcript or recording. The address of the Colorado Hispanic Bar Association is P.O. Box 8895, Denver, Colorado 80201.

October 15, 2020: Speaker, "Legal Considerations When Serving on a Board of Directors," Board Governance 101: Director Responsibilities, 2020-21 Corporate Boardbound Program, webinar. PowerPoint presentation supplied.

October 13, 2020: Speaker, "Big Data, Artificial Intelligence and Discrimination in Health Care and Beyond," IAPP Privacy. Security. Risk. 2020, webinar. PowerPoint presentation and video supplied.

September 30, 2020: Speaker, "Underappreciated Lawyering Skills: The Difference Between Good and Great Advocacy," Faculty of Federal Advocates, webinar. Notes supplied.

August 13, 2020: Panelist, "Continuing an IADC Conversation About Becoming an Active Ally with a Focus on Latinx Allyship: How to Get Involved, Stay

Involved, and Educate Others About Racial and Social Injustice," International Association of Defense Counsel Diversity and Inclusion Committee, webinar. I have no notes, transcript or recording. The address of the International Association of Defense Counsel is 303 W. Madison Street, Suite 925, Chicago, Illinois 60606.

August 12, 2020: Moderator, General Counsel Roundtable, "The Path to Transforming the Legal Profession," Center for Legal Inclusiveness, Legal Inclusiveness & Diversity Summit, webinar. Video available at https://www.youtube.com/watch?v=YviB9Wr0AWg.

May 8, 2020: Speaker, "COVID 19: Reopening Responsibly – Corporate Risk Mitigation Strategies," WilmerHale, webinar. PowerPoint presentation and video supplied.

September 26, 2019: Moderator, "#MeToo: How to Ensure that Women of Color Have a Voice and Are Not Forgotten During the Movement," Corporate Counsel Women of Color, 15th Annual Career Strategies Conference, Chicago, Illinois. The panel discussion was about how to ensure women of color are not left out of the conversation. I have no notes, transcript or recording. The address of the Corporate Counsel of Women of Color is Radio City Station, P.O. Box 2095, New York City, New York 10101-2095.

September 11, 2019: Speaker, "Legal Considerations when Serving on a Board of Directors," Deloitte, Board Ready Women – Fiduciary Responsibilities, Denver, Colorado. PowerPoint presentation supplied.

July 25, 2019: Speaker, "Finding Your Voice," LILY Network, Boys and Girls Club of Metro Denver, Denver, Colorado. Video supplied.

October 10, 2018: Panelist, "More than the It Factor: 10 Ways to add significant value to your business clients, corporation, and law department," Corporate Counsel Women of Color, 14th Annual Career Strategies Conference, New York City, New York. The panel was about ways to add value in your business. I have no notes, transcript or recording. The address of the Corporate Counsel Women of Color is Radio City Station, P.O. Box 2095, New York City, New York 10101-2095.

May 21, 2016: Panelist, "Transitioning Your Practice: Ethical Considerations," Colorado Women's Bar Association, Vail, Colorado. I answered questions on a panel about how to switch law firms. I have no notes, transcript or recording. The address of the Colorado Women's Bar Association is P.O. Box 1918, Denver, Colorado 80201.

November 11, 2015: Speaker, "Luminarias de la Ley: An Exhibit of the First Latina Lawyers 1900 - 1980," University of Denver, Denver, Colorado. I spoke

about Delores Atencio and her dedication to documenting the history of Latinas in the law. I have no notes, transcript or recording. The address of the University of Denver is 2199 South University Boulevard, Denver, Colorado 80210.

September 4, 2015: Panelist, "Closing the Deal: Part Two," Annual Convention, Hispanic National Bar Association, Boston, Massachusetts. I spoke on a panel about business development and developing a practice in a law firm. I have no notes, transcript or recording. The address of the Hispanic National Bar Association is 1020 19th Street Northwest, Suite 505, Washington, District of Columbia 20036.

June 25, 2015: Speaker, 2015 Most Powerful and Influential Women of Colorado, Colorado Diversity Council, Denver, Colorado. I thanked the council for the award. I have no notes, transcript or recording. The Colorado Diversity Council has no mailing address.

May 4, 2015: Panelist, "Bias in the Courtroom," Workshop, 2015 Legal Inclusiveness & Diversity Summit, Center for Legal Inclusiveness, Denver, Colorado. I spoke about unconscious bias in the courtroom and strategies to address such bias. I have no notes, transcript or recording. The address of the Center for Legal Inclusiveness is 633 17th Street, Suite 3000, Denver, Colorado 80202.

September 10 – 13, 2014: Panelist, "Closing the Deal: Part One," Annual Convention, Hispanic National Bar Association, Washington, District of Columbia. I spoke on a panel about business development and developing a practice in a law firm. I have no notes, transcript or recording. The address of the Hispanic National Bar Association is 1020 19th Street Northwest, Suite 505, Washington, District of Columbia 20036.

March 21, 2014: Panelist, "Your Career Game Plan," Latina Commission Leadership Program, Hispanic National Bar Association, Orlando, Florida. I spoke on a panel about different career paths in the law. I have no notes, transcript or recording. The address of the Hispanic National Bar Association is 1020 19th Street Northwest, Suite 505, Washington, District of Columbia 20036.

October 10, 2013: Speaker, Recipient of 2013 Denver Women of Distinction Award, Thin Mint Dinner, Girl Scouts of Colorado, Denver, Colorado. I thanked the Girl Scouts for the award and thanked my family for their support. I have no notes, transcript or recording. The address of the Girl Scouts of Colorado is 3801 East Florida Avenue, Suite 720, Denver, Colorado 80210.

September 4, 2013: Speaker, Recipient of 2013 Latina Lawyer of the Year Award, Hispanic National Bar Association, Denver, Colorado. I thanked the Hispanic National Bar Association for the award. I have no notes, transcript or

recording. The address of the Hispanic National Bar Association is 1020 19th Street Northwest, Suite 505, Washington, District of Columbia 20036.

June 12, 2013: Panelist, Colorado Pledge to Diversity Fifth Annual 1L Boot Camp, Colorado Bar Association, Denver, Colorado. I spoke on a panel about working in a private law firm. I have no notes, transcript or recording. The address of the Colorado Bar Association is 1900 Grant Street, Ninth Floor, Denver, Colorado 80203.

March 13, 2013: Award Recipient, Distinguished Achievement in Private Practice, University of Colorado Law School, Denver, Colorado. I thanked the Alumni Board for the award. I have no notes, transcript or recording. The address of the University of Colorado Law School is Wolf Law Building, 2450 Kittredge Loop Road, Boulder, Colorado 80309.

October 4, 2012: Panelist, "Ethics and Professionalism – Is There a Difference?," Colorado Hispanic Bar Association, Denver, Colorado. I spoke on a panel about the distinction between ethics and professionalism. I have no notes, transcript or recording. The address of the Colorado Hispanic Bar Association is P.O. Box 8895, Denver, Colorado 80201.

August 25, 2012: Panelist, Top Five Issues Affecting New/Young Hispanic Lawyers, Annual Convention, Hispanic National Bar Association, Seattle, Washington. I spoke on a panel about how the profession has changed and how young lawyers must adjust. I have no notes, transcript or recording. The address of the Hispanic National Bar Association is 1020 19th Street Northwest, Suite 505, Washington, District of Columbia 20036.

June 22, 2012: Panelist, "Making Partner: How to Achieve It and What Happens Once You Do," University of Denver, Sturm College of Law, Denver, Colorado. I spoke about partnership in private law firms. I have no notes, transcript or recording. The address of the University of Denver, Sturm College of Law is 2255 East Evans Avenue, Denver, Colorado 80210.

June 24, 2011: Panelist, "The View From the Top," Women's Leadership Summit, National Association for Female Executives, Minneapolis, Minnesota. I spoke on a panel about working mothers and female executives. I have no notes, transcript or recording. The address of the National Association for Female Executives is 1300 Mercantile Lane, Suite 100L, Upper Marlboro, Maryland 20774.

April 21, 2011: Panelist, Creating Opportunities – Latina Leaders Forum, Faegre Baker Daniels, Denver, Colorado. I spoke on a panel about Latinas in leadership positions. I have no notes, transcript or recording. The current name of the firm is Faegre Drinker Biddle & Reath LLP and the address is 1144 15th Street, Suite 3400, Denver, Colorado 80202.

2010: Speaker, Internal Investigations – Civil Litigation Summit, Faegre Baker Daniels, Denver, Colorado. I spoke on how to conduct an internal investigation. I have no notes, transcript or recording. The current name of the firm is Faegre Drinker Biddle & Reath LLP and the address is 1144 15th Street, Suite 3400, Denver, Colorado 80202.

2009: Speaker, Internal Investigations – Complex Litigation Summit, Faegre Baker Daniels, Denver, Colorado. I spoke on how to conduct internal investigations. I have no notes, transcript or recording. The current name of the firm is Faegre Drinker Biddle & Reath LLP and the address is 1144 15th Street, Suite 3400, Denver, Colorado 80202.

February 21 – 22, 2008: Speaker, "Piecing the Compliance Puzzle Together," Colorado Chapter of the Healthcare Financial Management Association, Lone Tree, Colorado. I spoke on the importance of compliance to health care personnel. I have no notes, transcript or recording. The address of the Colorado Chapter of the Healthcare Financial Management Association is 3222 East First Avenue, Denver, Colorado 80206.

2006: Panelist, "Attorney-Client Privilege in Internal Investigations," Minority Corporate Counsel Association, Chicago, Illinois. I spoke on a panel about how to conduct an internal investigation and whether such investigations are privileged. I have no notes, transcript or recording. The address of the Minority Corporate Counsel Association is 1111 Pennsylvania Avenue Northwest, Washington, District of Columbia 20004.

2004: Speaker, "Back to School: Director Education," Faegre Baker Daniels, Denver, Colorado. I spoke on what to do when your company receives a subpoena. I have no notes, transcript or recording. The current name of the firm is Faegre Drinker Biddle & Reath LLP and the address is 1144 15th Street, Suite 3400, Denver, Colorado 80202.

May 17 – 19, 2002: Panelist, How to Prepare for Trial "I Need a Miracle," 25th Annual Convention, Colorado Women's Bar Association, Breckenridge, Colorado. I spoke on a panel about comprehensive and ethical trial preparation for both criminal and civil arenas. I have no notes, transcript or recording. The address of the Colorado Women's Bar Association is P.O. Box 1918, Denver, Colorado 80201.

2002: Speaker, "Subpoenaing a Non-Party Federal Employee," CLE on Professional Ethics, Federal Bar Association, Denver, Colorado. I spoke on the Touhy regulations and the steps to subpoena a federal employee. I have no notes, transcript or recording. The address of the Federal Bar Association is 1200 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

October 19, 2001: Panelist, Consent Jurisdiction of the Magistrate Judges CLE, Faculty of Federal Advocates, Denver, Colorado. I spoke on a panel about the procedures for consenting to the jurisdiction for the magistrate judges. I have no notes, transcript or recording. The address of the Faculty of Federal Advocates is 3700 Quebec Street, #100-389, Denver, Colorado 80207.

April 1, 2001: Panelist, Motions Practice from the Court's Perspective, Federal Practice Update, Federal Bar Association and Colorado Bar Association, Denver, Colorado. I spoke on a panel about the dos and don'ts of motions practice. I have no notes, transcript or recording. The address of the Federal Bar Association is 1200 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

1997 – 2000: Instructor, Various Presentations, National Advocacy Center, Columbia, South Carolina. From 1997 to 2000, I gave approximately ten presentations as an instructor at the National Advocacy Center. The topics I recall for the presentations include: Preparing and Defending a Medical Malpractice Case (2000), Use of Expert Witnesses (2000), How to Defend a Malpractice Action (2000), Overview and Preparing a Federal Tort Claim Action (1999), Discovery in Complex Cases (1999), Litigating Individual Liability Cases (1998), Enhanced Negotiation and Alternative Dispute Resolution (1998), Alternative Dispute Resolution Processes and Procedures (1997), Preparing the Client for Mediation (1997), and Advanced Negotiations (1997). I have no notes, transcripts or recordings. The address of the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

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 not maintained a record of all interviews I have given, but I have conducted a search of my files and an extensive Internet search to provide as complete a list as possible. Nonetheless, there may be interviews which I did not recall or locate.

2019 Outstanding Women in Business, Denver Business Journal, Aug. 21, 2019. Copy supplied.

Accomplished Litigator Regina M. Rodriguez Joins WilmerHale, WilmerHale (also posted on *Globe Newswire*), May 13, 2019. Copy supplied.

Tony Flesor, *Top Women: Regina Rodriguez*, Law Week Colorado, May 8, 2019. Copy supplied.

Veronique Van Gheem, *Perspectives on Pro Bono*, The 1891-CWBA, Apr. 3, 2019. Copy supplied.

Kathleen Lavine, *Thought Leader: Attorney Gina Rodriguez Credits Mentorship and Opportunity*, Denver Business Journal, May 11, 2018. Copy supplied.

Tony Flesor. *Moving the Needle, Law Week Colorado*, May 8, 2018. Copy supplied.

Kathleen Lavine, *Cover story: Hogan Lovells attorneys battle Guatemalan kids' deportation*, Denver Business Journal, Dec. 1, 2017. Copy supplied.

Monica Mendoza, *Regina Rodriguez bound for the bench*, Denver Business Journal, Sept. 23, 2016. Copy supplied.

Jenna Ebersole, *Hogan Nabs Prominent Trial Lawyer from Faegre Baker Daniels*, Law360, Jan. 20, 2016. Copy supplied.

Prominent Trial Lawyer Regina Rodriguez Joins Hogan Lovells in Denver, Hogan Lovells, Jan. 18, 2016. Copy supplied.

Sindhu Sundar, *Product Liability Cases to Watch in 2016*, Law 360, Dec. 24, 2015. Copy supplied.

Arthur Kane, *Contracts to Denver City Attorney's Friends Cost Taxpayers Big Bucks, Raise Ethics Question*, Denver Post, Nov. 23, 2015. Copy supplied.

Victoria Sanders, *Pioneers for Hispanics in NFL Nominated for Hall of Fame*, 9News, Sept. 23, 2015. Copy supplied.

MP McQueen, *Minority Ranks at Large Firms Show Little Growth*, American Lawyer, May 28, 2015 (reprinted in multiple outlets). Copy supplied.

Doug Chartier, *Top Litigators: Gina Rodriguez*, Law Week Colorado, Mar. 16, 2015 (reprinted in multiple outlets). Copy supplied.

Jordan Steffen, *Denver Hires New Lawyers in Jail Inmate Abuse Case*, Denver Post, June 30, 2014. Copy supplied.

2013 Girl Scouts of Colorado Denver Women of Distinction, The Girl Scouts of Colorado, Oct. 14, 2013. Video supplied.

Heather Draper, *Helping the Legal Sector Catch Up*, Denver Business Journal, Sept. 20, 2013. Copy supplied.

Faegre Attorney Named Latina Lawyer of the Year, Law Week Colorado, Aug. 29, 2013. Copy supplied.

Regina Rodriguez ('88): Alumni of the Month, University of Colorado School of

Law, Mar. 2013. Copy supplied.

Regina Rodriguez Honored by Colorado Hispanic Bar Association, Faegre Baker Daniels, Jan. 31, 2013. Copy supplied.

Natalie Lucas, *Legal Legends-A Mentor to All: Al Harrell Offers His Time, Expertise to Young Lawyers*, The Docket (Denver Bar Association), Oct. 2012. Copy supplied.

Trial Lawyer Regina Rodriguez Makes a Case for Work and Family, Working Mother, May 9, 2012. Copy supplied.

Faegre Baker Daniels Receives Colorado Corporate Community Award, Faegre Baker Daniels, Mar. 21, 2012. Copy supplied.

Todd Engdahl, *Tuition-Setting Season Ramps Up*, Chalkbeat, Mar. 6, 2012. Copy supplied.

Ivan Moreno, *Colorado Congressional Redistricting Suit Wraps Up*, Associated Press, Oct. 31, 2011. Copy supplied.

Redistricting: Latino Attorney Rips Democratic and Republican Maps, GOP Says New Map Coming, Denver Post, Oct. 31, 2011. Copy supplied.

Colorado Court Battle Over Congressional Maps Begins, Associated Press, Oct. 9, 2011. Copy supplied.

A Line in the Sand, Hotline, 2011 National Journal, Sept. 20, 2011. Copy supplied.

San Antonio Spurred, Hotline, 2011 National Journal, Sept. 6, 2011. Copy supplied.

Lynn Bartels, *Congressional Redistricting: New Voter Plan Could Aid Latinos – A DA's Map Would Carve Up Denver*, Denver Post, Sept. 3, 2011. Copy supplied.

Lynn Bartels, *Latino Map Puts Perlmutter and Tipton in Same Congressional District*, Denver Post, Sept. 2, 2011. Copy supplied.

Lynn Bartels, *Redistricting Battle: Dems Reshape Latino Leverage*, Denver Post, Aug. 27, 2011. Copy supplied.

Lynn Bartels, *Judge Sets Map Release Dates in Colorado Redistricting Lawsuit, Some Want to See Others' Hands First, So Court Orders Compromise*, Denver Post, Aug. 13, 2011. Copy supplied.

Latinos Join Colorado Redistricting Litigation to Preserve and Advance Electoral Strength, Mexican American Legal Defense and Educational Fund, The Latino Legal Voice for Civil Rights in America, July 22, 2011. Copy supplied.

Ali McNally, *Top Women Lawyers*, Law Week Colorado, May 23, 2011. Copy supplied.

Faegre & Benson Sponsors Latina Leaders Forum Event, Faegre Baker Daniels, Apr. 20, 2011. Copy supplied.

Daniel J. Chacon, *City, Woman Near Deal on Alleged Police Harassment*, Rocky Mountain News (Denver, Colorado), Jan. 30, 2009. Copy supplied.

Christopher N. Osher, *Denver Near Settlement in Police Suit*, Denver Post, Jan. 29, 2009. Copy supplied.

Daniel J. Chacon, *City Officials Discuss Settling Police Lawsuit; Woman Says She Was Injured When Shoved to Ground*, Rocky Mountain News (Denver, Colorado), Jan. 28, 2009. Copy supplied.

Tillie Fong, *U.S. Sues Former Mine Owners Over Silver Creek Pollution*, Rocky Mountain News (Denver, Colorado), July 30, 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. However, I have served in two appointed positions.

On March 11, 2020, United States Magistrate Judge Michael E. Hegarty, appointed me to serve as Special Master until further notice of U.S. District Court, District of Colorado (Dkt. No. 143). Case Name: *Warner Records, Inc., et al. v. Charter Communications, Inc.*, Case Number: 1:19-cv-00874-RBJ-MEH.

From approximately December 2011 to 2016, I served as an unpaid member of the Colorado Supreme Court Hearing Board. Colorado has established the Office of the Presiding Disciplinary Judge, pursuant to Colorado Rules of Civil Procedure 251.16. The Presiding Disciplinary Judge presides over attorney regulation proceedings and issues opinions together with a two-member hearing board at trials and hearings.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? ___1___

I served on the two-member hearing board in one matter that came before the Colorado Supreme Court Hearing Board.

i. Of these cases, approximately what percent were:

jury trials: 0 %
bench trials: 100 %

ii. Of these cases, approximately what percent were:

civil proceedings: 100 %
criminal proceedings: 0 %

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

I have issued several orders in my role as Special Master in *Warner Records v. Charter Communications*. Those orders are on the case docket at numbers:

149, 173, 176, 181, 182, 190, 230, 241, 244, 251, 252, 253, 261, 323, 324, 325, 326, 333, 341, and 344.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of 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 (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Warner Records, Inc., et al. v. Charter Communications, Inc.*, Case Number: 1:19-cv-00874-RBJ-MEH

Plaintiffs are record companies and music publishers that produce, manufacture, distribute, sell, and license commercial sound recordings and musical compositions. The action arises out of the alleged secondary infringement by the Defendant, Charter Communications, Inc., of Plaintiffs' copyrighted musical compositions and sound recordings. Plaintiffs allege Defendant infringed their copyrighted works by contributing to its subscribers' direct infringement and by profiting from the subscribers' direct infringement while declining to exercise a right to stop or limit it. Plaintiffs allege that thousands of their works were unlawfully distributed online by Charter's internet service subscribers to third parties using BitTorrent or other peer-to-peer file sharing programs between 2013 and 2016. The case is currently active.

Plaintiffs' Counsel:

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(212) 841-1000

Neema T. Sahni
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Matthew J. Oppenheim
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Craig D. Joyce
Jack Markham Tanner
Fairfield & Woods, P.C.
1801 California Street, Suite 2600
Denver, CO 80202-2645
(303) 830-2400

2. *People of the State of Colorado v. Christopher Paul Forsyth*, Case Number: 12 PDJ016

People claimed that Respondent engaged in frivolous litigation and prejudiced the

administration of justice in violation of Colo. RPC 3.1 and 8.4(d) by filing an appeal that the Colorado Court of Appeals deemed to be without merit. The Hearing Board concluded that the People did not prove misconduct by clear and convincing evidence, and therefore dismissed the complaint. The Board's conclusion is reported at *People of the State of Colorado v. Christopher Paul Forsyth*, Colo. Law., March 2013, at 109 (Case No. 12 PDJ016). Copy supplied.

Honorable Adam Espinosa
Office of Attorney Regulation Counsel on behalf of the People
Currently, Judge, Denver County Court
1437 Bannock Street, Courtroom 175
Denver, CO 80202
(720) 865-7270

Gary S. Cohen
Law Office of Gary S. Cohen on behalf of respondent
303 East 17th Avenue, #620
Denver, CO 80203
(303) 863-9500

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.

None of the orders I have issued as Special Master were published. I do not have any additional unpublished opinions.

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

None.

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.

I serve as a special master in *Warner Records, Inc., et al. v. Charter Communications, Inc.*, Case Number: 1:19-cv-00874-RBJ-MEH. Pursuant to Dkt. 143 the parties can appeal my decisions to the Magistrate Judge. They can then appeal the Magistrate Judge's decisions to the Article III District Court Judge. The following are orders I issued that were appealed and reversed:

On September 9, 2020, Magistrate Judge Hegarty overruled in part my May 29, 2020 Order (Dkt. 181) and my July 6, 2020 Order Denying reconsideration of the

May 29, 2020 Order (Dkt. 190). Judge Hegarty's ruling was then appealed to Judge Jackson. On November 5, 2020, Judge Jackson granted the appeal and reinstated my Orders. (Dkt. 284). Copies supplied.

On September 9, 2020, Magistrate Judge Hegarty overruled in part my August 12, 2020 Order (Dkt. 230). I had declined to order the Defendant to produce data relating to millions of tickets created in response to infringement notices. I relied largely on competing affidavits, eventually determining that the burden and cost of production outweighed the probative value. Magistrate Judge Hegarty reversed my decision and ordered the Defendant to produce the data sought. However, recognizing the burden, he required the Plaintiffs to pay the costs associated with the production. During that same hearing, Magistrate Judge Hegarty overruled another portion of my August 12, 2020 Order, in which I had denied Plaintiffs' request to require Defendant to include a title/re: column on its privilege log. Judge Hegarty required Defendant to include a title/re: column, but instructed that Defendant could redact the entries that it deemed privileged. The transcript of the hearing is at Dkt. 243, however, the transcript is filed under seal and therefore a copy is not supplied.

On December 18, 2020, Magistrate Judge Hegarty amended my October 8, 2020 Order (Dkt. 261). In my Order, I had allowed the Defendant to redact certain portions of a spreadsheet that contained irrelevant data. Magistrate Judge Hegarty noted that it was not custom to allow the redaction of non-responsive information. Judge Hegarty did not order that the document be produced without redactions, but he required Defendant to allow a single attorney for Plaintiffs to review a sample of the redacted data to determine whether Plaintiffs could make any other relevance arguments. Copy supplied.

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.

In the hearing board matter, the Presiding Judicial Officer issued an opinion. I concurred.

In *Warner Records, Inc., et al. v. Charter Communications, Inc.*, Case Number: 1:19-cv-00874-RBJ-MEH I have issued a number of Orders. These Orders are unpublished and can be found on the case docket.

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.
None.

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.

None.

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:

    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.

    I have not served as a judge.

    I neither recused myself sua sponte nor was I asked to recuse myself as a member of the Colorado Supreme Court Hearing Board.

    I neither recused myself sua sponte nor was I asked to recuse myself as the Special Master in the matter described above.

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.

    Infrastructure Priorities Task Force, City and County of Denver, Subcommittee Member, appointed by Mayor John Hickenlooper (2006 – 2007)

    Colorado Commission on Higher Education, State of Colorado, Seventh Congressional District, appointed by Governor Bill Ritter (2009 – 2015)

Colorado Supreme Court Nominating Commission, appointed by Governor Jared Polis (2020 – Present)

I have never run for elective 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.

None.

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;

I did not serve as a clerk.

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;

1988 – 1995
Cooper & Kelly, P.C.
Now defunct
Denver, Colorado 80202
Associate Attorney

1995 – 2002
United States Attorney's Office, District of Colorado
1225 17th Street, Suite 700
Denver, Colorado 80202
Chief, Civil Division (1999 – 2002)
Deputy Chief, Civil Division (1998 – 1999)
Deputy Senior Counsel to the Associate Attorney General, United States Department of Justice (four-month detail 1997 – 1998)
Assistant United States Attorney (1995 – 2002)

2002 – 2016
Faegre Baker Daniels LLP
n/k/a Faegre Drinker Biddle & Reath LLP
1144 15th Street, Suite 3400
Denver, Colorado 80202
Partner (2005 – 2016)
Special Counsel (2002 – 2005)

2016 – 2019
Hogan Lovells US LLP
1200 17th Street, Suite 1500
Denver, Colorado 80202
Partner

2019 – Present
Wilmer Cutler Pickering Hale & Dorr LLP
1225 17th Street, Suite 2600
Denver, Colorado 80202
Partner

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 served as a mediator as part of the Department of Justice Employee Counseling and Assistance program. I attended a training program and was certified as a Department of Justice mediator. I mediated three different employee complaints to successful resolution. The details of these mediations are confidential, and I do not have access to any records. In general, each case involved an employee who intended to file a formal complaint of discrimination against his or her respective agency. The mediations were an effort to resolve the matter before the filing of a formal complaint.

b. Describe:

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

I am a trial lawyer. The vast majority of my law practice has been focused on trying cases. I began my career with the law firm of Cooper & Kelly, P.C. in 1988. My practice was focused primarily on professional liability defense and general insurance defense work. I tried a number of cases as second chair and as first chair.

From 1995 to 2002, I served as an Assistant United States Attorney. I litigated more than 100 cases during my tenure at the United States Attorney's Office. Those cases spanned the breadth of federal practice – including, for example, Federal Tort Claims Act, employment discrimination, civil rights, *Bivens*, environmental, land use, immigration, bankruptcy, habeas, and prisoner litigation. In 1997, I was detailed to the Office of the Associate Attorney General, United States Department of Justice, in Washington, District of Columbia. In this capacity I developed and presented training programs in the effective use of Alternative Dispute Resolution for Assistant United States Attorneys across the country.

In 1998, I was promoted to deputy chief of the Civil Division and I returned to Colorado. In that capacity, I supervised all defensive litigation and continued to handle my own caseload. In 1999, I was promoted to Chief of the Civil Division. In that capacity, I supervised both defensive and affirmative litigation as well as the Financial Litigation Unit. I became much more involved in affirmative litigation and helped to coordinate the parallel proceedings policy. I continued to handle a full caseload in addition to my supervisory duties. I also served as a liaison with the courts, client agencies, the private bar, and congresspersons. I met regularly with the regional directors and legal counsel for the federal agencies we served. I returned to private practice in 2002.

For the past eighteen years, I have been in private practice and primarily focused my work on national mass tort, class action, and multidistrict litigation. I developed my practice to focus on complex cases which were likely to go to trial and tried several major cases during that time. Many of those cases involved technical issues, ranging from biomedical engineering to epidemiology to statistical analysis. Those matters also required management and coordination of hundreds, if not thousands, of cases and trials in multiple jurisdictions.

In 2016 I joined HoganLovells US LLP to expand the depth and breadth of my practice to a global platform where I handled investigations, product liability, and commercial matters around the world.

In 2019 I joined Wilmer Cutler Pickering Hale and Dorr LLP where I have again broadened my practice to include investigations, crisis management, and anti-discrimination work.

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

As a trial lawyer, I have represented individuals and corporations alike, as both plaintiffs and defendants, in cases large and small. At Cooper & Kelly, P.C., my typical clients were insurance companies, as well as

doctors, lawyers, dentists, mental health professionals, and architects. I specialized in professional liability defense and insurance defense, and I also represented several businesses in premises liability or general liability matters.

At the United States Attorney's Office, my clients were the United States and all of its agencies, as well as individual employees acting within the course and scope of their employment.

During the last eighteen years in private practice my typical clients are Fortune 500 companies as well as smaller businesses headquartered in Colorado. I also represent plaintiffs and defendants in complex commercial disputes and internal investigations. I have also handled several civil rights actions on both the plaintiff and defense sides. Recently, I have broadened my practice to include more investigations, crisis management and anti-discrimination work.

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 have appeared in federal court frequently throughout my career. Virtually all of my practice at the United States Attorney's Office was in federal court. The majority of my practice today is in federal court in Colorado and other states. The majority of my practice has been on the civil side, although I have worked on several criminal proceedings and represented clients in response to grand jury subpoenas. I was a part of the management team at the United States Attorney's Office and worked closely with the criminal division, however, I did not personally handle any criminal matters.

i. Indicate the percentage of your practice in:
   1. federal courts: 72%
   2. state courts of record: 28%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 98%
   2. criminal proceedings: 2%

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.

I have tried 35 cases to verdict. In approximately 60% of these, I have served as

lead, co-lead or sole counsel.

i. What percentage of these trials were:
   1. jury: 90%
   2. non-jury: 10%

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.

None.

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. *C5 Medical Werks, LLC et al v. CeramTec GmbH*, Case No. 1:14-cv-00643 (D. Colo. 2016)

Plaintiffs C5 Medical Werks and Coorstek Medical sued our client, CeramTec, for cancellation of two trademark registrations and a declaratory injunction for non-infringement. CeramTec alleged the plaintiffs had infringed its exclusive rights in the use of the color pink for hip joint implants. CeramTec also alleged the district court lacked personal jurisdiction over CeramTec, a German company. The case was ultimately tried as a bench trial before Judge R. Brooke Jackson, U.S. District Court, District of Colorado from August 29, 2016 to September 8, 2016 and from October 3, 2016 to October 5, 2016. I was brought in as trial counsel shortly before trial. I presented the testimony of key company representatives and cross-examined plaintiffs' experts. Judge Jackson issued findings of fact and conclusions of law in favor of plaintiffs on January 5, 2017, on their claims of cancellation of the trademark registrations and a declaration of non-infringement. On appeal, the Tenth Circuit reversed the district court's denial of the motion to dismiss for lack of personal jurisdiction and remanded to the

district court with instructions to dismiss the case. *C5 Med. Werks, LLC v. CeramTec GMBH*, 937 F.3d 1319 (10th Cir. 2019).

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2. *Mullin v. Zimmer, Inc., et al.*, Case No. 11-L-136 (Ill. 2015)

From approximately 2013 to 2015, I was part of a team that represented Zimmer, Inc., (now Zimmer Biomet) when it was sued in thousands of cases alleging that a hip implant component which it manufactured, sold and distributed failed to properly osseointegrate into the body, resulting in failed implants and the need for revision surgery. The cases were mostly consolidated into three forums: California Superior Court, St. Clair County, Illinois, and a multidistrict litigation in New Jersey. I worked on the coordination and litigation of these cases for several years. I tried the first of the Zimmer cases in November 2014, where we obtained a defense verdict. I tried or was integrally involved in three of the four cases that went to trial.

These were very complicated medical device cases in which there was extensive expert testimony. In *Mullin*, we represented the defense in a three-week jury trial in July and August 2015 before Judge Vincent J. Lopinot in the Circuit Court for the Twentieth Judicial Circuit in St. Clair County, Illinois. The trial resulted in a defense verdict. I coordinated the trial team, worked on pre-trial and trial briefing, jury instructions and post-trial motions, conducted cross-examination of plaintiffs experts, including the FDA/regulatory expert and orthopedic surgeon, and presented the testimony of Zimmer's expert orthopedic surgeon, FDA expert, and a key company representative.

Counsel for Plaintiff:

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3. *Brady v. Zimmer, Inc., et al.*, Case No. 2:10-cv-03043-SDW-SCM, MDL No. 2158 (D. N.J. 2015)

This was another case in which our client, Zimmer, Inc., faced allegations that its hip implant component was defective. The case was before Judge Susan D. Wigenton in the United States District Court for the District of New Jersey. *Brady* went to a three-day trial in May 2015 to determine the date of notice for purposes of the statute of limitations defense, which resulted in a defense verdict. While I did not try the case, I was integrally involved in the defense and took the key depositions of the plaintiff and her treating surgeon, which were used at trial.

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4. *Pugliese v. Zimmer, Inc., et al.*, Case No. 11-L-136 (Ill. 2014)

This was another case in which our client, Zimmer, Inc., faced allegations that its hip implant component was defective. The case was before Judge Vincent J. Lopinot in the Circuit Court for the Twentieth Judicial Circuit in St. Clair County, Illinois. A three-week trial in November 2014 resulted in a defense verdict. I coordinated the trial team, worked on pre-trial and trial briefing, jury instructions and post-trial motions, conducted cross-examination of plaintiff's experts including the FDA/regulatory expert and orthopedic surgeon, and presented the testimony of Zimmer's expert orthopedic surgeon, FDA expert, and a key company representative.

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5. *Coggeshall v. Zimmer, Inc., et al.*, Case No. BC444834 (Cal. 2015)

This was another case in which our client, Zimmer, Inc., faced allegations that its hip implant component was defective. I was brought in before trial to lead the trial team. The case settled shortly before trial in October 2015. The case was before Judge Amy D. Hogue of the California Superior Court for the County of Los Angeles.

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6. *Hunter v. City & County of Denver, et al.*, Case No. 1:12-cv-02682-JLK (D. Colo. 2014)

Plaintiff, Mr. Hunter, brought suit against the City of Denver and various individuals for alleged constitutional torts pursuant to 28 U.S.C. § 1983. This was a contentious matter which received significant media attention. In June 2014, I was retained by the City of Denver to represent them approximately six weeks before trial. I had to quickly gather a team, review thousands of pages of discovery, review pleadings and come up to speed to prepare to try the case under intense scrutiny and significant time pressures. The case was ultimately mediated and settled in September 2014. The case was before Senior Judge John L. Kane in the United States District Court for the District of Colorado. In addition, we worked with opposing counsel and the City to effectuate change in the personnel and policies of the Sheriff's Department to remediate issues giving rise to the litigation. We also worked to implement the recommendations of the Independent Monitor and his report on the Sheriff's Department.

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7. *In re: Aredia and Zometa Products Liability Litigation*, MDL 1760 & related cases *Georges v. Novartis Pharmaceuticals Corporation*, Case No. 2:06-cv-05207-SJO-VBK (C.D. Cal. 2012) & *Winter v. Novartis Pharmaceuticals Corporation*, Case No. 2:06-cv-04049-MJW (W.D. Mo. 2012)

Our client Novartis Pharmaceuticals Corporation (NPC) was sued in hundreds of cases where it was alleged that NPC manufactured, sold and distributed the drugs Aredia® and Zometa® but failed to properly and timely warn of a significant potential risk of developing osteonecrosis of the jaw. These drugs are prescribed for patients with metastatic cancer to prevent debilitating skeletal-related events. I was part of the Faegre Baker Daniels team brought in to try several cases that had been remanded from the MDL and set for trial.

I was co-lead counsel in the *Georges* matter. The case was tried for two weeks in November 2012 before Judge S. James Otero in the United States District Court for the Central District of California. That case resulted in a verdict for the plaintiff. In the *Winters* matter, I assisted the team preparing for trial, prepared pre-trial motions, jury instructions, witness lists and exhibit lists. I attended the pretrial conference and argued several motions at subsequent hearings before Magistrate Judge Matt J. Whitworth in the United States District Court for the Western District of Missouri, to whom jurisdiction was stipulated. The case was tried in March and April 2012. The jury returned a verdict in favor of the plaintiff.

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8. *Adams, et al. v. E.I. duPont de Nemours and Company, et al.*, Case No. 03-0049-E-BLW (D. Idaho 2009)

Hundreds of growers of various crops alleged off-target movement of herbicide applied by the Bureau of Land Management (BLM) on government-controlled, fire-damaged land to kill invasive weed species following rampant range fires. In 2009, I was part of a three-person trial team for defendant E.I. duPont de Nemours and Co. We tried this several-month jury trial of the claims of four bellwether plaintiffs against the BLM and DuPont. Judge B. Lynn Winmill in the United States District Court for the District of Idaho presided. The jury returned a verdict in favor of the bellwether plaintiffs and against BLM and DuPont. I worked for approximately two years on the discovery and pre-trial litigation of the case. My primary assignment was the development of the company defense and developing the case against the BLM.

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9. *Nance v. Kone, Inc., et. al.*, Case No. 05-cv-3703 (D. Colo. Dec. 8, 2006); *Strayer, et al. v. Kone, Inc., et al.*, Case No. 05-cv-5131 (D. Colo. May 16, 2007); & *Torres v. Kone, Inc., et al.*, Case No. 05-cv-5113 (D. Colo. June 7, 2006)

I was lead counsel for the Faegre Baker Daniels team that represented the Colorado Rockies Baseball club, Ltd. and the Denver Metropolitan Major League Baseball Stadium District in actions arising from an escalator accident which occurred at Coors Field on July 2, 2003. This incident received significant media attention as several patrons were seriously injured when the two-story escalator oversped following a fireworks display. Many of the claims were resolved without litigation. However, three cases were filed in the District Court for the City and County of Denver, State of Colorado. These cases were litigated from 2005 to 2007 before Judges John W. Madden, IV (*Nance*), Robert S. Hyatt (*Strayer*) and Sheila Ann Rappaport (*Torres*). I was lead counsel in the defense and resolution of these matters, personally handling most of the litigation that included extensive factual investigation, discovery, expert retention and preparation, motions practice and mediation. The cases were settled by codefendant Kone without payment by my clients.

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10. *Quigley v. Jobe*, 851 P.2d 236 (Colo. App. 1992)

This was a medical malpractice case tried before Judge Clifton Flowers in the District Court for the City and County of Denver, State of Colorado to a defense verdict. The plaintiff sued her treating gynecologist and radiologist. As defense counsel for the radiologist, I was extensively involved in all phases of the litigation, including the retention and preparation of expert witnesses, all discovery and trial preparation. This case is illustrative of the complexity of medical and legal issues in which I was involved early in my career.

The plaintiff alleged that Dr. Jobe, a radiologist, failed to identify and diagnose breast cancer when she first presented to him with a palpable lesion. Dr. Jobe performed an ultrasound examination of the lesion rather than a needle core biopsy and determined the mass was a benign cyst. Plaintiff returned a year later after the mass had significantly increased in size and was diagnosed with breast cancer. A central issue was whether ultrasound examination of a palpable breast mass met the standard of care for radiologists. At the time, ultrasound technology was cutting edge and not widely used in the diagnosis of breast cancer. Additionally, plaintiff was given instructions that she should be rechecked in six months in the absence of clinical changes, however, plaintiff did not return until a year later. She alleged that she was not told to return in six months and that the standard of care required she be instructed to return in six weeks based upon risk management guidelines imposed upon Dr. Jobe by his insurance company.

On our motion, Judge Flowers excluded the risk management guidelines since they were imposed by the radiologist's insurance carrier and were not evidence of the standard of care. Additionally, Judge Flowers held that the potential unfair prejudice of introducing evidence of the defendant's insurance coverage outweighed any probative value the guidelines might have. The case was tried to a defense verdict, and the Colorado Court of Appeals (Judges Claus J. Hume, Raymond Dean Jones, and Jose D.L. Marquez) affirmed the ruling.

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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.)

I also represent clients facing civil, administrative and criminal investigations, principally by conducting internal investigations, negotiating with government agencies and providing risk management services. For example, I represented a large physician group in an investigation originated by the FDA where it was alleged the client was distributing product that was not approved for distribution in the United States. We conducted an internal investigation and made recommendations to the client regarding potential overpayments and reporting. We conducted negotiations with the United States Attorney's Office. I have handled a number of False Claims Act investigations and defense for clients.

In addition, I have litigated a variety of cases ranging from commercial disputes to civil

rights cases. Many of these cases are resolved prior to trial but involve the extensive analysis of numerous documents and co-ordination of witness testimony in order to advise the client and its board of directors as well as to effectively negotiate resolution with opposing counsel. I represented a client who brought suit against its former accountant and CEO in a malpractice and breach of fiduciary duties action and the case settled favorably. The Colorado Board of Accountancy prosecuted the CPA on the same set of allegations.

In the last several years my practice has broadened to include more investigations, crisis management and anti-discrimination matters. This has included policy and procedure reviews for clients who are seeking to advance their commitment to Diversity, Equity, and Inclusion.

I have never been a lobbyist.

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.

    None.

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.

    Upon resignation from the partnership, I would be entitled to distributions as set forth in the Amended and Restated Partnership Agreement Wilmer Cutler Pickering Hale and Dorr LLP. If confirmed, I would ask my firm to expedite any payments I am owed in order to eliminate any ongoing financial interest in the firm.

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).

When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that 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.

       If confirmed, I would recuse from any case in which I, or my present law firm, had previously worked and any case in which I had an interest raising an appearance of bias or which presented a ground on which my impartiality could reasonably be questioned. I am not aware of any family member that has, or would have, a matter in the District of Colorado. If a potential conflict arose, I would apply the standards of 28 U.S.C. § 455 and the Code of Conduct for United States Judges, as well as any other pertinent principles of judicial ethics, to determine the appropriateness of recusal. Further, I would disclose to all parties if there were any potential issue in a matter arising before me.

    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 comply with the provisions of 28 U.S.C. § 455 and all other applicable 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.

    My pro bono work began almost from the first day I was licensed as an attorney and has continued to the present. I joined the board of Open Door Youth Gang Alternatives as a newly licensed lawyer in order to help curb the rise of gang violence in our community. Since that time, I have served on the boards of non-profit organizations primarily devoted to education and providing opportunities to disadvantaged youth. I was a founding member of Colorado Youth at Risk and served for many years as a board member of Colorado's first head start and Montessori school, Family Star. I served for five years on the Colorado Commission for Higher Education. I am a former director for Latinas First which raises money for scholarships and encourages young women to seek higher

education. I currently serve on the board of Denver School of Science & Technology, an organization whose mission is to eliminate the educational achievement gap. I have provided pro bono legal representation in dozens of matters where the subject matter has ranged from representation of Latino groups in the re-districting litigation to a case against the City & County of Denver for excessive force. I have represented a family of children seeking asylum after fleeing violence and abuse in their country. I currently lead a team of WilmerHale attorneys representing an inmate bringing constitutional and Americans with Disabilities Act claims against the Colorado Department of Corrections and individual employees. This case is part of the district court's pro bono program. I have been recognized by civic organizations such as the Girl Scouts and the Colorado Hispanic Bar Association for my civic activities and pro bono work.

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.

In 2015, Colorado Senators Michael Bennet and Cory Gardner each appointed a Judicial Nominating Commission. I submitted an application to each Commission and was interviewed by Senator Gardner's Commission on October 20, 2015, and Senator Bennet's Commission on December 15, 2015. My name was one of three names recommended to Senator Bennet by his Commission. My name was one of four names recommended to Senator Gardner by his Commission. On January 7, 2016, I met with Senator Bennet and his staff in Denver. On January 26, 2016, I met with Senator Gardner in Denver. On February 9, 2016, Senators Bennet and Gardner sent their recommendations to the White House. I was one of three candidates recommended by both Senators; Senator Gardner recommended one additional candidate. After February 18, 2016, I was in contact with officials from the Office of Legal Policy at the Department of Justice. On April 4, 2016, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, District of Columbia. On April 28, 2016, the President submitted my nomination to the Senate. I did not receive a hearing, and that nomination expired.

Early in 2021 I was contacted by Senator Bennet's office to inquire whether I was willing to re-engage in the judicial nomination process. I spoke with Senators Bennet and Hickenlooper in mid-January. On January 27, 2021, I interviewed with attorneys from the White House Counsel's Office, and since that time I have been in contact with officials from the Office of Legal Policy at the Department of

Justice. On February 3, 2020, Senators Bennet and Hickenlooper recommended me to serve on the United States District Court for the District of Colorado. On March 30, 2021, the President announced his intent to nominate me.

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.

Response to Question for the Record from Senator Dick Durbin, Chair, Senate Judiciary Committee to Judge Ketanji Brown Jackson, Nominee to the United States Court of Appeals for the D.C. Circuit

1. **The Judiciary Committee has received a number of letters of support from conservatives who have worked and clerked with you. As I mentioned during your hearing, Judge Thomas Griffith— an appointee of President George W. Bush who retired from the bench last year—wrote to the Committee: "Although [Judge Jackson] and I have sometimes differed on the best outcome of a case, I have always respected her careful approach and agreeable manner, two indispensable traits for success in a collegial body."**

   The Committee also received a letter signed by 23 Supreme Court law clerks who clerked alongside you during the October 1999 Term. The 23 signatories included clerks to Chief Justice Rehnquist and Justices Scalia, Thomas, Kennedy, and O'Connor, among others.

   Please describe the importance you place on working with colleagues who may have different views or who may approach an issue differently than you do.

   RESPONSE: I have had the privilege of working alongside people who have a variety of viewpoints about the law and legal analysis throughout my professional career. As a Supreme Court law clerk, for example, I evaluated complex legal issues and regularly exchanged significant insights with the clerks of other Justices. Similarly, my work in both private practice and on the Sentencing Commission (a bi-partisan policymaking body by statute) routinely required me to consider, assess, and incorporate the views and concerns of brilliant lawyers and judges with different backgrounds and perspectives. Taking into account the views of others helped me to formulate my own perspective on the issues we were considering. And the skills that I developed while engaging in such interactions should serve me well on the circuit court, if I am confirmed. Because the D.C. Circuit often address complicated and potentially contentious legal issues, the ability to listen with an open mind to other points of view, and to be respectful even if a judge ultimately disagrees with another judge's analysis or conclusions, is crucial to the effective operation of the court, and, ultimately, maintains public trust in the court as an institution.

Responses to Questions for the Record from Senator Chuck Grassley, Ranking Member to Judge Ketanji Brown Jackson, Nominee to the United States Court of Appeals for the D.C. Circuit

1. **Are you aware of the dark money left wing group Demand Justice?**
   a. **Are you aware that you are on their "shortlist" for the Supreme Court?**
   b. **Are you aware that when the group initially released their list on October 15, 2019 you were not on the list?**[1]
   c. **Do you have any idea why you were added to the list after originally being left off of it?**
   d. **Have you had any conversations with anyone associated with Demand Justice since October 15, 2019?**

   RESPONSE: I am aware that the group Demand Justice has compiled a Supreme Court "shortlist." I am also aware that I was not on the first iteration of that list, and that I am now listed. I do not know why I was added to the list. Chris Kang, who I understand is affiliated with Demand Justice, is among the many people who offered me congratulations on this nomination. I met Mr. Kang when he served as chief judicial nominations counsel to President Obama in 2012, when I was nominated to be a U.S. District Judge. That is the only communication that is responsive to this question.

2. **What is an *Irons* footnote?**

   RESPONSE: An *Irons* footnote is a mechanism by which a panel of the D.C. Circuit can overrule a circuit precedent that, "due to an intervening Supreme Court decision, or the combined weight of authority from other circuits, . . . is clearly an incorrect statement of current law." D.C. Circuit Policy Statement on *En Banc* Endorsement of Panel Decisions ("*Irons* Footnote Policy") at 1 (Jan. 17, 1996) (alteration omitted); *see also Irons v. Diamond*, 670 F.2d 265, 267–68 & n. 11 (D.C. Cir.1981). D.C. Circuit panels are permitted to use *Irons* footnotes when "the circumstances of the case or the importance of the legal questions presented do not warrant the heavy administrative burdens of full en banc hearing." *Irons* Footnote Policy at 1; *see also Oakey v. U.S. Airways Pilots Disability Income Plan*, 723 F.3d 227, 232 (D.C. Cir. 2013).

3. **What is *Skidmore* deference? Can you summarize the D.C. Circuit's current *Skidmore* jurisprudence?**

   RESPONSE: *Skidmore* deference refers to the Supreme Court's conclusion that a court may defer to an agency's interpretation of a statute that the agency itself administers, when that agency interpretation is not set forth in a document that has the force of law (i.e., not a rule or adjudication). When *Skidmore* deference is applicable,

[1] Available at https://demandjustice.org/demand-justice-releases-supreme-court-shortlist-of-diverse-progressive-lawyers/.

the agency's "interpretation is 'entitled to respect' only to the extent it has the 'power to persuade.'" *Gonzales v. Oregon*, 546 U.S. 243, 256 (2006) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)); *see also Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 159 (2012) (explaining that a court applying *Skidmore* deference accords the agency's interpretation "a measure of deference proportional to the 'thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade'" (quoting *United States v. Mead Corp.*, 533 U.S. 218, 228 (2001))). The D.C. Circuit's current *Skidmore* jurisprudence is consistent with the Supreme Court's articulation of the doctrine. *See, e.g.*, *Indian River Cty. v. U.S. Dep't of Transp.*, 945 F.3d 515, 531 (D.C. Cir. 2019) ("When an agency's interpretation of a statute has been binding on agency staff for a number of years, and it is reasonable and consistent with the statutory framework, deference to the agency's position is due under *Skidmore*."); *Orton Motor, Inc. v. U.S. Dep't of Health & Hum. Servs.*, 884 F.3d 1205, 1211 (D.C. Cir. 2018) ("Ultimately, a court will uphold an agency determination under *Skidmore* if it is persuasive.").

4. What is *Chevron* deference? Can you summarize the D.C. Circuit's current *Chevron* jurisprudence?

RESPONSE: I have applied the *Chevron* deference doctrine in at least 11 of my written opinions. *See, e.g.*, *Las Americas Immigrant Advoc. Ctr. v. Wolf*, 2020 WL 7039516, at *13 (D.D.C. Nov. 30, 2020); *Otay Mesa Prop., L.P. v. Dep't of the Interior*, 344 F. Supp. 3d 355, 368 (D.D.C. 2018); *Depomed, Inc. v. Dep't of Health & Hum. Servs.*, 66 F. Supp. 3d 217, 229 (D.D.C. 2014); *Am. Meat Inst. v. Dep't of Agric.*, 968 F. Supp. 2d 38, 52 (D.D.C. 2013). *Chevron* deference refers to the Supreme Court's requirement that "a court review[ing] an agency's construction of the statute which it administers" must defer to the agency's authoritative interpretation of that statute in certain circumstances. *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984). An agency's statutory interpretation "qualifies for *Chevron* deference when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority." *United States v. Mead Corp.*, 533 U.S. 218, 226–27 (2001). In order to determine whether or not to defer under *Chevron*, courts must employ a two-step process. The court decides, first, "whether Congress has directly spoken to the precise question at issue[,]" using "traditional tools of statutory construction[.]" *Chevron*, 467 U.S. at 842, 843 n.9. "If the intent of Congress is clear," the court "must give effect to the unambiguously expressed intent of Congress." *Id.* at 842–43. But "if the statute is silent or ambiguous with respect to the specific issue," the court must proceed to determine whether the agency's interpretation is "based on a permissible construction of the statute[,]" *id.* at 843, and, if so, the court must defer to the agency's interpretation. The D.C. Circuit's current *Chevron* jurisprudence is consistent with the Supreme Court's articulation of the doctrine. *See, e.g.*, *Murray Energy Corp. v. EPA*, 936 F.3d 597, 608 (D.C. Cir. 2019) (recognizing that, "[o]n questions of statutory interpretation, the court must review [the agency's] actions in

accordance with the standard set forth in" *Chevron*); *see also id.* (reiterating that "*Chevron* deference involves a two-step analysis.").

5. What is *Auer* deference? Can you summarize the D.C. Circuit's current *Auer* jurisprudence?

RESPONSE: *Auer* deference is a doctrine that instructs courts to "defer[] to agencies' reasonable readings of genuinely ambiguous regulations." *Kisor v. Wilkie*, 139 S. Ct. 2400, 2408 (2019) (citing *Auer v. Robbins*, 519 U.S. 452 (1997); *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945)). Recently, in *Kisor v. Wilkie*, the Supreme Court clarified the circumstances under which *Auer* deference is warranted, holding that "a court should not afford *Auer* deference unless" the court determines that "the regulation is genuinely ambiguous" after "exhaust[ing] all the 'traditional tools' of construction." *Id.* at 2415. And even "[i]f genuine ambiguity remains," deference is only required when "the agency's reading" is "reasonable"—*i.e.*, "it must come within the zone of ambiguity the court has identified after employing all its interpretive tools." *Id.* at 2415–16. An agency's interpretation of its regulations "must [also] be the agency's 'authoritative' or 'official position,'" as well as "in some way implicate its substantive expertise[,]" to qualify for *Auer* deference. *Id.* at 2416–17. The Supreme Court has further explained that *Auer* deference would not be warranted if the reviewing "court concludes that an interpretation does not reflect an agency's authoritative, expertise-based, fair, or considered judgment[,]" *id.* at 2414 (internal quotation marks, alteration, and citation omitted), and is instead "a merely convenient litigating position or *post hoc* rationalization advanced to defend past agency action against attack[,]" *id.* at 2417 (internal quotation marks, alteration, and citation omitted). The D.C. Circuit's current *Auer* jurisprudence is consistent with the Supreme Court's articulation of the doctrine. For instance, the D.C. Circuit recently maintained that "[a]n agency may receive deference when it reasonably interprets its own 'genuinely ambiguous' regulations." *Nat'l Lifeline Ass'n v. FCC*, 983 F.3d 498, 507 (D.C. Cir. 2020) (quoting *Kisor*, 139 S. Ct. at 2414); *see also id.* (emphasizing that "if there is only one reasonable construction of a regulation—then a court has no business deferring to any other reading, no matter how much the agency insists it would make more sense" (quoting *Kisor*, 139 S. Ct. at 2415)).

6. Is there an analytical difference between *Auer* deference and *Seminole Rock* deference?

RESPONSE: In *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945), the Supreme Court held that a federal court must defer to an agency's interpretation of a regulation that the agency administers. It appears that the Court has historically treated the *Seminole Rock* deference standard and as interchangeable shorthand for the same idea that it expressed in its subsequent articulation of *Auer* deference: "This Court has often deferred to agencies' reasonable readings of genuinely ambiguous regulations" and "[w]e call that practice *Auer* deference, or sometimes *Seminole Rock* deference, after two cases in which we employed it." *Kisor v. Wilkie*, 139 S. Ct. 2400, 2408 (2019). The D.C. Circuit has relied on those two cases interchangeably as

well. *See, e.g.*, *Tilden Mining Co., Inc. v. Sec'y of Lab.*, 832 F.3d 317, 322 (D.C. Cir. 2016) (noting that courts afford deference to an agency's interpretation of its own regulation "based on the Supreme Court's decisions in [*Auer*] and [*Seminole Rock*]"). Whatever analytical differences there may be between *Seminole Rock* and *Auer*, the current controlling authority concerning deference to an agency's interpretations of its own regulations is neither *Auer* nor *Seminole Rock*; the Supreme Court has declined to overrule *Auer* / *Seminole Rock*, but, in *Kisor*, it established a detailed multi-factor process for determining when this kind of deference is proper. *See* 139 S. Ct. at 2414–18.

7. **When a new presidential administration begins, they may want to reverse, review, expand upon, or otherwise change agency actions from the previous administration.**
   a. **What kind of process do agencies have to go through in order to revoke a rule promulgated by a previous administration?**

RESPONSE: Under section 1 of the Administrative Procedure Act ("APA"), an agency is generally required to use the same processes to repeal a rule as it used to promulgate the rule. *See Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 101 (2015). Thus, if the agency issued the rule after engaging in notice and comment rulemaking pursuant to section 553 of the APA, it must ordinarily go through the notice and comment process in order to repeal the rule.[2] However, if the rule in question did not require notice-and-comment rulemaking in the first place (if, for instance, it was an interpretive rule), then the agency need not use the notice-and-comment process to repeal the rule. *See id.* at 102 (holding that courts may not impose any additional procedural requirements on agencies beyond those set forth in the APA); *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 524 (1978) (same). The Supreme Court has further emphasized that, when an agency changes its policy position on a matter, the agency must provide a "reasoned explanation for its action[,]" "display awareness that it is changing position[,]" and "show that there are good reasons for the new policy." *F.C.C. v. Fox Tel. Stations, Inc.*, 556 U.S. 502, 515 (2009).

   b. **What has the Supreme Court said about this issue?**

RESPONSE: Please see my response to Question 7a.

   c. **What are they key D.C. Circuit cases on point here?**

RESPONSE: Key D.C. Circuit cases on this topic include *Friends of Animals v. Bernhardt*, 961 F.3d 1197 (D.C. Cir. 2020), *Natural Resources Defense Council v. Wheeler*, 955 F.3d 68 (D.C. Cir. 2020), *Mingo Logan Coal Co. v. Environmental*

[2] The APA's notice-and-comment process entails issuing a notice of proposed rulemaking, giving interested parties an opportunity to comment on the proposed rule, and issuing a final rule with "a concise general statement of [the rule's] basis and purpose." *See* 5 U.S.C. § 553.

Protection Agency, 829 F.3d 710 (D.C. Cir. 2016), and *Consumer Energy Council of America v. Federal Energy Regulatory Commission*, 673 F.2d 425 (D.C. Cir. 1982). The doctrine announced in *Paralyzed Veterans of America v. D.C. Arena L.P.*, 117 F.3d 579 (D.C. Cir. 1997), has also been a "key" case in this area, but the Supreme Court abrogated the *Paralyzed Veterans* rule in *Perez v. Mortgage Bankers Association*, 575 U.S. 92 (2015).

8. **You served as a law clerk for Justice Breyer with Tim Wu. Mr. Wu is now a member of President Biden's National Economic Council.**
   a. **How have you handled recusal when it comes to cases that have come before you that implicated Mr. Wu's work on the National Economic Council?**
   b. **If confirmed, how will you handle recusal when it comes to cases that come before you that implicate Mr. Wu's work on the National Economic Council?**

   RESPONSE: I have not had a case in which the National Economic Council was a party. In general, if confirmed to the U.S. Court of Appeals, my process for determining whether particular matters required my recusal would involve reviewing the Judicial Code of Conduct and 28 U.S.C. § 455 concerning the legal standards that pertain to recusal. I will also consult with my colleagues, and, if necessary, discuss the matter with counsel to the Judicial Conference Committee on Codes of Conduct. This is the process that I have followed as a district court judge.

9. **You were listed as a counsel on a brief in support of defendant-appellants in *McGuire v. Reilly*, 260 F. 3d. 36 (1st Cir. 2001). Some of the amici curiae your brief was on behalf of include: Repro Associates, Abortion Access Project of Massachusetts, Mass. NARAL, and the Religious Coalition for Reproductive Choice, among others.**
   a. **You appear to have worked on this brief while an associate at a law firm in Boston. Was this a pro bono case?**
   b. **How did you get involved with this case? Did you seek out this assignment?**
   c. **Based on your brief's analysis of *Hill v. Colorado*, could a legislature enact content-neutral buffer zones that prohibited protests to occur outside of federal courthouses or police stations?**

   RESPONSE: The referenced brief was drafted and filed when I was an associate at Goodwin Proctor LLP in Boston in 2001, during my first year of law practice after completing my Supreme Court clerkship. I was assigned to work on this amicus brief related to a matter that was pending in the First Circuit, among other projects. I do not recall how I came to work on this assignment, but I am listed on the brief along with the Goodwin Proctor partner and senior associate with whom I was working at that time. The analysis of *Hill* that is presented in that brief is a legal argument that was made on behalf of my amici-clients, and there have been developments in the law concerning buffer zones in the two decades that have transpired since the brief was filed.

As a sitting federal judge, I am bound by the Supreme Court's current First Amendment caselaw, and I would apply the binding case law of the Supreme Court and the D.C. Circuit if I am assigned to any First Amendment case in which such precedents are applicable. As a pending judicial nominee and a sitting federal judge, it would be inappropriate for me to opine on the constitutionality of buffer zones that government officials might establish in hypothetical circumstances.

10. Some of my colleagues on the other side of the aisle have criticized previous nominees for their membership or involvement with the Federalist Society. While I know you were never a member, you have spoken at an event hosted by the American Constitution Society, a self-described progressive legal organization.

a. In your opinion, what is the substantive difference between the Federalist Society and the American Constitution Society?

b. Do you think a nominee's involvement with the American Constitution Society is less problematic than with a nominee's involvement with the Federalist Society?

RESPONSE: I am not a member of the Federalist Society or the American Constitution Society, and thus I am not in a position to speak to the substantive differences between those two organizations or whether a nominee's involvement with either organization is "problematic." Canon 4 of the Code of Conduct for United States Judges authorizes judges to participate in extrajudicial activities, including being involved with organizations, subject to certain limitations, *see also* Advisory Opinion No. 93 ("Extrajudicial Activities Related to the Law"), and the Code's commentary emphasizes that "a judge should not become isolated from the society in which the judge lives[,]" Commentary to Canon 4. The Judicial Conference Committee on Codes of Conduct has also spoken to this issue: Advisory Opinion No. 82 provides that, prior to undertaking involvement with any organization, judges should carefully consider "the Code's fundamental commands to avoid impropriety or the appearance of impropriety, [to] not lend the prestige of office, and [to] not participate in activities that would detract from the dignity of the judge's office, interfere with the performance of official duties, reflect adversely on the judge's impartiality, or lead to frequent disqualification." Advisory Opinion No. 82 ("Joining Organizations").

11. The left-wing group Demand Justice has deployed a billboard truck to pressure Justice Breyer into retiring:



Do you agree with Demand Justice's message?

RESPONSE: As a pending judicial nominee and a sitting federal judge, I am bound by the Supreme Court's precedents, regardless of that Court's composition. It would be inappropriate for me to comment on whether or when any sitting Supreme Court Justice should retire.

12. In response to a question from Senator Hawley about a statement of beliefs from a school on whose board you used to sit, you answered that you're a member of a lot of organizations and you don't know all the statements of every organization you're a member of. Then-Senator Franken asked then-Professor Amy Barrett at her hearing of her speaking at the Blackstone Fellowship in light of their positions on LGBT issues, "Is it your habit of accepting money from organizations without first learning what they do?"

a. Is it your habit to join an organization without knowing what they believe in?

b. Can you list the organizations you joined before learning about what the organization believed in?

RESPONSE: I served on the inaugural advisory board of Montrose Christian School—a now-defunct kindergarten through 12th grade private school—from the fall of 2010 to the fall of 2011, prior to my nomination and confirmation as a federal district judge. I was aware that Montrose Christian School was affiliated with Montrose Baptist Church. I was not aware that the school had a public website or that any statement of beliefs was posted on the school's website at the time of my service. My service on the advisory school board primarily involved planning for school fund-raising activities for the benefit of enrolled students. I did not receive any compensation for my service.

13. What kind of analysis does the D.C. Circuit use to determine if a final rule is a "logical outgrowth" of a proposed rule?

RESPONSE: A final rule qualifies as a logical outgrowth of a proposed rule, and thus satisfies the Administrative Procedure Act's notice requirement, "if interested parties should have anticipated that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period." *Idaho Conservation League v. Wheeler*, 930 F.3d 494, 508 (D.C. Cir. 2019) (quoting *CSX Transp., Inc. v. STB*, 584 F.3d 1076, 1079–80 (D.C. Cir. 2009)). "On the other hand, a final rule is *not* a logical outgrowth if 'interested parties would have had to divine [the agency's] unspoken thoughts, because the final rule was surprisingly distant from the proposed rule.'" *Id.* (quoting *CSX Transp.*, 584 F.3d at 1080 (emphasis supplied)). Thus, the D.C. Circuit has "found that a final rule represents a logical outgrowth where the [agency's Notice of Proposed Rulemaking] expressly asked for comments on a particular issue or otherwise made clear that the agency was contemplating a particular change." *CSX Transp.*, 584 F.3d at 1081. "By contrast, [the D.C. Circuit's] cases finding that a rule was not a logical outgrowth have often involved situations where the proposed rule gave no indication that the agency was considering a different approach, and the final rule revealed that the agency had completely changed its position." *Id.*

14. Senator Booker invoked John Adams representing British soldiers accused of murder during the Boston Massacre as a reason why you are the right person for the job. Please list all the cases where you represented a client whose views you disagreed with or whose alleged crimes you found offensive.

RESPONSE: Under the ethics rules that apply to lawyers, an attorney has a duty to represent her clients zealously, which includes refraining from contradicting her client's legal arguments and/or undermining her client's interests by publicly declaring the lawyer's own personal disagreement with the legal position or alleged behavior of her client. Because these standards apply even after termination of the representation, it would be inappropriate for me to list the cases in which I previously represented a client whose views I disagreed with or whose alleged crimes I found offensive.

15. In response to my question about sentencing reform, you mentioned that one of your rationales for giving judges more information is because judges don't like to be "outliers."

a. What, if anything, should we as Congress do about judges who *are* outliers?
b. Is that an area for the judicial branch to work on solutions for?
c. Is it worse to be an outlier below the mean, above the mean, or are they both equally bad?

RESPONSE: As a sitting federal district court judge, my current role in the justice system is to evaluate the facts of cases and controversies that parties with standing to adjudicate legal claims present, and I resolve each case on an individual basis by assessing the parties' legal arguments based on the law, as I understand it, including the binding precedents of the Supreme Court and the D.C. Circuit. I no longer serve

on the United States Sentencing Commission, and canons of judicial ethics prevent me from opining on particular policy positions regarding sentencing reforms or commenting on the particular legislation that Congress should enact. Congress has authorized a policymaking branch of the Judiciary—the United States Sentencing Commission—to make proposals concerning sentencing reforms; additionally, with Congress' consent, the Commission promulgates sentencing guidelines for federal judges to use when imposing sentences in individual cases. After *Booker*, judges have a duty to calculate and consider the applicable sentencing guidelines in every federal criminal case, and to impose a sentence that is sufficient but not greater than necessary to comply with the purposes of punishment, as 18 U.S.C. § 3553(a) requires.

16. During Senator Feinstein's questioning of you, she referenced a statistic from the left-wing group Alliance for Justice that put your reversal rate at less than 2%. I know that was not your statistic, but you didn't object to the premise of the question and answered. Do you believe 2% is an accurate portrayal of your reversal rate? If not, what do you think your reversal rate is?

RESPONSE: To the best of my knowledge, it is accurate to say that only 2% of the written opinions that I have issued have been reversed by the Court of the Appeals.

17. Westlaw has reversal reports for every sitting judge. Instead of using the total number of opinions (which appears to be the denominator used by AFJ in getting to 2%), Westlaw looks at the opinions that were *actually* appealed, which makes sense to me since an opinion that is not appealed cannot be reversed.[3] Using those numbers, you have been reversed 8 times out of 75 appeals, for a rate of 10.7%. Do you believe this is a more accurate reflection of your reversal rate? If not, why not?

RESPONSE: The reversal-rate analysis that Westlaw employs is misleading. Looking only at the number of reversals relative to the number of decisions that are "actually appealed" merely assesses a losing party's odds of being successful if an appeal is sought; that computation does not account for the overall number of opinions that the judge has issued and the fact that a losing party may choose to forego an appeal for a number of reasons, including the recognition that the ruling is correct and would be sustained on appeal. The performance of a judge who has written 562 opinions, only 75 of which have even been appealed, is not the same as that of a judge who has written 80 opinions, 75 of which have been appealed, even if those two judges have the same number of reversals. Westlaw would apparently characterize a hypothetical judge who has issued hundreds of uncontested written decisions as having a 50% reversal rate if only four of his decisions are appealed and if two of those four are reversed.

Westlaw's reversal-rate analysis also lacks an assessment of the relative complexity of the cases at issue or the practices of the court of appeals that reviews a district

[3] Westlaw notes that the number of cases appealed comes "from only those appeals where the lower court judge is identified in the decision."

judge's work. Not all reversals are equivalent. *See, e.g.*, *Gov't of Guam v. United States*, 341 F. Supp. 3d 74 (D.D.C. 2018) (adopting the view of the Sixth and Seventh Circuits, in the context of a circuit split, concerning a dispute regarding application of a provision of the Comprehensive Environmental Response, Compensation, and Liability Act), *rev'd*, 950 F.3d 104 (D.C. Cir. 2020) (reversing after a determination that the D.C. Circuit will side with the Ninth Circuit, rather than the Sixth and Seventh, with respect to the question at issue), *cert. granted*, 141 S. Ct. 976 (oral argument held Apr. 26, 2021). Thus, while Westlaw's analysis suggests that a judge's reversal rate (calculated solely based on the number of appeals and the number of reverses) is a reliable marker of judicial competence, without weighting the cases or standardizing the review practices of the various courts of appeals, it is difficult draw meaningful conclusions.

18. In your response to Senator Tillis, you said that you did not have control over what third parties or reporters say about your rulings.

a. Does any judge have control over what third parties or reporters say about her rulings?

b. Was it wrong for Senator Tillis to question you over what third parties or reporters said about your rulings?

c. Was it wrong of Democrats to question judicial nominees appointed by President Trump over what third parties or reporters said about their rulings?

RESPONSE: No judge has control over what third parties or reporters say about her rulings. It would be inappropriate for me to comment on the propriety of any question that any Senator asks of a nominee in connection with the Senate's exercise of its constitutional advise and consent power.

19. In your response to Senator Tillis, you said that you did not have control over what third parties or reporters say about your rulings. You also said in the *McGahn* opinion, "Stated simply, the primary takeaway from the past 250 years of recorded American history is that Presidents are not kings." Did the Department of Justice claim monarchical powers for the President in that case?

RESPONSE: In *McGahn*, the Department of Justice claimed that the President has the power to prevent certain former staff members from appearing for questioning in response to a valid legislative subpoena, even against will of the former staff member to whom the subpoena is directed—i.e., even when the former staff member would otherwise be required by law to respond to the subpoena, would willingly do so, and would be able to invoke executive privilege in the context of such questioning, where appropriate.

20. You go on to explain, "This means that they do not have subjects, bound by loyalty or blood, whose destiny they are entitled to control."

a. Did the Department of Justice claim blood loyalty on the part of Don McGahn?

b. Assuming "not a subject, bound by loyalty or blood" is the correct analytical category by which to understand the relationship between the President and his staff, does it also apply to the following relationships? If not, why not?

i. Attorney General and political staff
ii. Attorney General and career staff
iii. Senators and Senate staff
iv. Judges and law clerks
v. Police chiefs and patrol officers

RESPONSE: As a sitting federal judge, it would not be appropriate for me to provide an opinion concerning hypothetical disputes over directives from the listed government officials to their staff members. With respect to the Department of Justice's arguments concerning the power of the President to direct that certain former White House staff members ignore a valid legislative subpoena, please see my response to Question 19.

21. In *McGahn* you continued: "Rather, in this land of liberty, it is indisputable that current and former employees of the White House work for the People of the United States, and that they take an oath to protect and defend the Constitution of the United States."

a. Doesn't this beg the question?
b. Wasn't the position of the Department of Justice that Don McGahn couldn't comply with the subpoena *because of* his oath to protect and defend the Constitution of the United States?

RESPONSE: Please see my response to Question 19.

22. If a future Congress were to subpoena one of your law clerks to better understand your thinking in the *McGahn* case and you instructed him or her not to comply with the subpoena, would it answer that "the primary takeaway from the past 250 years of recorded American history is that Judges are not kings; this means that they do not have subjects, bound by loyalty or blood, whose destiny they are entitled to control"?

RESPONSE: Please see my response to Question 20.

23. President Obama famously said of enacting policy without legislation, "I have a pen and a phone." Was President Obama a king?

RESPONSE: I am not familiar with the quoted statement. The Supreme Court has addressed the extent of the President's authority to issue executive orders or undertake executive actions, with and without congressional authorization. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *see also Medellin v. Texas*, 552 U.S. 491 (2008); *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004); *Dames & Moore v. Regan*, 453 U.S. 654 (1981). Broadly speaking, "[t]he President's authority to act, as with the exercise of any governmental power, 'must stem either from an act

of Congress or from the Constitution itself[,]'" *Medellin*, 552 U.S. at 524 (citation omitted), and the Supreme Court's pronouncements regarding this issue are binding on me as a sitting federal judge. The Code of Conduct for federal judges prevents me from further opining about the oft-litigated and controversial subject of the power of the President to enact policy without legislation.

24. During your hearing there were multiple comments made about the importance of an independent judiciary. You defined judicial activism to Senator Cruz as a judge unable or unwilling to separate personal views from the law and ruling consistent with those views instead of the law. I agree.

a. Is the final disposition of a case the only metric to mark judicial activism? More specifically—if a judge reaches the result mandated by the law and by precedent but editorializes why she disagrees with the result or engages in superfluous dicta, is that also judicial activism?

b. "I have my doubts about the wisdom of courts opining on hot-button political issues or the motives of citizens who hold one position or another in those debates." Do you agree with this statement? If not, why not?

RESPONSE: I am not familiar with the quoted statement. During the hearing, I emphasized that courts have a duty of independence from political pressure, meaning that judges must resolve cases and controversies in a manner that is consistent with what the law requires, despite the judge's own personal views of the matter, and this is so even with respect to cases and controversies that pertain to controversial political issues. While the judge may acknowledge the force of contrary positions regarding the legal issues in dispute, the result that a judge reaches must be consistent with the requirements of the law, as set forth in the binding precedents of the Circuit and the Supreme Court. Judicial activism occurs when a judge who is unwilling or unable to rule as the law requires and instead resolves cases consistent with his or her personal views. It is my testimony that judicial activism is properly defined as characterizing a judge who is unwilling or unable to rule as the law requires.

25. Senator Cruz asked you if you believed in the idea of a "living constitution" and you declined to answer one way or the other, citing your lack of experience interpreting constitutional text. During your 2013 nomination to the District Court, the late Senator Tom Coburn asked you the following written question for the record: "Some people refer to the Constitution as a 'living' document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?" You responded: "No."

a. Why did your answer change from 2013 to now?

b. If you were absolute in your answer about disagreeing with the idea of a "living" constitution in 2013 but were not during your hearing last week, should we take your answer to mean that you at least agree with the "living" constitution more than you did in 2013?

c. If so, what has happened during your tenure as a District Judge to make you believe more in a "living" constitution than you did in 2013?

d. As I mentioned, you cited your lack of experience interpreting constitutional text in declining to answer Senator Cruz's question. Yet you answered freely in 2013. Did you have more experience interpreting constitutional text in 2013 than you do now?

RESPONSE: As a sitting federal judge, I am bound by the methods of constitutional interpretation that the Supreme Court has adopted, and I have a duty not to opine on the Supreme Court's chosen methodology or suggest that I would undertake to interpret the text of the Constitution in any manner other than as the Supreme Court has directed. I also have a duty to avoid commenting on, or providing personal views of, disputed legal matters such as the most appropriate method of interpreting the Constitution. I was not a sitting federal judge when I answered Senator Coburn's question in 2013.

26. Under the Supreme Court's First Amendment jurisprudence, can someone shout "fire" in a crowded theater?

RESPONSE: In *Schenck v. United States*, Justice Oliver Wendell Holmes, Jr., writing for the Court, stated in dicta that "[t]he most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." 249 U.S. 47, 52 (1919). The facts of *Schenck* itself did not involve yelling fire in a crowded theater; instead, the Court was reviewing convictions for conspiracy to violate the Espionage Act of 1917, where the defendants had merely mailed leaflets that asserted that the draft was unlawful to men eligible for military service. *See id.* at 48–49. The Court affirmed the convictions on the ground that such speech presented a "clear and present danger" by obstructing the war effort. *Id.* at 52.

Schenck's "clear and present danger" test no longer governs the scope of permissible speech proscriptions, and the Supreme Court has generally recognized that "the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force[.]" *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). However, under *Brandenburg*, the State may proscribe speech or advocacy, including potentially yelling fire in a crowded theater, if the speech "is directed to inciting or producing *imminent* lawless action and is *likely* to incite or produce such action." *Id.* (emphases added).

27. Justice Scalia's opinion in *D.C. v. Heller* does allow for some regulation of firearms, such as possession of firearms by felons. Which firearm regulations has the D.C. Circuit upheld as constitutional?

RESPONSE: Since the Supreme Court's decision in *Heller*, the D.C. Circuit has upheld challenged firearm regulations on five separate occasions. In *Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011), the D.C. Circuit upheld the District's basic registration requirement as applied to handguns and the District's prohibitions on assault weapons and large-capacity magazines. In *Schrader v. Holder*, 704 F.3d 980 (D.C. Cir. 2013), the D.C. Circuit upheld the federal law

prohibiting felons from possessing firearms as applied to common-law misdemeanants. In *Heller v. District of Columbia*, 801 F.3d 264 (D.C. Cir. 2015), the D.C. Circuit upheld the District's basic registration requirement as applied to long guns, the District's requirement that a registrant be fingerprinted and photographed and make a personal appearance to register a firearm, the District's requirement that an individual pay certain fees associated with the registration of a firearm, and the District's requirement that registrants complete a firearms safety and training course. In *Medina v. Whitaker*, 913 F.3d 152 (D.C. Cir. 2019), the D.C. Circuit upheld the federal statute prohibiting felons from possessing firearms, as applied to a person convicted of a felony count of making a false statement to a lending institution. And, most recently, in *United States v. Class*, 930 F.3d 460 (D.C. Cir. 2019), the D.C. Circuit upheld a federal law prohibiting the possession of firearms on the grounds of the United States Capitol, as applied to a defendant who possessed guns in a parking lot near the Capitol.

28. Is it proper for a circuit court judge to question Supreme Court precedent in a concurring opinion? What about in a dissent?

RESPONSE: A circuit judge might properly encourage the Supreme Court to reconsider holdings that are confusing or otherwise problematic in application, by pointing out a problem with the interpretation or application of a precedent, in either a concurrence or a dissent. But it would not be proper for a circuit court judge to depart from Supreme Court precedent when ruling in a case.

29. When interpreting text you find to be ambiguous, which tools would you use to resolve that ambiguity?

RESPONSE: As a sitting district court judge, I have routinely undertaken to interpret statutes, and I have issued nearly 50 written opinions that involve statutory interpretation. My review of my past practice indicates that I seek to resolve alleged ambiguities in a statutory provision by examining the structure of the statute as a whole and other indicia of meaning based upon the statutory text. *See, e.g.*, *All. of Artists & Recording Cos., Inc. v. Gen. Motors Co.*, 162 F. Supp. 3d 8 (D.D.C. 2016), *aff'd*, 947 F.3d 849 (D.C. Cir. 2020). If that does not resolve the ambiguity, I look to Supreme Court precedent for guidance as to the tools of interpretation to apply next in light of the particular circumstances of the case (e.g., the rule of lenity in the criminal context, *Chevron* deference, etc.). I have also consulted the legislative history of a statute, as the Supreme Court permits, but I have never resolved an ambiguity based solely on the legislative history of the statute.

30. When interpreting text you find to be ambiguous, how would you handle two competing, contradictory canons of statutory interpretation?

RESPONSE: As a district court judge, I have routinely undertaken to interpret statutes, and I have issued nearly 50 written opinions that involve statutory interpretation. In my experience, canons of statutory interpretation sometimes lead to

conflicting results, and are not always and inevitably helpful. I attempt to resolve alleged ambiguities in a statutory provision by carefully examining the text of the provision and the statute as whole, including any statutory statements of finding and purpose. If necessary, I consult the legislative history of the statute, as the Supreme Court permits, in order to ascertain the will of Congress.

31. How do you decide when text is ambiguous?

RESPONSE: Some of the nearly 50 written opinions that I have issued that involve statutory interpretation address disputed questions of first impression about the meaning of the text. *See, e.g.*, *Otay Mesa Prop., L.P. v. U.S. Dep't of Interior*, 344 F. Supp. 3d 355, 367–70 (D.D.C. 2018). In each of those cases, when deciding whether the statute's text is ambiguous, I used traditional tools of statutory construction, including textual analysis, structural analysis, and canons of construction, to determine whether the statute at issue "can be read more than one way" and is therefore ambiguous, *AFL–CIO v. FEC*, 333 F.3d 168, 173 (D.C. Cir. 2003) (citation omitted); *see also, e.g.*, *Otsuka Pharm. Co. v. Burwell*, 302 F. Supp. 3d 375, 391–99 (D.D.C. 2016), *aff'd*, 869 F.3d 987 (D.C. Cir. 2017).

32. Do you find, in general, Congressional statutes or agency regulations to consist of more ambiguous text?

RESPONSE: As a district court judge who has reviewed both congressional statutes and agency regulations, it is my role to interpret statutes and regulations, as necessary, to resolve the cases before me. I have not formed an opinion as to whether statutes or regulations tend to be more ambiguous as a generally matter, and I doubt that it is possible to determine in the abstract which form of law has "more ambiguous text." I evaluate each case that comes before me on its own merits.

33. In Federalist No. 62, James Madison wrote: "It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?" Do you agree with this statement?

RESPONSE: In our constitutional system, the Legislative Branch promulgates statutes, consistent with its limited authority under Article I of the Constitution and the protections of individual rights embodied in the Constitution's Amendments. I understand this quotation from Federalist No. 62, which is entitled, "The Senate," to be addressing the extent to which the Senate should exercise its powers in a prudent manner that leads to clear statements of policy concerning the matters that the Senate seeks to address. In any case that raises the question of the clarity of legislative enactments, it would be my duty to apply Supreme Court precedent and the binding law of the D.C. Circuit to resolve the dispute before me.

34. Do you agree with the Supreme Court that the free exercise clause lies at the heart of a pluralistic society (*Bostock v. Clayton County*)? If so, does that mean that the Free Exercise Clause requires that religious organizations be free to act consistently with their beliefs in the public square?

RESPONSE: During my confirmation hearing, I testified in response to a question from Senator Hawley that the Free Exercise Clause is a fundamental and foundational constitutional right. The Supreme Court has made clear that the First Amendment's Free Exercise Clause and Establishment Clause, the Religious Freedom Restoration Act, and other federal statutes guarantee that religious individuals and organizations will have substantial autonomy to act consistently with their religious beliefs.

35. Do you agree with the Supreme Court that the principle of church autonomy goes beyond a religious organization's right to hire and fire ministers? What, in your view, are the limits on church autonomy consistent with what the Supreme Court has said?

RESPONSE: Federal courts, including the Supreme Court, are actively evaluating the scope of the fundamental First Amendment right of religious liberty in a variety of circumstances. I am bound by the Supreme Court's precedents and pronouncements regarding church autonomy, including its reaffirmance in *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), that the Free Exercise Clause protects the right of religious institutions "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Id.* at 2055 (citation omitted). As a pending judicial nominee and a sitting federal judge, it would be inappropriate under Canon 3 of the Code of Conduct for me to provide personal views regarding the limits of church autonomy beyond what the Supreme Court has said.

36. Do you agree that the Religious Freedom Restoration Act requires assessing compelling government interests "to the person" substantially burdened by a government action?

a. **If not, why not?**
b. **If so, can *general* interests restrict religious liberty, or must the interests be defined more precisely?**

RESPONSE: In *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006), the Supreme Court held that the Religious Freedom Restoration Act "requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person'—the particular claimant whose sincere exercise of religion is being substantially burdened." *Id.* at 430–31 (citation omitted). Thus, federal courts must "look[] beyond broadly formulated interests justifying the general applicability of government mandates and scrutinize[] the asserted harm of granting specific exemptions to particular religious claimants." *Id.* at 431. My personal views of this standard, if any, are irrelevant; notwithstanding

any personal views of this issue, I am required to apply the Supreme Court's interpretation of what RFRA requires. If confirmed, I will do so.

37. Do you agree with the following statements?

a. **We live in a pluralistic society with people of widely diverse faith traditions. Religious freedom for all is part of our country's bedrock, from the enactment of our Constitution to the establishment of our more recent statutes that protect against religious discrimination.**

RESPONSE: Please see my response to Question 34.

b. **Title VII requires that employers not discriminate against applicants or employees because of their religious beliefs, observances, or practices and that employers accommodate religious beliefs, observances, and practices, absent undue hardship.**

RESPONSE: Title VII of the Civil Rights Act of 1964 prohibits employers from undertaking certain employment practices "because of [an] individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2. Under that statute, prohibited practices include the failure or refusal to hire an individual, or the discharge of an individual, on the basis of these protected characteristics, as well as "discriminat[ion] against any [such] individual with respect to his compensation, [or the] terms, conditions, or privileges of employment." *See id.* § 2000e-2(a). The definitions provision of Title VII defines "religion" as "includ[ing] all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." *Id.* § 2000e(j).

c. **Federal civil-rights regulators should seek to learn more about the extent to which employees request time off for prayer or Sabbath observance, seek exemption from grooming or dress codes, or seek to avoid participation in hot-button practices like abortion or LGBTQ celebration.**

RESPONSE: As a sitting district judge, my role in the judicial system is to consider any legal claims brought by employees concerning the manner in which their employers have treated their requests for religious accommodation. My role as a circuit judge, if confirmed, would be the same. It would be inappropriate for me to comment on threshold policy questions concerning what federal civil-rights regulators can or should do to educate themselves regarding such requests.

d. **It is important to improve religious discrimination awareness for employees and employers while encouraging meaningful dialogue between employees, employers, and the government.**

RESPONSE: As a sitting district judge, my role is to consider any legal claims brought by employees concerning alleged religious discrimination, and my role as a circuit judge, if confirmed, would be the same. It would be inappropriate for me to comment about threshold policy matters, including the importance *vel non* of general awareness and meaningful dialogue about religious discrimination.

e. **The federal government should prevent and remedy unlawful religious discrimination.**

Please see my answers to Question 37(c) and (d).

38. You can answer the following questions yes or no:

a. **Was *Brown v. Board of Education* correctly decided?**
b. **Was *Loving v. Virginia* correctly decided?**
c. **Was *Griswold v. Connecticut* correctly decided?**
d. **Was *Roe v. Wade* correctly decided?**
e. **Was *Planned Parenthood v. Casey* correctly decided?**
f. **Was *Gonzales v. Carhart* correctly decided?**
g. **Was *District of Columbia* v. Heller correctly decided?**
h. **Was *McDonald v. City of Chicago* correctly decided?**
i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**
j. **Was *Sturgeon v. Frost* correctly decided?**
k. **Was *Juliana v. United* States (9th Cir.) correctly decided?**
l. **Was *Rust v. Sullivan* correctly decided?**

RESPONSE: As a sitting federal judge, all of the Supreme Court's pronouncements are binding on me, and consistent with the positions taken by other pending judicial nominees, it would be inappropriate for me to comment on the merits or demerits of any of the Supreme Court's binding precedents. Of the listed cases, the *Brown v. Board* and *Loving v. Virginia* opinions are two exceptions to this general rule. *Brown* overruled the manifest injustice of *Plessy v. Ferguson*, and its underlying premise—that "separate but equal is inherently unequal"—is beyond dispute. *Loving*, which reaffirms the Court's rejection of the "notion that the mere 'equal application' of a statute containing racial classifications" comports with the Fourteenth Amendment, is a direct outgrowth of *Brown*. Therefore, I can confirm that that these two matters were rightly decided without calling into question my duties under the Code of Conduct.

39. Do Blaine Amendments violate the Constitution?

RESPONSE: The original Blaine Amendment—a proposal that Congress considered but did not pass in the 1870's—"would have amended the Constitution to bar any aid to sectarian institutions." *Mitchell v. Helms*, 530 U.S. 793, 828 (2000). Some states have enacted state-law provisions or have adopted practices that bar government entities from appropriating funds to religious sects or institutions (which I understand

are referred to as Blaine Amendments), on the grounds that doing so is necessary to prevent Establishment Clause violations. The Supreme Court recently addressed one such state-law provision in *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246, 2262 (2020) (assessing the Montana Supreme Court's application of a no-aid provision in Montana's Constitution to invalidate a state scholarship program). In *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), the Supreme Court reviewed a similar state agency's practice of summarily denying a religious institution's application for competitively awarded grant funding on the grounds that the money could not be given to a religious institution. In both cases, the Supreme Court struck down the state restrictions as a violation of the First Amendment's neutrality requirement. *See also Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 524 (1993). As a sitting federal judge, I am bound by the Supreme Court's precedents regarding whether a state prohibition concerning the provision of funds to religious sects or institutions violates the Constitution.

40. Please describe the selection process that led to your nomination from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

RESPONSE: On January 26, 2021, White House Counsel Dana Remus contacted me concerning my potential nomination to the D.C. Circuit to fill the anticipated vacancy that would arise from then-Judge Merrick Garland's confirmation as Attorney General of the United States. Since that date, I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice regarding my potential nomination and the nominations process. On February 24, 2021, I met with President Biden and Dana Remus at the White House concerning the nomination, and on March 30, 2021, the President announced his intent to nominate me.

41. Have you had any conversations with individuals associated with the group Demand Justice, including but not limited to Brian Fallon or Chris Kang in connection with this or any other potential judicial nomination? If so, please explain the nature of those conversations.

RESPONSE: Chris Kang, who I understand is affiliated with Demand Justice, is among the many people who offered me congratulations on this nomination. Mr. Kang served as chief judicial nominations counsel to President Obama in 2012, when I was nominated to be a U.S. District Judge. That is the only communication that is responsive to this question.

42. Have you had any conversations with individuals associated with the American Constitution Society, including but not limited to Russ Feingold, in connection with this or any other potential judicial nomination? If so, please explain the nature of those conversations.

RESPONSE: No.

43. Have you had any conversations with individuals associated with the Lawyers Committee for Civil and Human Rights, including but not limited to Vanita Gupta, in connection with this or any other potential judicial nomination? If so, please explain the nature of those conversations.

RESPONSE: I had one conversation with Kristen Clarke in mid-April 2021, in which we discussed her experience in appearing before the Committee. That is the only communication that is responsive to this question.

44. You mention in your SJQ that you met with President Biden before being nominated. Did he ask you any questions about judicial precedent or public policy in that meeting? If so please describe those questions and your responses.

RESPONSE: President Biden did not ask me any questions about judicial precedent or public policy.

45. Please explain with particularity the process by which you answered these questions.

RESPONSE: The answers that I have provided to all of the written questions of the members of the Committee are mine alone. To generate each response, I read the question carefully, researched the law and my own practices as a district judge, as necessary, and drafted answers to the questions. I then shared my draft answers with employees of the Department of Justice's Office of Legal Policy and received their feedback. I then finalized the responses based on my independent judgment.

46. Do these answers reflect your true and personal views?

RESPONSE: I have responded truthfully to each question, and have provided answers that are true and consistent with my oath of office and my duties and obligations as a sitting federal judge.

Responses to Questions for the Record from Senator Tom Cotton
to Judge Ketanji Brown Jackson, Nominee to the
United States Court of Appeals for the D.C. Circuit

1. **Since becoming a legal adult, have you ever been arrested for or accused of committing a hate crime against any person?**

   RESPONSE: No.

2. **Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?**

   RESPONSE: No.

3. **During your confirmation hearing, you engaged in a policy discussion with Ranking Member Grassley regarding sentencing policy, which you clarified was a discussion in which you engaged not as a sitting judge, but "as a former member of the Sentencing Commission." In that discussion, you also expressed your support for particular sentencing laws passed by Congress. As a former member of the Sentencing Commission, do you believe that federal criminal sentences for drug trafficking should be more lenient?**

   RESPONSE: During my confirmation hearing, Ranking Member Grassley stated that he himself was "someone who has worked hard on the First Step Act and other issues of criminal justice reform," and that he "appreciate[d]" my prior work "on sentencing reform[.]" He then asked me one question about a particular policy position that I had publicly asserted as a member of the Sentencing Commission—a position that Judge William Pryor, a former Acting Chair of the Sentencing Commission, also shared. In this regard, Ranking Member Grassley noted that, as members of the Sentencing Commission, Judge Pryor and I had publicly "agree[d] sentencing needs to be reformed" but we had also publicly debated the nature of any such reforms. Ranking Member Grassley's one question to me during the confirmation hearing was to ask me to explain the difference between Judge Pryor's and my publicly stated policy positions on sentencing reform, and, specifically, "why [I] trust judges with more discretion when it comes to sentencing than Pryor does?"

   In response to Ranking Member Grassley's question, I first thanked Ranking Member Grassley, Chairman Durbin, Senator Lee and other members of the Judiciary Committee, "as a former member of the Sentencing Commission," for their work on statutory changes to the federal sentencing system. I then proceeded to explain the different approaches that Judge Pryor and I had taken "in our public statements and in the [Commission] meetings about the need for reform[,]" and I explained our respective, publicly stated views about "how do we change the system after the Supreme Court's decision making the Guidelines advisory and not binding anymore on judges?" Ranking Member Grassley did not respond to my description of the past

positions that Judge Pryor and I had taken in the context of proposed sentencing reforms during my service as a policymaker on the Sentencing Commission, nor did I engage in any policy discussion with Ranking Member Grassley or express a current position on any federal sentencing laws.

As a pending judicial nominee and a sitting federal judge, I am not a policymaker, and the Code of Conduct for United States Judges prevents me from expressing a view about the propriety of the penalties that Congress has prescribed for any crimes. It would be inappropriate for me to provide policy views concerning whether federal criminal sentences should be more lenient, even based on my expertise as a "former member of the Sentencing Commission[,]" because doing so would jeopardize the confidence of the parties and the public in my ability to set aside any such views and faithfully apply the penalties that currently exist in federal criminal statutes.

4. **During your confirmation hearing, you engaged in a policy discussion with Ranking Member Grassley regarding sentencing policy, which you clarified was a discussion in which you engaged not as a sitting judge, but "as a former member of the Sentencing Commission." In that discussion, you also expressed your support for particular sentencing laws passed by Congress. As a former member of the Sentencing Commission, do you believe that federal criminal sentences for fentanyl trafficking should be more lenient?**

   RESPONSE: Please see my response to Question 3, which clarifies the scope and circumstances of my statements in response to Ranking Member Grassley's question during my confirmation hearing. When I responded to Ranking Member Grassley's request that I explain a particular policy position that I had taken publicly during my service as a member of the Sentencing Commission, I did not undertake to express any current policy views of federal sentencing statutes "as a former member of the Sentencing Commission" or otherwise. As a pending judicial nominee and a sitting federal judge, it would be inappropriate for me to answer this policy question about statutory penalties for fentanyl trafficking.

5. **During your confirmation hearing, you engaged in a policy discussion with Ranking Member Grassley regarding sentencing policy, which you clarified was a discussion in which you engaged not as a sitting judge, but "as a former member of the Sentencing Commission." In that discussion, you also expressed your support for particular sentencing laws passed by Congress. As a former member of the Sentencing Commission, do you believe that federal criminal sentences for heroin trafficking should be more lenient?**

   RESPONSE: Please see my response to Question 3, which clarifies the scope and circumstances of my statements in response to Ranking Member Grassley's question during my confirmation hearing. When I responded to Ranking Member Grassley's request that I explain a particular policy position that I had taken publicly during my service as a member of the Sentencing Commission, I did not undertake to express any current policy views of federal sentencing statutes "as a former member of the

Sentencing Commission" or otherwise. As a pending judicial nominee and a sitting federal judge, it would be inappropriate for me to answer this policy question about statutory penalties for heroin trafficking.

6. **During your confirmation hearing, you engaged in a policy discussion with Ranking Member Grassley regarding sentencing policy, which you clarified was a discussion in which you engaged not as a sitting judge, but "as a former member of the Sentencing Commission." In that discussion, you also expressed your support for particular sentencing laws passed by Congress. As a former member of the Sentencing Commission, do you believe that federal criminal sentences for methamphetamine trafficking should be more lenient?**

RESPONSE: Please see my response to Question 3, which clarifies the scope and circumstances of my statements in response to Ranking Member Grassley's question during my confirmation hearing. When I responded to Ranking Member Grassley's request that I explain a particular policy position that I had taken publicly during my service as a member of the Sentencing Commission, I did not undertake to express any current policy views of federal sentencing statutes "as a former member of the Sentencing Commission" or otherwise. As a pending judicial nominee and a sitting federal judge, it would be inappropriate for me to answer this policy question about statutory penalties for methamphetamine trafficking.

7. **During your confirmation hearing, you engaged in a policy discussion with Ranking Member Grassley regarding sentencing policy, which you clarified was a discussion in which you engaged not as a sitting judge, but "as a former member of the Sentencing Commission." In that discussion, you also expressed your support for particular sentencing laws passed by Congress. As a former member of the Sentencing Commission, do you believe that federal criminal sentences for armed criminals should be more lenient?**

RESPONSE: Please see my response to Question 3, which clarifies the scope and circumstances of my statements in response to Ranking Member Grassley's question during my confirmation hearing. When I responded to Ranking Member Grassley's request that I explain a particular policy position that I had taken publicly during my service as a member of the Sentencing Commission, I did not undertake to express any current policy views of federal sentencing statutes "as a former member of the Sentencing Commission" or otherwise. As a pending judicial nominee and a sitting federal judge, it would be inappropriate for me to answer this policy question about statutory penalties for armed criminals.

8. **During your confirmation hearing, you engaged in a policy discussion with Ranking Member Grassley regarding sentencing policy, which you clarified was a discussion in which you engaged not as a sitting judge, but "as a former member of the Sentencing Commission." In that discussion, you also expressed your support for particular laws passed by Congress. As a former member of the Sentencing**

Commission, do you believe that federal criminal sentences for violent crime should be more lenient?

RESPONSE: Please see my response to Question 3, which clarifies the scope and circumstances of my statements in response to Ranking Member Grassley's question during my confirmation hearing. When I responded to Ranking Member Grassley's request that I explain a particular policy position that I had taken publicly during my service as a member of the Sentencing Commission, I did not undertake to express any current policy views of federal sentencing statutes "as a former member of the Sentencing Commission" or otherwise. As a pending judicial nominee and a sitting federal judge, it would be inappropriate for me to answer this policy question about statutory penalties for violent crimes.

9. **During your confirmation hearing, you engaged in a policy discussion with Ranking Member Grassley regarding sentencing policy, which you clarified was a discussion in which you engaged not as a sitting judge, but "as a former member of the Sentencing Commission." In that discussion, you also expressed your support for particular laws passed by Congress. As a former member of the Sentencing Commission, do you believe that illegally reentering the United States after being deported should be a crime?**

RESPONSE: Please see my response to Question 3, which clarifies the scope and circumstances of my statements in response to Ranking Member Grassley's question during my confirmation hearing. When I responded to Ranking Member Grassley's request that I explain a particular policy position that I had taken publicly during my service as a member of the Sentencing Commission, I did not undertake to express any current policy views of federal sentencing statutes "as a former member of the Sentencing Commission" or otherwise. As a pending judicial nominee and a sitting federal judge, it would be inappropriate for me to answer this policy question about whether Congress should have criminalized illegally reentering the United States after being deported.

10. **During your confirmation hearing, you engaged in a policy discussion with Ranking Member Grassley regarding sentencing policy, which you clarified was a discussion in which you engaged not as a sitting judge, but "as a former member of the Sentencing Commission." You also told Senator Lee that you are "aware of" studies regarding racial bias, again mentioning your time as a member of the Sentencing Commission. You said further that the different thresholds to trigger mandatory minimum sentences in crack cocaine cases as compared with powder cocaine cases are one factor that you believe contributes to alleged racial disparities in criminal sentencing. What other factors to you believe contribute to alleged racial disparities in federal criminal sentencing?**

RESPONSE: Please see my response to Question 3, which clarifies the scope and circumstances of my statements in response to Ranking Member Grassley's question during my confirmation hearing. When I responded to Ranking Member Grassley's

request that I explain a particular policy position that I had taken publicly during my service as a member of the Sentencing Commission, I did not undertake to express any current policy views of federal sentencing statutes "as a former member of the Sentencing Commission" or otherwise.

In response to Senator Lee—who asked me whether I would agree or disagree "with someone who said that most racial disparities in criminal convictions and sentencings result from an unconscious racial bias of judges, juries, and other judicial decisionmakers"—I began by explaining that "as a judge now, it is very important for me not to make personal commitments about things like the question that you asked." I then acknowledged being "aware of social science research" regarding implicit bias, citing in particular the work of Harvard Professor Mahzarin Banaji, and I also stated that I am aware of research that the Sentencing Commission has conducted concerning the impact of certain policy choices in the federal sentencing system on different demographic groups. The Commission's body of research regarding the federal sentencing system in the wake of the Anti-Drug Abuse Act of 1986, which is the legislation that established mandatory minimums and created the 100-to-1 crack cocaine/powder cocaine disparity, is among the research with which I am familiar. The Commission's October 2017 report concerning the impact of mandatory minimum penalties for drug offenses in the federal criminal justice system is another such research study.

When I responded to Senator Lee, I did not express any personal views regarding my own beliefs about what factors contribute to alleged racial disparities in criminal convictions and sentencings, and as a pending judicial nominee and a sitting federal judge, it would be inappropriate for me to express a belief about whether there are racial disparities in federal criminal sentencing, or whether unconscious bias of judicial officers causes any such disparities. It would likewise be inappropriate for me to identify other potentially contributing factors, in response to this policy question.

11. During your confirmation hearing, you commented on the Supreme Court's jurisprudence regarding the First Amendment. Specifically, you said that "the Supreme Court has rightly viewed the First Amendment right to religious liberty as foundational, fundamental." I'd like to ask you about another of the Supreme Court's views on foundational, fundamental rights: You said during your hearing that you are bound by the Supreme Court's opinions on the Second Amendment, including *District of Columbia v. Heller*, and *McDonald v. Chicago*. Do you believe that the Supreme Court "rightly viewed" Second Amendment rights in those cases?

RESPONSE: During my confirmation hearing, I expressed the indisputable fact that the First Amendment of the Constitution, which states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[,]" expressly protects a fundamental and foundational right to religious liberty. I also explained that "the Supreme Court is working through the doctrine" and that "there has been a series of cases in the last few years as the [Supreme] Court determines what it means to treat religious organizations differently." Similarly, the Second Amendment

states that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed[,]" and in *District of Columbia v. Heller*, the Supreme Court held that this constitutional provision establishes "an individual right to keep and bear arms[,]" *see* 554 U.S. 570, 595 (2008); *see also McDonald v. City of Chicago*, 561 U.S. 742, 74–50 (2010). As a current federal judge, I am bound to follow both *Heller* and *McDonald*, as I would be if confirmed to the D.C. Circuit. I have not expressed any personal views of the scope and contours of the fundamental rights protected by the First and Second Amendments, and it would not be appropriate for me to do so under Canon 3 of the Code of Conduct for Judges, given that the Supreme Court and other courts are actively considering such issues as applied to various government regulations.

12. During your confirmation hearing, you commented on the Supreme Court's jurisprudence regarding the First Amendment. Specifically, you said that "the Supreme Court has rightly viewed the First Amendment right to religious liberty as foundational, fundamental." I'd like to ask you about another of the Supreme Court's holdings regarding the First Amendment: In *Citizens United v. FEC*, the Supreme Court held that the First Amendment prohibits the government from restricting independent political expenditures by entities such as corporations, nonprofit entities, and others. Do you believe that the Supreme Court "rightly viewed" the First Amendment's Free Speech Clause in *Citizens United*?

RESPONSE: During my confirmation hearing, I expressed the indisputable fact that the First Amendment of the Constitution, which states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[,]" expressly protects a fundamental and foundational right to religious liberty. The First Amendment also prohibits Congress from "abridging the freedom of speech" by legislation, and the Supreme Court has long held that it thereby expressly protects a fundamental and foundational right to free speech. In *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), the Supreme Court determined that the First Amendment's fundamental right to free speech prohibits the federal government from imposing limits on corporate entities' independent expenditures for political communications. As a sitting federal judge, I am bound to follow *Citizens United*, as I would be if confirmed to the D.C. Circuit. I have not expressed any personal view about the Supreme Court's application of First Amendment protections to campaign-finance restrictions, or any other law, and it would not be appropriate for me to do so under the Code of Conduct for Judges, given the fact that I am bound by Supreme Court precedents and campaign-finance issues are the subject of ongoing legislative review. Disputes concerning these matters are routinely litigated in federal courts.

13. During your confirmation hearing, you commented on the Supreme Court's jurisprudence regarding the First Amendment. Specifically, you said that "the Supreme Court has rightly viewed the First Amendment right to religious liberty as foundational, fundamental." I'd like to ask you about another of the Supreme Court's holdings regarding the First Amendment: In *Citizens United v. FEC*, the Supreme Court held that the First Amendment prohibits the government from

restricting independent political expenditures by entities such as corporations, nonprofit entities, and others. Do you believe that the Supreme Court "rightly viewed" the First Amendment's Free Speech Clause in *Citizens United*?

RESPONSE: Please see my response to Question 12.

14. During your confirmation hearing, you commented on the Supreme Court's jurisprudence regarding the First Amendment. Specifically, you said that "the Supreme Court has rightly viewed the First Amendment right to religious liberty as foundational, fundamental." I'd like to ask you about another of the Supreme Court's holdings regarding the First Amendment: In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Supreme Court in November 2020 enjoined New York from enforcing its 10- and 25- person occupancy limits on religious gatherings, which it described as "the Governor's severe restrictions on the applicants' religious services." Do you believe that the Supreme Court "rightly viewed" the First Amendment's Free Exercise Clause in *Roman Catholic Diocese of Brooklyn v. Cuomo*?

RESPONSE: During my confirmation hearing, I expressed the indisputable fact that the First Amendment of the Constitution, which states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[,]" expressly protects a fundamental and foundational right to religious liberty. I also explained that "the Supreme Court is working through the doctrine" and that "there has been a series of cases in the last few years as the [Supreme] Court determines what it means to treat religious organizations differently." As a sitting federal judge, I am bound to follow the Supreme Court's decision in *Roman Catholic Diocese of Brooklyn v. Cuomo*, as well as the principles that the Court recently articulated, *per curiam*, in *Tandon v. Newsom*, and I would continue to be bound by Supreme Court precedents in this area if confirmed to the D.C. Circuit. I have not expressed any personal views of the scope and contours of the fundamental right to religious liberty, and it would not be appropriate for me to do so under Canon 3 of the Code of Conduct for Judges, as the Supreme Court and other courts are actively evaluating the Free Exercise Clause, as applied to various government regulations.

15. During your confirmation hearing, you commented on the Supreme Court's jurisprudence regarding the First Amendment. Specifically, you said that "the Supreme Court has rightly viewed the First Amendment right to religious liberty as foundational, fundamental." I'd like to ask you about another of the Supreme Court's holdings regarding the First Amendment: In *Tandon v. Newsom*, the Supreme Court in April 2021 enjoined California from enforcing its limits on religious gatherings, including gatherings in private homes, noting that California "treats some comparable secular activities more favorably than at-home religious exercise." This decision did not break new ground, and the Court even noted that this ruling was "the fifth time that the Court has summarily rejected the Ninth Circuit's analysis of California's COVID restrictions on religious exercise," and that the Court's decisions have made the law on the Free Exercise Clause "clear." You

mentioned in your confirmation hearing that you are aware of the "series of rulings" from the Supreme Court on this issue in the past few years. Do you believe that the Supreme Court "rightly viewed" the First Amendment's Free Exercise Clause in *Tandon v. Newsom*?

RESPONSE: Please see my response to Question 14.

16. During your confirmation hearing, when asked by Senator Hawley about the First Amendment right to religious liberty, you responded, "I do believe in religious liberty. That is a foundational tenet of our entire government, our constitutional scheme. The Supreme Court has made clear through its case law that governments can't infringe on people's religious rights." Do you believe that the First Amendment right to free speech, which the Supreme Court has held in *Citizens United v. FEC* also applies to the speech of corporations and nonprofit entities, is a "foundational tenet of our entire government, our constitutional scheme?"

RESPONSE: Please see my response to Question 12.

17. During your confirmation hearing, when asked by Senator Hawley about the First Amendment right to religious liberty, you responded, "I do believe in religious liberty. That is a foundational tenet of our entire government, our constitutional scheme. The Supreme Court has made clear through its case law that governments can't infringe on people's religious rights." Do you believe in the Second Amendment right of an individual to keep and bear arms?

RESPONSE: Please see my response to Question 11.

18. During your confirmation hearing, when asked by Senator Hawley about the First Amendment right to religious liberty, you responded, "I do believe in religious liberty. That is a foundational tenet of our entire government, our constitutional scheme. The Supreme Court has made clear through its case law that governments can't infringe on people's religious rights." Do you believe that the Second Amendment right of an individual to keep and bear arms is a "foundational tenet of our entire government, our constitutional scheme?"

RESPONSE: Please see my response to Question 11.

19. Are civil rights guaranteed to all Americans, or only specific sub-sets of Americans?

RESPONSE: All Americans have the rights that are guaranteed by our Constitution. Federal civil rights statutes, such as the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241, the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327, and the Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, 107 Stat. 1488, contain provisions that specifically define the scope of the protections that are afforded by the particular congressional enactment, and in so doing, statutes such as these ultimately ensure liberty and justice for all. Such statutes also typically

contain extensive findings by Congress pertaining to the prior discriminatory treatment of the groups of persons that the statutes cover. *See, e.g.*, Civil Rights Act of 1991, Pub. L. No. 102-166, § 3(1), 105 Stat. 1071 (stating that the law was meant to provide, among other things, "appropriate remedies for intentional discrimination and unlawful harassment in the workplace"); Americans with Disabilities Act § 2(b)(1) (declaring that the law's purpose is to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities"); Religious Freedom Restoration Act § 2(b)(2) (explaining that the law was intended to "provide a claim or defense to persons whose religious exercise is substantially burdened by government"). These civil rights statutes, and others, protect the constitutional rights of the categories of persons that are specifically identified in the statutes.

20. Do illegal aliens have a civil right to come to the United States?

RESPONSE: The circumstances under which noncitizens may be admitted into the United States are established in several federal statutes, including the Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq.*, as amended by legislation including the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, 110 Stat. 3009. Section 208 of the INA authorizes the Secretary of Homeland Security or the Attorney General to grant asylum to noncitizens who qualify as refugees within the meaning of the statute and satisfy certain eligibility criteria. *See* 8 U.S.C. § 1158. The Supreme Court has also held that "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent[,]" *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); however, the Court has recently clarified that noncitizens "seeking initial entry[,]" such as those "who arrive at ports of entry" or those who are "detained shortly after unlawful entry[,]" are afforded "only those rights regarding admission that Congress has provided by statute[,]" *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1982–83 (2020).

21. Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.

RESPONSE: The answers that I have provided to all of the written questions of the members of the Committee are mine alone. To generate each response, I read the question carefully, researched the law and my own practices as a district judge, as necessary, and drafted answers to the questions. I then shared my draft answers with employees of the Department of Justice's Office of Legal Policy and received their feedback. I then finalized the responses based on my independent judgment.

22. Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. If government officials assisted with writing or drafting your answers,

please also identify the department or agency with which those officials are employed.

RESPONSE: The answers that I have provided to all of the written questions of the members of the Committee are mine alone. No individual outside of the United States federal government wrote or drafted any of the answers to any of the written questions that were sent to me by members of the Committee. My current and former chambers staff assisted me with research, as necessary, and employees of the Department of Justice's Office of Legal Policy provided feedback on the answers that I drafted.

Responses to Questions for the Record from Senator Ted Cruz
to Judge Ketanji Brown Jackson, Nominee to the
United States Court of Appeals for the D.C. Circuit

1. **Different judges apply different theories of interpretation to the Constitution. Some understand the Constitution to be living document, whereas Justice Scalia described himself as an originalist and said the Constitution was "dead, dead, dead." During your hearing, you testified that you have not presided over any cases that have "required [you] to develop a view on Constitutional interpretation of text."**

   a. **Is it your testimony that, as a sitting judge and a nominee for D.C. Circuit Court of Appeals that you do not have a theory of constitutional interpretation?**

      RESPONSE: Yes, that is my testimony. As a sitting district judge, I view my role as applying D.C. Circuit and Supreme Court precedents to cases that come before me, and not developing my own theory of constitutional interpretation. If confirmed to the D.C. Circuit, I would likewise be bound by both Supreme Court and D.C. Circuit precedent.

   b. **If your answer to subpart (a) is anything other than "yes" please describe the theory of Constitutional interpretation of text to which you ascribe.**

      RESPONSE: Please see my response to subpart (a).

2. **Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's philosophy from Warren, Burger, Rehnquist, or Robert's Courts is most analogous with yours.**

   RESPONSE: I do not have a judicial philosophy per se, other than to apply the same method of thorough analysis to every case, regardless of the parties. Specifically, in every case that I have handled as a district judge, I have considered only the parties' arguments, the relevant facts, and the law as I understand it, including the text of any applicable statutes and the binding precedents of the Supreme Court and the D.C. Circuit. And I have consistently applied the same level of analytical rigor to my evaluation of the parties' arguments, no matter who or what is involved in the legal action. Moreover, in my work as a district judge, I have not had occasion to evaluate broader legal principles or develop a substantive judicial philosophy. Given the very different functions of a trial court judge and a Supreme Court Justice, I am not able to draw an analogy between any particular Justice's judicial philosophy and the approach that I have employed as a district court judge or would employ as a D.C. Circuit Judge, if I am confirmed.

3. Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?

RESPONSE: As a sitting district judge, I am currently bound by the methods of constitutional interpretation that the Supreme Court has adopted, and I have a duty not to opine on the Supreme Court's methodology or suggest that I would undertake to interpret the text of the Constitution in any manner other than as the Supreme Court has directed. I also have a duty to avoid commenting on, or providing any personal views about, matters that are in the Supreme Court's province to decide, such as how best to discern the meaning of the Constitution's provisions and whether its meaning has changed over time.

4. Is it appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns? Please explain.

RESPONSE: The Constitution requires that the President "take Care that the Laws be faithfully executed[.]" U.S. Const. art. II, § 3. As a sitting federal judge, who might be called upon to address a President's refusal to enforce a law in the context of a litigated case, it would be inappropriate for me to opine as to whether the President's refusal to enforce a law violates Article II, section 3 or any other constitutional provision.

5. What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

RESPONSE: The Supreme Court has addressed the scope of the President's power to issue executive orders or undertake executive actions, with and without congressional authorization. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *see also Medellin v. Texas*, 552 U.S. 491 (2008); *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004); *Dames & Moore v. Regan*, 453 U.S. 654 (1981). Broadly speaking, "[t]he President's authority to act, as with the exercise any of governmental power, 'must stem either from an act of Congress or from the Constitution itself.'" *Medellin*, 552 U.S. at 524 (citation omitted). The judicially enforceable limits on the President's ability to act thus include circumstances in which the President acts without express constitutional or statutory authority, or when the executive action impermissibly interferes with the functions that the Constitution assigns to another branch of government, or when the executive action otherwise violates a constitutional or statutory provision.

6. President Biden has created a commission to advise him on reforming the Supreme Court. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.

RESPONSE: As a sitting federal judge, I am bound by the Supreme Court's precedents, regardless of that Court's size or composition. It would be

inappropriate for me to comment on the merits or demerits of proposals to increase or decrease the number of Justices on the Supreme Court.

7. Do you personally own any firearms? If so, please list them.

RESPONSE: No, I do not own any firearms.

8. Have you ever personally owned any firearms?

RESPONSE: No, I have never owned a firearm.

9. Have you ever used a firearm? If so, when and under what circumstances?

RESPONSE: I have not had occasion to use a firearm. I am familiar with the operation of firearms, however, through my service on a court that often handles trial cases that involve unlawful possession of dangerous weapons, and also through my relationship with my only sibling, who has served both as an infantryman and officer in the Maryland Army National Guard (during which he was twice deployed overseas) and as an undercover narcotics recovery officer in the Baltimore City police department. My earliest exposure to firearms occurred in connection with my childhood relationship with two of my uncles, who were employed as law enforcement officers in Miami-Dade County when I was a child, one of whom was subsequently appointed as the Chief of the City of Miami Police Department.

10. Is the ability to own a firearm a personal civil right?

RESPONSE: In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment confers "an individual right to keep and bear arms." 554 U.S. 570, 595 (2008). In *McDonald v. City of Chicago*, the Court further held that the right that the Second Amendment guarantees is a fundamental right that applies to the states as well the federal government. *See* 561 U.S. 742, 750 (2010). These precedents of the Supreme Court are binding on me, and I would be required to apply them in any case that implicates a restriction or limitation on a person's individual right to own a firearm.

11. Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?

RESPONSE: The Supreme Court has held that the Second Amendment confers "an individual right to keep and bear arms." *Heller*, 554 U.S. at 595. The Court has also clarified that the individual constitutional right to keep and bear arms is "not unlimited, just as the First Amendment's right of free speech [is] not[.]" *Id.* To my knowledge, neither the Supreme Court nor the D.C. Circuit has concluded that the right to own a firearm receives less protection than the other individual rights that are specifically enumerated in the Constitution. If confirmed, I will abide by

Heller, *McDonald*, and any other Supreme Court and D.C. Circuit precedent that defines the scope of protections that the Second Amendment guarantees.

12. Does the right to own a firearm receive less protection than the right to vote under the Constitution?

RESPONSE: Please see my response to Question 11.

13. Is the Religious Freedom Restoration Act a civil rights law?

RESPONSE: Yes. "Congress enacted [the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. §§ 2000bb–2000bb4] in 1993 in order to provide very broad protection for religious liberty." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693 (2014). RFRA's statutory statement of findings and purpose states, *inter alia*, that, under our constitutional scheme, "governments should not substantially burden religious exercise without compelling justification[,]" 42 U.S.C. § 2000bb(a)(3), and RFRA was promulgated to ensure that the government "justif[ies] burdens on religious exercise imposed by laws neutral toward religion[,]" *id.* § 2000bb(a)(4). The statute is aimed at protecting individuals' First Amendment right to the free exercise of religion in a manner that is similar to the Civil Rights Act's protection of the Fourteenth Amendment right to equal protection and due process by prohibiting discrimination. Indeed, in interpreting a phrase "persons acting under color of law" as it appears in RFRA, the Supreme Court observed that RFRA "draws from one of the most well-known civil rights statutes: 42 U.S.C. § 1983, and explained that "[b]ecause RFRA uses the same terminology as § 1983 in the very same field of civil rights law, it is reasonable to believe that the terminology bears a consistent meaning." *Tanzin v. Tanvir*, 141 S. Ct. 486, 490–91 (2020) (internal quotation marks and citation omitted). Congress has also identified RFRA as a civil rights law by including it among the statutes for which attorneys fees are available under the Civil Rights Attorney's Fees Award Act. *See* 42 U.S.C. § 1988.

14. Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be an religious organization like Little Sisters of the Poor or small businesses operated by observant owners?

RESPONSE: The Supreme Court has made clear that, under certain circumstances, various constitutional protections limit what the government can impose on, or require of, private persons and institutions. These constitutional limits include the First Amendment's Free Exercise Clause. *See, e.g.*, *Tandon v. Newsom*, 141 S. Ct. 1294, 1296–97 (2021) (per curiam); *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 66–68 (2020) (per curiam). The Supreme Court has also found that government can lack the constitutional authority to regulate the conduct of private parties under certain circumstances. *See, e.g.*, *United States v. Morrison*, 529 U.S. 598, 613 (2000); *United States v. Lopez*, 514 U.S. 549, 561 (1995); *see also Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 558 (2012).

15. Do Americans have the right to their religious beliefs outside the walls of their houses of worship and homes?

RESPONSE: Under the binding precedents of the Supreme Court, the rights secured by the Free Exercise Clause and the Religious Freedom Restoration Act are not limited to religious practices in the home or in houses of worship.

16. You served on the advisory board of the Montrose Christian School. While you served, the school had a statement of beliefs, posted on its website, that included traditional Christian moral teachings like "all Christians are under obligation to seek to make the will of Christ supreme."

a. Were you aware of this publicly posted statement of beliefs during your time on the advisory board?

RESPONSE: I served on the inaugural advisory board of Montrose Christian School—a now-defunct kindergarten through 12th grade private school—for one year, from the fall of 2010 to the fall of 2011. I was aware that Montrose Christian School was affiliated with Montrose Baptist Church. I was not aware that the school had a public website or that any statement of beliefs was posted on the school's website. My service on the board primarily involved planning for school fund-raising activities for the benefit of enrolled students. I did not receive any compensation for my service.

b. If so, were you aware of the specific declarations that:

i. "Man is the special creation of God, made in His own image. He created them male and female as the crowning work of His creation. The gift of gender is thus part of the goodness of God's creation."

1. Yes or no?

ii. "In the spirit of Christ, Christians should oppose racism, every form of greed, selfishness, and vice, and all forms of sexual immorality, including adultery, homosexuality, and pornography. We should work to provide for the orphaned, the needy, the abused, the aged, the helpless, and the sick. We should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death. Every Christian should seek to bring industry, government, and society as a whole under the sway of the principles of righteousness, truth, and brotherly love.

1. Yes or no?

iii. "A wife is to submit herself graciously to the servant leadership of her husband even as the church willingly submits to the headship of Christ. She, being in the image of God as is her husband and thus equal to him, has the God-given responsibility to respect her husband and to serve as his helper in managing the household and nurturing the next generation."

1. **Yes or no?**

RESPONSE: Please see my answer to Q.16.a.

c. **I have not, and will not, inquire as to what you believe on these issues, and whether these statements reflect your personal views. Probing a nominee's faith, and making it a matter of public display and ridicule, is and has never been appropriate. Do you agree that an individual's beliefs on these matters do not affect his or her fitness to be a judge?**

RESPONSE: Article VI of the Constitution forbids any religious test for appointment to any public office, including an appointment to judicial service. That provision states, in relevant part, that "all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." Per the oath of office and the Code of Conduct, a judge is required to set aside all personal beliefs, including any religious beliefs, when she undertakes to rule in the cases to which she is assigned.

17. **President Biden has promised to nominate judges "who look like America." What do you understand this to mean?**

RESPONSE: My understanding is that President Biden is seeking to appoint judges from a variety of professional and personal backgrounds.

18. **Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?**

RESPONSE: As a pending judicial nominee and sitting federal judge, the Constitution and the Code of Conduct for United States Judges prevent me from commenting on the constitutionality of any particular set of factors that the Executive Branch might or does consider when making political appointments.

19. **Is there systemic racism in public policy across America?**

RESPONSE: I am aware that policymakers in the Executive Branch have expressed views about "systemic racism," including, for example, the view that "systemic racism refers to historic patterns or practices that have had a disparate impact of communities of color and other ethnic minorities, such as the fact that those communities have disproportionately lower rates of employment and wealth accumulation." Responses to Questions for the Record to Judge Merrick Garland, Nominee to be United States Attorney General, at 64 (Feb. 28, 2021). Policymakers routinely consider evidence concerning such matters, and they also make determinations regarding relevant policy changes. The role of a judicial

officer is distinct from that of a policymaker; as a judicial officer, it is my duty to adjudicate individual claims, including claims of race discrimination, that are filed by persons who are authorized to litigate such cases or controversies in federal court. When I have jurisdiction to do so, I resolve properly filed legal disputes concerning race discrimination and other unlawful conduct based on the arguments that the parties make, the established facts of the particular case, and the applicable law, and I do not draw upon, reference, or consider my personal views, if any, regarding systemic racism. Thus, it would be inappropriate for me to comment on the existence *vel non* of any such phenomenon.

20. Is the criminal justice system systemically racist?

RESPONSE: Please see my response to Question 19.

21. If you are to join the D.C. Circuit, and supervise along with your colleagues the court's human resources programs, will it be appropriate for the Court to provide its employees trainings which include the following:

a. One race or sex is inherently superior to another race or sex;

b. An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;

c. An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or

d. **Meritocracy or related values such as work ethic are racist or sexist.**

RESPONSE: To my knowledge, the judges of the D.C. Circuit are not involved in evaluating or selecting training programs for court employees. If I join the D.C. Circuit, and if am asked to participate in evaluating any such program, I would assess the program's teachings and would oppose any instruction regarding race or sex that is unconstitutional or are otherwise contrary to law in light of the binding precedents of the Supreme Court and the D.C. Circuit.

22. Will you commit to opposing any proposed trainings for D.C. Circuit employees that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?

RESPONSE: Please see my response to Question 21.

23. Is it appropriate for a witness to a crime to consider the race of the perpetrator when deciding whether to provide information to the police or federal authorities?

RESPONSE: As a sitting federal judge, it is not my role to determine whether a witness's consideration of the race of a perpetrator is "appropriate," as opposed to unlawful, and I assess the lawfulness of a defendant's behavior based solely on the

facts of the particular case and the applicable law, including binding precedents of the D.C. Circuit and the Supreme Court. In any event, this question provides insufficient information to form an opinion about the appropriateness of the hypothesized witness's decision-making process, and as a pending judicial nominee and a sitting federal judge, I am not able to provide any view regarding the lawfulness of a witness's consideration of race in this hypothetical situation.

24. Is it racist for a person to call police out of concern over the threatening or unlawful conduct of a person of color?

RESPONSE: As a sitting federal judge, it is not my role to determine whether conduct by individuals is "racist," as opposed to unlawful, but the question itself posits that race played no role in the caller's decision to contact the police. Moreover, as a pending judicial nominee and a sitting federal judge, I am not able to provide any view regarding the lawfulness of a person's decision to call the police in this hypothetical situation.

25. Does the President have the authority to abolish the death penalty?

a. Does the implementation of a criminal punishment prescribed by law depend entirely on the President's discretion?

b. Could a President lawfully declare, as a policy, that he disfavors physical imprisonment and order all federal prosecutors to refuse to seek it?

RESPONSE: Under our constitutional system, Congress determines the applicable penalties for conduct that it has declared unlawful, and, by statute, it has determined that the death penalty is an appropriate sentence for certain federal crimes under certain circumstances. The Supreme Court has upheld the death penalty as constitutional, and it is the President's duty to "take Care that the Laws be faithfully executed." U.S. Const. art II, § 3. Acting alone, the President does not have the authority to change the laws that Congress enacts, including the penalties that Congress has prescribed for criminal offenses. As a pending judicial nominee and sitting federal judge, I cannot opine as to any hypothetical scenario in which the President might refuse to implement any aspect of the criminal justice regime that the federal statutes embody.

26. At his hearing, Attorney General Garland said that an attack on a courthouse while in operation, and trying to prevent judges from actually trying cases, "plainly is domestic extremism." And when pressed, he mentioned also that an attack "simply on government property at night or any other kind of circumstances" is a clear and serious crime. But he seemed to make a distinction between the two, describing the latter (and only the latter) as an "attack on our democratic institutions." If you are confirmed, you will be sitting on a very important court. Do you agree with these statements?

RESPONSE: I am not familiar with these statements by Attorney General Garland, but the quoted statements appear to refer to alternative hypothetical circumstances involving an attack on a courthouse. Because litigation involving such issues might arise in the future, Canon 3 of the Code of Conduct prohibits me, as a sitting federal judge, from providing any personal view of whether the hypothesized conduct qualifies as "domestic extremism" or constitutes "an attack on our democratic institutions."

27. Do you agree that free speech is an essential and irreplaceable American value?

RESPONSE: Yes. The First Amendment of the Constitution plainly protects the right of free speech, *see* U.S. Const. amend. I, and the Supreme Court has long held that freedom of speech is a "fundamental" right. *See, e.g.*, *Schneider v. New Jersey*, 308 U.S. 147, 150 (1939).

a. What are the present threats to free speech in America?

RESPONSE: Policymakers routinely consider whether free speech in America is being threatened in various ways, and judicial officers also sometimes consider legal actions brought by individuals and entities who claim that their rights to free speech are being threatened. As a judicial officer, it is my duty to adjudicate individual claims of free-speech violations, and when I have jurisdiction to do so, I resolve properly filed legal disputes concerning violations of free speech based solely on the arguments that the parties make, the established facts of the particular case, and the applicable law. *See, e.g.*, *Patterson v. United States*, 999 F. Supp. 2d 300 (D.D.C. 2013). I do not draw upon, reference, or consider my personal views, if any, regarding present threats to free speech in America. Thus, it would be inappropriate for me to comment on the existence *vel non* of any such threats.

b. What role do the courts have in addressing threats to free speech?

RESPONSE: Please see my response to Question 27(a).

c. Does the First Amendment protect speech that some may consider offensive?

RESPONSE: Yes. "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Texas v. Johnson*, 491 U.S. 397, 414 (1989); *see also Street v. New York*, 394 U.S. 576, 592 (1969) ("It is firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.").

i. If so, what are the limits to that protection?

RESPONSE: The Supreme Court has made clear that "speech that is 'vulgar,' 'offensive,' and 'shocking`' is 'not entitled to absolute constitutional protection under all circumstances.'" *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 56 (1988) (quoting *FCC v. Pacifica Found.*, 438 U.S. 726, 747 (1978)). For instance, the government can "lawfully punish an individual for the use of insulting '"fighting" words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.'" *Id.* (quoting *Chaplinksy v. New Hampshire*, 315 U.S. 568, 571–72 (1942)). Similarly, "obscene material is unprotected by the First Amendment[,]" such that the government may regulate materials that, "taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value." *Miller v. California*, 413 U.S. 15, 24 (1973).

d. What is "hate speech"?

RESPONSE: A plurality of the Supreme Court has described "[s]peech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground" as "hateful[.]" *Matal v. Tam*, 137 S. Ct. 1744, 1764 (2017) (plurality opinion). However, the Supreme Court has not defined "hate speech" as a distinct doctrinal category, and the Court has consistently recognized First Amendment limits on the government's ability to regulate such speech. *See, e.g.*, *Snyder v. Phelps*, 562 U.S. 443, 457–58 (2011); *R.A.V. v. City of St. Paul*, 505 U.S. 377, 380–81 (1992) (holding that an ordinance that prohibits "plac[ing] on public or private property a symbol, object, appellation, characterization or graffiti, including, but not limited to, a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender" is facially unconstitutional); *see also B.W.A. v. Farmington R-7 Sch. Dist.*, 554 F.3d 734, 739 (8th Cir. 2009) (observing that "[r]acially offensive speech cannot be restricted for that reason alone").

i. Is "hate speech," as you have just defined it, protected by the First Amendment?

RESPONSE: Please see my response to Question 27(d).

ii. If so, what are the limits to that protection?

RESPONSE: The Supreme Court has held that the government may punish "'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace[,]" *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942), consistent with the First Amendment. The government can also permissibly regulate "true threats," *i.e.*, "those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Virginia v. Black*, 538 U.S. 343, 359 (2003).

28. Do public educational institutions have the legal obligation to protect the speech rights of students and employees?

RESPONSE: Yes. The Supreme Court has held that "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students" in public educational institutions, and that "[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). Thus, "the First Amendment generally precludes public universities from denying student organizations access to school-sponsored forums because of the groups' viewpoints." *Christian Legal Soc'y Chapter of Univ. of Cal. v. Martinez*, 561 U.S. 661, 667–68 (2010). However, the Supreme Court has held that public schools can regulate student speech that would "materially and substantially disrupt the work and discipline of the school[,]" *Tinker*, 393 U.S. at 513, and that "the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings[,]" *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 682 (1986). Whether the *Tinker* rule applies to student speech that occurs off campus is a matter that the Supreme Court is currently considering in the case of *Mahanoy Area School District v. B.L.*, No. 20-255 (U.S. argued Apr. 28, 2021).

29. Do private educational institutions have the legal obligation to protect the speech rights of students and employees?

RESPONSE: The Supreme Court has held that the First Amendment does not directly regulate the actions of private educational institutions, because, by its terms, the First Amendment "appl[ies] to governmental action" and "ordinarily does not itself throw into constitutional doubt the decisions of private citizens to permit, or to restrict, speech[.]" *Denver Area Educ. Telecomms. Consortium, Inc. v. FCC*, 518 U.S. 727, 737 (1996).

30. Are educational institutions that receive federal funding permitted to discriminate on the basis of speech?

RESPONSE: Whereas Title VI of the Civil Rights Act of 1964 prohibits entities (including educational institutions) that receive federal funding from discriminating on the basis of race, color, or national origin, 42 U.S.C. § 2000d, and Title IX of the Education Amendments of 1972 prohibits educational institutions that receive federal funding from discriminating on the basis of sex, 20 U.S.C. § 1681(a), to my knowledge, no federal statute currently prohibits educational institutions that receive federal funding from discriminating on the basis of speech.

31. In 2011, the U.S. Department of Education issued a dear Deal Colleague Letter to colleges and universities that broadened the definition of sexual harassment and required schools to adopt a lenient "more likely than not" burden of proof when

adjudicating claims, among other procedural defects. How does this compare with the standard of proof that governs in criminal prosecutions?

RESPONSE: It is well established that "the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970). Because the "more likely than not" burden of proof is a lower standard than proof beyond a reasonable doubt, it would be easier to establish guilt concerning claims of sexual harassment in the context of DOE adjudications than in criminal prosecutions concerning similar conduct.

32. Given the information in the public domain, do you believe that Brett Kavanaugh sexually assaulted Christine Blasey Ford?

RESPONSE: As a pending judicial nominee and a sitting federal judge, it would be inappropriate for me to comment on this question.

Responses to Questions for the Record from Senator Mike Lee
to Judge Ketanji Brown Jackson, Nominee to the
United States Court of Appeals for the D.C. Circuit

1. How would you describe your judicial philosophy?

RESPONSE: I do not have a judicial philosophy per se, other than to apply the same method of thorough analysis to every case, regardless of the parties. In every case that I have handled as a district judge, I have considered only the parties' arguments, the relevant facts, and the law as I understand it, including the text of any applicable statutes and the binding precedents of the Supreme Court and the D.C. Circuit. And I have consistently applied the same level of analytical rigor to my evaluation of the parties' arguments, no matter who or what is involved in the legal action. If confirmed to the U.S. Court of Appeals for the D.C. Circuit, I would do the same.

2. What sources would you consult when deciding a case that turned on the interpretation of a federal statute?

RESPONSE: I have issued nearly 50 published opinions in which I have engaged in the process of interpreting a federal statute. When I undertook to determine the meaning of statutory text in each of those cases, I started with a comprehensive evaluation of the statute's text, using traditional tools of statutory construction, including a close textual analysis of the words and structure of the statute. *See, e.g.*, *All. of Artists & Recording Cos., Inc. v. Gen. Motors Co.*, 162 F. Supp. 3d 8 (D.D.C. 2016), *aff'd*, 947 F.3d 849 (D.C. Cir. 2020). I have also occasionally employed canons of construction. Use of these tools ordinarily results in a conclusion regarding the meaning of the statutory provision. However, if I find that the statutory text is ambiguous insofar as it is susceptible to more than one meaning, I reconsider the parties' arguments and may consult the legislative history, as the Supreme Court permits, in an effort to ascertain the will of Congress. I have never resolved a statutory ambiguity based solely on the legislative history of the statute.

3. What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?

RESPONSE: I would interpret the Constitution in a manner that is consistent with the methods of interpretation that the Supreme Court employs when it undertakes to interpret constitutional provisions. The Supreme Court has recently interpreted various constitutional provisions by attempting to ascertain the original meaning of the words used as understood by the public at the time of the Founding. *See, e.g.*, *United States v. Jones*, 132 S. Ct. 945, 949 (2012) (Fourth Amendment); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 906 (2010) (First Amendment); *District of Columbia v. Heller*, 554 U.S. 570, 576–600 (2008) (Second Amendment); *Crawford v. Washington*, 541 U.S. 36, 42–57 (2004) (Confrontation Clause); *Alden v. Maine*, 527 U.S. 706, 715–724 (1999) (Eleventh Amendment). And while the

Supreme Court has primarily evaluated the original public meaning of the text of the constitutional provision at issue, *see Jones*, 132 S. Ct. at 949, 953; *Heller*, 554 U.S. at 576–77, its binding precedents also sometimes refer to the original intent of the Framers, *see Crawford*, 541 U.S. at 53–54, 59, 61. As a lower court judge, I am bound by both the precedents of the Supreme Court and its method of analysis, and if called upon to interpret a constitutional provision, I would adhere to the methods of analysis that the Supreme Court and the D.C. Circuit employ, without regard to any personal view of how the Constitution should be interpreted.

4. What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?

RESPONSE: Please see my response to Question 3.

5. What are the constitutional requirements for standing?

RESPONSE: The "irreducible constitutional minimum" requirements for standing to invoke the power of a federal court to resolve, as necessary to demonstrate that the plaintiff's legal claim presents a remediable case or controversy that gives rise to jurisdiction under Article III of the Constitution, are: (1) that the plaintiff has suffered an injury in fact that is "concrete and particularized" and "actual or imminent"; (2) that the asserted injury is fairly traceable to the defendant's action, and (3) that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (internal quotation marks and citations omitted).

6. Do you believe there is a difference between "prudential" jurisdiction and Article III jurisdiction in the federal courts? If so, which jurisdictional requirements are prudential, and which are mandatory?

RESPONSE: Article III, section 2 defines the scope of a federal court's jurisdiction—i.e., "[t]he judicial Power" that the Constitution vests in the federal judiciary—and the Supreme Court has developed various doctrines that relate the exercise of a federal court's jurisdiction. Some of these doctrines are mandated by the Constitution's text; others are merely "prudential."

Standing, mootness, and ripeness are all rooted in Article III's "case" or "controversy" requirement. *See, e.g.*, *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 559–60 (1992); *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 180 (2000); *Duke Power Co. v. Carolina Env't Study Grp., Inc.*, 438 U.S. 59, 81 (1978). These determinations are mandatory considerations that must be assessed at the outset of a case, and if there is no standing, or if the matter is moot or unripe, the court lacks jurisdiction to proceed to review the merits and resolve the dispute.

Other limits on a federal court's exercise of jurisdiction that are not grounded in the text of Article III, but the Supreme Court has determined that the exercise of a court's

jurisdiction over certain cases and controversies is restricted on these grounds nevertheless. *See, e.g.*, *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 12 (2004) (explaining that "prudential standing encompasses the general prohibition on a litigant's raising another person's legal rights, [and] the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches" (internal quotation marks and citation omitted)); *Duke Power Co.*, 438 U.S. at 81–82 (discussing "prudential considerations embodied in the ripeness doctrine[,]" such as the extent to which the parties would be "adversely affected" by a "delayed resolution" of the case); *United States v. W.T. Grant Co.*, 345 U.S. 629, 632–33 (1953) (noting that various practical concerns impact mootness determinations, such as the likelihood that an action will recur). Notwithstanding these "prudential" considerations, the Supreme Court has recently reiterated that federal courts must hear cases that have been properly brought, and that "a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126 (2014) (internal quotation marks and citation omitted).

Another potential category of prudential restrictions that pertain to a court's jurisdiction relate to circumstances under which a court can hear claims that implicate the adjudicative authority of the States. The Supreme Court has sometimes required federal courts to abstain from exercising jurisdiction as a prudential matter, rather than one that is necessarily grounded in Article III. *See, e.g.*, *R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496, 501 (1941) (emphasizing that federal courts should abstain from exercising jurisdiction over a case involving state law when, for instance, resolution of a state law question by state courts can avoid the necessity of deciding a question of federal constitutional law); *see also Younger v. Harris*, 401 U.S. 37, 41 (1971) (holding that federal courts should not grant injunctive relief against state criminal prosecution pursuant to "the national policy forbidding federal courts to stay or enjoin pending state court proceedings except under special circumstances").

7. How would you define the doctrine of administrative exhaustion?

RESPONSE: Administrative exhaustion is the principle that a plaintiff must pursue administrative remedies before seeking to challenge an agency or state action in federal court. *See, e.g.*, *McKart v. United States*, 395 U.S. 185, 193 (1969).

8. Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?

RESPONSE: The scope of Congress's constitutional authority is a matter that is subject to vigorous and ongoing debate. Article I, section 8 lists various specific powers of the Legislative branch, and it concludes with the statement that the Legislature also has the power "[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by the Constitution in the Government of the United States, or in any Department or

Officer thereof." U.S. Const. art I, § 8, cl. 18. Similarly, section 5 of the Fourteenth Amendment confers to Congress the "power to enforce, by appropriate legislation, the provisions of this article." Some have argued that these and other constitutional grants of authority compel the conclusion that the Framers intended for Congress to have implied powers beyond those enumerated in the Constitution.

The Supreme Court has, at times, recognized that Congress has certain implied powers. *See, e.g.*, *Perez v. Brownell*, 356 U.S. 44, 57 (1958) (explaining that, "[a]lthough there is in the Constitution no specific grant to Congress of power to enact legislation for the effective regulation of foreign affairs, there can be no doubt of the existence of this power in the law-making organ of the Nation"), *overruled in part on other grounds by Afroyim v. Rusk*, 387 U.S. 253 (1967); *McGrain v. Daugherty*, 273 U.S. 135, 173 (1927) (holding "that the two houses of Congress, in their separate relations, possess, not only such powers as are expressly granted to them by the Constitution, but such auxiliary powers as are necessary and appropriate to make the express powers effective"). However, the Supreme Court has also made clear that "[e]very law enacted by Congress must be based on one or more of its powers enumerated in the Constitution." *United States v. Morrison*, 529 U.S. 598, 607 (2000); *see also United States v. Lopez*, 514 U.S. 549, 566 (1995) ("The federal government is acknowledged by all to be one of enumerated powers." (internal quotation marks, citation, and alterations omitted)). Thus, while "[t]he principle [that Congress] can exercise only the powers granted to it . . . is now universally admitted[,]" the significant "question respecting the extent of the powers actually granted[] is perpetually arising, and will probably continue to arise, as long as our system shall exist." *Lopez*, 514 U.S. at 566 (quoting *McCulloch v. Maryland*, 4 Wheat. 316, 405 (1819)) (internal quotation marks and alterations omitted)).

9. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?

RESPONSE: If I were ever called upon to evaluate a congressional enactment that did not reference a specific power enumerated in the Constitution, I would utilize the same methods of evaluation that the Supreme Court has used to assess Congress's ability to enact laws that have been challenged on those grounds.

In *United States v. Lopez*, 514 U.S. 549 (1995), for example, the Supreme Court assessed the authority of Congress to enact the Gun-Free School Zones Act by "start[ing] with first principles[,]" and in this regard, it focused on the text of the Constitution itself. *See id.* at 552 (noting that "[t]he Constitution creates a Federal Government of enumerated powers"). The Court then reviewed prior precedents that had addressed the extent of Congress's power under the Commerce Clause, *see id.* at 553–59, and gleaned applicable principles from those binding authorities, including confirmation that Congress's Commerce Clause power "is subject to outer limits[,]" *id.* at 557. The Court also determined, based on the circumstances presented in the prior binding precedents, that even its past decisions affirming Congress's authority to enact legislation under the Commerce Clause "had involved economic activity in a

way that the possession of a gun in a school zone does not[,]" *id.* at 560, and it also noted that, "as part of [its] independent evaluation of constitutionality under the Commerce Clause" it would have "of course consider[ed] legislative findings, and indeed even congressional committee findings, regarding effect on interstate commerce[,]" if the statute or its legislative history had contained such findings, *id.* at 562.

I would ascertain if the Supreme Court or the D.C. Circuit has used additional, or different, tools to evaluate the constitutionality of enactments of Congress that do not reference a specific enumerated right. And I would research the applicable methods of interpretation, and apply such tools, if I had to evaluate the constitutionality of any such statute.

10. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?

RESPONSE: The Supreme Court has determined that the Constitution protects certain rights that are not specifically enumerated in the Constitution. Cases such as *Griswold v. Connecticut*, 381 U.S. 479 (1965), and *Eisenstadt v. Baird*, 405 U.S. 438 (1972), recognize an unenumerated right to privacy that encompasses the right to marital privacy and to use contraception. *Obergefell v. Hodges*, 576 U.S. 644 (2015), and *Loving v. Virginia*, 388 U.S. 1 (1967), affirm a constitutional right to marry, and *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942), and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), recognize the right to have children and to direct their education. In *Saenz v. Roe*, 526 U.S. 489 (1999), the Supreme Court affirmed a right to travel, and *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), articulate a limited right to terminate a pregnancy, particularly before viability, *Casey*, 505 U.S at 870. The Supreme Court has also "assumed, and strongly suggested" that there is a "right to refuse unwanted lifesaving medical treatment." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

According to the Supreme Court, the due process clauses of the Fifth and Fourteenth Amendments are the primary sources for the recognition of unenumerated rights, and the Court has held that, as a general matter, due process protects "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty[.]" *Glucksberg*, 521 U.S. at 720–21 (internal quotation marks and citations omitted). The Supreme Court has also, at times, suggested that the Ninth Amendment—which provides that the "enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people[,]" and the Privileges and Immunities Clause of Article IV, section 2, which states that "the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States[,]" are sources for unenumerated rights. *See, e.g.*, *Roe*, 410 U.S. at 152–53; *Saenz*, 526 U.S. at 501–02.

11. What rights are protected under substantive due process?

RESPONSE: Please see my response to Question 10.

12. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?

RESPONSE: As a pending judicial nominee and a sitting federal judge, any personal views that I might have regarding of the scope of substantive due process have no bearing on the constitutional analysis that I would impose in any case that implicates these issues. Under binding Supreme Court precedent, the substantive due process clause protects unenumerated rights that are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty," *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) (internal quotation marks and citations omitted), and the government's regulation of such unenumerated personal rights may be subject to heightened scrutiny. The Supreme Court has not afforded the same protection to the unenumerated economic rights that were initially recognized in *Lochner*. *See West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937); *Williamson v. Lee Optical of Okla. Inc.*, 348 U.S. 483 (1955). The Court has held that the government can regulate in a manner that restricts economic freedom if the regulation at issue is rationally related to a legitimate government interest. *See, e.g.*, *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 461 (1981); *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

13. What are the limits on Congress's power under the Commerce Clause?

RESPONSE: According to the Supreme Court, Congress's power under the Commerce Clause is broad, but it is not unlimited. The Court has held that Congress may only regulate three categories of activity pursuant to that constitutional provision: (1) "the use of the channels of interstate commerce," (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce" and activities that threaten such instrumentalities, persons or things, and (3) activities that "substantially affect interstate commerce[.]" *United States v. Lopez*, 514 U.S. 549, 558–59 (1995); *see also Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 536 (2012).

14. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?

RESPONSE: When an act of government distinguishes between groups of people, the Supreme Court has described the "traditional indicia of suspectness" to include those classifications that pertain to "an immutable characteristic determined solely by the accident of birth," and also those that pertain to classes of persons who are "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *Johnson v.*

Robison, 415 U.S. 361, 375 n.14 (1974) (internal quotation marks and citations omitted). To date, when there is a constitutional challenge, the Supreme Court has determined that race, religion, national origin, and alienage are suspect classes that are subject to heightened ("strict") scrutiny. *See, e.g.*, *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976); *Graham v. Richardson*, 403 U.S. 365, 371–32 (1971).

15. How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?

RESPONSE: Checks and balances play an essential role in our constitutional scheme, because liberty can only be achieved, and retained, through the stratification of government power. The Framers carefully and deliberately divided the powers of government among the three branches, and they also authorized each branch to relate to, and work in concert with, the others, so as to serve as a check on the others' accumulation of power. In Federalist 51, James Madison explained that "the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others." The Federalist No. 51 (James Madison); *see also Buckley v. Valeo*, 424 U.S. 1, 121 (1976) ("[T]he men who met in Philadelphia in the summer of 1787 . . . viewed the separation of powers as a vital check against tyranny."). And the structure of our constitutional system prevents autocracy while also promoting "a workable government." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring); *see also id.* ("While the Constitution diffuses power to better secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government[,]" and thereby "enjoins upon its branches separateness but interdependence, autonomy but reciprocity."). Thus, the system of separate powers, accompanied by checks and balances, is a foundational component of our governmental scheme that promotes core constitutional values, by design. *See Myers v. United States*, 272 U.S. 52, 292–93 (1926) (Brandeis, J., dissenting) ("Checks and balances were established in order that this should be 'a government of laws and not of men.' . . . The purpose [of the doctrine of the separation of powers] was not to promote efficiency but to preclude the exercise of arbitrary power . . . by means of the inevitable friction incident to the distribution of the governmental powers among three departments," in order "to save the people from autocracy.").

16. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?

RESPONSE: I have yet to be assigned a case involving a claim that Congress was not constitutionally authorized to enact certain legislation. If I had such a case, I would analyze the constitutional text that pertains to the issue in dispute consistent with Supreme Court and D.C. Circuit precedents that evaluate other allegedly unauthorized exercises of congressional authority, including cases such as *Medellin v. Texas*, 552 U.S. 491 (2008), *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), *United States v. Morrison*, 529 U.S. 598 (2000), and *United States v. Lopez*, 514 U.S. 549 (1995).

In a case of mine that involved a claim that the President had overstepped his constitutional authority by issuing executive orders that governed the collective bargaining rights of federal employees in a manner that conflicted with the will of Congress as set forth in the prescriptions of Federal Service Labor-Management Relations Act ("FSLRMS"), 5 U.S.C. § 7101–35, *see Am. Fed'n of Gov't Emps., AFL-CIO v. Trump*, 318 F. Supp. 3d 370 (D.D.C. 2018), *rev'd and vacated on other grounds*, 929 F.3d 748 (D.C. Cir. 2019), I consulted and applied binding Supreme Court and D.C. Circuit case law regarding the authority of the President to regulate federal labor-management relations with or without specific congressional authorization, *see id.* at 412–18, and interpreted the statute's text in light of precedents that define the statutory right of federal employees to bargain collectively, *see id.* at 418–40.

17. What role should empathy play in a judge's consideration of a case?

RESPONSE: A judge has a duty to decide cases based solely on the law, without fear or favor, prejudice or passion. In all cases, courts should generally be mindful that the exercise of judicial authority has a profound impact of the lives and circumstances of litigants. But to the extent that empathy is defined as one's ability to share what another person is feeling from the other person's point of reference, empathy should not play a role in a judge's consideration of a case.

18. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

RESPONSE: The statutes that Congress enacts are presumed to be constitutional, and there is no legal authority for a court to invalidate a congressional enactment that is, in fact, constitutional. Furthermore, the Supreme Court has long required lower federal courts to avoid considering constitutional questions that might lead to the invalidation of federal statutes, if possible, and there are often threshold considerations under Article III that limit a federal court's power to address a constitutional challenge in any event. Thus, I would need significantly more information than this question provides about the laws at issue and the circumstances under which they are being challenged in order to be able to form any opinion about which exercise of judicial authority is "worse." Even if such information was provided, however, as a pending judicial nominee and a sitting federal judge, it would be inappropriate for me to opine on the relative merits or demerits of hypothesized scenarios regarding judicial treatment of challenged government action.

19. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

RESPONSE: Please see my response to Question 18. As a district court judge, my role has been to consider the facts and arguments that are presented in each case that is assigned to me, and to apply the law (including and especially the binding precedents of the Supreme Court and the D.C. Circuit) to resolve the matter before me. It is well established that "[i]t is emphatically the province and duty of the judicial department to say what the law is[,]" and that this power includes ruling on the constitutionality of legislation that Congress passes and the President signs, *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). But I have not formed any opinions about broader trends or changes in the Supreme Court's practices concerning invalidation of federal statutes. Even if I had formed such an opinion, it would be inappropriate for me, as a pending judicial nominee and a sitting federal judge, to comment on the benefits and disadvantages of difference in the rate at which the Court exercises its power to review the constitutionality of legislative enactments.

20. How would you explain the difference between judicial review and judicial supremacy?

RESPONSE: Judicial review refers to the power of the judiciary to assess the legality of decisions made by the executive and legislative branch. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). Judicial supremacy refers to the idea that the Supreme Court is the final arbiter on the meaning of constitutional provisions. *See, e.g.*, *City of Boerne v. Flores*, 521 U.S. 507, 536 (1997) (explaining that, while "[i]t is for Congress in the first instance to 'determin[e] whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment,' and its conclusions are entitled to much deference[,] . . . the courts retain the power, as they have since *Marbury v. Madison*, to determine if Congress has exceeded its authority under the Constitution." (quoting *Katzenbach v. Morgan*, 384 U.S. 641, 651 (1966))); *see also* Barry Friedman & Erin F. Delaney, *Becoming Supreme: The Federal Foundation of Judicial Supremacy*, 111 Colum. L. Rev. 1137 (2011) (explaining the doctrine of judicial supremacy).

21. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?

RESPONSE: The Constitution's tenets are binding on officials who are elected to serve in the government of the United States, and it is clear beyond cavil that such officials have an independent obligation to adhere to the Constitution's commands. As a judicial officer, my role is to determine whether and to what extent the Constitution and laws of the United States have been violated by anyone, including such officials, in the context of cases or controversies that are properly filed in federal court and assigned to me. As a pending judicial nominee and a sitting federal judge,

it would be inappropriate for me to opine on the antecedent question of how such officials can avoid violating the Constitution as interpreted by the judiciary, or the means by which such officials can accomplish the subsequent duty of balancing their own understanding of what the Constitution requires with the determinations that are made in judicial decisions.

22. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.

The Federalist Papers speak to the Framers' intent concerning the powers that the Constitution confers upon the branches of the federal government. In No. 78, Hamilton asserts that "the judiciary is beyond comparison the weakest of the three departments of power[,]" and he also makes clear that the judicial power to review and invalidate legislative action for conformity with the Constitution's commands—which is in "the proper and peculiar province of the courts"—does *not* "imply a superiority of the judiciary to the legislative power." The Federalist No. 28 (Alexander Hamilton). To this end, the Supreme Court has established various doctrines to ensure that courts, which are not accountable to the people by design, cannot exercise unlimited power. These doctrines include the Supreme Court's interpretation of Article III to confine courts to the consideration of "cases" or "controversies," and it is important for courts to keep the judiciary's limited authority in mind when judging, consistent with the Framers' intent. *See, e.g., Lujan v. Defs. of Wildlife*, 504 U.S. 555, 577 (1992) (preventing the Judiciary from intruding into the executive sphere).

23. How would you describe your approach to reading statutes – how much weight do you give to the plain meaning of the text? When we talk about the plain meaning of a statute, are we talking about the public understanding at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?

RESPONSE: As a district court judge, I routinely undertake to interpret statutes, and have issued nearly 50 opinions that involve some form of statutory interpretation. Based on my past practice, I give the statute's text controlling weight. I have considered the meaning of the terms that the legislature used, the structure of the statute as a whole, and other traditional tools of statutory construction, including canons of statutory interpretation. *See, e.g., All. of Artists & Recording Cos., Inc. v. Gen. Motors Co.*, 162 F. Supp. 3d 8 (D.D.C. 2016), *aff'd*, 947 F.3d 849 (D.C. Cir. 2020). I also apply Supreme Court and D.C. Circuit precedents regarding the appropriate method of interpretation in light of the particular circumstances of the case (e.g., the rule of lenity in the criminal context, *Chevron* deference, etc.). If and only if a statute is ambiguous, I have also occasionally consulted the legislative history of a statute, as the Supreme Court permits, to assess the original intent of the legislative body that enacted the provision at issue. I have not considered the meaning of a statute to change as social norms and linguistic conventions evolve.

And I have not resolved a statutory ambiguity based solely on the legislative history of the statute.

24. As a circuit court judge, you would be bound by both Supreme Court precedent, and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?

RESPONSE: It is the duty of a judge to apply Supreme Court and circuit precedent that governs the resolution of the issue at hand faithfully, regardless of that judge's personal opinion about either the matter at issue or the correctness of the holdings in those cases. However, if a particular Supreme Court or D.C. Circuit precedent is not applicable to an issue before me, I would look for analogous precedents to glean principles that could be applied to the circumstances of the case at hand. It might also be necessary to distinguish the instant circumstances from other seemingly applicable precedents, and to explain why the principles articulated in such other cases do not control the outcome of the case.

25. Would it ever be appropriate for a judge to review a decision of the President or an Officer of the United States that Congress has committed to the "sole and unreviewable discretion" of the executive?

RESPONSE: I confronted this question in *Make the Road New York v. McAleenan*, 405 F. Supp. 3d 1 (D.D.C. 2019), and my analysis of the facts and arguments in that matter, in light of D.C. Circuit precedents, yielded a nuanced answer.

The text of section 1225(b)(1)(A)(iii)(I) of the Immigration and Nationality Act ("INA") grants DHS "sole and unreviewable discretion" to designate categories of unauthorized noncitizens for expedited removal, which plainly indicates Congress's intention to confer to DHS exclusive discretion to make that determination, insofar as the statute anoints the agency as the "sole" decider, and suggests that once DHS makes that determination, the agency's decision regarding how long a noncitizen must be present in the United States to warrant more extensive removal procedures is final (i.e., "unreviewable"). But Congress has also elsewhere directed executive agencies as to *how* they must go about exercising the discretion that it confers. *See* Administrative Procedure Act, 5 U.S.C. §§ 551–59. And the D.C. Circuit has long recognized that judicial review of the procedures that an agency employs to make congressionally authorized determinations may be authorized, despite broadly worded delegations of authority. *See, e.g.*, *Delta Air Lines, Inc. v. Export-Import Bank of the U.S.*, 718 F.3d 974, 977 (D.C. Cir. 2013) (per curiam) (explaining that a "'statute can confer on an agency a high degree of discretion, and yet a court might still have an obligation to review the agency's exercise of its discretion to avoid abuse,' especially

on procedural grounds" (quoting 3 Richard J. Pierce, Jr., Administrative Law Treatise § 17.6 (4th ed. 2002)). Thus, the question of first impression that I addressed in *Make the Road* was whether the "sole and unreviewable discretion" language in section 1225(b)(1)(A)(iii)(I) of the INA conferred discretion that was not *only* exclusive, but was *also* preclusive of the standard procedural requirements that would otherwise apply to govern DHS's decision making process.

As the opinion explains, in my view, the language of section 1225(b)(1)(A)(iii)(I) can be read together with the APA's procedural requirements, per the *in para materia* cannon and other traditional tools of statutory interpretation, to mean that Congress intended to provide DHS with the exclusive authority to make the expedited removal designation determination within the statutory limits, but that the agency must exercise its broad discretion consistent with its standard decision making obligations under the APA. Given this reading of the relevant statutes, section 1225(b)(1)(A)(iii)(I) serves to bar judicial review of the substantive merits of the agency's expedited removal designation decision (except, perhaps, for constitutional challenges), but judicial review of the procedures that DHS employs when it exercises the broad discretion that Congress has provided remains available, under the APA. *See Make the Road NY*, 405 F. Supp.3d at 43 (observing that, while the INA confers broad discretion to DHS to make the designation decision, it does not address the procedures that the agency must use, nor does it plainly indicate that Congress intended to authorize DHS to opt to forego the procedural mandates that would ordinarily apply); *see also id.* (reasoning that Congress's preservation of the federal court's subject matter jurisdiction to hear challenges to the validity of the implementation of the expedited removal system in 8 U.S.C. § 1252(e)(3) further suggests that Congress intended to authorize judicial review of the agency's abandonment of procedural standards with respect to the expedited removal process). On appeal, the D.C. Circuit panel disagreed with this analysis, *see Make the Rd. N.Y. v. Wolf*, 962 F.3d 612 (D.C. Cir. 2020); it held, in essence, that where Congress has delegated to an agency "sole and unreviewable discretion" to make a specified determination, that language is sufficient to establish that Congress has necessarily granted decision making authority that is *both* exclusive *and* preclusive of APA review of the procedures that the agency employs. *See id.* at 633–34. That Circuit determination is binding precedent, which means that, going forward, it is not appropriate in this jurisdiction for a judge to review an executive decision that Congress has committed to the "sole and unreviewable discretion" of the executive based on a claim that the agency's exercise of that discretion violates the APA.

26. Do you believe it is ever appropriate to look past jurisdictional issues if they prevent the court from correcting a serious injustice?

RESPONSE: No. My uniform practice in the eight years that I have served as a district judge has been to determine whether or not I have subject matter jurisdiction as a threshold question, and to dismiss the case where I have no jurisdiction, without reaching the merits. *See, e.g.*, *New England Anti-Vivisection Soc'y v. U.S. Fish & Wildlife Serv.*, 208 F. Supp. 3d 142, 148 (D.D.C. 2016) (explaining that, because the

plaintiff lacked standing, "the Court is constrained to refrain from passing on the merits of Plaintiffs' arguments or granting them the relief they seek"); *Food & Water Watch, Inc. v. Vilsack*, 79 F. Supp. 3d 174, 206 (D.D.C. 2015) (finding that, because the plaintiffs lacked standing, "this Court has no authority to reach the merits of their case" and dismissing case as a result), *aff'd*, 808 F.3d 905 (D.C. Cir. 2015); *Z St., Inc. v. Koskinen*, 44 F. Supp. 3d 48, 53–54 (D.D.C. 2014) ("As a court of limited jurisdiction, we begin, and end, with an examination of our jurisdiction." (quotation marks and citation omitted)), *aff'd sub nom. Z St. v. Koskinen*, 791 F.3d 24 (D.C. Cir. 2015).

27. Once again, for the record, please explain your statement that "observed inconsistencies are largely attributable to factors other than group-based bias by judicial decisionmakers."

RESPONSE: The quoted statement is from a presentation that I made in May of 2019, as participant in Columbia Law School's Courts & Legal Process colloquium, which is a long-standing series that brings judges and other legal experts to campus to critique draft academic articles about judicial process for the benefit of students in Professor Burt Huang's seminar on the courts. The draft article that I was asked to review was entitled "Is Judicial Bias Inevitable?" and the authors opened with the contention that, while impartiality is a key tenet of any fair judicial system in theory, in practice, "judges cannot be impartial" because "[s]ocial science has uncovered the prevalence and inevitability of biases, heuristics, and stereotypes in human decision making, which operate automatically and, at times, unconsciously." The article cited and described the findings of various social scientists who study implicit bias, including Harvard Professor Mahzarin R. Banaji, as support for the proposition that "the particular identities and roles of parties have proven a significant factor in shaping judicial outcomes, casting a shadow on judicial impartiality." And due to what the authors called "the growing recognition of the prevalence and impact of implicit bias" in judicial decision making, the article's primary contribution was its exploration of the authors' proposed solution: "the use of online court proceedings" that "substitut[e] physical meetings with online interaction" and thereby "limit judicial exposure to, and hence the impact of, the group identities of the parties, thus mitigating disparities in judicial outcomes that stem from visible markers of group-based identity (for example, age, gender and race)."

In critiquing the article, I accepted the authors' premise that inconsistencies in judicial outcomes with respect to different demographic groups have been observed, and that the implicit bias phenomenon that social science research documents may be a factor. But I argued—as the quoted statement indicates—that such inconsistencies might also be attributable to factors other than implicit bias. I further maintained that, regardless, any judicial system that is devoid of human interaction would be unlikely to produce fair and just results. *See* KBJ Reflections on Courts & Legal Process Article, at 1 ("My concern is that the article both *overestimates* the extent to which disparate outcomes are in fact attributable to bias (unconscious or otherwise), and

underestimates the importance of human interaction as an indispensable feature of a fair and just[] dispute resolution system.") (emphasis in original).

28. In your hearing testimony, you mentioned that the sentencing disparity between crack and powder cocaine has resulted in disparities in criminal convictions and sentencing. What additional factors—other than unconscious bias—have you seen come into play that could account for some of the disparities we see in criminal convictions and sentencing?

RESPONSE: During my confirmation hearing, when I was asked whether I would agree or disagree "with someone who said that most racial disparities in criminal convictions and sentencings are result from an unconscious racial bias of judges, juries, and other judicial decisionmakers[,]" I began my response by explaining that "as a judge now, it is very important for me not to make personal commitments about things like the question that you asked." I then stated that I am "aware of social science research" regarding implicit bias, citing in particular the work of Harvard Professor Mahzarin Banaji, and I also stated that I am aware of research that the Sentencing Commission has conducted concerning the impact of certain policy choices in the federal sentencing system on different demographic groups. The Commission's body of research regarding the federal sentencing system in the wake of the Anti-Drug Abuse Act of 1986, which is the legislation that established mandatory minimums and created the 100-to-1 crack cocaine/powder cocaine disparity, is among the research with which I am familiar. The Commission's October 2017 report concerning the impact of mandatory minimum penalties for drug offenses in the federal criminal justice system is another such research study. I did not express any personal views regarding my own beliefs about what factors contribute to alleged racial disparities in criminal convictions and sentencings, and as a pending judicial nominee and a sitting federal judge, it would be inappropriate for me to express a belief about whether there are racial disparities in federal criminal sentencing, or whether unconscious bias of judicial officers causes any such disparities. It would likewise be inappropriate for me to identify other potentially contributing factors in response to this policy question.

29. Does it concern you that so called "dark money" groups, like Demand Justice and the Leadership Conference on Civil and Human Rights, support your nomination to the U.S. Court of Appeals for the D.C. Circuit?

a. Have you ever spoken with anyone at Demand Justice or the Leadership Conference on Civil and Human Rights Regarding your nomination to the D.C. Circuit?

RESPONSE: Among the many people who have offered me congratulations with respect to this nomination was Chris Kang, who I understand is affiliated with Demand Justice. I met Mr. Kang when he served as chief judicial nominations counsel to President Obama in 2012, when I was nominated to be a U.S. District Judge. That is the only communication that is responsive to this question.

30. When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identit(ies) (*e.g.*, race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?

RESPONSE: Pursuant to section 3553(a) of Title 18 of the United States Code, district judges must impose sentences that are "sufficient, but not greater than necessary" to promote the purposes of punishment, including providing just punishment, deterrence, incapacitation and rehabilitation. 18 U.S.C. § 3553(a). When the Court undertakes to "determin[e] the particular sentence to be imposed" under this statute, Congress has directed the judge to consider "the nature and circumstances and the history and characteristics of the defendant[,]" among other things. 18 U.S.C. § 3553(a)(1).

31. Would it ever be appropriate to sentence a defendant who belongs to a historically disadvantaged group less severely than a similarly situated defendant who belongs to a historically advantaged group to correct systemic sentencing disparities?

RESPONSE: No. The factors that a judge may appropriately consider when sentencing an individual defendant are prescribed by Congress in section 3553(a) of Title 18 of the United States Code, and the need to treat similarly situated defendants differently in order to correct systemic sentencing disparities is not a factor that Congress has instructed courts to consider when crafting a sentence. Section 3553(a) instructs courts to consider "the need to *avoid* unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." *Id.* § 3553(a)(6) (emphasis added). And consistent with congressional commands in this regard, section 5H1.10 of the Sentencing Guidelines Manual states that race and certain other demographic factors (i.e., sex, national origin, creed, religion, and socio-economic status) "are not relevant in the determination of a sentence."

32. It has been reported that you met with President Biden to discuss your potential nomination to the D.C. Circuit. Once again, for the record, will you confirm that President Biden did not discuss or ask for a commitment from you on any of the following issues:

a. Abortion or *Roe v. Wade*?

b. The Second Amendment, *District of Columbia vs. Heller* or *MacDonald v. Chicago*?

c. Efforts to defund the police?

d. Illegal immigration?

RESPONSE: President Biden did not discuss any of these issues with me or ask for any commitments related to these matters.

Responses to Questions for the Record from Senator Ben Sasse
to Judge Ketanji Brown Jackson, Nominee to the
United States Court of Appeals for the D.C. Circuit

For all nominees:

1. **Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

   RESPONSE: No.

2. **Since becoming a legal adult, have you participated in any rallies or demonstrations where you or other participants have willfully damaged public or private property?**

   RESPONSE: No.

3. **Was Marbury v. Madison correctly decided?**

   RESPONSE: As a sitting federal judge, all of the Supreme Court's pronouncements are binding on me, and under the Code of Conduct for United States Judges, I have a duty to refrain from critiquing the law that governs my decisions, because doing so creates the impression that the judge would have difficulty applying binding law to their own rulings. Consistent with the positions taken by other pending judicial nominees, it is my testimony that, as a general matter, it would be inappropriate for me to comment on the merits or demerits of the Supreme Court's binding precedents.

   Marbury v. Madison is one of three exceptions to the general principle that a judge should not critique or comment on the Supreme Court's precedents. *Marbury* warrants this special status because the principle of judicial review that that decision established—i.e., its holding that, per the design of our Constitution, "[i]t is emphatically the province and duty of the judicial department to say what the law is[,]" *Marbury v. Madison*, 5 U.S. 137, 177 (1803)—is a foundational finding that is beyond dispute. *See* Federalist No. 78 (Alexander Hamilton) ("The interpretation of the laws is the proper and peculiar province of the courts."). Therefore, just as other nominees for judicial office and other sitting federal judges have done, I can confirm that *Marbury* was rightly decided without calling into question my duties under the Code of Conduct.

4. **Was Brown v. Board of Education correctly decided?**

   RESPONSE: As a sitting federal judge, all of the Supreme Court's pronouncements are binding on me, and under the Code of Conduct for United States Judges, I have a duty to refrain from critiquing the law that governs my decisions, because doing so creates the impression that the judge would have difficulty applying binding law to

their own rulings. Consistent with the positions taken by other pending judicial nominees, it is my testimony that, as a general matter, it would be inappropriate for me to comment on the merits or demerits of the Supreme Court's binding precedents.

Brown v. the Board of Education is one of three exceptions to the general principle that a judge should not comment on the Supreme Court's precedents. *Brown* warrants this special status because that decision overruled the manifest injustice of *Plessy v. Ferguson*, which had given rise to legally enforceable segregation in various places in the United States by endorsing 'separate but equal' as consistent with the Constitution's Equal Protection Clause. The underlying premise of the *Brown* decision—i.e., that "separate but equal is inherently unequal"—is beyond dispute, and judges can express their agreement with that principle without calling into question their ability to apply the law faithfully to cases raising similar issues. Therefore, just as other nominees for judicial office and other sitting federal judges have done, I can confirm that *Brown* was rightly decided without calling into question my duties under the Code of Conduct.

5. Was Loving v. Virginia correctly decided?

RESPONSE: As a sitting federal judge, all of the Supreme Court's pronouncements are binding on me, and under the Code of Conduct for United States Judges, I have a duty to refrain from critiquing the law that governs my decisions, because doing so creates the impression that the judge would have difficulty applying binding law to their own rulings. Consistent with the positions taken by other pending judicial nominees, it is my testimony that, as a general matter, it would be inappropriate for me to comment on the merits or demerits of the Supreme Court's binding precedents.

Loving v. Virginia is one of three exceptions to the general principle that a judge should not comment on the Supreme Court's precedents. *Loving* reaffirmed the rejection of the "notion that the mere 'equal application' of a statute containing racial classifications" comports with the Fourteenth Amendment, *Loving v. Virginia*, 388 U.S. 1, 8 (1967), and as such, it is a direct outgrowth of *Brown*. Therefore, just as other nominees for judicial office and other sitting federal judges have done, I can confirm that *Loving* was rightly decided without calling into question my duties under the Code of Conduct.

6. Was Roe v. Wade correctly decided?

RESPONSE: As a sitting federal judge, all of the Supreme Court's pronouncements are binding on me, and under the Code of Conduct for United States Judges, I have a duty to refrain from critiquing the law that governs my decisions, because doing so creates the impression that the judge would have difficulty applying binding law to their own rulings. Consistent with the positions taken by other pending judicial nominees, it is my testimony that it would be inappropriate for me to comment on the merits or demerits of the Supreme Court's binding precedents.

7. Was United States v. Virginia correctly decided?

RESPONSE: My response to Question 6 applies to this question.

8. Was District of Columbia v. Heller correctly decided?

RESPONSE: My response to Question 6 applies to this question.

9. Was Boumediene v. Bush correctly decided?

RESPONSE: My response to Question 6 applies to this question.

10. Was Citizens United v. FEC correctly decided?

RESPONSE: My response to Question 6 applies to this question.

11. Was Obergefell v. Hodges correctly decided?

RESPONSE: My response to Question 6 applies to this question.

12. In the absence of controlling Supreme Court precedent, what factors determine whether it is appropriate for an en banc court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?

RESPONSE: D.C. Circuit precedents make clear that it is appropriate for that court, sitting en banc, to overturn its own precedents only in a narrow set of circumstances. The primary circumstance in which that action is warranted is when "an intervening development of the law, through either the growth of judicial doctrine or further action taken by Congress,' necessitates a shift in the Court's position." *United States v. Burwell*, 690 F.3d 500, 504 (D.C. Cir. 2012) (quoting *Patterson v. McLean Credit Union*, 491 U.S. 164, 173 (1989)). In addition, "it is appropriate for the en banc court to set aside circuit precedent when, 'on reexamination of an earlier decision, it decides that the panel's holding on an important question of law was fundamentally flawed.'" *Allegheny Def. Project v. Fed. Energy Regul. Comm'n*, 964 F.3d 1, 18 (D.C. Cir. 2020) (quoting *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 975 F.2d 871, 876 (D.C. Cir. 1992) (en banc)). It is also permissible for the en banc court to overturn its own prior precedent "where the precedent 'may be a positive detriment to coherence and consistency in the law, either because of inherent confusion created by an unworkable decision, or because the decision poses a direct obstacle to the realization of important objectives embodied in other laws.'" *Burwell*, 690 F.3d at 504 (quoting *Patterson*, 491 U.S. at 173).

13. In the absence of controlling Supreme Court precedent, what factors determine whether it is appropriate for an en banc court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?

RESPONSE: Please see my answer to Question 12. It does not appear that the D.C. Circuit's practices concerning overturning its own past precedents turns on whether the prior precedent conflicts with the original public meaning of *the Constitution* as opposed to the circumstance in which a prior precedent conflicts with the original public meaning of the text of *a statute*. In the latter context, however, the D.C. Circuit has found that "[a] court of appeals sitting en banc may also reexamine its own interpretation of a statute 'if it finds that other circuits have persuasively argued a contrary construction.'" *United States v. Burwell*, 690 F.3d 500, 504 (D.C. Cir. 2012) (quoting *Critical Mass Energy Proj. v. NRC*, 975 F.2d 871, 876 (D.C. Cir .1992) (en banc)).

14. If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant?

RESPONSE: No. The factors that a judge may appropriately consider when sentencing an individual defendant are prescribed by Congress in section 3553(a) of Title 18 of the United States Code, and the need to treat similarly situated defendants differently in order to correct systemic sentencing disparities is not a factor that Congress has instructed courts to consider when crafting a sentence. Section 3553(a) instructs courts to consider "the need to *avoid* unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." *Id.* § 3553(a)(6)(emphasis added). And consistent with congressional commands in this regard, section 5H1.10 of the Sentencing Guidelines Manual states that race and certain other demographic factors (i.e., sex, national origin, creed, religion, and socio-economic status) "are not relevant in the determination of a sentence."

Additional Questions For Judge Ketanji Brown Jackson:

1. Please list some examples from your time as a federal district court judge of when your rulings conflicted with your personal policy preferences.

RESPONSE: My role as a district court judge has been to consider the facts and arguments that are presented in each case and controversy that is presented, and to apply the law faithfully to resolve the issues before me. Because my personal policy preferences play no role in the performance of my duties, in every case that I have handled, I have set aside my personal policy preferences completely, and have considered only the parties' arguments, the relevant facts, and the law as I understand it, including and especially the binding precedents of the Supreme Court and the D.C. Circuit. As a pending judicial nominee and a sitting federal judge, it would be inappropriate for me to publicly identify those opinions of mine in which my personal

policy preferences conflicted with the ruling that I made in the case based on what the law required. This is because judges are duty bound not to act or speak in a manner that might call into question their impartiality or their ability to rule consistently with the law, rather than their stated policy preferences, and the discussion of a judge's own policy preferences gives rise to that concern.

2. Why did you choose to become an Assistant Federal Public Defender?

RESPONSE: I chose to become an Assistant Federal Public Defender because public service is a core value in my family, and after becoming a lawyer, I determined that being a public defender was the highest and best use of my time and talents. Both of my parents spent most of their careers in the public sector—my mother as a public school science teacher to start, and, later, the principal of a public magnet school in South Florida. My father started his working life as a public high school history teacher and ended it as chief legal counsel to the Miami-Dade County School Board. Two of my uncles were career law enforcement officers: one was a Miami-Dade County sex crimes detective, and the other rose through the ranks of the City of Miami Police Department to become the Chief of Police. And my younger brother (my only sibling) served as an undercover police officer in a drug sting unit in Baltimore after graduating from college, before he joined the Maryland Army National Guard, trained to be an infantry officer, and led two battalions during two tours of duty in Iraq and the Sinai Peninsula.

Given this family background, there was no question that I would gravitate toward public service at some point in my legal career. After clerking for three federal judges and working briefly in private practice, I served as a staff attorney at the Sentencing Commission in a legislative drafting and policymaking role. I soon discovered that I lacked a practical understanding of the actual workings of the federal criminal justice system, and I decided that serving "in the trenches," so to speak, would be helpful. A position with the Federal Public Defender was a highly competitive and extraordinary opportunity to hone one's litigation skills and to gain knowledge about critical aspects of federal criminal justice processes. I also viewed working in the office of the Federal Public Defender as an opportunity to help people in need, and to promote core constitutional values, such as the Sixth Amendment principles that the government cannot deprive people who are subject to its authority of their liberty without meeting its burden of proving its criminal charges, and that every person who is accused of criminal conduct by the government, regardless of wealth and despite the nature of the accusations, is entitled to the assistance of counsel.

3. Were you ever concerned that your work as an Assistant Federal Public Defender would result in more violent criminals—including gun criminals—being put back on the streets?

RESPONSE: The primary concern of lawyers of who work as public defenders is the same as that of the Framers who crafted the Sixth Amendment of the Constitution:

that, in order to guarantee liberty and justice for all, the government has to provide due process to the individuals it accuses of criminal behavior, including the rights to a grand jury indictment, a fair trial by a jury of one's peers, and competent legal counsel to hold the government accountable for providing a fair process and otherwise assist in the preparation of a defense against the charges. The Constitution guarantees that every person who is compelled to enter into the criminal justice system by virtue of being accused of a crime will receive representation in the context of their interactions with government authorities, and attorneys in the federal public defender's office perform this crucial function. Having lawyers who can set aside their own personal beliefs about their client's alleged behavior or their client's propensity to commit crimes benefits *all* persons in the United States, because it incentivizes the government to investigate accusations thoroughly and to protect the rights of the accused during the criminal justice process, which, in the aggregate, reduces the threat of arbitrary or unfounded deprivations of individual liberty.

4. **While working as an Assistant Federal Public Defender, why did you choose to work on behalf of Guantanamo detainee Khi Ali Gul? If you did not have a choice as to whether working on behalf of this client, did you ever consider resigning from your position?**

RESPONSE: Between 2005 and 2007, as an employee of the Office of the Federal Public Defender in Washington D.C., I worked with other assistant federal public defenders to represent some of the individuals designated as enemy combatants who were detained by the federal government without charge or trial at the U.S. Naval Base in Guantanamo Bay, Cuba, and whose legal claims for relief were being litigated in the federal courts in the District of Columbia. The Federal Public Defender's office in Washington, D.C., is a relatively small office, and to my knowledge, the U.S. District Court for the District of Columbia was the exclusive venue in which the legal claims of Guantanamo Bay detainees were being reviewed. Khi Ali Gul was one of the individuals whom the D.C. Federal Public Defenders' office represented, and in my role as an Assistant Federal Public Defender, I drafted various motions, and worked on other court filings on his behalf.

At the time of this representation, my brother was an enlisted U.S. Army infantryman who was deployed outside of Mosul, Iraq, and I was keenly and personally mindful of the tragic and deplorable circumstances that gave rise to the U.S. government's apprehension and detention of the persons who were secured at Guantanamo Bay. In the wake of the horrific terrorist attacks in September of 2001, I was also among the many lawyers who were keenly aware of the threat that the 9-11 attacks had posed to foundational constitutional principles, in addition to the clear danger to the people of the United States.

Under the ethics rules that apply to lawyers, an attorney has a duty to represent her clients zealously, which includes refraining from contradicting her client's legal arguments and/or undermining her client's interests by publicly declaring the lawyer's own personal disagreement with the legal position or alleged behavior of her

client. Because these standards apply even after termination of the representation, it would be inappropriate for me to comment on whether I disagreed with Khi Ali Gul, found his alleged crimes offensive, or considered resigning my position as an Assistant Federal Public Defender based on any such disagreement or offense.

5. **Were you ever concerned that your work on behalf of Guantanamo detainee Khi Ali Gul would result in him returning to his terrorist activities?**

RESPONSE: Please see my response to Additional Question 4.

6. **While in private practice, why did you choose to represent clients filing amicus briefs in support of the petitioners in Boumediene v. Bush and Al-Odah v. United States?**

RESPONSE: Between 2007 and 2010, I was employed as Of Counsel in the Supreme Court and Appellate Group of a private law firm. The firm represented both paying clients and clients who retained our services pro bono. During that time, the Supreme Court was considering several cases that involved Guantanamo Bay detainees, including a challenge to the detention review procedures that the government was providing to such detainees, which it addressed in the consolidated cases of *Boumediene v. Bush* and *Al-Odah v. United States*, and a case that raised the issue of whether Congress had authorized the President to detain as enemy combatants, without criminal charge or trial, lawful residents of the United States who were apprehended within the United States (*Al-Marri v. Spagone*).

I co-authored Supreme Court amicus briefs for clients in two of these cases. One of the briefs that I drafted was filed on behalf of twenty former federal judges, who argued, on the basis of the examination of Founding-era historical texts, that the Framers would not have intended for our constitutional scheme to permit reliance on evidence that had be extracted from torture during criminal trials. I filed another amicus brief on behalf of The Cato Institute, The Constitution Project, and the Rutherford Institute, arguing that Congress's authorization for the use of military force did not permit lawful residents of the United States to be detained indefinitely as enemy combatants. I believe that I was assigned to work on these amicus briefs because of the knowledge of the military tribunal processes that I had accumulated from my prior work as an Assistant Federal Public Defender.

7. **Were you ever concerned that your work in support of the petitioners in Boumediene v. Bush and Al-Odah v. United States would result in more terrorists being released back into the fight against the United States?**

RESPONSE: Please see my response to Additional Question 5. The work that I did in relation to these cases was on behalf of clients who were filing amicus briefs to inform the Supreme Court concerning the clients' views of particular legal issues that the Court may have sought to address in the context of its review. The brief I filed on behalf of my clients—retired federal judges—in the consolidated *Boumediene* and *Al-*

Odah cases argued that the judicial review that the Detainee Treatment Act provided was not an adequate substitute for the common law writ of habeas corpus, because it did not appear that the reviewing court was authorized to determine the extent to which the Combatant Status Review Tribunal had relied on statements extracted by torture when the court ruled on the legality of the detention.

8. **While in private practice, why did you choose to represent clients filing amicus briefs in support of the petitioner in Al-Marri v. Spagone?**

RESPONSE: Please see my response to Additional Question 6.

9. **Were you ever concerned that your work in support of the petitioner in Al-Marri v. Spagone would result in more terrorists being released back into the fight against the United States?**

RESPONSE: Please see my response to Additional Question 7.

Responses to Questions for the Record from Senator Thom Tillis to Judge Ketanji Brown Jackson, Nominee to the United States Court of Appeals for the D.C. Circuit

1. **Judge Jackson, do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

RESPONSE: Yes. Under the Code of Conduct for United States Judges and established standards of judicial ethics, a judge's own personal views regarding a matter must not have any bearing on her interpretation and application of the law.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

RESPONSE: Judicial activism occurs when a judge is unwilling or unable to rule as the law requires and instead resolves cases consistent with his or her personal views. During the hearing, I emphasized that courts have a duty of independence from political pressure, meaning that judges must resolve cases and controversies in a manner that is consistent with the law, despite the judge's own personal views of the matter, even when the cases pertain to controversial political issues. Judicial activism, so defined, is not appropriate.

3. **Judge Jackson, do you believe impartiality is an aspiration or an expectation for a judge?**

RESPONSE: Impartiality is much more than a mere "aspiration" or "expectation." Ruling without fear or favor is the essence of judicial independence, which is the constitutional mandate of judicial service. *See* The Federalist No. 78 (Alexander Hamilton). My record of rulings in cases challenging government action demonstrates my ability to rule independently and impartially, regardless of the presidential administration that promulgates the policy being challenged.

4. **Judge Jackson, should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

RESPONSE: No. The role of a judge is evaluate legal claims that are made about an act of the defendant (who may well be a policymaker), and to determine the merits of those claims based on arguments presented by the parties, in light of applicable law, including the binding precedents of the Supreme Court. At no point in the process of judicial decision making can a judge substitute her own policy preferences for those of Congress or state legislative bodies, either to reach a desired outcome or for any other purpose.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

RESPONSE: Faithfully interpreting the law can sometimes result in an outcome that conflicts with a judge's own personal view of the matter. It is the judge's duty to set aside her personal view of the matter, and/or the outcome that she would personally prefer, and faithfully apply the law. An outcome that comports with the law, as set forth in the binding precedents of the circuit and the Supreme Court, is required by the judge's oath and the Constitution. Thus, that outcome *is* the most desirable one, regardless of a judge's own personal beliefs.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

RESPONSE: No. Please see my response to Questions 1, 2, 4 and 5. A judge has a duty to set aside her own politics and/or policy preferences when she is interpreting and applying the law.

7. **What is the longest decision you have issued as a District Court Judge?**

RESPONSE: I have written dozens of lengthy written opinions (defined as written rulings that are 50 or more pages long), dating back to the early days of my appointment as a federal judge. (*See* my response to Question 10, *infra*.) Although I may have missed one or more of my lengthy opinions in searching my records and electronic databases to respond to this question, it appears that the longest decision that I have issued as a district court judge was *Make the Road New York v. McAleenan*, 405 F. Supp. 3d 1 (D.D.C. 2019), which is 126 pages long.

8. **What is the shortest decision you have issued as a District Court Judge?**

RESPONSE: I have handled hundreds of cases, and have made thousands of decisions in connection with those matters, in the eight years that I have been a district court judge. I cannot accurately identify my "shortest decision," because many decisions at the trial-court level take the form of short orders that are not published in electronic case reporting databases such as Westlaw or LEXIS. The shortest written decisions I have issued as a district court judge take the form of paperless Minute Orders that consist of a sentence or two on the docket of a case. *See, e.g.*, *Tarque v. Biden*, No. 21-cv-338, Min. Order of Apr. 4, 2021 (granting motion for extension of time to answer complaint); *Citizens for Responsibility & Ethics in Wash. v. Dep't of Trans.*, No. 21-cv-610, Min. Order of Apr. 29, 2021 (requiring the parties to file a status report in a FOIA case); *Centro Presente, Inc. v. Wolf*, No. 19-cv-2480, Min. Order of Mar. 17, 2021 (granting motion for leave to appear pro hac vice). I have also routinely issued short paper orders regarding a variety of legal issues. *See, e.g.*, *Hogue v. Costal Int'l, Inc.*, No. 18-cv-389, Order Dismissing Case for Lack of Prosecution, ECF No. 39 (D.D.C. May 4, 2021); *In re Subpoena Duces Tecum to Verizon Wireless*, No. 19-mc-103, Order Transferring Case, ECF No. 4 (D.D.C. July 18, 2019); *Nugent v. Nat'l Pub. Radio, Inc.*, No. 14-cv-0416, Order, ECF No. 8 (D.D.C. March 28, 2014) (granting the defendant's motion to withdraw its notice of removal and remanding the case to the Superior Court of the District of Columbia).

9. **What is the average length of all of the decisions you have issued as a District Court Judge?**

RESPONSE: Please see my responses to Questions 7 and 8. I am unable to determine accurately the length of my shortest decisions and/or the precise number of short orders that I have issued as a district court judge. As a result, it is impossible to determine "the average length of all of the decisions that [I] have issued[.]"

10. **During the Senate Judiciary Committee Hearing, you said that your opinion in the McGhan case was "just another opinion."**

- How many pages was the opinion you issued in this case?

- Is this the longest opinion you have issued?

- Were you overruled at any level in full or in part upon appeal?

-Can you explain why you think an opinion that is so lengthy is "just another opinion?

RESPONSE: Please see my response to Question 7. It is routine for judges seated in the District of Columbia to issue lengthy opinions, such as the one in *McGahn*, because federal judges in Washington, D.C. regularly handle some of the most complex and consequential legal disputes that can be resolved by an Article III judicial officer under our constitutional scheme, due to the unique nature of our docket, which is largely comprised of legal disputes concerning the scope and application of the federal government's power. The length of a written opinion that resolves such a dispute depends on the complexity and number of legal arguments that the parties make concerning the significant legal claims brought in the case.

The opinion that I issued in *McGahn* was 118 pages long (excluding the table of contents). The following description documents my opinion-writing practices during the eight years that I have been on the bench and establishes that *McGahn* is the third longest opinion that I have issued as a district court judge.

In September of 2013, approximately six months after I received my judicial commission, I issued a 76-page opinion in *American Meat Institute v. U.S. Department of Agriculture*, 968 F. Supp. 2d 38 (D.D.C. 2013). The following year, in 2014, I issued four more opinions that were over 50 pages in length. *See Pencheng Si v. Laogai Rsch. Found.*, 71 F. Supp. 3d 73 (D.D.C. 2014) (51 pages); *Nat. Res. Def. Council v. Nat'l Marine Fisheries Serv.*, 71 F. Supp. 3d 35 (D.D.C. 2014) (61 pages); *A Love of Food I, LLC v. Maoz Vegetarian USA, Inc.*, 70 F. Supp. 3d 376 (D.D.C. 2014) (69 pages); *United States ex rel. Tran v. Computer Scis. Corp.*, 53 F. Supp. 3d 104 (D.D.C. 2014) (58 pages).

In 2015, I issued five lengthy opinions, including *Takeda Pharmaceuticals, U.S.A., Inc. v. Burwell*, 78 F. Supp. 3d 65 (D.D.C. 2015), which was 77 pages long; *XP Vehicles, Inc. v. Department of Energy*, 118 F. Supp. 3d 38 (D.D.C. 2015), was 67 pages long, and *Otay Mesa Property, L.P. v. U.S. Department of the Interior*, 144 F.

Supp. 3d 35 (D.D.C. 2015), was 62 pages long. Likewise, in 2016, I issued *Yah Kai World Wide Enterprises, Inc. v. Napper*, 195 F. Supp. 3d 287 (D.D.C. 2016), which was 65 pages long, and four other opinions that qualify as lengthy: *Otsuka Pharmaceuticals Co., Ltd. v. Burwell*, 302 F. Supp. 3d 375 (D.D.C. 2016) (57 pages); *Abington Memorial Hospital v. Burwell*, 216 F. Supp. 3d 110 (D.D.C. 2016) (59 pages); *Pacific Ranger, LLC v. Pritzker*, 211 F. Supp. 3d 196 (D.D.C. 2016) (51 pages); *New England Anti-Vivisection Society v. U.S. Fish & Wildlife Service*, 208 F. Supp. 3d 142 (D.D.C. 2016) (59 pages).

In 2017 I wrote an opinion that was more than 100 pages long. *Kubicki on behalf of Kubicki v. Medtronic, Inc.*, No. 12-cv-734, sealed slip. op., ECF No. 158 (D.D.C. Dec. 12, 2017), published at 293 F. Supp. 3d 129 (D.D.C. 2018), was 103 pages. I also issued *Ross v. Lockheed Martin Corp.*, 267 F. Supp. 3d 174 (D.D.C. 2017), that year (52 pages). Similarly, I issued three lengthy opinions in 2018, including one that was 119 pages. *See Am. Fed. of Gov't Emps., AFL-CIO v. Trump*, 318 F. Supp. 3d 370 (D.D.C. 2018); *see also In re Air Crash over S. Indian Ocean on Mar. 8, 2014*, 352 F. Supp. 3d 19 (D.D.C. 2018) (61 pages); *Yah Kai World Wide Enters., Inc. v. Napper*, 292 F. Supp. 3d 337 (D.D.C. 2018) (62 pages).[1]

Thus, the 118-page opinion in *Committee on the Judiciary v. McGahn*, 415 F. Supp. 3d 148 (D.D.C. 2019), which I issued in November of 2019, was not unusual. Indeed, just two months prior, in late September of that same year, I had issued *Make the Road New York v. McAleenan*, 405 F. Supp. 3d 1 (D.D.C. 2019), which was 126 pages long. And I issued the 51-page opinion in *Center for Biological Diversity v. McAleenan*, 404 F. Supp. 3d 218 (D.D.C. 2019), at the beginning of September of 2019 a few weeks prior to *Make the Road New York*. In 2020, I issued three additional lengthy opinions: *Las Americas Immigrant Advocacy Center v. Wolf*, 19-cv-3640, --- F. Supp. 3d ----, 2020 WL 7039516 (D.D.C. Nov. 30, 2020) (60 pages); *Kiakombua v. Wolf*, --- F. Supp. 3d ---, No. 19-cv-1872, 2020 WL 6392824 (D.D.C. Oct. 31, 2020) (96 pages); *AFL-CIO v. NLRB*, 466 F. Supp. 3d 68 (D.D.C. 2020) (52 pages).

McGahn was a lengthy opinion because it required me to resolve cross-motions for summary judgment concerning "three legal contentions of extraordinary constitutional significance." 451 F. Supp. 3d at 152 (internal quotation marks and citation omitted). In particular, I held that (1) the inter-branch subpoena dispute between the President and the House Judiciary Committee was a justiciable matter that the Judiciary Committee had Article III standing to pursue in federal court; (2) the Judiciary Committee had a cause of action to seek enforcement of its subpoena; and (3) the President does not have the power to prevent his aides from responding to legislative subpoenas on the basis of absolute testimonial immunity. On appellate review, over the course of two opinions, a divided panel of the D.C. Circuit reversed my rulings on the standing and cause of action issues, but the entire D.C. Circuit granted en banc

[1] *Yah Kai* was a trademark matter in which I presided over two bench trials: one in 2016 addressing liability and one in 2018 addressing damages. Taken together, my findings of fact and conclusions of law in this matter totaled 127 pages.

review twice, and has now vacated both panel reversals. To date, the en banc D.C. Circuit has affirmed my conclusion that the House Judiciary Committee has standing to adjudicate its subpoena enforcement claims in federal court notwithstanding the inter-branch nature of the dispute. The cause of action and merits questions remain pending.

11. **As of November 1, 2019, were you a lawyer and former public defender?**

RESPONSE: On November 1, 2019, I was a lawyer and a federal district judge. I was also a former Vice Chair of the United States Sentencing Commission; a former law firm Of Counsel and associate; and a former Assistant Federal Public Defender who had been employed in the appellate division of the Office of the Federal Public Defender in Washington D.C.

12. **Are you a bold progressive champion? If yes, please explain.**

RESPONSE: I have never called myself or anyone else a "bold progressive champion" nor do I have a clear understanding of the meaning of that phrase. As a pending judicial nominee and sitting federal judge, it would contravene the Code of Conduct to associate myself with any political viewpoint or leaning.

13. **Have you been on the front lines advancing the law for progressive values? If yes, please explain.**

RESPONSE: I have never purported to be "on the front lines advancing the law for progressive values" or stated anything of the sort. As a pending judicial nominee and sitting federal judge, it would contravene the Code of Conduct to associate myself with any political viewpoint or leaning.

14. **You said that "you have served on "many boards" and that you "don't necessarily agree with all of the . . . statements of any of all the things those boards might have in their materials." Please list the name and length of service for each board on which you served that you do not entirely agree with all of their materials. For each one please identify each statement or material with which you do not agree.**

RESPONSE: During my confirmation hearing, Senator Hawley referenced various statements that apparently once appeared on the website of Montrose Christian School, a private kindergarten through 12th grade school. Montrose Christian School is now defunct; I served as an advisory school board member with respect to that school for one year, spanning 2010 and 2011. In the context of his question, Senator Hawley stated that he had defended Justice Amy Coney Barrett's right to serve on a religious school board, and that he would also "defend [my] right to religious liberty and to serve on this board whatever your opinions may be[.]" He also stated that he had gleaned "from [my] service" that I "believe in the principle of the constitutional right of religious liberty[.]" In response, and primarily to clarify that my board service did

not itself portend any personal belief about religious liberty or anything else, I explained that my views about religious liberty "come[] from my duty to observe Supreme Court precedent [and] to follow its tenets, not from any personal views that I might have." Emphasizing that "any personal views that I might have about religion would never come into my service as a judge," I also said that "I have served on many boards, and that I don't necessarily agree with all of the statements of all of the things that those boards might have in their materials." I did not state any personal view concerning the statements that Senator Hawley identified and that Montrose Christian School purportedly posted on its website. Nor did I express any agreement or disagreement with any statements of any other board on which I have served.

The various boards on which I have served—all without compensation—and my length of service are listed at questions 6 and 9 of my Senate Judiciary Questionnaire for Judicial Nominees. As a pending judicial nominee and sitting federal judge, it would be inappropriate for me to identify any statements or policy positions of those boards and indicate my personal agreement or disagreement with those statements.

15. **Is there any board on which you served in the past that you would not serve on today were you not a federal judge?**

RESPONSE: As a pending judicial nominee and sitting federal judge, I cannot give voice to any regrets concerning prior board service, because to do so would give rise to speculation about my personal views concerning such boards and their policy positions, which could undermine the public's confidence in my ability to set aside such personal views and rule only with respect to the facts and law in any case concerning parties that hold similar policy positions.

16. **Senator Hawley asked if you believe in the constitutional right of religious liberty based on your affiliation with a board you served on. You seemed to indicate in your answer that the reason you believe in the individual right to religious liberty is because of Supreme Court Precedent. Is that what you intended to say? Is it correct that the reason you believe in an individual's right to religious liberty is because of Supreme Court Precedent?**

RESPONSE: Please see my response to Question 14, which clarifies the intended scope of my answer to Senator Hawley concerning religious liberty. My duty as a federal judge is to uphold the Constitution, and the First Amendment states that the "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]" The Supreme Court has repeatedly reaffirmed that the First Amendment to the Constitution expressly protects a fundamental individual right to religious liberty.

17. **Some are demanding that Justice Breyer retire. Do you agree that should Justice Breyer retire this year, President Biden would have the right to nominate someone to fill that seat on the Supreme Court?**

RESPONSE: Article II, section 2 of the Constitution vests the President with the "Power, by and with the Advice and Consent of the Senate, to . . . appoint . . . Judges of the supreme Court." *See* U.S. Const., art. II, § 2. I am obligated to apply binding precedents of the Supreme Court, regardless of its size.

18. **How would you respond if a group ran ads and publicly called for you to retire as a District Court Judge? Would this answer change as a Circuit Court Judge? As a Supreme Court Justice?**

RESPONSE: Under Article III, section 1 of the Constitution, all judges "both of the supreme and inferior Courts, shall hold their Offices during good Behaviour[.]" To promote judicial independence and impartiality in the performance of a federal judge's duties, the Code of Conduct for United States Judges prohibits judges from engaging in public debates of a political nature or publicly responding to public pressure of any kind. *See* Code of Conduct for United States Judges, Canon 5. Therefore, it would likely be inappropriate for me to respond in any way to advertisements that call for my retirement as a district judge. The Code of Conduct for Judges applies to circuit judges as well, so in the unlikely event that a response to a group's public call for retirement would be appropriate for me as a district judge, such response would also be inappropriate for me as a circuit judge, if I am confirmed.

19. **Do you agree with that Justice Breyer should retire? If not, why not?**

RESPONSE: As a pending judicial nominee and a sitting federal judge, I am bound by the Supreme Court's precedents, regardless of that Court's composition. It would be inappropriate for me to comment on whether or when any sitting Supreme Court Justice should retire.

20. **Judge Jackson, if you are confirmed, what will you do to protect Americans' right to practice their faith during this incredibly difficult time?**

RESPONSE: As a sitting federal judge, I am bound to apply faithfully all binding precedents of the D.C. Circuit and the Supreme Court, including all precedents that pertain to the First Amendment's fundamental right to the free exercise of religion. If I were to be confirmed to the D.C. Circuit, that obligation would not change.

21. **Judge Jackson, is there a line where a First Amendment activity or peaceful protesting becomes rioting and is no longer protected? What is that line? Do you agree that looting, burning property, and causing other destruction is not a protected First Amendment activity?**

RESPONSE: The First Amendment expressly protects "the right of the people *peaceably* to assemble," U.S. Const. amend. I (emphasis added), and the Supreme Court has recognized that "peaceful demonstrations in public places are protected" but that "where demonstrations turn violent, they lose their protected quality as expression under the First Amendment[,]" *Grayned v. City of Rockford*, 408 U.S. 104, 116

(1972); *see also, e.g.*, *Gregory v. City of Chicago*, 394 U.S. 111, 112 (1969) (explaining that a "march, if peaceful and orderly, falls well within the sphere of conduct protected by the First Amendment"). The precedents of the Supreme Court and the D.C. Circuit concerning this and all other legal issues are binding on me, and, if confirmed, I would faithfully apply those precedents if I were ever assigned a case on appeal that involved these issues. As a pending judicial nominee and sitting federal judge, it would be inappropriate for me to opine as to hypothetical circumstances that test of the limits of these principles, as such matters are regularly litigated in the Supreme Court and the lower federal courts. *See* Code of Conduct for United States Judges, Canon 3(A)(6) ("A judge should not make public comment on the merits of a matter pending or impending in any court.").

22. **Judge Jackson, how would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?**

RESPONSE: I would evaluate any case concerning handguns or COVID-19 restrictions consistent with the binding precedents of the Supreme Court. Two weeks ago, in the case of *New York State Rifle & Pistol Association, Inc. v. Corlett*, No. 20-843, the Supreme Court granted *certiorari* in case that involved the denial of applications to carry a gun outside the home for self-defense individuals that had been submitted pursuant to a New York statute. In a similarly recent series of *per curiam* opinions, including *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68 (2020), and *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Supreme Court has also addressed the application of Free Exercise principles to restrictions that various localities have issued out of COVID-related public health concerns. As a pending judicial nominee and a sitting federal judge, it would be inappropriate for me to opine on the constitutionality of such firearm and religious-liberty restrictions while these issues are being actively litigated in the Supreme Court and other lower federal courts. *See* Code of Conduct for United States Judges, Canon 3(A)(6) ("A judge should not make public comment on the merits of a matter pending or impending in any court.").

23. **Judge Jackson, what will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

RESPONSE: As a sitting federal judge, I am bound to apply faithfully all binding precedents of the D.C. Circuit and the Supreme Court, including all precedents that pertain to the Second Amendment individual right to keep and bear arms. If I were to be confirmed to the D.C. Circuit, that obligation would not change.

24. **What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?**

RESPONSE: According to my records, I have considered whether qualified immunity shielded a law enforcement officer from liability for alleged constitutional violations nine times over the past eight years, and in each case, I carefully considered the particular facts and circumstances that the case presented and adhered to Supreme Court and D.C. Circuit precedents when reaching my decision. Under binding Supreme Court and D.C. Circuit case law, a court must grant summary judgment or dismiss a civil action against an officer "'when [the] official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) (per curiam) (quoting *White v. Pauly*, 137 S. Ct. 548, 551 (2017) (per curiam)). Thus, the two relevant questions in determining whether qualified immunity applies are (1) "whether a constitutional right would have been violated on the facts alleged[,]" and (2) "whether the right was clearly established" at the time of the violation." *Saucier v. Katz*, 533 U.S. 194, 200 (2001). In my rulings, upon consideration of these questions in light of the particular facts at issue, I have both granted defense motions for summary judgment on the grounds that the law enforcement officers are entitled to qualified immunity, and denied defense motions for qualified immunity based on a finding that the officer violated the plaintiff's clearly established rights. *See, e.g.*, *Kyle v. Bedlion*, 177 F. Supp. 3d 380 (D.D.C. 2016); *Patterson v. United States*, 999 F. Supp. 2d 300 (D.D.C. 2013); *Page v. Mancuso*, 999 F. Supp. 2d 269 (D.D.C. 2013).

25. **Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?**

RESPONSE: The existing standards that the Supreme Court has adopted for determining whether a law enforcement officer is entitled to qualified immunity are binding on me, and are explained in my response to Question 24. If confirmed, I will faithfully apply all binding precedents of the Circuit and the Supreme Court, including any precedent pertaining to qualified immunity, and my past practices demonstrate that any personal views that I might have regarding the sufficiency of qualified immunity doctrine have played no role in my determination of whether to grant or deny a motion for qualified immunity. As a pending judicial nominee and a sitting federal judge, it would be inappropriate for me to comment on whether the Supreme Court's qualified immunity jurisprudence provides sufficient protection for law enforcement officers.

26. **What do you believe should be the proper scope of qualified immunity protections for law enforcement?**

RESPONSE: Please see my response to Question 25.

27. **Do you agree with the current state of the *Chevron* deference doctrine? Or do you believe there should be either more or less deference given to agencies?**

RESPONSE: *Chevron* deference refers to the Supreme Court's requirement that "a court review[ing] an agency's construction of the statute which it administers" must defer to the agency's authoritative interpretation of that statute in certain circumstances. *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984). Consistent with the current state of Supreme Court jurisprudence, I have applied the *Chevron* deference doctrine in at least 11 of my written opinions. *See, e.g.*, *Las Americas Immigrant Advoc. Ctr. v. Wolf*, 2020 WL 7039516, at *13 (D.D.C. Nov. 30, 2020); *Otay Mesa Prop., L.P. v. Dep't of the Interior*, 344 F. Supp. 3d 355, 368 (D.D.C. 2018); *Depomed, Inc. v. Dep't of Health & Hum. Servs.*, 66 F. Supp. 3d 217, 229 (D.D.C. 2014); *Am. Meat Inst.* v. *Dep't of Agric.*, 968 F. Supp. 2d 38, 52 (D.D.C. 2013). As a pending judicial nominee and a sitting federal judge, it would be inappropriate for me to comment on my personal beliefs regarding the current state of the *Chevron* doctrine. If confirmed as a circuit judge, I would continue to apply faithfully all binding precedents of the Circuit and the Supreme Court, including any precedent pertaining to the level of deference that should be afforded to agencies.

28. **How have your views on agency deference developed during your time as a district judge?**

RESPONSE: Prior to my work as a district judge, my expertise was in federal criminal sentencing policy, rather than administrative law. During my work as a district judge over the past eight years, I have handled many cases involving challenges to agency action, including challenges to an agency's interpretation of a statute. I have faithfully applied all binding precedents of the D.C. Circuit and the Supreme Court, including any precedent pertaining to the level of deference that should be afforded to agencies, and would continue to do so if am confirmed as a circuit judge.

Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Candace Jackson-Akiwumi
Nominee to the Court of Appeals for the Seventh Circuit
May 5, 2021

1. **At your hearing, members on both sides of the aisle asked you questions about your time as a federal public defender. While there is no doubt that you have a great deal of experience working on criminal matters, you also have experience in private practice working on civil cases.**

   Can you discuss your experience working on civil matters, particularly during your time at Skadden in Chicago?

   Response: I have worked on civil matters at three different stages in my career. First, the two years I spent clerking for a federal district court judge followed by a federal court of appeals judge exposed me to a wide variety of civil matters. The majority of cases for which I conducted research and prepared memoranda, draft opinions, and draft orders as a law clerk were civil. Next, I spent three years as a civil litigator at Skadden, Arps, Slate, Meagher & Flom LLP. I engaged in complex civil litigation in both state and federal court, at the trial and appellate level. My billable matters were exclusively civil and involved areas as disparate as contracts, tax, privacy, securities, and patent infringement. My pro bono matters on the civil side involved adoption, civil rights, and tort law in federal and state courts and before administrative bodies. While at the firm, I tried one civil jury trial in state court, for which I was my client's sole counsel at trial. Last year, I returned to civil practice when I joined the litigation boutique Zuckerman Spaeder LLP. The attorneys at Zuckerman are for the most part generalists who practice both civil and criminal law. Accordingly, I continue to offer my services in criminal cases, but civil cases have predominated. My matters thus far have involved business disputes, ethics, telecommunications, and antitrust, and they are pending in the courts and before administrative agencies.

Senator Grassley, Ranking Member
Questions for the Record
Candace Jackson-Akiwumi
Nominee to be United States Circuit Judge for the Seventh Circuit

1. **You once defended a bank robber by essentially arguing that the system made him do it. *United States v. Willie Weathersby*, 16 CR 465 (N.D. Ill.). While you acknowledged the defendant's responsibility, you meant that the failure to put him in a half-way house left him no choice but to rob a bank as "the ultimate act of desperation." You said, "We did not act fast enough." I don't think anyone ever needs to rob a bank, so I disagree with you there. But beyond that, your client was a felon who had previously been convicted of aggravated robbery, burglary, and a prior bank robbery. These are violent crimes and yet he was still on the streets.**

   If we're going to blame the system for keeping him on the street and making him rob a bank, shouldn't we also blame the system for putting this violent felon on the street at all before he was ready for release?

   Response: In representing each of my clients, I took very seriously my obligation to describe for the sentencing judge the nature and circumstances of my client's offense because the federal sentencing law, 18 U.S.C. § 3553(a)(1), requires the judge to consider the nature and circumstances of the offense. In advocating on behalf of my client, I described the facts of the case so that the court could fulfill its responsibility under Section 3553(a)(1).

2. **In your hearing, in response to my question about whether district judges can take social policy into consideration in sentencing (here, the need to avoid racial disparities in sentences), you said that 18 U.S.C. § 3553(a)(6) allows a district judge to consider such disparities in passing a sentence. What caselaw supports the proposition that district courts can take racial disparities into account under § 3553(a)(6)?**

   Response: Using race to impose a different sentence on defendants with similar records and similar conduct would not be appropriate. *See United States v. Bridgewater*, 950 F.3d 928, 936 (7th Cir. 2020).

   My response was a reference to *Kimbrough v. United States*, 552 U.S. 85 (2007), in which the Supreme Court acknowledged the United States Sentencing Commission's finding that the crack/powder sentencing differential "fosters disrespect for and lack of confidence in the criminal justice system because of a widely-held perception that it promotes unwarranted disparity based on race." *Id.* at 98 (internal citations omitted). The Supreme Court's holding in *Kimbrough* permitted judges to consider the unwarranted crack/powder disparity, and the way laws impact different groups, when considering the need to avoid unwarranted disparities pursuant to 18 U.S.C. § 3553(a)(6).

3. **In your Reginald Taylor sentencing memorandum, about which I asked in your hearing, you referenced a "powerful one-plus-minute video, The Racism of the U.S. Justice System in 10 Charts," by "the media outlet Vox" to bolster your claim that Mr. Taylor's sentence should not exceed the mandatory minimum. Retired Judge Richard Posner was famous for using non-record internet research in helping him decide appeals. As a general matter, when do you think it's appropriate for federal judges to rely on non-record evidence, such as videos from Vox, as authority in rendering judicial decisions?**

   Response: If confirmed to serve as a circuit judge, I would consider only the law and the materials in the record on appeal as authority in issuing rulings. Information submitted to the district court during or in preparation for sentencing *is* a part of the record. *See* Fed. R. App. P. 10(a) (the record on appeal consists of what the parties filed in the district court, any transcripts, and the district court docket).

4. **Not long after your Reginald Taylor sentencing memorandum, the Seventh Circuit said, "imposing different sentences based on race would violate the Equal Protection Clause of the Fourteenth Amendment and the Sentencing Guidelines." *U.S. v. Grisanti*, 943 F.3d 1044 (7th Cir. 2019) (Hamilton, J.). Would your position in the Reginald Taylor case have been consistent with this precedent had it existed at the time?**

   Response: Yes, because I did not ask the court to issue a lesser sentence based on my client's race. In the sentencing memorandum that I filed on July 18, 2019, I specifically stated "Mr. Taylor is not advocating for a lower sentence based on his race. He is advocating for a sentence no higher than any mandatory minimum this Court finds applicable as one means to avoid further entrenching proven racial disparities."

5. **The Seventh Circuit explained in a case you litigated:**

   > **The district court was not required to explicitly discuss 'the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct.' See 18 U.S.C. § 3553(a)(6). Subsection (a)(6) is not concerned with disparate sentences per se; its focus is on sentencing disparity that is unwarranted or unjustified."**

   ***U.S. v. Smart*, 603 Fed.Appx. 500 (7th Cir. 2015) (per curiam).**

   a. **Do you agree with the Seventh Circuit that a sentencing disparity in and of itself should not guide a district court under 18 U.S.C. § 3553(a)(6)?**
   b. **What sorts of disparities, under current law, are "unwarranted or unjustified"?**
   c. **Do you agree with current law?**

Response: Title 18, United States Code, Section 3553(a)(6) requires sentencing courts to consider "the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct." Whether any disparity among defendants with similar records who have been found guilty of similar conduct is unwarranted has typically been evaluated on a case-by-case basis. In the case you mentioned, I was representing a client as his advocate. If confirmed to serve as a judge, I would apply the sentencing statute and Supreme Court and Seventh Circuit precedent in reviewing any sentencing decision.

6. **What is the correct comparator for sentencing disparities and why do you think so:**
   a. **sentencing disparities among similarly situated defendants before a single judge;**
   b. **sentencing disparities among similarly situated defendants within a single district;**
   c. **sentencing disparities among similarly situated defendants within a single circuit;**
   d. **sentencing disparities among all similarly situated defendants;**
   e. **any other comparator.**

Response: Title 18, United States Code, Section 3553(a)(6) directs judges who are imposing a sentence to consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." Most courts have by now held that this sentencing factor looks to "national disparities." *See, e.g.*, *United States v. Fry*, 792 F.3d 884, 892 (8th Cir. 2015) (collecting cases). However, the Supreme Court and most circuits have also recognized that, in certain instances, judges may consider the need to avoid unwarranted co-defendant disparities when fashioning a sentence. *See, e.g.*, *Gall v. United States*, 552 U.S. 38, 55 (2007) (finding no error where district court "considered the need to avoid unwarranted disparities, but also considered the need to avoid unwarranted similarities among other co-conspirators who were not similarly situated."); *United States v. Statham*, 581 F.3d 548, 556 (7th Cir. 2009) (noting that, following *Gall*, the Seventh Circuit is "open in all cases to an argument that a defendant's sentence is unreasonable because of a disparity with the sentence of a co-defendant").

7. **In the Seventh Circuit, what is the standard of review for a motion to dismiss under Rule 12(b)(6)?**

Response: The Seventh Circuit reviews dismissal under Federal Rule of Criminal Procedure 12(b)(6) de novo. *See, e.g.*, *Nelson v. City of Chicago*, 992 F.3d 599, 603 (7th Cir. 2021).

8. **In the Seventh Circuit, what is the level of scrutiny a court must apply to a claim arising under the Second Amendment?**

Response: The Seventh Circuit has recognized that the Supreme Court, aside from ruling out rational basis review, has not identified the level of scrutiny courts must apply to

Second Amendment claims. *See Ezell v. City of Chicago*, 651 F.3d 684, 701 (7th Cir. 2011) (discussing the Supreme Court's decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008)). For the Seventh Circuit's most recent consideration of a Second Amendment claim, see *Wilson v. Cook County*, 937 F.3d 1028 (7th Cir. 2019), *cert. denied sub nom. Wilson v. Cook Cty., Illinois*, 141 S. Ct. 110 (2020) (affirming dismissal of complaint raising Second Amendment challenge to Cook County's ban on assault rifles and large-capacity magazines). In *Wilson*, the Seventh Circuit held that the applicable level of scrutiny to a claim under the Second Amendment depends on the nature of the conduct being regulated, specifically "how close the law comes to the core of the Second Amendment right and the severity of the law's burden on the right." *Wilson*, 937 F.3d at 1032 (internal citations omitted).

9. In the Seventh Circuit, what is the process by which a judge determines whether or not a burden is "substantial" under the Religious Freedom Restoration Act?

Response: The standard in the Seventh Circuit for inquiring whether a burden is "substantial" under the Religious Freedom Restoration Act is the same standard the Supreme Court applied most recently in *Holt v. Hobbs*, 574 U.S. 352 (2015), and *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014). *See Jones v. Carter*, 915 F.3d 1147, 1150 (7th Cir. 2019) (clarifying in a case brought under the Religious Land Use and Institutionalized Persons Act that, in the wake of *Hobby Lobby* and *Holt*, the Religious Freedom Restoration Act should "be construed in favor of a broad protection of religious exercise" (quoting *Hobby Lobby*, 573 U.S. at 698)).

10. In the Seventh Circuit, what is the applicable standard for a district judge to recruit counsel to represent an Eighth Amendment prisoner litigant?

Response: Prisoners do not have a right to counsel in federal civil litigation, and the demand for counsel by prisoners often exceeds the supply of volunteer lawyers. *See McCaa v. Hamilton*, 959 F.3d 842, 844-45 (7th Cir. 2020). When determining whether to recruit counsel, the district court must answer two questions: has the plaintiff made a reasonable attempt to obtain counsel and, if so, given the difficulty of the case, does the plaintiff appear competent to litigate it herself or himself? *See Pruitt v. Mote*, 503 F.3d 647, 654 (7th Cir. 2007) (en banc). The Seventh Circuit reviews the district court's answer to the second question under the deferential abuse of discretion standard, asking "not whether we would have recruited a voluntary lawyer in the circumstances, but whether the district court applied the correct legal standard and reached a reasonable decision based on facts supported by the record." *Id.* at 658.

11. In the Seventh Circuit, what is the difference, if any, between the *Rooker-Feldman* Doctrine and *res judicata*?

Response: *Rooker-Feldman* precludes a district court from adjudicating a case only when the federal suit starts after a state court has ruled against the federal plaintiff. *See Exxon*

Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005). If a federal suit began before the state court ruled against a federal plaintiff, the relevant doctrine is res judicata, also known as claim preclusion. *See Nesses v. Shepard*, 68 F.3d 1003, 1004 (7th Cir. 1995).

12. What is the relationship between the Collateral Order Doctrine and the First Amendment?

Response: A general rule of appellate review, simply stated, is that all parts of a case must be final before the case can be appealed. The collateral order doctrine permits a select category of interlocutory orders to be appealed immediately because those orders are "too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Herx v. Diocese of Fort Wayne-South Bend, Inc.*, 772 F.3d 1085, 1088 (7th Cir. 2014).

The fact that First Amendment rights are involved may be relevant to this test. For example, some courts have found pretrial gag orders to be appealable under the collateral order doctrine. *See United States v. Brown*, 218 F.3d 415 (5th Cir. 2000).

13. The Supreme Court of Wisconsin has held that where a "statute's meaning is plain, there is no ambiguity to clarify, and no need to consult extrinsic sources such as legislative history." *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 681 N.W.2d 110, 126 (Wis. 2004).

a. In a Wisconsin heard in diversity, is a panel of the Seventh Circuit bound by this textualist rule? Why or why not?
b. For cases involving federal law, would it make sense for the Seventh Circuit to adopt a similar rule? Why or why not?

Response: In general, when a federal court sits in diversity, federal law governs procedure and state law applies to substantive issues. *See, e.g., Horne v. Elec. Eel Mfg. Co., Inc.*, 987 F.3d 704, 713 (7th Cir. 2021). The Seventh Circuit follows the Supreme Court's longstanding rule of statutory construction: when a statute is not ambiguous on its face, the court looks no further and cannot consult extrinsic sources. *See, e.g., Carcieri v. Salazar*, 555 U.S. 379, 387, (2009) ("This case requires us to apply settled principles of statutory construction under which we must first determine whether the statutory text is plain and unambiguous."); *United States v. Silva*, 140 F.3d 1098, 1102 (7th Cir. 1998) ("If the language is unambiguous, we need not resort to legislative history or other sources to glean the legislative intent of the statute."). Thus, whether the Seventh Circuit is sitting in diversity and applying Wisconsin law, or sitting as a matter of federal jurisdiction, it applies the same rule of statutory construction.

14. In the Seventh Circuit, what level of religious accommodation are employers required to provide employees under Title VII?

Response: Under Title VII, an employer need not bear "more than a slight burden" and the statute also "does not place the burden of accommodation on fellow workers." *See Equal Emp. Opportunity Comm'n v. Walmart Stores E., L.P.*, 992 F.3d 656, 659 (7th Cir. 2021).

15. In the Seventh Circuit, what is the standard for a district court approving a class settlement?

Response: The Seventh Circuit's decision in *Camp Drug Store, Inc. v. Cochran Wholesale Pharmaceutical, Inc.*, 897 F.3d 825, 830-31 (7th Cir. 2018), sets forth the standard:

> The legal principles that must guide our decision today are well settled. A district court may approve the settlement of a class action only if it holds a hearing and finds that the proposed resolution "is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). One of the district court's principal responsibilities in undertaking this review is "to protect the members of a class ... from lawyers for the class who may ... place their pecuniary self-interest ahead of that of the class." *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 279 (7th Cir. 2002). Indeed, we have characterized the role of "the district judge in the settlement phase of a class action suit [as] a fiduciary of the class, who is subject therefore to the high duty of care that the law requires of fiduciaries." *Id.* at 280. We evaluate how the court fulfilled this role for an abuse of discretion. *See Kaufman v. Am. Express Travel Related Servs. Co.*, 877 F.3d 276, 283 (7th Cir. 2017). "Under this standard, we shall affirm the judgment of the district court whenever we believe that the district court chose an option that was among those from which we might expect a district court reasonably to choose." *Salgado v. Gen. Motors Corp.*, 150 F.3d 735, 739 (7th Cir. 1998).

16. In the Seventh Circuit, who bears the burden of proof in an as-applied Second Amendment case, the party challenging the gun regulation, or the government defending it?

Response: The Seventh Circuit evaluates claims under the Second Amendment as follows:

> First, the threshold inquiry in some Second Amendment cases will be a 'scope' question: Is the restricted activity protected by the Second Amendment in the first place? [I]f the government can establish that a challenged firearms law regulates activity falling outside the scope of the Second Amendment right as it was understood at the relevant historical moment ... the analysis can stop there; the regulated activity is categorically unprotected, and the law is not subject to further Second Amendment review. If, however, the government cannot meet this burden, then the court must inquir[e] into the strength of the government's justification for restricting or

> regulating the exercise of Second Amendment rights. The rigor of this inquiry will depend on how close the law comes to the core of the Second Amendment right and the severity of the law's burden on the right. [A] severe burden on the core Second Amendment right of armed self-defense will require an extremely strong public-interest justification and a close fit between the government's means and its end. However, laws restricting activity lying closer to the margins of the Second Amendment right, laws that merely regulate rather than restrict, and modest burdens on the right may be more easily justified. How much more easily depends on the relative severity of the burden and its proximity to the core of the right.

Wilson v. Cook Cty., 937 F.3d 1028, 1032 (7th Cir. 2019), *cert. denied sub nom. Wilson v. Cook Cty., Illinois*, 141 S. Ct. 110 (2020) (internal citations and quotation marks omitted).

17. In the Seventh Circuit, what kind of employee counts as a "minister" under the First Amendment's Ministerial Exemption?

Response: The Seventh Circuit follows Supreme Court precedent, which has stated that there is not a "rigid formula" for determining whether a particular position is ministerial. The Supreme Court has concluded that some religious schoolteachers are included within the ministerial exemption, because "[e]ducating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core of the mission of a private religious school." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2064 (2020).

18. Do minors have rights under the Second Amendment?

Response: Yes – for example, the Seventh Circuit struck down a regulation that banned anyone under the age of 18 from entering a firing range. *See Ezell v. City of Chicago*, 846 F.3d 888, 896 (7th Cir. 2017).

19. In the Seventh Circuit, what is the applicable standard for remanding an appeal to the Social Security Administration in a disability case? Is the standard in a case involving mental health any different from one involving physical health?

Response: An appellate court reviews a decision by an administrative law judge from the Social Security Administration deferentially to determine whether substantial evidence supports the decision and whether the administrative law judge applied the proper legal standard. *See Allord v. Astrue*, 631 F.3d 411, 415 (7th Cir. 2011). The appellate court has the statutory authority to affirm or reverse or modify the decision, with or without remanding. 42 U.S.C. § 405(g). Even where the court determines that an error has occurred, it will remand only where the court is convinced that a second proceeding would produce

a different result – that is, it will only remand if the error is not harmless. *See Deborah M. v. Saul*, No. 20-2570, 2021 WL 1399281, at *4 (7th Cir. Apr. 14, 2021) (*citing Fisher v. Bowen*, 869 F.2d 1055, 1057 (7th Cir. 1989)). The standard for evaluating whether an applicant has a disability is the same for a mental or physical impairment, therefore the standard of review for determining whether an administrative law judge correctly determined disability would be the same. *See, e.g.*, *Gedatus v. Saul*, No. 20-1753, 2021 WL 1589329, at *3 (7th Cir. Apr. 23, 2021).

20. Should you be confirmed, what specific factors will you take into consideration when deciding to overturn circuit precedent?

Response: Seventh Circuit Rule 40(e) governs. A panel of the court cannot overrule circuit precedent without first circulating a proposed opinion among active members of the court and providing an opportunity for a majority of active members to vote to hear the case en banc. The standard for hearing a case en banc, as set forth in Federal Rule of Appellate Procedure 35, contains factors a circuit judge necessarily will consider when deciding whether to revisit circuit precedent. These factors include, for example, whether a panel decision conflicts with a decision of the Supreme Court and whether the uniformity of the court's decisions is at stake.

21. Is it more important for the law to be certain or for it to be correct?

Response: This question may present two sides of same coin in that correctness drives certainty. Correctness – resulting from careful, reasoned analysis of the law – becomes the basis for certainty. When judges endeavor to say correctly "what the law is," *Marbury v. Madison*, 5 U.S. 137, 177 (1803), certainty results for the public as to what the law is. Writing clearly is an important skill for judges in communicating the correct result and generating the certainty that follows.

22. Are there areas of the law where certainty is more important than correctness?

a. Is certainty more valuable than correctness in commercial law? Why or why not?

b. Is certainty more valuable than correctness in criminal law? Why or why not?

Response: See my answer to Question 21, which does not change based on the area of the law.

23. In your hearing you mentioned the process of judges meeting in conference.

a. Is there a tension between building consensus in the conference room and applying the law as written?

b. What is more important, reaching the correct conclusion about the law or reaching a conclusion about the law all three judges agree with? Why?

c. What is more important, reaching the correct conclusion about the law or reaching a conclusion that secures a majority of a panel? Why?

d. When is it appropriate for a judge to dissent (1) from a panel opinion, (2) from an en banc opinion, and (3) from an order denying en banc rehearing? Why?

e. When is it appropriate for a judge to join a majority opinion but file a separate concurring opinion? Why?

Response: There should be no tension between building consensus and applying the law because ultimately the law must guide judicial decision-making. It is appropriate for a judge to join a unanimous or majority opinion, issue a dissent, or file a concurring opinion when a judge finds, based upon her own careful review of the facts and the law, that she has reached the correct legal conclusion.

24. Is the right to enter into a same-sex marriage provided by the Constitution's guarantee of due process?

Response: Yes, under *Obergefell v. Hodges*, 576 U.S. 644, 675-76 (2015), in which the Supreme Court held: "[T]he right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry. No longer may this liberty be denied to them."

25. Is the right to enter into a same-sex marriage provided by the Constitution's guarantee of equal protection?

Response: Yes, under *Obergefell v. Hodges*, 576 U.S. 644, 675-76 (2015), in which the Supreme Court held: "[T]he right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry. No longer may this liberty be denied to them."

26. Where in the text of the Constitution is the right to enter into a same-sex marriage found?

Response: In *Obergefell v. Hodges*, 576 U.S. 644, 675-76 (2015), the Supreme Court held: "[T]he right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry. No longer may this liberty be denied to them."

27. During your hearing you mentioned the example of the Fourth Circuit as a court that prizes collegiality. Recently the Fourth Circuit began using initial en banc hearings

to take cases from panels with majority Republican appointees. *See Mayor and City Council of Baltimore v. Azar*, 799 Fed. Appx. 193 (4th Cir. 2020) (Richardson, J., dissenting) ("In a sharp break with settled practice, our Court invokes the once-extraordinary mechanism of initial-en-banc review to circumvent our conventional three-judge panel process. We used to place great value in entrusting a panel of our colleagues with first adjudicating the appeal. Doing so not only fostered collegiality but reflected the value of deciding even controversial matters with adherence to a purposeful procedure. … For the past fifty years, we followed this practice through varied administrations and court compositions. Times have changed.").

a. Is that practice consistent with collegiality?

Response: I am not familiar with initial en banc review in the Fourth Circuit based on my time clerking on the court, or with any changes to the practice since that time. If I am confirmed to serve on the Seventh Circuit, the Fourth Circuit would be a sister circuit and it would not be proper for me to opine upon its operating practices.

b. Under what circumstances should a court undertake initial en banc review?

Response: Federal Rule of Appellate Procedure 35 provides the same rule for hearing en banc (initial review) as rehearing en banc. The rule states that: "An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless: (1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance." An en banc hearing or rehearing requires the agreement of a majority of active circuit judges who are not disqualified from hearing the matter.

28. I believe Senator Booker brought up John Adams and the Boston Massacre at your hearing. As I'm sure you recall, while Samuel Adams convinced the authorities to hire fellow-patriot Robert Treat Paine as a private special prosecutor to ensure the British soldiers were punished for their actions, his cousin, John Adams, defended British Captain Preston and his soldiers accused of murder in the wake of the Boston Massacre. John Adams did this even though he was also a patriot himself. This is the foundational example in our criminal justice system of how everyone is entitled to representation. With which side of the Boston Massacre trial, Paine or Adams, would you more closely associate private litigators brought in to run a high-profile criminal prosecution because they agreed the defendant should be punished?

Response: I do not have an opinion regarding private litigators who participate in criminal prosecution. As a general matter, the representation of defendants after the Boston Massacre illustrates that even before we were a nation, the principles of due process and the right to be represented by counsel were on full display. These principles ultimately made their way into our Constitution.

29. During your time as a federal defender, did the U.S. Government ever employ strategic communications firms in supporting their prosecutions? How would you have reacted if they did?

Response: I have no personal knowledge as to whether this practice was employed or not employed.

30. An often overlooked but foundational case from the early republic is *Rutgers v. Waddington*. There Alexander Hamilton challenged the legality of New York's Trespass Act of 1783, designed to punish those who sympathized with the British during the Revolution. A New York businessman, Joshua Waddington, engaged Hamilton to defend him in litigation seeking back rents from a dispossessed brewery owner. Hamilton, a hero of the Revolution, therefore represented a notorious Tory in what turned out to be a precedent-setting case. What does this case tell you about how a client's politics should affect his ability to retain counsel?

Response: This case as you described it affirms the power of our nation's Sixth Amendment, which guarantees everyone a right to the assistance of counsel.

31. Do you agree with the following statement: Not everyone deserves a lawyer, there is no civil requirement for legal defense?

Response: Select jurisdictions across the country provide the right to a lawyer in certain civil proceedings. *See generally*, American Bar Association, Civil Right to Counsel (containing links to state-specific appointment authority), *available at* https://www.americanbar.org/groups/legal_aid_indigent_defense/civil_right_to_counsel1/ (last accessed May 6, 2021).

32. Do you think law firms should allow paying clients to influence which pro bono clients they take?

Response: These are decisions for individual law firms to make. To my knowledge, there is no ethical standard dictating a law firm's decision in either direction.

33. Do you think law-firm clients should use their financial position to influence which pro bono clients their attorneys take?

Response: These are decisions for individual law firms to make. To my knowledge, there is no ethical standard dictating a law firm's decision in either direction.

34. Absent a traditional conflict of interest, should paying clients of a law firm be able to prevent other paying clients from engaging the firm?

Response: These are decisions for individual law firms to make. To my knowledge, there is no ethical standard dictating a law firm's decision in either direction.

35. Do you agree with the following statement: Talk of the states as laboratories is hollow if federal courts enjoin experiments before the results are in?

Response: This appears to be a quote from Judge Easterbrook's concurrence in the denial of rehearing en banc in *Planned Parenthood of Indiana and Kentucky, Inc. v. Box*, 949 F.3d 997 (7th Cir. 2019). The Supreme Court subsequently granted certiorari, vacated the underlying decision, and remanded for further consideration in light of *June Medical Services L.L.C. v. Russo*, 140 S.Ct. 2103 (2020). On remand, the Seventh Circuit "again affirm[ed] the district court's preliminary injunction barring enforcement of the challenged law pending full review in the district court." *Planned Parenthood of Indiana and Kentucky, Inc. v. Box*, 991 F.3d 740, 742 (7th Cir. 2021). A petition for certiorari filed in April 2021 is still pending. As a pending judicial nominee, it would be inappropriate for me to opine on a pending case.

36. Do you agree with the following statement: A legitimate sting operation takes an actual criminal off the streets and thus reduces the actual crime rate?

Response: This appears to be a quote from the Seventh Circuit's en banc decision in *United States v. Mayfield*, 771 F.3d 417, 436 (7th Cir. 2014). *Mayfield* is binding Seventh Circuit precedent I would faithfully apply if confirmed.

37. Do you agree with the following statement: The absence of voter impersonation prosecutions is explained by the endemic underenforcement of minor criminal laws and by the extreme difficulty of apprehending a voter impersonator?

Response: This appears to be a quote from the Seventh Circuit's opinion in *Crawford et al. v. Marion County Election Board et al.*, 472 F.3d 949, 953 (7th Cir. 2007). The Supreme Court subsequently affirmed the Seventh Circuit's decision, which upheld an Indiana law requiring citizens to present government-issued photo ID to vote. *See* 553 U.S. 181 (2008). *Crawford* is binding Supreme Court precedent I would faithfully apply if confirmed.

38. Is *Morrison v. Olson* good law?

Response: The case remains binding Supreme Court precedent.

39. Do you agree with retired Judge Posner's critique of how the Seventh Circuit treats pro se litigants or of its management of the staff attorney program?

Response: As a general matter, in any court, cases involving pro se litigants deserve the same care and attention as cases involved represented parties. I have not studied Judge Posner's critique of the Seventh Circuit or the responses to his critique. If confirmed, I look forward to learning more about the circuit's sizeable pro se docket and its staff attorneys' office.

40. Do you agree with the Seventh Circuit's practice of not revealing panel composition until the morning of argument?

Response: While I can understand arguments on both sides of this question, this is a decision for the Seventh Circuit committee that assesses practices of the court. If I am confirmed and subsequently asked to participate in that decision-making, I would evaluate the arguments on both sides, as I would any other matter I am asked to consider as a judge, paying special attention to the question of which practice allows for the most efficient and fair process for litigants.

41. When should a court of appeals certify a question to a state supreme court?

Response: The Seventh Circuit reiterated its standard in *In re Zimmer, NexGen Knee Implant Products Liability Litigation*, 884 F.3d 746, 754 (7th Cir. 2018): "Certification is appropriate if we are 'genuinely uncertain about a question of state law that is vital to a correct disposition of the case.' *Cleary v. Philip Morris Inc.*, 656 F.3d 511, 520 (7th Cir. 2011)."

42. Is certification necessary as a consequence of the *Erie* doctrine? Is it consistent with principles of federalism?

Response: Based on my research, the Seventh Circuit has announced its practice with regard to certification without reference to the *Erie* doctrine. *See, e.g.*, *In re Zimmer, NexGen Knee Implant Products Liability Litigation*, 884 F.3d 746, 754 (7th Cir. 2018) ("Certification is appropriate if we are genuinely uncertain about a question of state law that is vital to a correct disposition of the case" (internal quotation marks and citations omitted)); *Cleary v. Philip Morris Inc.*, 656 F.3d 511, 520 (7th Cir. 2011) (same).

43. Do you think that there is a tension between multifactor state conflict of law standards, such as the Restatement (Second) of Conflicts and its "significant contacts" test, and the *Erie* doctrine as currently applied?

Response: My current practice has not required me to familiarize myself with the *Erie* doctrine. If I were confirmed, and a case presented these questions, I would carefully study the applicable Supreme Court and Seventh Circuit precedent and apply it to the facts of the case.

44. At your hearing I asked how many arms traffickers you have defended in court. You said it would be difficult to answer that question providing, instead, your client base in broad brushstrokes.

a. With the benefit of more time and your records, could you please tell me how many arms traffickers you have represented as clients?

b. How many felons in possession of a firearm have you represented as clients?

c. How many sex offenders have you represented as clients in conjunction with sex crimes?

Response: Among clients I represented from arrest or investigation through plea, trial, sentencing and/or appeal, according to the database at the Federal Defender Program for the Northern District of Illinois, I represented two clients charged with firearm trafficking, ten clients charged with possession of a firearm as a felon, and six clients charged with sex offenses. These numbers do not reflect the 152 clients I represented in supervised release cases because the database does not categorize supervised release clients by underlying criminal conviction type, only by the general case type category of "supervised release." Therefore, I am unable to report how many of those 152 clients had underlying convictions for firearm trafficking, possession of a firearm as a felon, or sex offenses. Also excluded from the numbers supplied above are clients who were charged with multiple offenses spanning different case types. For example, the database often categorizes clients with both a drug charge and a firearm possession charge as drug clients, and not also firearm possession clients. Accordingly, the numbers provided are estimates.

45. In the Seventh Circuit certain criminal prosecutions for illegal firearms have been prominent vehicles for asserting rights under the Second Amendment. *See, e.g.*, *U.S. v. Skoien*, 614 F.3d 638 (7th Cir. 2010) (en banc), *Kanter v. Barr*, 919 F.3d 437 (7th Cir. 2019), *U.S. v. Meza-Rodriguez*, 798 F.3d 664 (7th Cir. 2015). During your time as a federal defender did you ever bring a Second Amendment defense on behalf of a client accused of a gun crime?

Response: No.

46. You can answer the following questions yes or no:

a. Was *Brown v. Board of Education* correctly decided?

b. Was *Loving v. Virginia* correctly decided?

c. Was *Griswold v. Connecticut* correctly decided?

d. Was *Roe v. Wade* correctly decided?

e. Was *Planned Parenthood v. Casey* correctly decided?

f. Was *Gonzales v. Carhart* correctly decided?

g. Was *District of Columbia v. Heller* correctly decided?

h. Was *McDonald v. City of Chicago* correctly decided?

i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?

j. Was *Sturgeon v. Frost* correctly decided?

k. Was *Juliana v. United States* (9th Cir.) correctly decided?

l. Was *Rust v. Sullivan* correctly decided?

Response: The Supreme Court decisions listed above are binding precedent. If confirmed, I would apply the precedent above fully and faithfully. Prior judicial nominees have made

exceptions to the practice of avoiding comment on the merits of Supreme Court decisions to acknowledge that *Brown v. Board of Education* and *Loving v. Virginia* were correctly decided. I agree. *Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020), is a Ninth Circuit case and thus not binding precedent on the Seventh Circuit, but the Canons of Judicial Conduct prohibit me from opining on current controversies.

47. Under the Supreme Court's First Amendment jurisprudence, can someone shout "fire" in a crowded theater?

Response: In *Schenck v. United States*, 249 U.S. 47, 52 (1919), Justice Holmes wrote that "[t]he most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." Please note, however, the statement was dicta and the case did not involve someone falsely shouting fire in a crowded theatre.

48. Should the fact that a defendant carried an air gun, instead of a firearm, alter the sentencing range for the defendant?

Response: According to *Rodriguez-Contreras v. Sessions*, 873 F.3d 579, 580-81 (7th Cir. 2017), an air gun is not a firearm under federal law. Under the United States Sentencing Guidelines, an air gun is also not firearm, but a dangerous weapon. *See* U.S.S.G. § 1B1.1 Cmt. 1(H). Throughout the sentencing guidelines, a dangerous weapon usually results in different enhancements than a firearm. *See, e.g.*, U.S.S.G. § 2B3.1(b)(2).

49. You questioned the veracity of two victims in a case involving a defendant charged with coercion and enticement, accusing them of only telling "some truths" and working as prostitutes prior to their relationship with the defendant. In essence, you are accusing the victims of lying and you went so far as to describe the victims of sexual abuse as earning money "on their backs."[1] Is the concept of "believe all women" consistent with the principles of due process?

Response: The constitutional guarantees of due process are enduring, and require elements including but not limited to notice, an opportunity to be heard, an impartial tribunal, the right to be confronted with the witnesses against oneself, and the right to be heard in one's own defense.

50. In an article in your Church newspaper, The Point, you noted that "[r]ecent court decisions . . . are making it harder to maintain racially integrated schools and schools that serve all students equally, no matter the student's color or socioeconomic status."[2] Which recent court decisions did you mean?

Response: In the article I wrote for my church newsletter seven years ago, I was referring to *Schuette v. Coalition to Defend Affirmative Action*, 572 U.S. 291 (2014). I wrote the

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[1] *United States v. Mack Adams, III*, 1:16 CR 569 (N.D. Ill.) Dkt. No. 125 at *4.
[2] SJQ 12(A) at 530.

article as a member of my church congregation who is a private citizen working as an attorney by day. If I am confirmed as a judge, *Schuette* is binding Supreme Court precedent which I will follow, and the personal views I expressed seven years ago would have no bearing on my ability to follow that precedent.

51. As discussed above, in *United States v. Reginald Taylor*, you argued that a defendant who had committed multiple, prior armed robberies and who qualified as an Armed Career Criminal should not receive the ACCA enhancement of a mandatory minimum of 15 years. In the case, the defendant tied up victims and threatened to shoot them, execution style.

a. Do you believe ACCA should be abolished?

Response: The Armed Career Criminal Act ("ACCA") is a federal statute, 18 U.S.C. § 924(e). Whether it should be abolished is a question for legislators, not judges or judicial nominees. My argument in *Taylor* that my client should not receive a mandatory minimum sentence pursuant to ACCA was based on the question of whether he had the requisite predicate criminal offenses to qualify for a sentence enhancement under ACCA – a legal question that the Supreme Court and circuit courts were considering at the time. My argument was not based on the legality or propriety of ACCA as a statute.

b. If you do not believe ACCA should be abolished, do you believe that ACCA should be altered? If so, what specifically would you like to see changed?

Response: See my response to question 51a. Whether ACCA should be abolished or altered is a question for legislators, not judges or judicial nominees.

c. Do you believe mandatory minimums should be abolished? Why or why not?

Response: This is a question for legislators, and I recognize that the role of a judge is to faithfully apply applicable precedent. If confirmed, my personal views, if any, on any topic in law or public policy, will have no bearing on my decision-making. If a case comes before me where an individual is challenging his or her sentence, I will carefully consider the applicable facts and the law.

d. If confirmed to the Seventh Circuit, will you enforce sentences of mandatory minimums for defendants who qualify for ACCA?

Response: Yes.

52. In reviewing 175 of your cases, it seems that you filed *Brady/Giglio* motions approximately fourteen times. These motions were not captioned as *Brady/Giglio*

motions but they sought discovery from the prosecution or law enforcement while citing *Brady* and *Giglio* as authority.

a. Why did you file these motions without including *Brady/Giglio* in the title or the docket caption?

Response: The motions for immediate disclosure of favorable evidence that I typically filed relied on *United States v. Bagley*, 473 U.S. 667 (1985), *United States v. Agurs*, 427 U.S. 97 (1976), *Giglio v. United States*, 405 U.S. 150 (1972), and *Brady v. Maryland*, 373 U.S. 83 (1963). In filing the motions, I was protecting my client's right to receive material because the Supreme Court in *Bagley*, in announcing the standard of review to be applied in cases of non-disclosure of favorable evidence, distinguished between cases in which specific requests for such information were made prior to trial and cases where general requests or no requests were made. The motions I filed made specific requests, thereby preserving my client's rights. These filings took place before Congress passed the Due Process Protections Act in 2020.

b. If there was a standing discovery order enforceable in the case, what was the purpose of filing this kind of motion?

To the best of my memory, I am not aware of any judges with standing criminal discovery orders in the Northern District of Illinois.

c. By filing these types of motions, were you seeking to highlight supposed prosecutorial misconduct?[3]

No.

53. In to [sic] a January 11, 2019, presentation pleas, you observe "Scholars have talked about how to handle this problem [of Brady violations and prosecutorial misconduct]: … Others have suggested list the names of the prosecutors even if no prejudice." What exactly do you mean that discipline should involve placing prosecutors "on a list"? How is this different from the doxxing of prosecutors?

Response: The speaking notes to which you are referring are from a game show event I co-hosted for the Federal Bar Association's Chicago Chapter on May 29, 2018, before an audience of prosecutors, defense attorneys, and judges (not a January 11, 2019, presentation on pleas). I do not recall if I conveyed the information in those speaking notes to the audience after the "contestants" answered the quiz question about a recent Seventh Circuit decision involving a *Brady* violation. In my speaking notes, I described five

[3] *See* SJQ attachments at 766: "Over last 5-7 years, many in the legal community have expressed concerns over lack of deterrence for brady violations and prosecutorial misconduct more generally."

suggestions by scholars on ways to reduce *Brady* violations, including listing the names of prosecutors who violate *Brady*. My speaking notes do not opine on the merits of the scholars' suggestions, nor do my notes describe the scholars' suggestions as discipline.

54. The Federalist Society is an organization of conservatives and libertarians dedicated to the rule of law and legal reform. Would you hire a member of the Federalist Society to serve in your chambers as a law clerk?

Response: My model is the judges for whom I clerked. For neither judge was membership in an organization, or failure to be a member of an organization, a reason for hiring or not hiring a law clerk. They evaluated each candidate holistically. I would do the same in hiring, if confirmed.

55. Is climate change real?

Response: This question has been the subject of extensive debate and is frequently an issue in litigation. As a pending judicial nominee, the Canons of Judicial Conduct prohibit me from opining on current controversies. If confirmed, I would approach any case presenting this issue just as I would any other case: by delving into the facts and the record, studying the arguments of the parties, carefully engaging the parties at oral argument, doing my own legal research to review applicable precedent, and conferencing with colleagues before reaching a reasoned decision.

56. Do masks prevent the transmission of COVID-19?

Response: I am not aware of any judicial pronouncement on this issue. I am aware, as a private citizen, that the U.S. Centers for Disease Control has issued guidance to wear a mask to help prevent the transmission of COVID-19.

57. Does human life begin at conception?

Response: This question has been the subject of extensive debate and is frequently an issue in litigation. As a pending judicial nominee, I will note that the Supreme Court has not resolved the question of when human life begins. Indeed, the Court has stated that it "need not resolve" the question. *Roe v. Wade*, 410 U.S. 113, 159 (1973).

58. Please list any other state or federal judgeships to which you have applied and the results of any such applications.

Response: I was a finalist for a federal magistrate position twice in 2018. I was not selected.

59. You clerked for retired Judge Coar of the Northern District of Illinois. At your hearing, Chairman Durbin said that Judge Coar heads his judicial-selection

committee. To the extent of your knowledge, what role did Judge Coar play in your selection for this position?

Response: To my knowledge, Judge Coar played no role in my selection. Also, Judge Coar previously chaired Chairman Durbin's district court selection committee. To my knowledge, there was no selection committee for the circuit court vacancy for which I have been nominated.

60. What conversations, if any, did you have with retired circuit judge Ann Claire Williams about your interest in this position? What role, if any, did she play in your selection?

Response: I had no conversations with Judge Williams about this position until after I learned of the President's intent to nominate me. To my knowledge, Judge Williams played no role in my selection.

61. Have you had any conversations with individuals associated with the group Demand Justice, including but not limited to Brian Fallon or Chris Kang, in connection with this or any other potential judicial nomination? If so, please explain the nature of those conversations.

Response: No.

62. Have you had any conversations with individuals associated with the American Constitution Society, including but not limited to Russ Feingold, in connection with this or any other potential judicial nomination? If so, please explain the nature of those conversations.

Response: No.

63. Have you had any conversations with individuals associated with the Lawyers Committee for Civil and Human Rights, including but not limited to Vanita Gupta, in connection with this or any other potential judicial nomination? If so, please explain the nature of those conversations.

Response: No.

64. You mention in your SJQ that you met with President Biden before being nominated. Did he ask you any questions about judicial precedent or public policy in that meeting? If so please describe those questions and your responses.

Response: No.

65. Please explain with particularity the process by which you answered these questions.

Response: I received questions for the record from members of the Senate Judiciary Committee on May 5, 2021. To answer the questions, I reviewed them, conducted research where necessary, including into my prior cases and writings, and consulted with Department of Justice attorneys. I authorized the transmission of my answers to the Senate Judiciary Committee on May 10, 2021.

66. Do these answers reflect your true and personal views?

Response: Yes.

United States Senator Marsha Blackburn
Questions for the Record
Candace Jackson-Akiwumi
Nominee to be United States Circuit Judge for the Seventh Circuit

1. **During your hearing on April 28, we spoke about a case where you represented a man accused of prostituting women. In *United States v. Mack Adams, III*, your defendant was charged with coercion and enticement, in violation of 18 U.S.C. §2422(a). In a *Brady* motion you filed against the government, you accused his victims of lying about their prior activity on Backpage.com. You continued these accusations in your sentencing memorandum, writing:**

> **"The victims, who were 19 and 27 at the time, have told some truths: they gave Mr. Adams money they earned on their backs. He supplied the marijuana and the pills, hotel rooms, and transportation. He also slept with them. It was 'f*cked up,' he candidly admits looking back. Some of the victims' testimony, however, is false, Mr. Adams steadfastly maintains, particularly the accusations that he used force and fraud in dealing with them. His position today is the very same thing he told FBI agents who interviewed him upon his arrest in 2016. The women, loathe they were to admit this to the FBI and the grand jury, willingly came to Illinois to be with Mr. Adams and to continue prostitution work they were already engaged in back home. This does not change, Mr. Adams understands, his wrongdoing in persuading them to come to Illinois and his act of prostituting them once here."**

How do you address criticism that your actions could be called victim shaming and blaming?

Response: In representing each of my clients, I took seriously my obligation under the Sixth Amendment and the ethics standards to zealously represent my client. In many cases, this representation included assisting my clients in contesting the evidence against them based on a thorough investigation of the facts. This obligation extends to sentencing hearings, during which a judge often makes factual findings to fashion a just sentence.

Likewise, in representing each of my clients, I took seriously my obligation to describe for the sentencing judge the nature and circumstances of my client's offense because federal sentencing law, 18 U.S.C. § 3553(a)(1), requires the judge to consider the nature and circumstances of the offense in fashioning a just sentence.

Thus, in advocating on behalf of my client, I described the facts of the case, including areas of agreement with the prosecution about the evidence and areas of disagreement, so that the court could fulfill its responsibility under 18 U.S.C. § 3553. In doing so, I also fulfilled my obligation under the Sixth Amendment.

As a final note, in representing my clients, I frequently worked with them in acknowledging and addressing the harm that their offense caused any victims. Federal sentencing law is also mindful of victims and the importance of ensuring defendants understand the seriousness of their offense. *See, e.g.*, 18 U.S.C. § 3553(a)(2), (7).

Nomination of Candace Jackson-Akiwumi
to be United States Circuit Judge for the Seventh Circuit
Questions for the Record
Submitted May 5, 2021

QUESTIONS FROM SENATOR COTTON

1. **Since becoming a legal adult, have you ever been arrested for or accused of committing ahate crime against any person?**

   Response: No.

2. **Since becoming a legal adult, have you ever been arrested for or accused of committing aviolent crime against any person?**

   Response: No.

3. **During your confirmation hearing, you were asked whether you believe that prosecutingfirearms traffickers is the best way to stop pipelines of illegal guns. You said that you "think there are a number of tools in the tool box for combating an issue like guns and gun violence, and prosecution is one tool." You did not, however, answer the question. Do you believe that prosecuting and sentencing firearms traffickers is the best way to stop pipelines of illegal guns into crime-prone areas?**

   Response: As a private citizen, I am aware that there are a number of tools available to governments and communities in addressing gun crime. One critical tool is prosecution, and as an advocate at the Federal Defender Program, my role was to represent clients in that process. If I am confirmed as a judge, my role would be to decide cases involving federal firearm offenses on a case-by-case basis, consistent with our Constitution and federal laws, applying Supreme Court and Seventh Circuit precedent.

4. **During your confirmation hearing, you were asked whether you believe that prosecutingfirearms traffickers is the best way to stop pipelines of illegal guns. You said that you "think there are a number of tools in the tool box for combating an issue like guns and gun violence, and prosecution is one tool." What other tools do you believe are in that "tool box" for stopping the pipelines of illegal guns into crime-prone areas?**

   Response: As a private citizen, I am aware that governments and communities also employ law enforcement partnerships, education initiatives, restorative justice

initiatives, and community-based programming to address gun crime. If I am confirmed as a judge, my job would be to decide cases involving federal firearm offenses on a case-by-case basis, consistent with our Constitution and federal laws, applying Supreme Court and Seventh Circuit precedent.

5. **During your confirmation hearing, you were asked about past arguments you have made as an advocate, where you have asked courts to give reduced sentences to African American defendants solely because of their race, which you suggested was to reduce "disparities" in sentencing. In your hearing, you were asked whether white defendants should be given longer sentences "in order to correct racial disparities," and you said thatjudges are guided by the law, "which sets forth at least seven sentencing factors, including disparities. So everyone in the system, including the judge and the attorneys, are operating within that framework that Congress provided. If confirmed, that's the exact framework that I would be looking to to review any sentencing decisions by judges." You did not, however, answer the question: Should white defendants receive longer sentences than the facts of the individual case require to correct systemic "disparities" in sentencing?**

Response: Congress has directed judges in sentencing proceedings to impose a sentence that is "sufficient, but not greater than necessary." 18 U.S.C. § 3553(a). No defendant should receive a sentence longer than the circumstances of his or her individual case require, for any reason. Respectfully, I have never "asked courts to give reduced sentences to African American defendants solely because of their race."

6. **During your confirmation hearing, I asked you whether the Constitution allows the government to treat any person differently because of their race. You answered, "no."Does the Constitution allow a convicted criminal to ever be given a longer or shorter sentence based solely on their race or the race of other inmates?**

   Response: No defendant should ever be given a sentence of any length based solely on his or her race, or the race of other people. Sentencing in such a manner would violate our Constitution.

7. **During your confirmation hearing, I asked you whether you agreed with the view of Justice Stephen Breyer and the late Justice Ruth Bader Ginsburg that the Supreme Court should have nine justices. You responded that you were "not familiar with their particularviews," but also that the size of the Supreme Court is a "question left to the legislative branch and the executive branch." Given that members of the Supreme Court—the judicial branch—have felt it appropriate to opine on this matter, it is clearly not out of bounds for members of the judiciary to comment on the size and functioning of the judiciary itself.**

   On July 24, 2019, *National Public Radio* published an interview with Justice Ginsburg, inwhich she said, "Nine seems to be a good number. It's been that way for a long time. I think it was a bad idea when President Franklin Roosevelt tried to pack the Court..... If anything, [it] would make the Court look partisan. It would be that – one side saying, 'When we're in power, we're going to enlarge the number of judges, so we would havemore people who would vote the way we want them to.'"

   On April 7, 2021, just weeks before your confirmation hearing, Justice Breyer gave a two-hour lecture at Harvard Law School, which he described as his "own effort" to ensure that people debating court-packing proposals understood how "'court packing' [would] reflect and affect the rule of law itself." Justice Breyer argued that court-packingcould increase the perception that judges are just "politicians in robes," and that, as a result, "confidence in the courts, and in the rule of law itself, can only diminish, diminishing the Court's power, including its power to act as a 'check' on the other branches." Justice Breyer argued against risking "further eroding [the] trust" of the publicthrough politically-motivated changes to the Supreme Court.

   Do you believe that Justices Breyer and Ginsburg are wrong on this issue?

   Response: I have not formed an opinion on the size of the Supreme Court. If confirmed to

serve on the Seventh Circuit, I would be bound to follow Supreme Court precedent regardless of the number of justices.

8. During law school, you planned a conference entitled, "*The Legacy of Brown v. Board ofEducation.*" Was *Brown v. Board of Education* rightly decided?

9. Was *District of Columbia v. Heller* rightly decided?

10. Was *McDonald v. City of Chicago* rightly decided?

Response to Questions 8-10: The Supreme Court's decisions in *Brown v. Board of Education*, *District of Columbia v. Heller*, and *McDonald v. City of Chicago* are binding precedent. If confirmed, I would apply this and all precedent fully and faithfully. Prior judicial nominees have made an exception to the practice of otherwise avoiding comment on the merits of Supreme Court decisions to acknowledge that *Brown v. Board of Education* was correctly decided. I agree.

11. Are civil rights guaranteed to all Americans, or only specific sub-sets of Americans?

Response: All Americans are guaranteed civil rights.

12. Do illegal aliens have a civil right to come to the United States?

Response: No.

13. You mentioned during your confirmation hearing that you have handled immigration cases as a public defender. If a judge orders that an illegal alien be deported, can the illegal alien just ignore that order, or should there be consequences for refusing to leave?

Response: No individual or entity may ignore a court order. Further, willful failure or refusal to depart the country after a court has ordered removal is a new crime. *See* 8 U.S.C. § 1253(a)(1).

14. Please describe with particularity the process by which you answered these questions andthe written questions of the other members of the Committee.

Response: I received questions for the record from members of the Senate Judiciary Committee on May 5, 2021. To answer the questions, I reviewed them, conducted research where necessary, and consulted with Department of Justice attorneys. I authorized the transmission of my answers to the Senate Judiciary Committee on May 10, 2021.

15. Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. Ifgovernment officials assisted with writing or drafting your answers, please also identifythe department or agency with which those officials are employed.

Response: No.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Candace Jackson-Akiwumi, Nominee for the Seventh Circuit

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's philosophy from Warren, Burger, Rehnquist, or Robert's Courts is most analogous with yours.

Response: My understanding from both practice as a lawyer and observation as a law clerk is that judges should fairly, diligently, and impartially apply the law to the facts of the cases before them. This is the extent of any philosophy I would bring with me to the court, if confirmed, as I have never been a judge, I have kept busy working hard every day to represent clients as a lawyer, and I have not studied the various Justices' judicial philosophies. If confirmed, I would employ in every case a method – rather than a philosophy per se – that should serve me well: (1) scrupulous review of the record with a restrained focus on the issues before the court; (2) careful review of the parties' briefs and open-minded engagement with the parties at oral argument; and (3) diligent research, thorough independent consideration of the matter, and open-minded consultation with my colleagues and law clerks. These steps should enable me to reach a reasoned result that I must then articulate in writing as cogently as possible for litigants and the public.

2. Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?

Response: The Constitution is an enduring document. If confirmed, I would follow Supreme Court and Seventh Circuit precedent about the meaning of the Constitution in applying the Constitution to the cases before me.

3. Is it appropriate for the executive under the Constitution to refuse to enforce alaw, absent constitutional concerns? Please explain.

Response: The Supreme Court's decision in *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579 (1952), guides courts when presented with questions about executive power. A President must act pursuant to express or implied congressional direction, an independent executive power, or a concurrent power. *Id.* at 635-37 (Jackson, J., concurring). Under these circumstances, executive authority is great. By contrast, executive authority is at its lowest point when the President acts in a manner "incompatible with the expressed or implied will of Congress." *Id.* at 637.

4. **President Biden has created a commission to advise him on reforming the Supreme Court. Do you believe that Congress should increase, or decrease, thenumber of justices on the U.S. Supreme Court? Please explain.**

Response: I have not formed an opinion. If confirmed to serve on the Seventh Circuit, I would be bound to follow Supreme Court precedent regardless of the number of justices.

5. **Do you personally own any firearms? If so, please list them.**

Response: No.

6. **Have you ever personally owned any firearms?**

Response: No.

7. **Have you ever used a firearm? If so, when and under what circumstances?**

Response: Yes. When I was a summer extern at the U.S. Attorney's Office during law school, the office took externs to a shooting range for an outing.

8. **Is the ability to own a firearm a personal civil right?**

Response: The Second Amendment guarantees the fundamental right of individuals to keep and bear arms. *See District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

9. **Does the right to own a firearm receive less protection than the other individualrights specifically enumerated in the Constitution?**

Response: *Heller* and *McDonald* do not address this question, but the *Heller* Court did state that, "[l]ike most rights, the right secured by the Second Amendment is not unlimited." *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). Should I be confirmed to the Seventh Circuit, I would follow *Heller*, *McDonald*, and any other binding Supreme Court and Seventh Circuit precedent regarding the Second Amendment.

10. **Does the right to own a firearm receive less protection than the right to vote under the Constitution?**

Response: *Heller* and *McDonald* do not address this question, but the *Heller* Court did state that, "[l]ike most rights, the right secured by the Second Amendment is not unlimited." *District of Columbia v. Heller*, 554 U.S. 570,

626 (2008). Should I be confirmed to the Seventh Circuit, I would follow *Heller*, *McDonald*, and any other binding Supreme Court and Seventh Circuit precedent regarding the Second Amendment.

11. **During Judge Thomas Kirsch's nomination hearing in 2020, Senator Durbin asked Judge Kirsch what he did "to prevent Indiana's gun shows from being the source of a pipeline of gun trafficking into the City of Chicago." In your time as a public defender, you defended numerous clients who were involved in unlawful firearms trafficking in Illinois. Throughout the process of your selection and nomination, did Senator Durbin ever ask you what you have done to prevent a "pipeline of gun trafficking into the City of Chicago"?**

Response: No.

12. **I understand and appreciate that you were representing clients charged with trafficking firearms, and that you sought the best outcome for them as you could. Do you believe your work contributed gun trafficking in Chicago?**

Response: No.

a. **Is trafficking illegally in firearms a serious crime?**

Response: Yes.

b. **Do you believe that judges should follow the sentencing guidelines for firearm offenses absent a convincing reason to depart from those guidelines?**

Response: Judges must follow the directives of Congress and the Supreme Court in conducting sentencing proceedings. Congress has directed judges to consider a range of sentencing factors, one of which is the sentencing guidelines, in arriving at an individualized sentence in each case. *See* 18 U.S.C. § 3553(a). The Supreme Court has held that the sentencing guidelines are advisory, not mandatory. *See United States v. Booker*, 543 U.S. 220 (2005). The Supreme Court has also held that a within-guidelines sentence is presumptively reasonable. *See Rita v. United States*, 551 U.S. 338 (2007).

c. Can you name some circumstances under which you believe it may be appropriate to downward depart from the sentencing guidelines for a firearms offense?

Response: The sentencing guidelines specify a departure for all offense types where the defendant provided substantial assistance to authorities. *See* U.S.S.G. § 5K1.1. The sentencing guidelines also specify a departure for all offense types, except child crimes and sexual offenses, if the court finds, pursuant to 18 U.S.C. § 3553(b)(1), that there is a mitigating circumstance in the case "not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that, in order to advance the objectives set forth in 18 U.S.C. § 3553(a)(2), should result in a sentence different from that described." *See* U.S.S.G. § 5K2.0(a)(1).

13. Is the Religious Freedom Restoration Act a civil rights law?

Response: Congress has identified the Religious Freedom Restoration Act as a civil rights law by including it among the statutes for which attorney's fees are available under the Civil Rights Attorney's Fees Awards Act of 1976. *See* 42 U.S.C. § 1988.

14. What are the benefits of federal sentencing guidelines?

Response: The federal sentencing guidelines have an important role because Congress has directed judges to impose individualized sentences but also avoid unwarranted disparities. The Supreme Court has emphasized that the advisory guideline system should "continue to move sentencing in Congress' preferred direction, helping to avoid excessive sentencing disparities while maintaining flexibility sufficient to individualize sentences where necessary." *See United States v. Booker*, 543 U.S. 220, 264–65 (2005).

15. As a federal defender, you argued that judges should take into account demographic disparities in sentencing when deciding on a sentence for an individual. Do you believe that judges have this discretion under the law?

Response: Congress has outlined the factors a judge should consider when imposing a sentence, which includes "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a) (6). Judges are not permitted to give defendants with similar records and similar conduct different sentences on based on their race. *See United States v. Bridgewater*, 950 F.3d 928, 936 (7th Cir. 2020). The Supreme Court has recognized that any perception of unwarranted sentencing disparities based on race undermines confidence in the criminal justice system. *See Kimbrough v. United States*, 552 U.S. 85, 98

(2007).

16. Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be an religious organization like Little Sisters of the Poor or small businesses operated by observant owners?

Response: The Supreme Court has held that there are limits under the Constitution to what government may impose or require of individuals in private institutions. Recent cases include *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), and *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020). If I am confirmed and asked to address a First Amendment question involving religious liberty and the free exercise of religion, I would apply the binding precedent of the Supreme Court and the Seventh Circuit.

17. Do Americans have the right to their religious beliefs outside the walls of theirhouses of worship and homes?

Response: Yes.

18. President Biden has promised to nominate judges "who look like America." What do you understand this to mean?

Response: Though I have not spoken with President Biden about this comment, I interpret the phrase as a recognition that American citizens are of every religion, race, ethnicity, national origin, gender, sexual identity, and sexual orientation; they are of all ages and abilities; and they come from varied backgrounds and live in different places.

19. Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?

Response: Political appointments of the type your question may be referring to are the provinceof the Executive Branch. The Constitution is the supreme law of the land: it applies to everyone and every branch of government. If I am confirmed and presented with questions about executive appointments, I would adhere to binding Supreme Court and Seventh Circuit precedent.

20. If you are to join the Seventh Circuit, and supervise along with your colleaguesthe court's human resources programs, will it be appropriate for the court to provide its employees trainings which include the following:

a. One race or sex is inherently superior to another race or sex;

b. An individual, by virtue of his or her race or sex, is inherently racist, sexist,or oppressive;

c. An individual should be discriminated against or receive adverse treatmentsolely or partly because of his or her race or sex; or

d. Meritocracy or related values such as work ethic are racist or sexist.

Response: Because I am not currently at the Seventh Circuit, I am not aware of the court's training for employees. Nor do I know if I will have any role supervising the court's human resource programs, if confirmed. No training program should violate the Constitution or an applicable statute.

21. Will you commit that you will oppose any trainings to Seventh Circuit employees teaching that meritocracy, or related values such as work ethic andself-reliance, are racist or sexist?

Response: Because I am not currently at the Seventh Circuit, I am not aware of the court's training for employees. No training program should violate the Constitution or an applicable statute.

22. Is it appropriate for a witness to a crime to consider the race of the perpetratorwhen deciding whether to provide information to the police or federal authorities?

Response: This is an individual determination for each witness to make.

23. Is it racist for a person to call police out of concern over the threatening or unlawful conduct of a person of color?

Response: If I am confirmed as a judge, my job would be to evaluate claims of racial discrimination on a case-by-case basis, consistent with our Constitution and federal laws, applying Supreme Court and Seventh Circuit precedent.

24. Is there systemic racism in public policy across America?

Response: If I am confirmed as a judge, my job would be to evaluate claims of racial discrimination on a case-by-case basis, consistent with our Constitution and federal laws, applying Supreme Court and Seventh Circuit precedent.

25. Is the criminal justice system systemically racist?

Response: If I am confirmed as a judge, my job would be to evaluate claims of racial discrimination on a case-by-case basis, consistent with our Constitution and federal laws, applying Supreme Court and Seventh Circuit precedent.

26. In an article celebrating the sixtieth anniversary of *Brown v. Board of Education*, you wrote that "we cannot celebrate these events . . . and nothing more. . . . [W]e must continue to fight for equal opportunity with an energy that should match those who fought for civil rights fifty and sixty years ago."I have a few questions about that fight:

a. Is there a difference between "equal opportunity" and "equity"? If so, whatis the difference?

I am aware of no Supreme Court or Seventh Circuit precedent addressing this question. I am aware that a recent executive order defined "equity" as "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment." Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, E.O. No. 13985 (Jan. 20, 2021).

b. What does the Constitution's Equal Protection Clause say about equity?

Response: The Fourteenth Amendment's Equal Protection Clause does not contain the word equity.

27. Does the President have the authority to abolish the death penalty?

a. Does the implementation of a criminal punishment prescribed by lawdepend entirely on the President's discretion?

b. Could a President lawfully declare, as a policy, that he disfavors physicalimprisonment and order all federal prosecutors to refuse to seek it?

Response: At the federal level, Congress has determined the death penalty is an appropriate penalty for certain crimes and the Supreme Court has held that the death penalty is constitutional for certain offenders and in certain circumstances. The President, acting alone, cannot change the laws enacted by

Congress, including laws related to criminal penalties, but the Constitution gives the President the authority to grant pardons, commutations, and reprieves. U.S. Const., Art. II, Sec. 2.

28. At his hearing, Attorney General Garland said that an attack on a courthouse while in operation, and trying to prevent judges from actually trying cases, "plainly is domestic extremism." And when pressed, he mentioned also that anattack "simply on government property at night or any other kind of circumstances" is a clear and serious crime. But he seemed to make a distinction between the two, describing the latter (and only the latter) as an "attack on our democratic institutions." If you are confirmed, you will be sitting on a very important court. Do you agree with these statements?

Response: Any situation where government institutions and public servants are victims of crime should be treated with seriousness. I am not aware of Attorney General Garland's statements and have no basis for commenting beyond that.

29. Do you agree that free speech is an essential and irreplaceable American value?

Response: The First Amendment's protection of free speech against government regulation is a fundamental right and a bedrock constitutional principle.

a. What are the present threats to free speech in America?

Response: If confirmed as a judge, I would adhere to Supreme Court and Seventh Circuit precedent in deciding cases alleging a violation of the First Amendment's freedom of speech.

b. What role do the courts have in addressing threats to free speech?

Response: A circuit judge's role is to decide, in a fair and impartial manner, each case that comes before the court.

c. Does the First Amendment protect speech that some may consider offensive?

Response: The Supreme Court has stated that "[w]e have said time and again that the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers." *Matal v. Tam*, 137 S.Ct. 1744, 1763 (2017) (internal quotation marks and citations omitted).

i. If so, what are the limits to that protection?

Response: The Supreme Court has carved out exceptions to First Amendment protections for speech in a long line of cases. A specific example involving speech that some people may consider offensive is *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942), where the Court held that direct personal insults are not protected free speech if the insults are so offensive they are likely to provoke the listener to resort to immediate violence.

d. What is "hate speech"?

Response: The Supreme Court, to the best of my knowledge, has not defined hate speech.

i. Is "hate speech," as you have just defined it, protected by the FirstAmendment?

Response: The Supreme Court has stated that the First Amendment does not protect the following classes of speech: obscenity, defamation, fraud, incitement, and speech integral to criminal conduct. *See United States v. Stevens*, 559 U.S. 460, 468 (2010). These classes are "well defined and narrowly limited," according to the Supreme Court and, to my knowledge, do not include hate speech. *Id.* at 468-69. Speech that someone describes as hate speech could fall under one of the unprotected classes above.

ii. If so, what are the limits to that protection?

Response: There is no exception for hate speech under the First Amendment's protection for freedom of expression, unless the speech is direct, personal, and either truly threatening or violently provocative. *See, e.g.*, *Snyder v. Phelps*, 562 U.S. 443 (2011); *Virginia v. Black*, 538 U.S. 343 (2003); *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942).

30. Do public educational institutions have the legal obligation to protect the speech rights of students and employees?

Response: The Supreme Court held in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969), that "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

31. Do private educational institutions have the legal obligation to protect the speech rights of students and employees?

Response: The First Amendment protects free speech against government regulation. In general, private educational institutions are not government actors. There may be legal obligations at the state level: states are entitled to make their own laws governing speech so long as those laws do not violate the Constitution.

32. Are educational institutions that receive federal funding permitted to discriminate on the basis of speech?

Response: I am not aware of any federal statute that prohibits educational institutions that receive federal funding from discriminating on the basis of speech. I am aware that there was an agency rule promulgated last year potentially implicating this question and a lawsuit about the rule remains pending. I therefore will refrain from speculating on this issue as a judicial nominee.

33. In 2011, the U.S. Department of Education issued a dear Deal Colleague Letterto colleges and universities that broadened the definition of sexual harassmentand required schools to adopt a lenient "more likely than not" burden of proof when adjudicating claims, among other procedural defects. How does this compare with the standard of proof that governs in criminal prosecutions?

Response: The standard of proof for guilt or innocence in a federal criminal trial is "beyond a reasonable doubt." There is a different standard of proof for other criminal proceedings such as sentencing hearings, probation violation hearings, supervised release violation hearings.

34. Given the information in the public domain, do you believe that Brett Kavanaugh sexually assaulted Christine Blasey Ford?

Response: I have tremendous respect for the Supreme Court and I take seriously the integrity and independence of the federal judiciary. Therefore, I do not find it appropriate to opine on this question.

Senator Mike Lee
Questions for the Record
Candace Jackson-Akiwumi, Seventh Circuit

1. How would you describe your judicial philosophy?

Response: My understanding from both practice as a lawyer and observation as a law clerk is that judges should fairly, diligently, and impartially apply the law to the facts of the cases before them. This is the extent of any philosophy I would bring with me to the court, if confirmed, as I have never been a judge, I have kept busy working hard every day to represent clients as a lawyer. If confirmed, I would employ in every case a method – rather than a philosophy per se – that should serve me well: (1) scrupulous review of the record with a restrained focus on the issues before the court; (2) careful review of the parties' briefs and open-minded engagement with the parties at oral argument; and (3) diligent research, thorough independent consideration of the matter, and open-minded consultation with my colleagues and law clerks. These steps should enable me to reach a reasoned result that I must then articulate in writing as cogently as possible for litigants and the public.

2. What sources would you consult when deciding a case that turned on theinterpretation of a federal statute?

Response: If the particular provision of the statute that is at issue had been previously interpreted by the Supreme Court or Seventh Circuit, those precedents would be binding. If it had not been previously interpreted, then I would first look at the text of the statute. The starting point for any decision involving statutory interpretation is the text of the statute. If the text is clear, the inquiry can end. If the text is ambiguous, I would next employ the various tools of statutory construction, including the broader statutory context and the canons of construction. I would also consult Supreme Court and Seventh Circuit precedent interpreting related or analogous statutory provisions, or precedent providing general guidance about the interpretive question at hand. If necessary, I would consider the legislative history of the statute or provision, and I would also consult other federal or state court decisions as persuasive, but not binding, authority.

3. What sources would you consult when deciding a case that turned on theinterpretation of a constitutional provision?

Response: In most cases, I would expect to start with applicable Supreme Court and Seventh Circuit precedent interpreting the particular provision at issue. In the unusual instance that I was confronted with a question of first impression involving a constitutional provision that had not yet been interpreted by the Supreme Court or Seventh Circuit, I would first look at the text of the constitutional provision. I would interpret the text in a manner consistent with the methods of interpretation that the Supreme

Court has used. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court looked to the original public meaning of the Second Amendment.

4. What role do the text and original meaning of a constitutional provision playwhen interpreting the Constitution?

Response: The Supreme Court has looked to the original meaning to interpret the Constitution in some cases, such as *Heller*, but not in all cases interpreting the Constitution. If I were confirmed to the Seventh Circuit, I would be bound by Supreme Court and Seventh Circuit precedent whether the precedent relied on original meaning or not.

5. What are the constitutional requirements for standing?

Response: The Supreme Court articulated the constitutional requirements for standing in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (internal citations omitted):

> Over the years, our cases have established that the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision.

6. Do you believe there is a difference between "prudential" jurisdiction andArticle III jurisdiction in the federal courts? If so, which jurisdictional requirements are prudential, and which are mandatory?

Response: Although the Supreme Court previously used the term "prudential jurisdiction," it has now called the term into question. The Seventh Circuit explained this in *Knopick v. Jayco, Inc.*, 895 F.3d 525, 529 (7th Cir. 2018):

> Though earlier cases speak in terms of "prudential standing" and permit courts to dismiss actions sua sponte, the Supreme Court has more recently called into question the bases of prudential standing. In *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014), the Court explained that describing as "prudential standing" the

> legal issue of which party could sue under a statute was a "misnomer." *Id.* at 127 (citation omitted). Instead, the court defined the inquiry as "a straightforward question of statutory interpretation" to determine on the merits whether the party had a cause of action under the statute. *Id.* at 129.

The Supreme Court's footnote in *Lexmark International* illustrates that the relevant inquiry remains whether a court has Article III jurisdiction:

> We have on occasion referred to this inquiry as "statutory standing" and treated it as effectively jurisdictional. That label is an improvement over the language of "prudential standing," since it correctly places the focus on the statute. But it, too, is misleading, since "the absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction, i.e., the court's statutory or constitutional power to adjudicate the case."

Lexmark International, 572 U.S. at 128 n.4 (internal citations omitted).

7. How would you define the doctrine of administrative exhaustion?

Response: The doctrine means that an individual challenging an agency decision must first pursue the agency's available remedies before seeking judicial review.

8. Do you believe Congress has implied powers beyond those enumerated in theConstitution? If so, what are those implied powers?

Response: The "Necessary and Proper Clause" at the end of Article I, Section 8 of the Constitution grants Congress powers considered necessary to implement the powers enumerated earlier in Article I, Section 8. *McCullough v. Maryland*, 17 U.S. 316 (1819), was the first Supreme Court case to recognize and affirm that Congress has implied powers, of which there many examples ranging from the power to charter a bank in *McCullough v. Maryland* to the power to enact the military draft.

9. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?

Response: If a case came before me where I had to evaluate whether Congress had the authority to pass a particular law that did not reference a specific enumerated power in the Constitution – and there was no binding Supreme Court or Seventh Circuit precedent that addressed the question already – my initial expectation is that I would follow methods of evaluation the Supreme Court has used. Two illustrative cases are *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000). The Supreme

Court looked to the text of the Constitution and its prior precedent regarding the Commerce Clause to determine principles that guided its prior decisions. Then the Court determined that the laws at issue in its prior cases all involved economic activity in a way that the laws at issue in *Lopez* and *Morrison* did not.

10. Does the Constitution protect rights that are not expressly enumerated in theConstitution? Which rights?

Response: Yes. The Supreme Court has found several such rights, including, for example, a right to travel within the country, a right to privacy, and a right to the presumption of innocence in criminal cases. *See Saenz v. Roe*, 526 U.S. 489 (1999); *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Coffin v. United States*, 156 U.S. 432 (1895).

11. What rights are protected under substantive due process?

Response: The Supreme Court has invoked substantive due process to protect a number of rights, as summarized in *Washington v. Glucksberg*, 521 U.S. 702, 720, (1997):

> In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the rights to marry, *Loving v. Virginia,* 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967); to have children, *Skinner v. Oklahoma ex rel. Williamson,* 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska,* 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923); *Pierce v. Society of Sisters,* 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925); to marital privacy, *Griswold v. Connecticut,* 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965); to use contraception, *ibid.; Eisenstadt v. Baird,* 405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972); to bodily integrity, *Rochin v. California,* 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed. 183 (1952), and to abortion, *Casey, supra.* We have also assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment. *Cruzan,* 497 U.S., at 278–279, 110 S.Ct., at 2851–2852.

12. If you believe substantive due process protects some personal rights such as aright to abortion, but not economic rights such as those at stake in *Lochner v.New York*, on what basis do you distinguish these types of rights for constitutional purposes?

Response: If confirmed to the Seventh Circuit, my personal beliefs about substantive due process or any other legal doctrine would have no bearing on my ability to apply binding Supreme Court and Seventh Circuit precedent. The Supreme Court has repeatedly upheld the right to an abortion pre-viability,

subject to regulations as long as those regulations do not impose "an undue burden" (if the regulations' "purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability"). *See Planned Parenthood v. Casey*, 505 U.S. 833, 878 (1992) (plurality opinion). The Supreme Court has declined to protect the economic rights at issue in *Lochner v. New York* under the umbrella of substantive due process. *See West Coast Hotel Co. v. Parrish*, 57 S.Ct. 578 (1937). Both lines of cases are binding precedent to which I will faithfully adhere if confirmed.

13. What are the limits on Congress's power under the Commerce Clause?

Response: The Supreme Court's decision in *United States v. Lopez*, 514 U.S. 549 (1995), outlines Congress's power to regulate under the Commerce Clause. Congress may regulate the channels of interstate, the instrumentalities of interstate commerce, and activity that substantially affects interstate commerce. *Id.* at 558-59.

14. What qualifies a particular group as a "suspect class," such that laws affectingthat group must survive strict scrutiny?

Response: The Supreme Court has designated race, alienage, national origin, and religion as suspect classes requiring strict scrutiny. *See, e.g., Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 n.4 (1976); *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

15. How would you describe the role that checks and balances and separation ofpowers play in the Constitution's structure?

Response: The fact that the framers devoted Article I to the legislative branch, the branch that directly represents the people, reflects that the Constitution is at its heart a contract with the people. The framers illustrated in the very structure of the document that the power belonged to the people and the people ceded some power to the government – but a limited government. Articles II and III follow separately and demonstrate, at every turn, that each branch of government operates as a check on the other branches. The view from the judicial branch provides an example. Congress depends on the courts "to say what the law is," *Marbury v. Madison*, 5 U.S. 137, 177 (1803), even though Congress alone has the power to make law. But the courts help Congress act as a check on the President by adjudicating when executive authority has exceeded its constitutional limitations or strayed too far from the laws passed by Congress. All this aside, the judicial branch's power is restrained. Article III limits the courts to deciding only actual cases or controversies. Additionally, the judicial branch cannot populate itself; the executive and legislative branch have that responsibility.

16. How would you go about deciding a case in which one branch assumed anauthority not granted it by the text of the Constitution?

Response: After studying the text of the Constitution, I would consult the vast body of Supreme Court precedent on executive powers or the use of implied powers by Congress, depending on which branch of government the case involved. I would then follow methods of evaluation the Supreme Court has used. Two illustrative cases are *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000). The Supreme Court looked to the text of the Constitution and its prior precedent regarding the Commerce Clause to determine principles that guided its prior decisions. Thereafter, the Court determined that the laws at issue in its prior cases all involved economic activity in a way that the laws at issue in *Lopez* and *Morrison* did not.

17. What role should empathy play in a judge's consideration of a case?

Response: A judge must follow the law without partiality to any party or external influence, and without the interference of her own personal views.

18. What's worse: Invalidating a law that is, in fact, constitutional, or upholding alaw that is, in fact, unconstitutional?

Response: A judge should do neither.

19. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantlymore common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: My law practice has not required me to study the arc of the Supreme Court's review of congressional action.

20. How would you explain the difference between judicial review and judicialsupremacy?

Response: According to my research, this topic is the subject of debate in that proponents of judicial supremacy view the Supreme Court's interpretation of the Constitution as authoritative for the executive and legislative branches, while proponents of judicial review consider each branch to have independent authority to interpret the Constitution.

21. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon

vital questions affectingthe whole people is to be irrevocably fixed by decisions of the wuo
. . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independentobligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: In our system of government, elected officials are required to follow duly rendered judicial decisions. Elected officials in the United States also independently swear an oath to uphold the Constitution. U.S. Const., Art. VI, Sec. 3.

22. **In Federalist 78, Hamilton says that the courts are the least dangerous branchbecause they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.**

Response: Remembering Hamilton's observation in Federalist 78 can help tether a judge to the text and principles of Article III. Judges do not have the will of the legislators to enact laws or the force of the executive branch to execute laws. Judges merely determine "what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). Relatedly, this is why courts cannot issue advisory opinions: they must adjudicate actual cases and controversies only, not opine on what the law should be.

23. **How would you describe your approach to reading statutes—how much weight do you give to the plain meaning of the text? When we talk about theplain meaning of a statute, are we talking about the public understanding atthe time of enactment, or does the meaning change as social norms and linguistic conventions evolve?**

Response: If the particular provision of the statute that is at issue had been previously interpreted by the Supreme Court or Seventh Circuit, those precedents would be binding. If it had not been previously interpreted, then I would first look at the text of the statute. The starting point for any decision involving statutory interpretation is the text of the statute. If the text is clear, the inquiry can end. If the text is ambiguous, I would next employ the various tools of statutory construction, including the broader statutory context and the canons of construction. I would also consult Supreme Court and Seventh Circuit precedent interpreting related or analogous statutory provisions, and precedent providing general guidance about the interpretive question at hand. If necessary, I would consider the legislative history of the statute or provision, and I would also consult other federal or state court decisions as persuasive, but not binding, authority.

24. As a circuit court judge, you would be bound by both Supreme Court precedent, and prior circuit court precedent. What is the duty of a lower courtjudge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does notappear to speak directly to the issue at hand? In applying a precedent that hasquestionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: Circuit judges are at all times bound by Supreme Court precedent and the precedent of their circuit. Stare decisis is important. In the event that a precedent is not controlling, that precedent could be distinguished and therefore would allow a judge to issue a decision that is consistent with the Constitution. This necessarily limits the precedent's application to only cases where it is appropriately applied and does so in a way that honors both stare decisis and the Constitution.

25. Do you believe it is ever appropriate to look past jurisdictional issues if theyprevent the court from correcting a serious injustice?

Response: No.

26. When sentencing an individual defendant in a criminal case, what role, if any,should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?

Response: In 18 U.S.C. § 3553(a), Congress specified the factors that a sentencing court should consider when imposing a sentence. Sentencing judges can consider aspects of a defendant's identity only insofar as those aspects bear relation to one of the sentencing factors in Section 3553(a).

27. Would it ever be appropriate to sentence a defendant who belongs to a historically disadvantaged group less severely than a similarly situated defendant who belongs to a historically advantaged group to correct systemicsentencing disparities?

Response: No.

28. In January 2014, you wrote an article for "The Point" criticizing state "standyour ground" laws. In that article, you took specific aim at a Florida law which you claimed was written by "a former president of the National Rifle Association" and pushed nationally by the American Legislative Exchange Council. Your comments seemed to imply that these groups' support for the legislation was somehow nefarious. With that in mind, please answer the following questions:

a. Do you agree that citizens have the right to petition their own governmentseven if it is done through donations to advocacy organizations they agree with?

Response: Yes.

b. Do you agree that dark money groups have an outsized influence on bothstate government and the federal government, including the federal judiciary?

Response: I have not studied the issue and formed an opinion. If I were confirmed and a case came before me that presented questions involving advocacy, lobbying, and fundraising in public policy, I would carefully study the applicable laws and precedent and apply them to the facts of the case.

c. Does it concern you that dark money groups, like Demand Justice and theLeadership Conference on Civil and Human Rights, support your nomination to the U.S. Court of Appeals for the Seventh Circuit?

Response: I am aware that Demand Justice and the Leadership Conference on Civil and Human Rights have stated publicly that they support my nomination. As indicated above, I have not studied the issue of dark money groups. If I were confirmed and a case came before me that presented questions involving advocacy, lobbying, and fundraising in public policy, I would carefully study the applicable laws and precedent and apply them to the facts of the case.

d. How is support for your nomination by groups like Demand Justice or theLeadership Conference on Civil and Human Rights different from supportby the National Rifle Association and the American Legislative Exchange Council for the enactment of "stand your ground" laws?

Response: My familiarity with these groups is limited and I do not have an opinion.

29. Have you spoken with anyone affiliated with Demand Justice or the Leadership Conference on Civil Rights regarding your nomination eitherbefore or after it was announced?

Response: No.

30. In an article titled "Ferguson and the Feds: How the Federal Government Is aPart of the Problem and the Solution," you praised the Obama Department ofJustice's use of pattern or practice investigations. In regards to pattern and practice investigations, at what point does the federal government's authority

to dictate specific policies and procedures employed by local law enforcementinfringe on the general police power granted to states?

Response: As I understand it, the purpose of the pattern and practice investigations Congress has authorized the Department of Justice to undertake pursuant to 34 U.S.C. § 12601 is to ensure that local law enforcement agencies are complying with the Constitution and federal law.

31. It has been reported that you met with President Biden to discuss your potential nomination to the Seventh Circuit. Once again, for the record, willyou confirm that President Biden did not discuss or ask for a commitment from you on any of the following issues:

a. Abortion or *Roe v. Wade*?

b. The Second Amendment, *District of Columbia vs. Heller* or *MacDonald v.Chicago*?

c. Efforts to defund the police?

d. Illegal immigration?

Response: As I testified at the confirmation hearing and as reflected in my answer to Question 26b of the Senate Judicial Questionnaire, President Biden did not discuss or ask for a commitment from me on any of the above issues.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
April 28, 2021

ANSWERS BY CANDACE JACKSON-AKIWUMI

For all nominees:

1. **Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

   Response: No.

2. **Since becoming a legal adult, have you participated in any rallies or demonstrations where you or other participants have willfully damaged public or private property?**

   Response: No.

3. **Was Marbury v. Madison correctly decided?**
4. **Was Brown v. Board of Education correctly decided?**
5. **Was Loving v. Virginia correctly decided?**
6. **Was Roe v. Wade correctly decided?**
7. **Was United States v. Virginia correctly decided?**
8. **Was District of Columbia v. Heller correctly decided?**
9. **Was Boumediene v. Bush correctly decided?**
10. **Was Citizens United v. FEC correctly decided?**
11. **Was Obergefell v. Hodges correctly decided?**

    Response to Questions 3-11: The Supreme Court decisions listed above are binding precedent. If confirmed, I would apply the precedent above fully and faithfully. Prior judicial nominees have made exceptions to the practice of avoiding comment on the merits of Supreme Court decisions to acknowledge that *Marbury v. Madison*, *Brown v. Board of Education*, and *Loving v. Virginia* were correctly decided. I agree.

12. **In the absence of controlling Supreme Court precedent, what factors determine whether it is appropriate for an en banc court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?**

    Response: Federal Rule of Appellate Procedure 35 contains factors a circuit judge must consider when deciding whether to hear or rehear a case en banc. En banc proceedings are "not favored." F.R.A.P. 35(a). However, en banc proceedings may be appropriate if a panel decision "conflicts with a decision of the Supreme Court or of the court to which the petition is addressed" or "the proceeding involves one or more questions of exceptional

importance." F.R.A.P. 35(b)(1)(A) & (B). In general, the principles of stare decisis apply to Seventh Circuit decisions. *See, e.g., Tate v. Showboat Marina Casino P'ship*, 431 F.3d 580, (7th Cir. 2005) ("The doctrine of stare decisis imparts authority to a decision, depending on the court that rendered it, merely by virtue of the authority of the rendering court and independently of the quality of its reasoning. The essence of stare decisis is that the mere existence of certain decisions becomes a reason for adhering to their holdings in subsequent cases." (internal quotation marks and citation omitted)).

13. In the absence of controlling Supreme Court precedent, what factors determine whether it is appropriate for an en banc court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?

Response: Please see my response to Question 12.

14. If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant?

Response: Congress has set forth the factors a judge should consider when imposing a sentence, which includes "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a) (6). Most courts have held that this sentencing factor looks to "national disparities." *See, e.g., United States v. Fry*, 792 F.3d 884, 892 (8th Cir. 2015) (collecting cases). Judges are not permitted to impose different sentences on defendants with similar records and similar conduct based on their race. *See United States v. Bridgewater*, 950 F.3d 928, 936 (7th Cir. 2020). The Supreme Court has recognized that any perception of any unwarranted sentencing disparities based on race undermines confidence in the criminal justice system. *See Kimbrough v. United States*, 552 U.S. 85, 98 (2007).

For Ms. Candace Jackson-Akiwumi

1. Why did you choose to become a Staff Attorney for the Federal Defender Program?

Response: I chose to become a Staff Attorney for the Federal Defender Program for the Northern District of Illinois because I wanted to return to public service from the private practice of law; engage in the direct representation of individual clients; help uphold our nation's constitutional principles; and work as both a trial attorney and appellate attorney.

2. Were you ever concerned that your work for the Federal Defender Program would result in more violent criminals—including gun criminals—being put back on the streets?

Response: No.

Questions for the Record for
Senator Thom Tillis for
Questions for Ms. Candace Rae Jackson-Akiwumi

1. Ms. Jackson-Akiwumi, do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?

Response: Yes.

2. What is judicial activism? Do you consider judicial activism appropriate?

Response: The term "judicial activism" has different meanings for different people. I interpret it to mean judicial decision-making that has been injected with the judge's personal views or gone beyond the issues presented for review. Neither is appropriate. Canon 3 of the Code of Conduct for United States Judges states that judges "should not engage in behavior that is . . . biased," "should not be swayed by partisan interests, public clamor, or fear of criticism," and "should hear and decide matters assigned."

3. **Ms. Jackson-Akiwumi, do you believe impartiality is an aspiration or an expectation for a judge**?

Response: Canon 3 of the Code of Conduct for United States Judges states that "a judge should perform the duties of the office fairly, impartially, and diligently." The canon confirms that impartiality is expected of judges.

4. Ms. Jackson-Akiwumi, should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?

Response: No. A judge should be guided first and foremost by law and precedent, as applied to the facts of the case, in reaching a decision, regardless of the outcome.

5. Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?

Response: Yes. A judge should be guided first and foremost by law and precedent, as applied to the facts of the case, in reaching a decision, regardless of the outcome.

6. Ms. Jackson-Akiwumi, should a judge interject his or her own politics or policy preferences when interpreting and applying the law?

Response: No.

7. Ms. Jackson-Akiwumi, if you are confirmed, what will you do to protect Americans' right to practice their faith during this incredibly difficult time?

Response: The First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." If confirmed, I can assure any litigants who would come before me that I understand a circuit judge's role is to uphold the Constitution and to decide, in a fair and impartial

manner, each case that comes before the court. This includes cases arising under the Free Exercise and Establishment Clauses of the First Amendment.

8. Ms. Jackson-Akiwumi, is there a line where a First Amendment activity or peaceful protesting becomes rioting and is no longer protected? What is that line? Do you agree that looting, burning property, and causing other destruction is not a protected First Amendment activity?

Response: The Supreme Court's decision in *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969), governs: "The constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." Thus, the First Amendment does not protect speech that "is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Id.*

9. Ms. Jackson- Akiwumi, how would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?

Response: The Supreme Court and circuit courts are actively considering litigation arising from the COVID-19 pandemic. *See, e.g.*, *Tandon v. Newsom*, 141 S. Ct. 1294 (2021). Canon 3 of the Code of Conduct for United States Judges, which applies to

judicial nominees, prevents me from commenting on pending or impending matters. In general, if I am confirmed, and subsequently presented with a case involving any constitutional question, I would look to the text of the Constitution and to the binding precedent of the Supreme Court and the Seventh Circuit in evaluating the case.

10. What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?

Response: The Second Amendment states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed." The Second Amendment guarantees the fundamental right of individuals to keep and bear arms. *See District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010). If confirmed, I can assure any litigants who would come before me that I understand a circuit judge's role is to uphold the Constitution and to decide, in a fair and impartial manner, each case that comes before the court. This includes cases arising under the Second Amendment.

11. What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?

Response: I have not served as judge before and thus have not considered cases regarding qualified immunity. If I am confirmed, and subsequently presented with a case involving a

qualified immunity defense, I would adhere to the binding precedent of the Supreme Court and Seventh Circuit on qualified immunity. *See, e.g.*, *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

12. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?

Response: If I am confirmed, and subsequently presented with a case involving a qualified immunity defense, I would adhere to the binding precedent of the Supreme Court and Seventh Circuit on qualified immunity. *See, e.g.*, *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). Any personal views I might have on any category of jurisprudence would be irrelevant in interpreting and applying the law.

13. **What do you believe should be the proper scope of qualified immunity protections for law enforcement?**

Response: Cases involving qualified immunity frequently come before federal courts. Canon 3 of the Code of Conduct for United States Judges, which applies to judicial nominees, prevents me from commenting on pending or impending matters. In general, if confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent on qualified immunity.

14. Do you agree with the current state of the *Chevron* deference doctrine? Or do you believe there should be either more or less deference given to agencies?

Response: *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), is binding Supreme Court precedent. Circuit judges are bound by Supreme Court precedent and the precedent of their circuit on any subject, including administrative law. Any personal views I might have on any category of jurisprudence would be irrelevant in interpreting and applying the law.

15. How have your views on agency deference developed during your time as a district judge?

Response: I have not been a district judge.

16. Are you a bold progressive champion? If yes, please explain.

Response: I do not know what the term above refers to and I have never used those words to describe myself.

17. Have you been on the front lines advancing the law for progressive values? If yes, please explain.

Response: I do not know to what the phrase above refers. Judges, court staff, prosecutors, public defenders, probation officers, and pretrial service officers are on the front lines of our country's criminal legal system every day, and I was a part of that system for a decade as a federal public defender.

18. Some are demanding that Justice Breyer retire. Do you agree that should Justice Breyer retire this year, President

Biden would have the right to nominate someone to fill that seat on the Supreme Court?

Response: Article II, Section 2 of the Constitution states that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the [S]upreme Court . . . ." It would not be appropriate for me to comment further on the matter.

19. How would you respond if a group ran ads and publicly called for you to retire as a Circuit Court Judge?

Response: I would not respond.

20. Do you agree with that Justice Breyer should retire? If not, why not?

Response: I have tremendous respect for the Supreme Court and I take seriously the integrity and independence of the federal judiciary. Therefore, I do not find it appropriate to opine on this question.

Senator Chuck Grassley, Ranking Member
Questions for the Record
The Hon. Julien Neals
Nominee to be United States District Judge for the District of New Jersey

1. **You have substantial courtroom experience. You served as a law clerk for Judge Seymour Marguiles; you have tried about 35 matters to verdict, judgment, or final decision; and you have also served as the chief judge for the Newark Municipal Court. I am interested in your approach to constitutional issues. Please share what has prepared you to handle cases that arise under the U.S. Constitution. And if you face a constitutional issue, what is the general procedure you will follow for determining what the law requires?**

   Response: A responsible district judge should interpret constitutional provisions by first examining the text of the Constitution itself, and the analysis of that text must then be guided by, and bounded by, prior precedent of the United States Supreme Court and the applicable United States Court of Appeals.

2. **What is the standard approach to statutory interpretation in New Jersey? How, if at all, do you think this would differ on the federal district court?**

   Response: The standard approach to statutory interpretation in New Jersey state courts is substantially similar to that provided for in federal law. In general, statutory interpretation cases in New Jersey state court begin with the statutory text and if the statute is clear the inquiry ends there. Many of the cases that I have handled in my career involved federal questions and I have extensive experience in applying statutory interpretation in the federal context.

3. **In the context of federal case law, what is super precedent? Which cases, if any, count as super precedent?**

   Response: "Super precedent" is not a term used or defined by the Supreme Court. If confirmed, my role as a district court judge would be to strictly adhere to all precedents set forth by the Supreme Court and the Third Circuit.

4. **What is more important for a district judge: reaching what he thinks is the correct conclusion, or reaching a conclusion that he knows will not be overturned on appeal?**

   Response: A district judge should always decide cases based on a thorough review of the record and application of settled law including Supreme Court and Third Circuit precedents to the facts.

5. **Under the Supreme Court's First Amendment jurisprudence, can someone shout "fire" in a crowded theater?**

Response: Shouting fire in a crowded theatre is a frequent paraphrasing of Justice Oliver Wendell Holmes, Jr., who stated in dicta "[t]he most stringent protection of free speech would not protect a man in falsely shouting fire in a fire and causing a panic." *Schenck v. Price*, 249 US 47, 52 (1919). The Supreme Court in *Brandenburg v. Ohio*, 395 (US) 444 (1969), provided that speech could only be banned if the speech "is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Id.* at 447.

6. **One of the federal district court's important functions is reading statutes and regulations, determining what they mean, and determining how they apply to the facts at hand.**

   a. **How would you determine whether statutory or regulatory text was ambiguous?**

      Response: As to statutory text, I would first examine the text of the statute or regulation to determine its meaning. If clear and unambiguous, my inquiry would end. If there is ambiguity then I would look to binding precedent in the Supreme Court and Third Circuit, and also consider canons of interpretation that those courts have approved. I would also review whether analogous Supreme Court or Third Circuit precedent exists on closely related questions. If there were no binding precedent on the issue I would also consider persuasive authority from other courts.

   b. **Would you apply different standards to determining whether statutory text and regulatory text were ambiguous? If so, how would the ambiguity standards differ?**

      Response: Please see my response to 6.a.

   c. **When interpreting ambiguous text, what tools would you use to resolve the ambiguity?**

      Response: Please see my response to 6.a.

   d. **When interpreting ambiguous text, how would you handled two competing and contradictory canons of statutory interpretation?**

      Response: The starting point in construing a statute is the language of the statute itself. The Supreme Court often recites the "plain meaning rule," that, if the language of the statute is plain and unambiguous, it must be applied according to its terms. "[C]anons of construction are no more than rules of thumb that help courts determine the meaning of legislation, and in interpreting a statute a court should always turn first to one, cardinal canon before all others.... [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says

there. When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.' " *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). The Supreme Court has provided guidance through various cases on the appropriate application of the canons of statutory construction. Words that are not terms of art and that are not statutorily defined are customarily given their ordinary meanings, frequently derived from the dictionary. *FDIC v. Meyer*, 510 U.S. 471, 476 (1994). If the word or phrase is defined in the statute or elsewhere in the United States Code, then that definition governs if applicable in the context used. *Colautti v. Franklin*, 439 U.S. 379, 392 (1979). If confirmed, I would follow Supreme Court and Third Circuit Court precedent on the application of canons of statutory construction.

7. **Do you agree with the Supreme Court's statement in *Bostock v. Clayton County*, 590 U.S. ___ (2020), that the Free Exercise Clause lies at the heart of a pluralistic society? If so, does that mean that the Free Exercise Clause legally requires that religious organizations and individuals should be free to act consistently with their beliefs in the public square?**

Response: *Bostock v. Clayton County*, 590 U.S. ___ (2020) is binding Supreme Court precedent. The First Amendment states "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The Supreme Court has interpreted the First Amendment Free Exercise and Establishment clauses in a number of cases. If confirmed I would be bound by the Supreme Court and would follow that binding precedent.

8. **As a county administrator, what is your view of the *Mount Laurel* decisions and their resulting doctrine?**

Response: As a judicial nominee, in general it would not be appropriate to provide an opinion concerning decisions of the Supreme Court or opine on matters that could possibly come before the courts. The *Mount Laurel* decisions are binding New Jersey Supreme Court precedent.

9. **The New Jersey Supreme Court is famously activist having handed down expansive progressive decisions like *NAACP v. Mount Laurel*, *Abbott v. Burke*, *Lewis v. Harris*, and *State v. Shack*. How are the powers of the New Jersey Supreme Court different from those of the U.S. District Court for the District of New Jersey?**

Response: The New Jersey Supreme Court is the state's highest appellate court. It is composed of a chief justice and six associate justices. As the highest appellate court, the New Jersey Supreme Court reviews cases from the lower courts. In very limited circumstances, such as where a judge in the Appellate Division files a dissenting opinion,

a party may appeal as of right to the New Jersey Supreme Court. In deciding the cases that come before it, the New Jersey Supreme Court interprets the New Jersey and the United States Constitution, New Jersey statutes, administrative regulations of the state's governmental agencies, as well as the body of common law. The Chief Justice of the New Jersey Supreme Court also serves as the administrative head for the court system, overseeing the management of the state's courts.

10. Do all Blaine Amendments violate the Constitution under the Supreme Court's decision in *Espinoza v. Montana*, 91 U.S. ___ (2020)? Please explain why or why not.

Response: In *Espinoza v. Montana*, 91 U.S. ___ (2020), the Supreme Court ruled that "A state need not subsidize private education. But once a state decides to do so, it cannot disqualify some private schools solely because they are religious." *Id.* As a judicial nominee, in general it would not be appropriate to opine on matters that could possibly come before the court. If confirmed, I would be bound by the relevant Supreme Court precedents regarding whether a statutory prohibition concerning the provision of funds to religious institutions violates the Constitution.

11. When you served on the Newark Municipal Court, you officiated Newark's first civil union.[1] You also said that, "If you can't recognize people for what they are, then we have no hope."[2] If a civil defendant was sued for her inability to endorse or facilitate a same-sex union—and if she was unable to do so based on her sincerely held religious beliefs—what legal standard or standards would you apply as a federal district judge?

Response: In *Obergefell v. Hodges*, 576 U.S. 644 (2015), the Supreme Court of the United States ruled that the fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. As a district judge I would apply binding Supreme Court precedent and set personal views aside.

12. Do you agree with the following statements? If you would word something differently, please indicate how you would prefer to word the statement.

a. We live in a pluralistic society with people of diverse faith traditions. Religious freedom for all is part of our country's bedrock, from our Constitution's ratification to the establishment of more-recent statutes that protect against religious discrimination.

Response: Yes.

[1] Paul Milo, *Newark Raises the Flag to Honor Gay Pride*, Patch (July 20, 2012), http://patch.com/new-jersey/newarknj/newark-raises-the-flag-to-honor-gay-pride (SJQ Attachments at 381).
[2] *Id.*

b. Title VII requires that employers not discriminate against applicants or employees because of their religious beliefs, observances, or practices. It also requires employers to accommodate religious beliefs, observances, and practices, absent undue hardship to the employers.

Response: Title VII of the Civil Rights Act of 1964 prohibits employers from undertaking certain employee practices "because of [an] individual's race, color, religion, sex or national origin." 42 U.S.C. 2000e-2. Per Title VII, prohibited practices include the failure or refusal to hire an individual, or the discharge of an individual on the basis of these protected characteristics, as well as "discriminat[ion] against any [such] individual with respect to his compensation, [or the] terms conditions or privileges of employment." See 42 U.S.C. § 2000e-2(a). The definitions provisions of Title VII define "religion" to include all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate an employee's or perspective employee's religious observance or practice without undue hardship on the conduct of the employers business." *Id.* at sec 2000e (j).

c. The law protects government employees' requests (1) for time off for religious observances, (2) for religious exemptions from grooming or dress codes, and (3) to decline participation in hot-button practices like abortion or LGBTQ celebrations.

Response: I am not familiar with all of the specific laws that might apply to these factual situations and thus do not believe that I can answer this question in the affirmative without additional information. My role as a district judge, if confirmed, would be to consider any legal claims brought concerning religious discrimination or the other activities described in the question above and to apply binding Supreme Court and Third Circuit precedent.

d. The law does not permit the government to engage in religion-based discrimination.

Response: Yes.

13. The Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that the Second Amendment protects an individual's right to possess a firearm, regardless of the individual's participation in a "well regulated Militia." The Supreme Court later expanded on that right in *McDonald v. Chicago*, 561 U.S. 742 (2010), when it held that the Fourteenth Amendment's Due Process Clause incorporated the Second Amendment. How would you describe the legal standard on Second Amendment rights today?

Response: The Second Amendment was reviewed by the United States Supreme Court in the *Heller* and *McDonald* decisions. In *Heller*, Justice Scalia's opinion for the Court held that the Second Amendment confers "an individual right to keep and bear arms." *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Court also stated that, "[l]ike most rights, the right secured by the Second Amendment is not unlimited." *Id.* at 626. In *McDonald v. Chicago*, 561 U.S. 742 (2010), the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government.

14. Please explain, with detail, the process by which you became a district-court nominee.

Response: On September 26, 2014, I sent my resume and a completed judicial questionnaire to the Chair of Senator Cory A. Booker's Advisory Group, for consideration for the position of United States District Judge. On September 30, 2014, I interviewed with the Advisory Group at Senator Booker's Newark office. On or about October 3, 2014, I interviewed with the Senator's staff at the Newark office. On November 7, 2014, Senator Booker advised me that he would be referring my name to President Barack H. Obama for consideration.

On November 21, 2014, I was first contacted by officials from the Office of Legal Policy at the Department of Justice. On January 13, 2015, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On February 27, 2015, the President submitted my nomination to the Senate.

On September 30, 2015, I received a hearing before the United States Senate Committee on the Judiciary. On November 5, 2015, the nomination was reported out of committee. The nomination expired on January 3, 2017, with the end of the 114th Congress.

I am advised that Senator Booker referred my name to former President Donald J. Trump. On May 4, 2017, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C.

On February 18, 2021, I was contacted by attorneys from the White House Counsel's Office. On Friday, February 19, 2021, I interviewed via videoconference with attorneys from the White House Counsel's Office. Since February 20, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 30, 2021, the President submitted my nomination to the Senate.

15. Have you had any conversations with individuals associated with the group Demand Justice, including but not limited to Brian Fallon, or Chris Kang, in connection with this or any other potential judicial nomination? If so, please explain the nature of those conversations.

Response: No.

16. Have you had any conversations with individuals associated with the American Constitution Society, including but not limited to Russ Feingold, in connection with this or any other potential judicial nomination? If so, please explain the nature of those conversations.

Response: No.

17. Please explain with particularity the process by which you answered these questions.

Response: On May 5, 2021, these questions were forwarded to me by the Office of Legal Policy at the Department of Justice. I personally reviewed these questions, undertook legal research as necessary and drafted all of my answers. Thereafter, I submitted my answers to the Office of Legal Policy and made subsequent revisions before submitting my answers to the Committee.

18. Do these answers reflect your true and personal views?

Response: Yes.

Nomination of Julien Xavier Neals
to be United States District Judge for the District of New Jersey
Questions for the Record
Submitted May 5, 2021

QUESTIONS FROM SENATOR COTTON

1. **Since becoming a legal adult, have you ever been arrested for or accused of committing ahate crime against any person?**

   Response: No.

2. **Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?**

   Response: No.

3. **Please describe with particularity the process by which you answered these questions andthe written questions of the other members of the Committee.**

   Response: On May 5, 2021, these questions were forwarded to me by the Office of Legal Policy at the Department of Justice. I personally reviewed these questions, undertook legal research as necessary and drafted all of my answers. Thereafter, I submitted my answers to the Office of Legal Policy and made subsequent revisions before submitting my answers to the Committee.

4. **Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. Ifgovernment officials assisted with writing or drafting your answers, please also identifythe department or agency with which those officials are employed.**

   Response: No.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Julien Xavier Neals, Nominee for the District of New Jersey

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. **Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's philosophy from Warren, Burger, Rehnquist, or Robert's Courts is most analogous with yours.**

Response: My judicial philosophy is that a judge must in all matters do the following: (1) make an impartial and unbiased commitment to review, comprehend and apply the appropriate rule of law and binding precedent; (2) provide to all parties a full and fair opportunity to present facts and legal argument in all proceedings; and (3) act diligently and efficiently in all proceedings to ensure that all matters are disposed of in a timely manner. I am without sufficient knowledge of the judicial philosophies of justices on the Warren, Burger or Rehnquist courts to comment as to whether their philosophies are analogous to mine.

2. **Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

Response: If confirmed as a District Court Judge, I would be required to look to the interpretation of the Constitution as set forth by the Supreme Court and the Third Circuit.

3. **President Biden has created a commission to advise him on reforming the Supreme Court. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: In my capacity as a district court nominee, it would not be appropriate for me to express my personal opinion about policy choices committed to the executive and legislative branches.

4. **Do you personally own any firearms? If so, please list them.**

Response: No.

5. **Have you ever personally owned any firearms?**

Response: No.

6. Have you ever used a firearm? If so, when and under what circumstances?

Response: No.

7. Is the ability to own a firearm a personal civil right?

Response: Yes. It is a right guaranteed and protected by the Second Amendment to the U.S. Constitution. The Supreme Court has addressed the right in *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010). If confirmed, I would uphold all Supreme Court precedent.

8. Is the criminal justice system systemically racist?

Response: I am aware that there are studies on various aspects of the criminal justice system, however, if confirmed, it would be my duty to approach all matters before me as outlined in my response to Question 1., and without regard to any personal views or particular policy goals or aims.

Questions for the Record for Julien Xavier Neals
From Senator Mazie K. Hirono

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:

   a. **Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

      Response: No.

   b. **Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

      Response: No.

Senator Mike Lee
Questions for the Record
Julien Xavier Neals, District of N.J.

1. **How would you describe your judicial philosophy?**

   Response: My judicial philosophy is that a judge must in all matters do the following: (1) make an impartial and unbiased commitment to review, comprehend and apply the appropriate rule of law; (2) provide to all parties a full and fair opportunity to present facts and legal argument in all proceedings; and (3) act diligently and efficiently in all proceedings to ensure that all matters are disposed of in a timely manner.

2. **What sources would you consult when deciding a case that turned on the interpretation of a federal statute?**

   Response: If the statute at issue had previously been interpreted by the Supreme Court or Third Circuit, I would follow that precedent. If no precedent exists then I would first examine the text of the statute to determine its meaning. If clear and unambiguous, my inquiry would end and the statute itself would serve as the source of controlling authority. If the language were ambiguous then I would review the statute as a whole in order to determine its intent. I would also review whether analogous Supreme Court or Third Circuit precedent exists on closely related questions. In the absence of analogous precedent, I would review relevant decisions of courts of appeals outside the Third Circuit and of other district courts, for persuasive but non-binding authority.

3. **What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?**

   Response: A responsible district judge should interpret constitutional provisions by first examining the text of the Constitution itself, and the analysis of that text must then be guided by, and bounded by, prior precedent of the United States Supreme Court and the applicable United States Court of Appeals.

4. **What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?**

   Response: If confirmed as a District Court Judge, I would look to the Supreme Court's holdings in relevant cases that interpret the constitutional provision. If confirmed, my approach to constitutional interpretation will be the same as my approach to judicial review generally –and faithfully apply all controlling precedent of the Supreme Court and the Third Circuit.

5. **What are the constitutional requirements for standing?**

   Response: To satisfy constitutional standing, which is required by Article III's limit on federal-court jurisdiction to cases or controversies, plaintiffs must demonstrate (1) that they have suffered an injury in fact; (2) that the injury is fairly traceable to the defendant's

conduct; and (3) that a favorable decision will redress the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 563 (1992).

6. Do you believe there is a difference between "prudential" jurisdiction and Article III jurisdiction in the federal courts? If so, which jurisdictional requirements are prudential, and which are mandatory?

Response: In addition to the constitutional standing requirements set out in response to Question 5, federal courts have adhered to "a set of prudential principles that bear on the question of standing." *Lujan at 563*. Prudential limits are concerned with the proper role of courts in a democratic society. *Id.* Unlike constitutional standing, Congress can override courts' prudential standing decisions with legislation. *Id.* As might be expected, no single rule governs every issue of prudential standing. See *Clarke v. Sec. Indus. Ass'n*, 479 U.S. 388, 400 n.16 (1987). Two considerations that are typically invoked: (1) litigants may not assert the rights of third parties; (2) courts should refrain from adjudicating matters of wide public significance which amount to generalized grievances. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014).

7. How would you define the doctrine of administrative exhaustion?

Response: The doctrine of administrative exhaustion, also commonly referred to as the exhaustion of administrative remedies doctrine, prevents a litigant from seeking relief in the courts without first pursuing other established available remedies. The doctrine generally requires that a litigant must initiate and pursue as fully as possible all procedures established by a statute, law, rule, regulation, contractual provision or other authority that specifies the manner in which an aggrieved party may seek redress for claims before seeking a remedy in a new court or jurisdiction.

8. Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?

Response: The United States Supreme Court has recognized Congress' implied powers beyond those enumerated in the Constitution. In the landmark case of *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), the U.S. Supreme Court defined the scope of Article I, Section 8 of the United States Constitution, which provides that:

> The Congress shall have Power... To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

In its ruling, the Supreme Court established that the "Necessary and Proper" Clause, also known as the "Elastic Clause" of the U.S. Constitution gives the federal government certain implied powers that are not explicitly enumerated in the Constitution but assumed

to exist due to their being necessary to implement the expressed powers that are named in Article I, and that the federal government is supreme over the states, and so states' ability to interfere with the federal government is limited.

An implied power is for example the establishment by Congress of a national bank. See *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819).

9. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?

Response: The Supreme Court has stated that Acts of Congress are due a "strong presumption" of constitutionality, *see United States v. Watson*, 423 U.S. 411, 416 (1976). Accordingly, a court should declare a statute enacted by Congress unconstitutional in only limited circumstances. Such limited circumstances might include when a statute clearly violates a constitutional provision or when Congress has exceeded its authority granted under Article I of the Constitution. A district court judge should also declare a statute unconstitutional only when that result is compelled by binding Supreme Court and Circuit Court precedent.

10. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?

Response: as one example, in *Griswold v. Connecticut*, 381 U.S. 479 (1965), the Supreme Court found that the marital privacy right was implied by the specific provisions of the Bill of Rights, such as those in the First, Third, Fourth, and Fifth Amendments. It referenced earlier cases where the Court had found personal liberties that were constitutionally protected despite not being specifically enumerated in the Constitution, such as the constitutional right to parental control over childrearing. If confirmed as a district judge I would apply binding Supreme Court and Third Circuit precedents.

11. What rights are protected under substantive due process?

Response: In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court held that a right is fundamental for purposes of the substantive due process clause when it is "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty such that neither liberty nor justice would exist if they were sacrificed." Id. at 720. The Supreme Court has interpreted the Constitution to include certain fundamental rights even though the rights are not literally expressed in the text. Relying on the Due Process Clause, the United States Supreme Court has made clear that the "Due Process Clause specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,' and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Id.* If confirmed, I would apply the *Glucksberg* case along with any other relevant binding precedent from the Supreme Court and Third Circuit.

12. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?

Response: My views of substantive due process will be guided by relevant Supreme Court and Third Circuit precedent.

13. What are the limits on Congress's power under the Commerce Clause?

Response: The Supreme Court has identified three categories of activity that Congress may regulate under the Commerce Clause: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce, and persons or things in interstate commerce; and (3) "activities having a substantial relation to interstate commerce ... i.e., those activities that substantially affect interstate commerce." *United States v. Lopez.*

14. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?

Response: In *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1995), the Supreme Court held that suspect classifications that are those that are "so seldom relevant to the achievement of any legitimate state interest" such as classifications based upon race, alienage, national origin, gender, or illegitimacy would be subject to heightened scrutiny under the Equal Protection Clause. If confirmed I will be bound by Supreme Court and Third Circuit precedent on suspect classifications and will strictly adhere to that binding precedent.

15. How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?

Response: Checks and balances are designed to maintain the system of separation of powers thereby keeping each branch within its constitutional limits. The idea is that it is not enough to separate the powers and guarantee their independence but the branches need to have the constitutional means to defend their own legitimate powers from the encroachments of the other branches. Checks and balances guarantee that the branches are co-equal, that is, are balanced, so that they can limit each other, avoiding the abuse of power.

16. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?

Response: A branch of government cannot act without authorization from the Constitution. If a branch were to act outside of constitutional authority that action would be unconstitutional. If confirmed and presented with such a case I would evaluate the facts presented and apply all relevant Supreme Court and Third Circuit precedent.

17. What role should empathy play in a judge's consideration of a case?

Response: In consideration of a case I would be guided by my judicial philosophy as set out in response to Question 1 and empathy would play no role.

18. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: Both situations are would be an undesired result and I would strive to avoid either as a district judge.

19. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: I am not aware of what may have accounted for the increase. Additionally, under the doctrine of constitutional avoidance, a federal court is supposed to decide a case without reaching a constitutional question if there are other grounds upon which to base a decision. However, if no such ground exists, a federal court is required to declare a statute unconstitutional if considered in light of applicable precedent, it is clear that Congress exceeded its constitutional authority in enacting the statute or if the statute clearly violates the Constitution.

20. How would you explain the difference between judicial review and judicial supremacy?

Response: Judicial review is a process under which executive or legislative actions are subject to review by the judiciary. Judicial review is one of the checks and balances in the separation of powers: the power of the judiciary to supervise the legislative and executive branches. Judicial supremacy is the concept that the Supreme Court is the authoritative interpreter of the Constitution and that its decisions are binding on the other branches of government unless a constitutional amendment or Supreme Court decision overrules them.

21. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: Under the United States Constitution each branch of government has a duty to follow the Constitution, which is the fundamental law of the United States.

22. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.

Response: Under the United States Constitution the Legislative, Executive, and Judicial branches of the United States government are separate and distinct in order to prevent abuse of power. This separation of powers is associated with a system of checks and balances. Article III judges are judges of limited power, and it is the judges' responsibility to decide only the issue presented before them in the most evenhanded way possible under the precedents and the text of the law and statutes. Judges do not enforce the law or decide cases with the intent to achieve a particular policy or personal goal. This would be an impermissible exercise of their power under the Constitution.

23. How would you describe your approach to reading statutes—how much weight do you give to the plain meaning of the text? When we talk about the plain meaning of a statute, are we talking about the public understanding at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?

Response: If the statute at issue had previously been interpreted by the Supreme Court or Third Circuit, I would follow that precedent. If no precedent exists then I would first examine the text of the statute to determine its meaning. If clear and unambiguous, my inquiry would end and the statute itself would serve as the source of controlling authority. If the language were ambiguous then I would review the statute as a whole in order to determine its intent. I would also review whether analogous Supreme Court or Third Circuit precedent exists on closely related questions. In the absence of analogous precedent, I would review relevant decisions of courts of appeals outside the Third Circuit and of other district courts, for persuasive but non-binding authority.

24. As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: A lower court judge must apply the applicable precedent without reservation. If precedent does not speak to the issue at hand then the case would be considered one of first impression. In look to the text of the constitutional and analogous provisions.

25. Do you believe it is ever appropriate to look past jurisdictional issues if they prevent the court from correcting a serious injustice?

Response: No. A court's exercise of power is dependent upon satisfaction of jurisdictional predicates.

26. When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?

Response: The factors to be considered in sentencing are set forth in 18 U.S.C. 3553(a). The race, gender, nationality, sexual orientation or gender identity of an individual are not enumerated factors.

27. Last year, you were a panelist for the New Jersey State Bar Association's symposium on Race and the Law. Reportedly, the role of the courts in creating inequality among different racial groups was a popular topic of conversation. In your view, would it ever be appropriate to sentence a defendant who belongs to a historically disadvantaged group less severely than a similarly situated defendant who belongs to a historically advantaged group to correct systemic sentencing disparities?

Response: No. 18 U.S.C. §3553 provides that when sentencing defendants in criminal cases, the court, in determining the particular sentence to be imposed, shall consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." *Id.* at (a) (6). When applying the guidelines, "[i]n the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders...." *Id.* at (b) (1). If confirmed, I would be duty bound to follow the Supreme Court and Third Circuit precedent and controlling law as to sentencing.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
April 28, 2021

For all nominees:

1. **Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

   Response: No.

2. **Since becoming a legal adult, have you participated in any rallies or demonstrations where you or other participants have willfully damaged public or private property?**

   Response: No.

3. **Was Marbury v. Madison correctly decided?**

   Response: Yes. I am aware that previous nominees have responded that the precedent was correctly decided as longstanding and well-accepted Supreme Court precedent unlikely to be challenged in the future.

4. **Was Brown v. Board of Education correctly decided?**

   Response: Yes. I am aware that previous nominees have responded that the precedent was correctly decided as longstanding and well-accepted Supreme Court precedent unlikely to be challenged in the future.

5. **Was Loving v. Virginia correctly decided?**

   Response: Yes. I am aware that previous nominees have responded that the precedent was correctly decided as longstanding and well-accepted Supreme Court precedent unlikely to be challenged in the future.

6. **Was Roe v. Wade correctly decided?**

   Response: *Roe v. Wade* is settled law and I would faithfully follow this precedent and all Supreme Court precedent as a district judge.

7. **Was United States v. Virginia correctly decided?**

   Response: Please see my response to Question 6

8. Was District of Columbia v. Heller correctly decided?

Response: Please see my response to Question 6

9. Was Boumediene v. Bush correctly decided?

Response: Please see my response to Question 6.

10. Was Citizens United v. FEC correctly decided?

Response: Please see my response to Question 6.

11. Was Obergefell v. Hodges correctly decided?

Response: Please see my response to Question 6.

12. In the absence of controlling Supreme Court precedent, what factors determine whether it is appropriate for an en banc court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?

Response: Federal Rules of Appellate Procedure, Rule 35 controls when hearing or rehearing *en banc* may be ordered. The determination of when it is appropriate for an *en banc* court to consider its own precedent is not something upon which I would rule as a district judge.

13. In the absence of controlling Supreme Court precedent, what factors determine whether it is appropriate for an en banc court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?

Response: Please see my prior response to Question 12.

14. If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant?

Response: No. 18 U.S.C. §3553 provides that when sentencing defendants in criminal cases, the court, in determining the particular sentence to be imposed, shall consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." *Id.* at (a) (6). When applying the guidelines, "[i]n the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders...." *Id.* at (b) (1).

Questions for the Record for
Senator Thom Tillis for
Judge Julien Xavier Neals

1. Judge Neals, do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?

Response: Yes. Accordingly, if confirmed I will faithfully follow precedent of the United States Supreme Court and of the Third Circuit without consideration of any personal views.

2. What is judicial activism? Do you consider judicial activism appropriate?

Response: *Black's Law Dictionary* defines "judicial activism as a "philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions." It is a judge's responsibility to decide only the contested issues properly before the court and to base said decision on text and precedent, without regard to personal beliefs. Accordingly, if confirmed I will faithfully follow precedent of the United States Supreme Court and of the Third Circuit without consideration of any personal views.

3. Judge Neals, do you believe impartiality is an aspiration or an expectation for a judge?

Response: I believe that impartiality is an expectation, and if confirmed, however, for me personally will be a requirement.

4. Judge Neals, should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?

Response: No.

5. Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?

Response: A judge should always decide cases based on a thorough review of the record and application of settled law to the facts without regard to a particular desired outcome.

6. Judge Neals, should a judge interject his or her own politics or policy preferences when interpreting and applying the law?

Response: No.

7. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence? Do you believe the current

jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?

Response: If confirmed as a district judge, it would be my duty to faithfully apply Supreme Court and Third Circuit precedents including precedent regarding patent eligibility. I would look to cases including *Alice Corp. v. CLS Bank International*, 573 U.S. 208 (2014); *Bilski v. Kappos*, 561 U.S. 593 (2010); and *Diamond v. Chakrabarty*, 447 U.S. 303 (1980).

8. Judge Neals, if you are confirmed, what will you do to protect Americans' right to practice their faith during this incredibly difficult time?

Response: The Establishment Clause and the Free Exercise Clause of the First Amendment together state that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." If confirmed I would follow the rule of law in order to safeguard all rights and liberties protected by the United States Constitution.

9. Judge Neals, is there a line where a First Amendment activity or peaceful protesting becomes rioting and is no longer protected? What is that line? Do you agree that looting, burning property, and causing other destruction is not a protected First Amendment activity?

Response: The First Amendment protects the Free of speech, including the freedom to peacefully protest. The Supreme Court in *Brandenburg v. Ohio*, 395 U.S. 444 (1969), held that "the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Id.* at 447-448. If confirmed, I would have to carefully review the facts of the particular case and apply relevant Supreme Court and Third Circuit precedent to those facts to determine whether any particular activity falls within the protections of the First Amendment.

10. Judge Neals, how would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?

Response: The Second Amendment was reviewed by the United States Supreme Court in the *Heller* and *McDonald* decisions. In *Heller*, Justice Scalia's opinion for the Court held that the Second Amendment confers "an individual right to keep and bear arms." *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Court also stated that, "[l]ike most rights, the right secured by the Second Amendment is not unlimited." *Id.* at 626. In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government. If confirmed and I were presented with a case

involving the Second Amendment, I would apply Supreme Court and Third Circuit precedent to the facts of the case.

11. Judge Neals, what will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), Justice Scalia's opinion for the Court held that the Second Amendment "protects an individual right to possess a firearm unconnected to service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home." *Id.* at 595. In *McDonald v. City of Chicago*, 561 U.S. 742, 749-50 (2010), the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well as the federal government." If confirmed, I will faithfully apply Supreme Court and Third Circuit Court precedent when reviewing Second Amendment issues and in all other cases.

12. What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?

Response: The Supreme Court established the standard to be applied when confronted with cases involving qualified immunity and found that qualified immunity does not protect officials who violate "clearly established statutory or constitutional rights of which reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). This is an objective standard, meaning that the standard does not

depend on the subjective state of mind of the official but rather on whether a reasonable person would determine that the relevant conduct violated clearly-established law. Whether the law is "clearly established" depends on whether the case law has addressed the disputed issue or has established the "contours of the right" such that it is clear that official's conduct is illegal. *Id.* at 815.

13. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?

Response: The Supreme Court in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), held that the qualified immunity protections extend to "government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* at 815.

14. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: The Supreme Court established the scope of qualified immunity that must be applied, which is binding precedent.

15. Do you agree with the current state of the *Chevron* deference doctrine? Or do you believe there should be either more or less deference given to agencies?

Response: The Supreme Court holding in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), is binding precedent and must be followed when reviewing federal government agency actions.

16. How have your views on agency deference developed during your time as a district judge?

Response: I do not currently serve as a district judge but if confirmed would faithfully apply Supreme Court and Third Circuit precedent in this area of law.

Senator Chuck Grassley, Ranking Member
Questions for the Record
The Hon. Zahid Quraishi
Nominee to be United States District Judge for the District of New Jersey

1. **You have served our country in many capacities: you are a decorated Army JAG captain, who was stationed in Germany and deployed to Iraq twice; you served in the Department of Homeland Security as an assistant chief counsel for ICE; you were a federal prosecutor in the District of New Jersey, to which you are now nominated; and you are now a magistrate judge in the District of New Jersey. In addition, you have volunteered for public service in a range of ways, including service with the District of New Jersey's Criminal Justice Act Panel and the District's reentry program. Please describe how your significant history of service to our country has prepared you to serve as a federal district judge.**

   Response: I believe my professional experience has prepared me to serve as a district judge. As a magistrate judge, I have managed civil cases through completion. Additionally, I have also decided dispositive motions and stepped into the role of a district judge in civil matters when the parties have consented to my jurisdiction. Prior to serving as a federal judge, I practiced in federal court in my district as a civil practitioner. I also have a background in criminal law, serving as both a federal prosecutor and criminal defense attorney and as a military prosecutor in the United States Army. I am proud to have taken the oath to support and defend the Constitution of the United States on more than one occasion in my lifetime – and if confirmed, it would be my honor to perform all the duties incumbent upon me as a district judge under the very same Constitution I have previously sworn to protect.

2. **Do you agree with the Supreme Court's statement in *Bostock v. Clayton County*, 590 U.S. ___ (2020), that the Free Exercise Clause lies at the heart of a pluralistic society? If so, does that mean that the Free Exercise Clause legally requires that religious organizations and individuals should be free to act consistently with their beliefs in the public square?**

   Response: The U.S. Supreme Court's opinion in *Bostock v. Clayton County* is binding precedent which I would continue to follow if confirmed as a district judge. Writing for the majority in Bostock, Justice Gorsuch explained: "we are also deeply concerned with preserving the promise of the free exercise of religion enshrined in our Constitution; that guarantee lies at the heart of our pluralistic society." *Bostock c. Clayton County,* 140 S. Ct. 1731, 1754 (2020). I would likewise be bound by Supreme Court precedent, including cases regarding the Free Exercise Clause.

3. **Do you agree with the Supreme Court that the principle of church autonomy goes beyond a religious organization's right to hire and fire ministers? Please describe your view on whether and/or how the Supreme Court has placed limits on church autonomy.**

Response: I have not had occasion to closely study Supreme Court precedent in this area, though I am aware of recently Supreme Court cases including *Our Lady of Guadalupe School v. Morrisey-Berru,* 140 S. Ct. 2049 (2020). I agree that the Supreme Court's decisions regarding the First Amendment and religious liberty are binding authority which I would faithfully continue to follow if confirmed as a district judge.

4. **The Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that the Second Amendment protects an individual's right to possess a firearm, regardless of the individual's participation in a "well regulated Militia." The Supreme Court later expanded on that right in *McDonald v. Chicago*, 561 U.S. 742 (2010), when it held that the Fourteenth Amendment's Due Process Clause incorporated the Second Amendment. What is the applicable level of scrutiny to a Second Amendment challenge in the Third Circuit?**

Response: Pursuant to Third Circuit precedent post-*Heller*, a Second Amendment Challenge is subject to the following two-part approach: "ask first whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee of the right to bear arms. If it does, the second step is to evaluate the law under some form of heightened scrutiny." *Ass'n of N.J. Rifle & Pistol Clubs Inc. v. A.G. N.J.*, 974 F.3d 241-42 (3d Cir. 2020) (citing *United States v. Marzarella,* 614 F.3d 85, 89 (3d. Cir. 2010)). "The level of scrutiny to be applied is determined by whether the law burdens the core of the Second Amendment guarantee. . . . Laws that do burden that core receive strict scrutiny, whereas those that do not burden it receive intermediary scrutiny." *Id.*at 242 (citing *Marzarella*, 61 F.3d at 89, 92, 96-97).

5. **Is the Second Amendment personal right to "keep" arms at all different from the right to "bear" arms?**

Response: The Second Amendment confers "an individual right to keep and bear arms." *District of Columbia v. Heller,* 554 U.S. 570, 595 (2008). In *McDonald v. City of Chicago,* 561 U.S. 742 (2010), this right was identified as a fundamental right that applies to the states pursuant to the Fourteenth Amendment. As with any issue that may come before me, I would review and apply binding precedent from the Third Circuit and Supreme Court.

6. **Under the Supreme Court's First Amendment jurisprudence, can someone shout "fire" in a crowded theater?**

Response: The Supreme Court has never specifically addressed the issue of whether shouting "fire" is unprotected speech under the First Amendment. However, the Supreme Court has held that certain speech is not protected if it "is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio,* 395 U.S. 444 (1969).

7. **One of the federal district court's important functions is reading statutes and regulations, determining what they mean, and determining how they apply to the facts at hand.**

   a. **How would you determine whether statutory or regulatory text was ambiguous?**

      Response: In a case of first impression where there was not already Supreme Court or Third Circuit precedent that specifically interpreted the statutory provision, I would first review the plain language of the statute to determine if the language is clear. If the language is clear, my inquiry ends and I would apply the law to the facts of the case. If there is ambiguity in the language, I would look to precedent from the Third Circuit and Supreme Court interpreting analogous provisions and I also would consider canons of interpretation that those courts have approved. If there was no binding precedent on the issue, I would also consider persuasive authority from other courts.

   b. **Would you apply different standards to determining whether statutory text and regulatory text were ambiguous? If so, how would the ambiguity standards differ?**

      Response: No.

   c. **When interpreting ambiguous text, what tools would you use to resolve the ambiguity?**

      Response: I would refer to canons of interpretation approved by the Third Circuit and Supreme Court. I might also refer to Supreme Court or Third Circuit precedent interpreting analogous provisions in other statutes.

   d. **When interpreting ambiguous text, how would you handle two competing and contradictory canons of statutory interpretation?**

      Response: I would consider whether the Supreme Court or Third Circuit has offered any guidance on weighing the two cannons at issue.

8. **When you were in private practice, you advised clients on how to prepare for opening marijuana businesses in New Jersey. You also said, in 2018, that your firm was focusing on the "key issue" of how state marijuana laws would interact with the federal Controlled Substances Act.[1] You said that "[n]o state act of legalization by itself can override this federal criminal statute."[2] Of course, under federal law, marijuana is still illegal.**

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[1] Jeannie O'Sullivan, *Riker Danzig, Cole Schotz Launch NY Cannabis Practice*, Law360 (Mar. 5, 2018) (SJQ Attachments at 118).
[2] *Id.*

a. When you were in private practice, did you ever advise a client to take steps that were inconsistent with the federal Controlled Substances Act? If so, please explain.

Response: No. The Controlled Substance does not prohibit an individual from applying for a distribution license with the State of New Jersey. I assisted clients with the application process in accordance with the Rules of Professional Conduct and at all times provided legal advice consistent with the Controlled Substances Act.

b. As a district judge, would you apply the Controlled Substances Act as it is written—even if a state law was more permissive than the federal law?

Response: Yes.

9. Please explain, with detail, the process by which you became a district-court nominee.

Response: I first communicated with Senator Booker's office regarding an opening on the United States District Court in February 2020. I later interviewed with members of Senator Booker's Federal Selection Committee, his staff, and then Senator Booker himself. I also interviewed with Senator Robert Menendez. I first received an email communication from attorneys from the White House Counsel's Office on January 27, 2021, to further discuss my potential candidacy with them. I spoke with attorneys from White House Counsel's Office that same day and was advised that I was being considered for one of the district judge vacancies in my district. Since January 27, 2021, I have been in contact with officials from White House Counsel's Office and the Office of Legal Policy at the Department of Justice. On March 30, 2021, the President announced his intent to nominate me.

10. Have you had any conversations with individuals associated with the group Demand Justice, including but not limited to Brian Fallon, or Chris Kang, in connection with this or any other potential judicial nomination? If so, please explain the nature of those conversations.

Response: No.

11. Have you had any conversations with individuals associated with the American Constitution Society, including but not limited to Russ Feingold, in connection with this or any other potential judicial nomination? If so, please explain the nature of those conversations.

Response: No.

12. Please explain with particularity the process by which you answered these questions.

Response: On May 5, 2021, these questions were forwarded to me by the Office of Legal Policy at the Department of Justice. I personally reviewed and drafted all of my answers. I later shared my answers with the Office of Legal Policy for input before submitting my answers to the Committee. The answers that I have submitted to the Committee are my own.

13. Do these answers reflect your true and personal views?

Response: Yes.

Nomination of the Honorable Zahid N. Quraishi
to be United States District Judge for the District of New Jersey
Questions for the Record
Submitted May 5, 2021

QUESTIONS FROM SENATOR COTTON

1. **Since becoming a legal adult, have you ever been arrested for or accused of committing a hate crime against any person?**

   Response: No.

2. **Since becoming a legal adult, have you ever been arrested for or accused of committing aviolent crime against any person?**

   Response: No.

3. **Please describe with particularity the process by which you answered these questions andthe written questions of the other members of the Committee.**

   Response: On May 5, 2021, these questions were forwarded to me by the Office of Legal Policy at the Department of Justice. I personally reviewed and drafted all of my answers. I later shared my answers with the Office of Legal Policy for input before submitting my answers to the Committee. The answers that I have submitted to the Committee are my own.

4. **Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. Ifgovernment officials assisted with writing or drafting your answers, please also identifythe department or agency with which those officials are employed.**

   Response: No.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Zahid N. Quraishi, Nominee for the District of New Jersey

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. **Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's philosophy from Warren, Burger, Rehnquist, or Robert's Courts is most analogous with yours.**

   Response: As a magistrate judge, I have adhered to a judicial philosophy of applying the law to the particular facts of a case without regard for personal opinion or the end result. If confirmed, I would continue to employ this same philosophy. I do not associate my personal judicial philosophy with any justice who served on the Supreme Court.

2. **Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

   Response: No. I would faithfully follow Supreme Court and Third Circuit precedent on interpreting the Constitution.

3. **President Biden has created a commission to advise him on reforming the Supreme Court. Do you believe that Congress should increase, or decrease, thenumber of justices on the U.S. Supreme Court? Please explain.**

   Response: I am not in a position to assess whether Congress should increase or decrease the number of justices on the Supreme Court and defer to Congress on that issue. However, regardless of Congress's decision on this issue, as a magistrate judge, and if confirmed as a district judge, I would remain bound by any decisions issued by the Supreme Court as binding precedent.

4. **Do you personally own any firearms? If so, please list them.**

   Response: No.

5. **Have you ever personally owned any firearms?**

   Response: No.

6. **Have you ever used a firearm? If so, when and under what circumstances?**

   Response: Yes. I was qualified to carry and use firearms while serving in the United States Army.

7. Is the ability to own a firearm a personal civil right?

Response: Yes. The Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008), held as much in its precedential decision.

8. Is the criminal justice system systemically racist?

Response: I am not in a position to assess the nature of the entire criminal justice system. As a sitting magistrate judge, I treat all individuals who appear before me equally and would continue to do so if confirmed to serve as a district judge.

Questions for the Record for Zahid N. Quraishi
From Senator Mazie K. Hirono

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:

   a. **Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

      Response: No.

   b. **Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

      Response: No.

Senator Mike Lee
Questions for the Record
Zahid N. Quraishi, District of N.J.

1. **How would you describe your judicial philosophy?**

Response: As a magistrate judge, I have adhered to a judicial philosophy of applying the law to the particular facts of a case without regard for personal opinion or the end result. If confirmed, I would continue to employ this same philosophy.

2. **What sources would you consult when deciding a case that turned on theinterpretation of a federal statute?**

Response: I would first look to binding precedent from the Supreme Court and Third Circuit interpreting the part of the statute that was at issue. If there was no binding precedent as to that part of the statute, I would review the plain language of the statute to determine if the language is clear. If the language is clear, my inquiry ends and I would apply the law to the facts of the case. If there is ambiguity in the language, I would also consider canons of interpretation that those courts have approved, and I would look to precedent from the Third Circuit and Supreme Court interpreting similar provisions in other statutes. If there was no binding precedent on the issue, I would also consider persuasive authority from other courts.

3. **What sources would you consult when deciding a case that turned on theinterpretation of a constitutional provision?**

Response: I would look to binding precedent from the Supreme Court and Third Circuit. If there was no binding precedent on the issue, I would also consider persuasive authority from other courts.

4. **What role do the text and original meaning of a constitutional provision playwhen interpreting the Constitution?**

Response: If confirmed, I would follow Supreme Court and Third Circuit precedent about the role of text and the original meaning of the Constitution when interpreting the Constitution.

5. **What are the constitutional requirements for standing?**

Response: The constitutional requirements for standing as provided by the Supreme Court is derived from Article III of the Constitution. The Supreme Court identified a three-part test for establishing standing in federal court: (1) injury in fact; (2) causation; and (3) likelihood of redress. *Lujan v. Defenders of Wildlife,* 504 U.S. 555 (1992).

6. **Do you believe there is a difference between "prudential"**

jurisdiction andArticle III jurisdiction in the federal courts? If so, which jurisdictional requirements are prudential, and which are mandatory?

Response: If confirmed, my view of jurisdictional issues will be guided by Supreme Court and Third Circuit precedent. Article III standing requires a showing that plaintiff has "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins,* 578 U.S. 300 (2016*)* (citation omitted*)*. If Article III standing has been met, prudential standing requires "(1) that a litigant assert his or her own legal interest rather than those of a third party; (2) that the grievance not be so abstract as to amount to a generalized grievance; (3) and that the [plaintiff's] interests are arguably within the 'zone of interests' protected by statute, rule, or constitutional provision on which the claim is based." *Lewis v. Alexander,* 685 F.3d 325 (3d Cir. 2012).

7. How would you define the doctrine of administrative exhaustion?

Response: The doctrine of administrative exhaustion refers to the notion that a person challenging an agency decision should first pursue all remedies available at the agency level before seeking judicial review. *See, e.g., McKart v. United States,* 395 U.S. 185, 193 (1969) *(*quoting *Myers v. Bethlehem Shipbuilding Corp.,* 303 U.S. 41, 50-51 (1938*)).*

8. Do you believe Congress has implied powers beyond those enumerated in theConstitution? If so, what are those implied powers?

Response: The Supreme Court has held that Congress has implied powers under the Necessary and Proper Clause. *See, e.g., McCulloch v. Maryland,* 17 U.S. 316, 411-412 (1819). If confirmed, I would faithfully follow such precedent.

9. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?

Response: I would faithfully follow precedent from the Third Circuit and Supreme Court on this issue.

10. Does the Constitution protect rights that are not expressly enumerated in theConstitution? Which rights?

Response: The Supreme Court has found that the Constitution protects some rights that are not expressly enumerated. *See, e.g., Griswald v. Connecticut,* 381 U.S. 479 (1965). I would faithfully follow Supreme Court

precedent here.

11. What rights are protected under substantive due process?

Response: Fundamental rights are protected under substantive due process. The Supreme Court has identified the basis for such protection from the due process clauses of the Fifth and Fourteenth Amendments to the Constitution. The Supreme Court "has regularly observed that the Due Process Clause specially protects those fundamental rights and liberties, which are, objectively, deeply rooted in this Nation's history and tradition." *Washington v. Glucksberg,* 521 U.S. 702, 720-21 (1997). If confirmed, I would adhere to Supreme Court precedent.

12. If you believe substantive due process protects some personal rights such as aright to abortion, but not economic rights such as those at stake in *Lochner v.New York*, on what basis do you distinguish these types of rights for constitutional purposes?

Response: My views on substantive due process will be guided by Supreme Court and Third Circuit precedent.

13. What are the limits on Congress's power under the Commerce Clause?

Response: The Supreme Court has addressed the scope of Congress's power under the Commerce Clause in *United States v. Morrison,* 529 U.S. 598 (2000) and *United States v. Lopez,* 514 U.S. 549 (1995), among other cases. In these cases, the Supreme Court struck down the statute at issue because of the absence of a nexus to economic activity. If confirmed, I would adhere to Supreme Court precedent.

14. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?

Response: The Supreme Court has identified race, national origin, religion, and alienage as suspect classes. If confirmed, I would be bound by Supreme Court and Third Circuit precedent on suspect classifications and I would faithfully apply such precedent. *See, e.g., City of Cleburne v. Cleburne Living Ctr.,* 473 U.S. 432, (1985).

15. How would you describe the role that checks and balances and separation ofpowers play in the Constitution's structure?

Response: Separation of powers refers to the division of responsibility into our three branches of government in order to check and limit the powers of the other in order to protect constitutional liberties.

16. How would you go about deciding a case in which one branch assumed anauthority not granted it by the text of the Constitution?

Response: I would faithfully follow precedent from the Third Circuit and Supreme Court on this issue.

17. What role should empathy play in a judge's consideration of a case?

Response: None.

18. What's worse: Invalidating a law that is, in fact, constitutional, or upholding alaw that is, in fact, unconstitutional?

Response: Invalidating a law that is constitutional and upholding a law that is unconstitutional are both improper.

19. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantlymore common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: I cannot speak for the Supreme Court nor can I speak to changes in circumstances from 1789-1857 to the present that would have necessarily led to the Supreme Court increased invalidations of federal statutes. Nonetheless, I would faithfully follow its decisions and the decisions of the Third Circuit as binding precedent when reviewing the constitutionality of a federal statute.

20. How would you explain the difference between judicial review and judicialsupremacy?

Response: Judicial review refers to the authority of the Supreme Court to review the actions of the other branches of government and determine whether such actions are in compliance with the Constitution. Judicial supremacy is the concept that the Supreme Court is the authoritative interpreter of the Constitution and that its decisions are binding on the other branches of government unless and until a constitutional amendment or subsequent Supreme Court decision overrules them.

21. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affectingthe whole people is to be irrevocably fixed

by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independentobligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: No one, including elected officials, is above the law. Elected officials are duty bound to follow the Constitution.

22. **In Federalist 78, Hamilton says that the courts are the least dangerous branchbecause they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.**

Response: Judges are not policy makers. Judges are to remain impartial and apply the law to the facts of a case without consideration of personal opinion or end result.

23. **How would you describe your approach to reading statutes—how much weight do you give to the plain meaning of the text? When we talk about theplain meaning of a statute, are we talking about the public understanding atthe time of enactment, or does the meaning change as social norms and linguistic conventions evolve?**

Response: I would first look to binding precedent from the Supreme Court and Third Circuit interpreting the part of the statute that was at issue. If there was no binding precedent as to that part of the statute, I would review the plain language of the statute to determine if the language is clear. If the language is clear, my inquiry ends and I would apply the law to the facts of the case. If there is ambiguity in the language, I would also consider canons of interpretation that those courts have approved, and I would look to precedent from the Third Circuit and Supreme Court interpreting similar provisions in other statutes. If there was no binding precedent on the issue, I would also consider persuasive authority from other courts.

24. **As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does notappear to speak directly to the issue at hand? In applying a precedent that hasquestionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where**

appropriate and reasonably possible?

Response: A lower court judge should apply precedent regardless of whether the lower court judge agrees with the decision or reasoning. It is not for a lower court judge to insert his or her opinion on what precedent should be – but rather – should apply precedent as it is.

25. Do you believe it is ever appropriate to look past jurisdictional issues if theyprevent the court from correcting a serious injustice?

Response: No. Federal courts are courts of limited jurisdiction and I would eb bound by those jurisdictional limits.

26. When sentencing an individual defendant in a criminal case, what role, if any,should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?

Response: None. The factors to be considered in sentencing are found in 18 U.S.C. § 3553(a). Group identities are not factors listed in the statute.

27. **Would it ever be appropriate to sentence a defendant who belongs to a historically disadvantaged group less severely than a similarly situated defendant who belongs to a historically advan**taged group to correct systemicsentencing disparities?

Response: No. The factors to be considered in sentencing are found in 18 U.S.C. § 3553(a); historical disadvantage or advantage are not among those factors. One of the factors set forth in § 3553(a) is "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct."

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
April 28, 2021

For all nominees:

1. **Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

   Response: No.

2. **Since becoming a legal adult, have you participated in any rallies or demonstrations where you or other participants have willfully damaged public or private property?**

   Response: No.

3. **Was Marbury v. Madison correctly decided?**

   Response: Yes. As a sitting magistrate judge on a lower court, I hesitate to opine on whether any decision by the Supreme Court was correctly decided since cases involving these issues may come before the district court. That being said, the Court's decision in *Marbury v. Madison* is a seminal decision establishing judicial review which I believe is not an issue that will arise again before the Court.

4. **Was Brown v. Board of Education correctly decided?**

   Response: Yes. As a sitting magistrate judge on a lower court, I hesitate to opine on whether any decision by the Supreme Court was correctly decided since cases involving these issues may come before the district court. That being said, when it comes specifically to the Court's decision in *Brown v. Board of Education*, a decision that is so intertwined in the very fabric of American life and our country's history, I do believe it was correctly decided and is not an issue that will arise again before the Court.

5. **Was Loving v. Virginia correctly decided?**

   Response: Yes. As a sitting magistrate judge on a lower court, I hesitate to opine on whether any decision by the Supreme Court was correctly decided since cases involving these issues may come before the district court. That being said, when it comes specifically to the Court's decision in *Loving v. Virginia*, a decision that is so intertwined in the very fabric of American life and our country's history, I do believe it was correctly decided and is not an issue that will arise again before the Court.

6. Was Roe v. Wade correctly decided?

Response: As a sitting magistrate judge on a lower court, I do not believe it is proper for me to opine on the correctness of Supreme Court decisions other than the exceptions above, but I would faithfully follow all precedential decisions from the Supreme Court and Third Circuit.

7. Was United States v. Virginia correctly decided?

Response: Please see my answer to Question 6.

8. Was District of Columbia v. Heller correctly decided?

Response: Please see my answer to Question 6.

9. Was Boumediene v. Bush correctly decided?

Response: Please see my answer to Question 6.

10. Was Citizens United v. FEC correctly decided?

Response: Please see my answer to Question 6.

11. Was Obergefell v. Hodges correctly decided?

Response: Please see my answer to Question 6.

12. In the absence of controlling Supreme Court precedent, what factors determine whether it is appropriate for an en banc court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?

Response: Pursuant to Chapter 9.1 of the Internal Operating Procedures of the United States Court of Appeals for the Third Circuit, "the holding of a panel in a precedential opinion is binding on subsequent panels." The Third Circuit must sit *en banc* to overturn its precedent. Federal Rule of Appellate Procedure 35 provides that sitting *en banc* should only occur when the panel's decision conflicts with Supreme Court precedent, is "necessary to secure and maintain uniformity of the court's decisions," or the case involves "one or more questions of exceptional importance." As a sitting magistrate judge on a lower court, I defer to the Third Circuit on its consideration of these factors when determining whether it is appropriate for an *en banc* court to reaffirm its own precedent "that conflicts with the original public meaning of the text of the Constitution."

13. In the absence of controlling Supreme Court precedent, what factors determine whether it is appropriate for an en banc court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?

Response: Pursuant to Chapter 9.1 of the Internal Operating Procedures of the United States Court of Appeals for the Third Circuit, "the holding of a panel in a precedential opinion is binding on subsequent panels." The Third Circuit must sit *en banc* to overturn its precedent. Federal Rule of Appellate Procedure 35 provides that sitting *en banc* should only occur when the panel's decision conflicts with Supreme Court precedent, is "necessary to secure and maintain uniformity of the court's decisions," or the case involves "one or more questions of exceptional importance." As a sitting magistrate judge on a lower court, I defer to the Third Circuit on its consideration of these factors when determining whether it is appropriate for an *en banc* court to reaffirm its own precedent "that conflicts with the original public meaning of the text of a statute."

14. If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant?

Response: Congress has identified certain factors, codified in 18 U.S.C. § 3553(a), to be considered when sentencing a criminal defendant. One of these factors is "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." If confirmed as a district judge, I would consider all the factors identified in the statute.

For Judge Zahid Quraishi:

1. Please list some examples from your time as a federal magistrate court judge of when your rulings conflicted with your personal policy preferences.

Response: I do not recall having any personal policy preferences which conflicted with a judicial decision while serving as a magistrate judge.

Questions for the Record for
Senator Thom Tillis for
Questions for Judge Zahid Nisar Quraishi

1. **Judge Quraishi, do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

Response: Yes.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

Response: Judicial activism occurs when judges go beyond applicable law to decide cases based on personal views and a desired outcome. I do not consider judicial activism appropriate.

3. **Judge Quraishi, do you believe impartiality is an aspiration or an expectation for a judge?**

Response: Expectation.

4. **Judge Quraishi, should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

Response: No.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

Response: Yes. There is nothing to reconcile - the role of a judge is to apply the law to the particular facts of a case irrespective of whether the result is desired.

6. **Judge Quraishi, should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

Response: No.

7. **Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence? Do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?**

Response: As a sitting magistrate judge on a lower court, I do not believe it is proper for me to opine on the current state of Supreme Court decisions other than to note that I would faithfully follow all precedential decisions from the Supreme Court and Third Circuit.

8. **Judge Quraishi, if you are confirmed, what will you do to protect Americans' right to practice their faith during this incredibly difficult time?**

Response: The right to freedom of religion is a core freedom protected by the First Amendment of the Constitution. If confirmed, I would faithfully follow all precedential decisions from the Supreme Court and Third Circuit on this and any other issue.

9. **Judge Quraishi, is there a line where a First Amendment activity or peaceful protesting becomes rioting and is no longer protected? What is that line? Do you agree that looting, burning property, and causing other destruction is not a protected First Amendment activity?**

Response: The First Amendment protects the freedom of speech including the freedom to peacefully protest. However, the First Amendment does not protect all speech. *See, e.g., Chaplinsky v. State of New Hampshire,* 315 U.S. 568 (1942). If confirmed, I would have to carefully review the facts of the particular case and apply controlling Third Circuit and Supreme Court precedent to these facts to determine whether any particular activity falls within the protection of the First Amendment.

10. **Judge Quraishi, how would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?**

Response: If confirmed, I would faithfully follow all precedential decisions from the Supreme Court and Third Circuit on this issue.

11. **Judge Quraishi, what will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

Response: The Second Amendment confers "an individual right to keep and bear arms." *District of Columbia v. Heller,* 554 U.S. 570, 595 (2008). In *McDonald v. City of Chicago,* 561 U.S. 742 (2010), this right was identified as a fundamental right that applies to the states pursuant to the Fourteenth Amendment. If confirmed, I would faithfully follow all precedential decisions from the Supreme Court and Third Circuit on this issue.

12. **What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?**

Response: Qualified immunity provides government officials immunity from suit for their actions in certain circumstances. In considering whether qualified immunity is appropriate in a particular case, I would consider whether the defendant was acting as a government official performing a discretionary function. I would then consider whether the specific acts taken by the official met the "good faith" and "objectively reasonable" test set forth in *Harlow v. Fitzgerald,* 457 U.S. 800, 816 (1982). Supreme Court precedent makes clear that "qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *City of Escondido v. Emmons,* 139 S. Ct. 500, 503 (2019) (quoting *Kisela v. Hughes,* 138 S. Ct. 1148, 1152 (2018)).

13. **Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?**

Response: If confirmed as a district judge, I would faithfully apply Supreme Court and Third Circuit precedent regarding issues of qualified immunity.

14. **What do you believe should be the proper scope of qualified immunity protections for law enforcement?**

Response: This is an issue which is under review by state and federal agencies and legislatures. I would leave the policy determinations to the legislative and executive branches.

15. **Do you agree with the current state of the *Chevron* deference doctrine? Or do you believe there should be either more or less deference given to agencies?**

Response: If confirmed as a district judge, I would faithfully apply Supreme Court and Third Circuit precedent, including *Chevron.*

16. **How have your views on agency deference developed during your time as a district judge?**

Response: I have not served as a district judge. If confirmed, I would faithfully apply Supreme Court and Third Circuit precedent, including *Chevron*, regardless of any personal views I may have if any.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Regina Rodriguez
Nominee to be United States District Judge for the District of Colorado

1. **You have had an impressive career. What do you think makes you qualified to be a district judge?**

   Response: I have over thirty years of experience practicing law. During that time, I have had the privilege of representing a wide array of clients in a diverse range of cases. Not only did I represent the United States for many years while at the U.S. Attorney's Office, I have also represented both plaintiffs and defendants in private practice in civil as well as criminal matters. In both the public and private sector, I gained significant trial experience.

   I have tried more than 30 cases. I understand the pace of litigation, the rules of evidence and the importance of the rule of law. This practical and recent experience in the courtroom will bring credibility and practical application to my work should I be appointed as a district judge.

2. **Do you think that your being a law firm partner and former prosecutor makes you more or less qualified to be a district judge?**

   Response: I believe that my experience across a broad spectrum of practice areas, in both government and the private sector, on behalf of plaintiffs and defendants, corporations and private individuals, are experiences that would be helpful if confirmed as a district judge. I would note that while I worked in the U.S. Attorney's Office and the Department of Justice for several years, my role was as a civil attorney rather than as a criminal prosecutor.

3. **In the context of federal case law, what is super precedent? Which cases, if any, count as super precedent?**

   Response: "Super precedent" is not a term used or defined by the Supreme Court. If confirmed, my role as a district judge will be to strictly adhere to all precedent set forth by the Tenth Circuit and the Supreme Court.

4. **Under the Supreme Court's First Amendment jurisprudence, can someone shout "fire" in a crowded theater?**

   Response: Justice Holmes used the phrase "shouting fire in a crowded theater" in the seminal U.S. Supreme Court case, *Schenck v. United States*, 249 U.S. 47 (1919). This case articulated the test for limitations on free speech—the printed or spoken word may not be the subject of previous restraint or subsequent punishment unless its expression creates a clear and present danger of bringing about a substantial evil. Justice Holmes' statement, and subsequent Supreme Court precedent, suggest that both the content and context of speech are critical elements of a First Amendment analysis. *See e.g., F.C.C. v. Pacifica*

Found., 438 U.S. 726, 744 (1978). The *Schenck* test was modified by the Supreme Court in *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) which provided that speech could only be banned when it was directed to and likely to incite "imminent lawless action." There is a large body of Supreme Court and Tenth Circuit precedent interpreting the First Amendment. If confirmed, I would strictly follow that precedent.

5. **Do you agree with the Supreme Court's statement in *Bostock v. Clayton County*, 590 U.S. ___ (2020), that the Free Exercise Clause lies at the heart of a pluralistic society? If so, does that mean that the Free Exercise Clause legally requires that religious organizations and individuals should be free to act consistently with their beliefs in the public square?**

Response: Writing for the majority in *Bostock*, Justice Gorsuch explained: "We are also deeply concerned with preserving the promise of the free exercise of religion enshrined in our Constitution; that guarantee lies at the heart of our pluralistic society." *Bostock v. Clayton Cty.*, Georgia, 140 S. Ct. 1731, 1754, (2020). The text of the First Amendment protects the free exercise of religion. The Supreme Court has interpreted this provision in a number of cases. If confirmed, I would be bound by the Supreme Court's interpretation and would follow that binding precedent.

6. **Please explain, with detail, the process by which you became a district-court nominee.**

Response: In 2015, Colorado Senators Michael Bennet and Cory Gardner each appointed a Judicial Nominating Commission. I submitted an application to each Commission and was interviewed by Senator Gardner's Commission on October 20, 2015, and Senator Bennet's Commission on December 15, 2015. My name was one of three names recommended to Senator Bennet by his Commission. My name was one of four names recommended to Senator Gardner by his Commission. On January 7, 2016, I met with Senator Bennet and his staff in Denver. On January 26, 2016, I met with Senator Gardner in Denver. On February 9, 2016, Senators Bennet and Gardner sent their recommendations to the White House. I was one of three candidates recommended by both Senators; Senator Gardner recommended one additional candidate. After February 18, 2016, I was in contact with officials from the Office of Legal Policy at the Department of Justice. On April 4, 2016, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, District of Columbia. On April 28, 2016, the President submitted my nomination to the Senate. I did not receive a hearing, and that nomination expired.

Early in 2021, I was contacted by Senator Bennet's office to inquire whether I was willing to re-engage in the judicial nomination process. I spoke with Senators Bennet and Hickenlooper in mid-January. On January 27, 2021, I interviewed with attorneys from the White House Counsel's Office, and since that time I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On February 3, 2020, Senators

Bennet and Hickenlooper recommended me to serve on the United Stated District Court for the District of Colorado. On March 30, 2021, the President announced his intent to nominate me.

7. **Have you had any conversations with individuals associated with the group Demand Justice, including but not limited to Brian Fallon, or Chris Kang, in connection with this or any other potential judicial nomination? If so, please explain the nature of those conversations.**

   Response: No.

8. **Have you had any conversations with individuals associated with the American Constitution Society, including but not limited to Russ Feingold, in connection with this or any other potential judicial nomination? If so, please explain the nature of those conversations.**

   Response: I spoke with Ellen K. Giarrantana in early 2021. Ms. Giarrantana indicated she was compiling a list of potentially qualified candidates for the vacant district court position in Colorado. She indicated she was a member of the American Constitution Society's Colorado chapter. She asked about my background and I referred her to my SJQ filed in 2016.

9. **Please explain with particularity the process by which you answered these questions.**

   Response: On May 5, 2021, these questions were forwarded to me by the Office of Legal Policy at the Department of Justice. I personally reviewed these questions, undertook legal research as necessary, and drafted all of my answers. I then shared my answers with the Office of Legal Policy for feedback before submitting my answers to the Committee.

10. **Do these answers reflect your true and personal views**?

    Response: Yes.

Nomination of Regina M. Rodriguez
to be United States District Judge for the District of Colorado
Questions for the Record
Submitted May 5, 2021

QUESTIONS FROM SENATOR COTTON

1. **Since becoming a legal adult, have you ever been arrested for or accused of committing a hate crime against any person?**

   Response: No.

2. **Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?**

   Response: No.

3. **Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.**

   Response: On May 5, 2021, these questions were forwarded to me by the Office of Legal Policy at the Department of Justice. I personally reviewed these questions, undertook legal research as necessary, and drafted all of my answers. I then shared my answers with the Office of Legal Policy for feedback before submitting my answers to the Committee.

4. **Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. If government officials assisted with writing or drafting your answers, please also identify the department or agency with which those officials are employed.**

   Response: No.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Regina M. Rodriguez, Nominee for the District of Colorado

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. **Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's philosophy from Warren, Burger, Rehnquist, or Robert's Courts is most analogous with yours.**

   Response: I do not ascribe to a particular judicial philosophy. I believe that a district judge should decide each case on the particular facts and law presented in that case. Federal courts are courts of limited jurisdiction. My approach, if I am confirmed, would be to determine whether the case is properly before me and, if so, to review and rule in each case based upon the admissible facts and controlling law.

2. **Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

   Response: A district judge is bound by the interpretation of the Constitution as set forth by the U.S. Supreme Court. If confirmed, I would follow that and all other binding precedent if called upon to interpret the Constitution.

3. **President Biden has created a commission to advise him on reforming the Supreme Court. Do you believe that Congress should increase, or decrease, thenumber of justices on the U.S. Supreme Court? Please explain.**

   Response: As a nominee for the district court, I take no position on reforming the Supreme Court. This is a matter reserved for the legislative and executive branches.

4. **Do you personally own any firearms? If so, please list them.**

   Response: No.

5. **Have you ever personally owned any firearms?**

   Response: No.

6. **Have you ever used a firearm? If so, when and under what circumstances?**

   Response: Yes. I have used firearms on several occasions for recreational

target practice.

7. Is the ability to own a firearm a personal civil right?

Response: Yes. The Second Amendment confers, "an individual right to keep and bear arms." *District Court v. Heller*, 554 U.S. 570, 595 (2008). In *McDonald v. City of Chicago,* 561 U.S. 742 (2010) this right was identified as a fundamental right that applies to the states pursuant the Fourteenth Amendment.

8. Is the criminal justice system systemically racist?

Response: The term "systemically racist" is not a term defined under the law. There is evidence suggesting that people of color have been disproportionately impacted by the criminal justice system – for example, the U.S. Sentencing Commission has found that sentencing disparities still exist between similarly situated offenders based on their race. There is a rich body of federal jurisprudence specifically intended to ensure that all people are treated equally under the laws. If confirmed, I will follow the applicable federal precedent and strive to ensure that I am treating every litigant in my courtroom fairly.

Questions for the Record for Regina M. Rodriguez
From Senator Mazie K. Hirono

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:

   a. **Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

      Response: No.

   b. **Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

      Response: No.

Senator Mike Lee
Questions for the Record
Regina M. Rodriguez, District of Colorado

1. **How would you describe your judicial philosophy?**

Response: I do not ascribe to a particular judicial philosophy. I believe that a district judge should decide each case on the particular facts and law presented in that case. Federal courts are courts of limited jurisdiction. My approach, if I am confirmed, would be to determine whether the case is properly before me and, if so, to review and rule in each case based upon the admissible facts and controlling law.

2. **What sources would you consult when deciding a case that turned on the interpretation of a federal statute?**

Response: I would start by reviewing the text of the statute in question. I would review and follow Tenth Circuit and Supreme Court precedent.

3. **What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?**

Response: I would start by reviewing the constitutional provision. I would review and follow Tenth Circuit and Supreme Court precedent.

4. **What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?**

Response: A district judge is bound by the interpretation of the Constitution as set forth by the United States Supreme Court. If confirmed, I would follow the Supreme Court and Tenth Circuit precedent regarding the text and its original meaning in both constitutional and statutory interpretation.

5. **What are the constitutional requirements for standing?**

Response: Supreme Court precedent instructs that the constitutional minimum for standing contains three elements. First, the plaintiff must have suffered an "injury in fact"; second, there must be a causal connection between the injury and the conduct complained of; and third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

6. **Do you believe there is a difference between "prudential" jurisdiction and Article III jurisdiction in the federal courts? If so, which jurisdictional requirements are prudential, and which are mandatory?**

Response: Justice Scalia explained in the majority opinion in *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126, (2014), that the

concept of "prudential" standing is "not exhaustively defined" and is "not derived from Article III." The Supreme Court has, however, instructed that the doctrine encompasses at least three broad principles: "the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked." *Id.* If confirmed, I will be bound by the U.S. Supreme Court's interpretation of Article III and its interpretation of relevant "prudential" considerations.

7. How would you define the doctrine of administrative exhaustion?

Response: The doctrine of administrative exhaustion instructs that a party must have taken advantage of the administrative remedies available to them before seeking judicial review. *See e.g. Myers v. Bethlehem Shipbuilding Corp.* 303 U.S. 41 (1938). Congress has included exhaustion requirements in many statutes. If confirmed, I will be bound by these statutes and binding precedent interpreting them.

8. Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?

Response: In *McCullough v. Maryland*, 17 U.S. 316 (1819), the Supreme Court recognized Congress's implied powers derive from the "Necessary and Proper Clause" of the Constitution which grants Congress power to pass laws considered "necessary and proper" for effectively exercising its enumerated powers. In *McCulloch* the Court recognized Congress's power to establish a national bank as one example of such powers.

9. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?

Response: I would look to Tenth Circuit and Supreme Court precedent.

10. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?

Response: The Supreme Court has instructed that the Constitution may protect rights that are not expressly enumerated in the Constitution. For example, in *Griswold v. Connecticut*, 381 U.S. 479 (1965) the Supreme Court held that a right to privacy can be inferred from the Constitution. If confirmed, I will be bound by the Supreme Court and Tenth Circuit interpretation of the Constitution and will strictly adhere to binding precedent.

11. What rights are protected under substantive due process?

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 703 (1997) the Supreme Court articulated its established method of substantive-due-process analysis and applied that analysis to the question of whether the right to commit suicide is protected as a fundamental right. "First, the due process clause protects those fundamental rights and liberties which are, objectively, deeply rooted in this nation's history and tradition, *E.g. Moore v. East Cleveland*, 431 U.S. 494, 503. Second, the Court requires a 'careful description' of the asserted fundamental liberty interest. *E.g. Reno v. Flores*, 507 U.S. 292, 302 (1993)." *Id.* If I am confirmed as a district judge, I would follow this and other Supreme Court precedent as well as Tenth Circuit precedent.

12. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v.New York*, on what basis do you distinguish these types of rights for constitutional purposes?

Response: My views of substantive due process will be guided by relevant Tenth Circuit and Supreme Court precedent.

13. What are the limits on Congress's power under the Commerce Clause?

Response: The Supreme Court has instructed that the proper test for determining whether an activity falls within Congress's powers pursuant to the Commerce Clause requires an analysis of whether the regulated activity "substantially affects" interstate commerce. *United States v. Lopez*, 514 U.S. 549, 559 (1995). The three categories of activity that Congress may regulate under the Commerce Clause are: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce, and persons or things in interstate commerce; and (3) "activities having a substantial relation to interstate commerce ... i.e., those activities that substantially affect interstate commerce." *Id.* If confirmed, I will be bound by the Supreme Court and Tenth Circuit interpretations of the Commerce Clause and will strictly adhere to that binding precedent.

14. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?

Response: The Supreme Court has identified particular classifications, such as those based on alienage, nationality and race to be inherently suspect. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1995). If confirmed, I will be bound by the Supreme Court and Tenth Circuit precent on suspect classifications and will strictly adhere to that binding precedent.

15. How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?

Response: The Constitution divides the government into three branches of

government: Legislative, Executive, and Judicial. Each of these branches checks and limits the powers of the others in order to ensure the securities and liberties guaranteed under the Constitution.

16. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?

Response: A branch cannot act without authority from the Constitution. To the extent that evidence demonstrated that a branch was acting in violation of its constitutional authority, that action would be unconstitutional. If confirmed, and if presented such a case, I would evaluate the facts presented and apply all applicable Supreme Court and Tenth Circuit precedent.

17. What role should empathy play in a judge's consideration of a case?

Response: None. It is the role of a district judge to adjudicate cases objectively and impartially in accordance with all applicable precedent.

18. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: Neither is desirable. If confirmed, I would work hard to avoid either.

19. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: I cannot speak to the increase in the Supreme Court's invalidation of federal statutes. A judge must respect the policy-making role of the legislature. However, the role of an independent judiciary includes preserving and protecting the Constitution, which at times may involve finding a statute or part of a statute unconstitutional or unconstitutional as applied.

20. How would you explain the difference between judicial review and judicial supremacy?

Response: Judicial review refers to the authority of the Supreme Court to review the actions of the other branches of government and determine whether such actions are constitutional. Judicial supremacy is the concept that the Supreme Court is the authoritative interpreter of the Constitution and its decisions are binding on the other branches of government unless and until a Constitutional Amendment or subsequent Supreme Court decision overrules

them.

21. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independentobligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: I am not, nor have I ever been, an elected official. If confirmed as a district judge, I will take an oath to uphold the Constitution and would be obligated to follow the precedent of the Supreme Court and Tenth Circuit.

22. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.

Response: The integrity of the court relies upon respect for judgment which in turn demands respect for the rule of law. Therefore, integrity and faithful adherence to precedent is paramount.

23. How would you describe your approach to reading statutes—how much weight do you give to the plain meaning of the text? When we talk about the plain meaning of a statute, are we talking about the public understanding at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?

Response: My approach would be to start with the language of the statute and any precedent interpreting that statute. If it is clear, my inquiry ends. If the statute is ambiguous, I would review binding Supreme Court and Tenth Circuit precedent. If there was no binding precedent on the issue, I would also consider persuasive authority from other federal courts.

24. As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that hasquestionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: A district judge should follow precedent regardless of whether he or she agrees with the decision or reasoning.

25. Do you believe it is ever appropriate to look past jurisdictional issues if they prevent the court from correcting a serious injustice?

Response: Federal courts are courts of limited jurisdiction and, if confirmed, I must be bound by those jurisdictional limits.

26. When sentencing an individual defendant in a criminal case, what role, if any,should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?

Response: The factors to be considered in sentencing are set forth in 18 U.S.C. §3553(a). The race, gender, nationality, sexual orientation or gender identity of an individual defendant is not an enumerated factor.

27. Would it ever be appropriate to sentence a defendant who belongs to a historically disadvantaged group less severely than a similarly situated defendant who belongs to a historically advantaged group to correct systemicsentencing disparities?

Response: No. If confirmed as a district judge, I would be bound by the sentencing factors Congress has set forth in federal law. The factors to be considered in sentencing are set forth in 18 U.S.C. §3553(a). One of the factors set forth in Section 3553(a)(6) includes the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
April 28, 2021

For all nominees:

1. **Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

   Response: No.

2. **Since becoming a legal adult, have you participated in any rallies or demonstrations where you or other participants have willfully damaged public or private property?**

   Response: No.

3. **Was Marbury v. Madison correctly decided?**

   Response: Other nominees have acknowledge, and I agree that *Marbury v. Madison* was properly decided. It is binding Supreme Court precedent. If confirmed, I would be bound to follow it and all other Supreme Court and Tenth Circuit precedent.

4. **Was Brown v. Board of Education correctly decided?**

   Response: Other nominees have acknowledged, and I agree that *Brown v. Board of Education* was properly decided. It is binding Supreme Court precedent. If confirmed, I would be bound to follow it and all other Supreme Court and Tenth Circuit precedent.

5. **Was Loving v. Virginia correctly decided?**

   Response: Other nominees have acknowledged, and I agree that *Loving v. Virginia* was properly decided. It is binding Supreme Court precedent. If confirmed, I would be bound to follow it and all other Supreme Court and Tenth Circuit precedent.

6. **Was Roe v. Wade correctly decided?**

   Response: *Roe v. Wade* is binding Supreme Court precedent. If confirmed, I would be bound to follow it and all other Supreme Court and Tenth Circuit precedent.

7. **Was United States v. Virginia correctly decided?**

   Response: *United States v. Virginia* is binding Supreme Court precedent. If confirmed, I would be bound to follow it and all other Supreme Court and Tenth Circuit precedent.

8. Was District of Columbia v. Heller correctly decided?

Response: *District of Columbia v. Heller* is binding Supreme Court precedent. If confirmed, I would be bound to follow it and all other Supreme Court and Tenth Circuit precedent.

9. Was Boumediene v. Bush correctly decided?

Response: *Boumediene v. Bush* is binding Supreme Court precedent. If confirmed, I would be bound to follow it and all other Supreme Court and Tenth Circuit precedent.

10. Was Citizens United v. FEC correctly decided?

Response: *Citizens United v. FEC* is binding Supreme Court precedent. If confirmed, I would be bound to follow it and all other Supreme Court and Tenth Circuit precedent.

11. Was Obergefell v. Hodges correctly decided?

Response: *Obergefell v. Hodges* is binding Supreme Court precedent. If confirmed, I would be bound to follow it and all other Supreme Court and Tenth Circuit precedent.

12. In the absence of controlling Supreme Court precedent, what factors determine whether it is appropriate for an en banc court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?

Response: The determination of when it is appropriate for an en banc court to consider its own precedent is not something upon which I would rule as a district judge. Generally, circuit courts determine whether to sit en banc pursuant to Fed. R. App. P. 35.

13. In the absence of controlling Supreme Court precedent, what factors determine whether it is appropriate for an en banc court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?

Response: The determination of when it is appropriate for an en banc court to consider its own precedent is not something upon which I would rule as a district judge. Generally, circuit courts determine whether to sit en banc pursuant to Fed. R. App. P. 35.

14. If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant?

Response: The factors to be considered in sentencing are set forth in 18 U.S.C. §3553(a). One of these factors is, "The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18

U.S.C. §3553(a)(6). If confirmed as a district judge, I would consider all of the factors identified in the statute.

Questions for the Record for
Senator Thom Tillis for
Questions for Ms. Regina Marie Rodriguez

1. **Ms. Rodriguez, do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

Response: Yes.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

Response: Judicial activism is where a judge renders a decision based upon her personal views rather than following precedent and adhering to the rule of law. A judge is duty-bound to follow the rule of law and judicial activism is not appropriate.

3. **Ms. Rodriguez, do you believe impartiality is an aspiration or an expectation for a judge?**

Response: I believe impartiality is an aspiration and an expectation for a judge. A judge must always aspire to be impartial and the parties who appear before a judge expect the judge to be impartial.

4. **Ms. Rodriguez, should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

Response: No.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

Response: Faithful adherence to the rule of law provides certainty and consistency in our justice system. A judge's personal views about whether an outcome is desirable are irrelevant. A judge is sworn to follow the law and not her personal views.

6. **Ms. Rodriguez, should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

Response: No.

7. **Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence? Do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?**

Response: Carefully. The Supreme Court set forth the test for patent eligibility in *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014). If confirmed, I would carefully review the claims of the patent before me and apply binding precedent from the U.S. Supreme Court and relevant circuit courts to evaluate the eligibility of the patent claims.

8. **Ms. Rodriguez, if you are confirmed, what will you do to protect Americans' right to practice their faith during this incredibly difficult time?**

Response: The First Amendment protects Americans' right to practice their religion freely. If confirmed, I will follow the rule of law in order to safeguard all of the liberties that are protected by our Constitution.

9. **Ms. Rodriguez, is there a line where a First Amendment activity or peaceful protesting becomes rioting and is no longer protected? What is that line? Do you agree that looting, burning property, and causing other destruction is not a protected First Amendment activity?**

Response: The First Amendment protects the freedom of speech, including the freedom to peacefully protest. However, the First Amendment does not protect all speech. *See e.g. Chaplinsky v. State of New Hampshire*, 315 U.S. 568, (1942). If confirmed, I would have to carefully review the facts of the particular case and apply applicable Tenth Circuit and Supreme Court precedent to those facts to

determine whether any activity falls within the protection of the First Amendment.

10. **Ms. Rodriguez, how would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?**

Response: In order to evaluate an alleged violation of a constitutional right, I would first identify the underlying right. I would then look to applicable Supreme Court and Tenth Circuit precedent to determine the scope of the right and the appropriate standard of review for analyzing the alleged constitutional violation. Finally, I would apply Supreme Court and Tenth Circuit precedent to the specific facts at issue in the case.

11. **Ms. Rodriguez, what will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

Response: The Second Amendment confers, "an individual right to keep and bear arms." *District Court v. Heller*, 554 U.S. 570, 595 (2008). In *McDonald v. City of Chicago*, 561 U.S. 742 (2010) this right was identified as a fundamental right that applies to the states pursuant the Fourteenth Amendment. If confirmed, I will follow the rule of law in order to protect all of the liberties that are protected by our Constitution.

12. **What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?**

Response: Qualified immunity provides government officials immunity from suit for their actions in certain circumstances. In considering whether qualified immunity is appropriate in a particular case, I would consider whether the defendant was acting as a government official performing a discretionary function. I would then consider whether the specific act(s) taken by the official met the "good faith" and "objectively reasonable" test set forth in *Harlow v. Fitzgerald,* 457 U.S. 800, 816 (1982). Supreme Court precedent makes clear that "qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *City of Escondido v. Emmons*, 139 S. Ct. 500, 503 (2019) (quoting *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018)).

13. **Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?**

Response: There is a robust body of jurisprudence in the Tenth Circuit and Supreme Court regarding qualified immunity and I would follow this precedent.

14. **What do you believe should be the proper scope of qualified immunity protections for law enforcement?**

Response: This is an issue which is under review by state and federal agencies and legislatures. I would leave the policy determinations to the legislative and executive branches.

15. **Do you agree with the current state of the *Chevron* deference doctrine? Or do you believe there should be either more or less deference given to agencies?**

Response: *Chevron* is Supreme Court precedent. If I am confirmed, I would be duty-bound to follow this precedent.

16. **How have your views on agency deference developed during your time as a district judge?**

Response: I have not yet had the honor of serving as a district judge and therefore I cannot answer this question.

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Kim A. Anderson
Executive Director

April 28, 2021

Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Senator:

On behalf of our 3 million members and the 50 million students they serve, we urge you to VOTE YES on Judge Ketanji Brown Jackson's nomination for the U.S. Court of Appeals for the District of Columbia Circuit. Votes on this nomination may be included in NEA's Report Card for the 117th Congress.

Judge Jackson is an inspiration. She comes from a family of educators and is the product of our nation's public schools. As she puts it, "When I was growing up . . . I went to a very good public school that gave me a strong educational foundation." She is a graduate of Harvard University and Harvard Law School, was an editor of the Harvard Law Review, and clerked for three federal judges, including Supreme Court Justice Stephen Breyer. She has briefed and argued federal appeals, managed complex litigation, defended indigent people accused of crimes, and worked to make sure federal criminal sentences were free from racial bias.

As a judge, she has meted out justice for all, vindicating the rights of those with disabilities,[1] immigrants,[2] employees (and educators in particular) who challenged racial and disability discrimination,[3] and workers to form and join strong unions.[4] Her judicial tenure has validated the Senate's previous unanimous confirmation of her to the federal bench, and her elevation to the U.S. Court of Appeals warrants the same support.

Judge Jackson's varied experiences—personal and professional—would bring badly needed diversity to the federal bench. As she put it, "I am only the second generation in my family to go to *any* college, and I am fairly certain that if you traced my family lineage back past my grandparents . . . you would find that my ancestors were slaves on both sides."

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[1] *See, e.g.*, *Pierce v. D.C.*, 128 F. Supp. 3d 250 (D.D.C. 2015).
[2] *See, e.g.*, *Kiakombua v. Wolf*, No. 19-CV-1872 (KBJ), 2020 WL 6392824 (D.D.C. Oct. 31, 2020).
[3] *See, e.g.*, *Willis v. Gray*, No. 14-CV-1746 (KBJ), 2020 WL 805659 (D.D.C. Feb. 18, 2020).
[4] *See, e.g.*, *AFL-CIO v. NLRB*, 466 F. Supp. 3d 68 (D.D.C.), *order amended on reconsideration*, 471 F. Supp. 3d 228 (D.D.C. 2020).

We strongly urge you to confirm Judge Ketanji Brown Jackson's nomination for the U.S. Court of Appeals for the District of Columbia Circuit.

Sincerely,

Marc Egan
Director of Government Relations
National Education Association

March 30, 2021

The Honorable Richard J. Durbin
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Chuck E. Grassley
Ranking Member, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley:

We, the undersigned, are law professors with expertise in a diverse array of fields and from law schools throughout the country. We write in support of President Joe Biden's nomination of Judge Ketanji Brown Jackson to serve on the U.S. Court of Appeals for the District of Columbia Circuit. Judge Jackson is perfectly qualified for the position; she has demonstrated excellent legal ability and shown her commitment to the principles of liberty, equality, and fairness, as well as the highest ethical and professional standards.

Judge Jackson possesses the brilliance, judgment, temperament, and experience required for an appellate jurist. From her earliest days, she distinguished herself as a thoughtful legal mind and skilled practitioner. She graduated *magna cum laude* from Harvard College and *cum laude* from Harvard Law School, where she served as an editor of the *Harvard Law Review*. She went on to three federal court clerkships -- at every level of the federal court system, for both Republican and Democratic-appointed judges -- Judge Patti B. Saris of the U.S. District Court for the District of Massachusetts, Judge Bruce M. Selya of the U.S. Court of Appeals for the First Circuit, and Justice Stephen Breyer on the United States Supreme Court.

As demonstrated by her eight years on the United States District Court for the District of Columbia, Judge Jackson's strong record demonstrates a high level of intellect and integrity. Judge Jackson has rarely been reversed on appeal (fewer than a dozen times out of the more than 550 judicial decisions she has authored), making her one of the judges most likely to be affirmed by the appellate court in her circuit. She has a reputation as a fair, impartial, highly intelligent jurist with fidelity to statutory law and the Constitution as her guide.

Prior to her years on the bench, she had an exemplary legal career. She gained wide-ranging experience at the highest levels of the legal profession having served as a federal public defender, private sector appellate and trial attorney, and Vice Chair of the United States Sentencing Commission. Her familiarity with public and private litigation on various legal issues makes her well-suited to serve on the U.S. Court of Appeals. Her broad and deep experience led the Senate to confirm her twice before.

We are confident that Judge Ketanji Brown Jackson will be an excellent addition to the U.S. Court of Appeals for the District of Columbia Circuit. We urge the Senate Judiciary Committee to advance her nomination to the full Senate.

Thank you for your consideration.

Sincerely,

Ralph Richard Banks
Jackson Eli Reynolds Professor of Law
Stanford Law School

Rachel Barkow
Vice Dean and Charles Seligson Professor of Law
NYU School of Law

Douglas A. Berman
Newton D. Baker - Baker & Hostetler Chair in Law
The Ohio State University Moritz College of Law

Tomiko Brown-Nagin
Dean, Harvard Radcliffe Institute
Daniel P.S. Paul Professor of Constitutional Law
Harvard Law School

Jonathan Cardi
Professor of Law
Wake Forest University School of Law

Sheryll Cashin
Carmack Waterhouse Professor of Law, Civil Rights, and Social Justice
Georgetown University Law Center

Guy-Uriel Charles
Edward and Ellen Schwartzman Professor of Law
Duke Law School

Erwin Chemerinsky
Dean and Jesse H. Choper Distinguished Professor of Law
University of California, Berkeley School of Law

Amy Chua
John M. Duff, Jr. Professor of Law
Yale Law School

Joshua A. Douglas
Ashland, Inc-Spears Distinguished Research Professor of Law
University of Kentucky J. David Rosenberg College of Law

Justin Driver
Robert R. Slaughter Professor of Law
Yale Law School

Lisa M. Fairfax
Alexander Hamilton Professor of Business Law
George Washington University Law School

Noah Feldman
Felix Frankfurter Professor of Law
Harvard Law School

Martha A. Field
Langdell Professor of Law
Harvard Law School

Mary Anne Franks
Professor of Law & Dean's Distinguished Scholar
University of Miami School of Law

Richard W. Garnett
Paul J. Schierl / Fort Howard Corporation Professor of Law
Notre Dame Law School

Jeannie Suk Gersen
John H. Watson, Jr. Professor of Law
Harvard Law School

Jamal Greene
Dwight Professor of Law
Columbia Law School

Daniel Hemel
Professor of Law and Ronald H. Coase Research Scholar
University of Chicago Law School

Carissa Byrne Hessick
Anne Shea Ransdell and William Garland "Buck" Ransdell, Jr. Distinguished Professor of Law
University of North Carolina School of Law

Bert I. Huang
Michael I. Sovern Professor of Law
Columbia Law School

Christine Jolls
Gordon Bradford Tweedy Professor of Law and Organization
Yale Law School

Lawrence Lessig
Roy L. Furman Professor of Law and Leadership
Harvard Law School

Leah Litman
Assistant Professor of Law
University of Michigan Law School

Bruce H. Mann
Carl F. Schipper, Jr. Professor of Law
Harvard Law School

Martha Minow
300th Anniversary University Professor, Harvard University and former Dean
Harvard Law School

Melissa Murray
Frederick I. and Grace Stokes Professor of Law
NYU School of Law

Jennifer Nou
Professor of Law
University of Chicago Law School

Anne Joseph O'Connell
Adelbert H. Sweet Professor of Law
Stanford Law School

Spencer Overton
Professor of Law
George Washington University Law School

Nathaniel Persily
James B. McClatchy Professor of Law
Stanford Law School

Richard Primus
Theodore J. St. Antoine Collegiate Professor
University of Michigan Law School

Intisar Rabb
Professor of Law
Harvard Law School

Frank S. Ravitch
Professor of Law and Walter H. Stowers Chair in Law and Religion
Michigan State University College of Law

Richard L. Revesz
AnBryce Professor of Law and Dean Emeritus
NYU School of Law

Russell K. Robinson
Walter Perry Johnson Professor of Law
University of California, Berkeley School of Law

Daniel B. Rodriguez
Harold Washington Professor and Dean Emeritus
Northwestern University Pritzker School of Law

Kermit Roosevelt III
Professor of Law
University of Pennsylvania Carey Law School

Theodore Ruger
Dean and Bernard G. Segal Professor of Law
University of Pennsylvania Carey Law School

Richard Schragger
Perre Bowen Professor of Law
University of Virginia School of Law

Geoffrey R. Stone
Edward H. Levi Distinguished Service Professor of Law and former Dean
University of Chicago School of Law

Lior J. Strahilevitz
Sidley Austin Professor of Law
University of Chicago School of Law

David A. Strauss
Gerald Ratner Distinguished Service Professor of Law
University of Chicago Law School

Franita Tolson
Vice Dean for Faculty and Academic Affairs, and Professor of Law
USC Gould School of Law

Laurence H. Tribe
Carl M. Loeb University Professor and
Professor of Constitutional Law Emeritus
Harvard Law School

Rebecca Tushnet
Frank Stanton Professor of First Amendment Law
Harvard Law School

Amanda L. Tyler
Shannon Cecil Turner Professor of Law
University of California, Berkeley School of Law

Sonja R. West
Brumby Distinguished Professor in First Amendment Law
University of Georgia School of Law

Jonathan Zittrain
George Bemis Professor of International Law
Harvard Law School

*** Institutional affiliations are listed for purposes of identification only.**

April 9, 2021

The Honorable Richard J. Durbin
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Chuck E. Grassley
Ranking Member, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley:

Each of us has had the privilege of serving as a law clerk to Judge Ketanji Brown Jackson on the United States District Court for the District of Columbia. We write this letter to convey our enthusiastic and unequivocal support for her elevation to the United States Court of Appeals for the District of Columbia Circuit. We are federal prosecutors, capital defense attorneys, agency lawyers and policymakers, attorneys at private law firms, in-house counsel, legal academics, and public interest lawyers. Although our backgrounds, personal views, and professional experiences are diverse, we speak with one voice in conveying our steadfast belief that Judge Jackson is a brilliant and conscientious judge whose nomination should be confirmed.

Judge Jackson's professional qualifications for a judgeship on the Court of Appeals are exemplary. Her background as a public defender, appellate litigator, federal sentencing commissioner, and trial judge has equipped her with the experience necessary to resolve the important and novel legal questions that come before the D.C. Circuit. Indeed, over the past eight years, Judge Jackson has handled numerous high-profile cases on the district court, demonstrating her ability to reason through some of the most complex and hotly debated legal questions of recent years. As an appellate judge, she would bring a deep awareness of and concern for the impact of her opinions on the parties, the lower courts, and the nation at large.

Judge Jackson's stellar resume and credentials are but one small part of what makes her an outstanding jurist. As her former law clerks, each of us can attest to her incredible intellect, her diligence, and her unwavering commitment to the rule of law. On the district court, Judge Jackson works tirelessly to approach each case, big or small, in the same way: balancing her intelligence with humility and curiosity, working to understand both the factual record and the applicable law backward and forward. During that

process, Judge Jackson listens carefully to the parties' contentions and her clerks' views, and never assumes the answer to a legal or factual question. And in her decisions, she conspicuously lays out every step of her reasoning, never shying away from grappling with previously unresolved or murky areas of the law when necessary to resolve a case.

Judge Jackson's extraordinary work ethic is driven in large part by her dedication to public service. She is keenly aware that judges serve the public, and because of that, she strives to ensure that the parties and the public understand the law and the basis for her decisions in each case. Judge Jackson treats every person who appears before her with dignity and respect. She is careful to ensure that all parties understand and are able to invoke their rights at every phase of the proceedings, especially in criminal cases. And when writing opinions, she reads the final draft aloud to ensure that any person hearing her words will understand them. Judge Jackson believes that it is not enough for her rulings to be correct; they also must make sense.

On top of all of these qualities, Judge Jackson is one of the warmest and kindest people we have had the pleasure to know. Whether it has been a year or a day since you last saw her, she greets you with the same trademark broad smile, enthusiasm in her voice, and (before the COVID-19 pandemic) a warm hug. From the very beginning of her tenure on the bench, Judge Jackson has always looked out for her clerks, whether by helping us navigate our career paths, providing mentorship during the clerkship and beyond, or stocking her chambers with enough snacks to satisfy the appetites of an entire football team—and then some. She and her husband, Patrick, have welcomed us and our families with open arms, hosting clerks and court staff for dinners and holiday parties, and sending us all home with some famous Jackson family hot fudge.

Clerking for Judge Jackson was an honor and a privilege. Her combination of intellect, integrity, compassion, and experience would make her an outstanding judge on the United States Court of Appeals for the District of Columbia Circuit. We unconditionally support her nomination and urge you to confirm her.

Respectfully submitted,

Julia M. Breyer
Mercedes Bugallo
Matteo Godi
Casey Trombley-Shapiro Jonas
Daniel R. Kanter
Sanchi Khare
Brian P. Kelly
Young K. Lee
Ezra Marcus
Kerrel Murray
Jena R. Neuscheler
Neha Sabharwal
Jo-Ann Tamila Sagar
Joe Slaughter
Joshua Tarrant-Windt
Alice A. Wang
Olivia Warren

April 19, 2021

The Honorable Dick Durbin
Chair
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Nomination of the Honorable Ketanji Brown Jackson as Circuit Judge,
United States Court of Appeals for the District of Columbia Circuit

Dear Chair Durbin and Ranking Member Grassley,

We write to you and to the Members of the Committee in support of the nomination of the Honorable Ketanji Brown Jackson to be a Circuit Judge on the United States Court of Appeals for the District of Columbia Circuit. We had the honor of serving as law clerks during the Supreme Court's October Term 1999, and were colleagues of Judge Jackson during that Term. We have followed many different paths since our clerkships, in private practice, government service, academia, and business. And our positions on politics and judicial philosophy vary widely. Yet we all write to support Judge Jackson's nomination, because we know her to be eminently qualified in intellect, character, and experience.

We worked closely with Judge Jackson during our year at the Court. In collaborating with her on the work of the Court, we came to know both her sharp intellect and her caring personality. Judge Jackson brought professionalism, integrity, and a welcome sense of humor to the work of a clerk—work that is often intense and challenging. We have great respect for her legal abilities, her work ethic, and her ability to work with colleagues of both like and differing views. And we appreciate that Judge Jackson treated everyone who worked at the Court with respect and kindness.

Since our time together at the Court, Judge Jackson has distinguished herself in many different roles—in private practice, as a federal public defender, as Vice Chair of the Sentencing Commission, and most recently as a federal judge on the District Court for the District of Columbia. Her experiences in all these positions will serve Judge Jackson well in her new role as a court of appeals judge.

Judge Jackson is fully qualified for the position of Circuit Judge on the United States Court of Appeals for the District of Columbia Circuit. Based on our experience of clerking with her, we believe that Judge Jackson will make an excellent addition to the court of appeals.

Very truly yours,

Jim Bennett
Law Clerk to Justice Kennedy (OT 1999)

Rosemarie Blase
Law Clerk to Chief Justice Rehnquist (OT 1999)

Kevin Boyle
Law Clerk to Chief Justice Rehnquist (OT 1999)

William Burck
Law Clerk to Justice Kennedy (OT 1999)

Erin Glenn Busby
Law Clerk to Justice Breyer (OT 1999)

David Franklin
Law Clerk to Justice Ginsburg (OT 1999)

Jordan B. Hansell
Law Clerk to Justice Scalia (OT 1999)

Leslie Hakala
Law Clerk to Justice O'Connor (OT 1999)

Marc Isserles
Law Clerk to Justice Breyer (OT 1999)

Bradley Joondeph
Law Clerk to Justice O'Connor (OT 1999)

Jay Jorgensen
Law Clerk to Chief Justice Rehnquist (OT 1999)

Jay L. Koh
Law Clerk to Justice Souter (OT 1999)

Noah Levine
Law Clerk to Justice O'Connor (OT 1999)

Benjamin L. Liebman
Law Clerk to Justice Souter (OT 1999)

Steve Nickelsburg
Law Clerk to Justice Kennedy (OT 1999)

Deborah Pearlstein
Law Clerk to Justice Stevens (OT 1999)

Richard Primus
Law Clerk to Justice Ginsburg (OT 1999)

Kermit Roosevelt
Law Clerk to Justice Souter (OT 1999)

Amanda Tyler
Law Clerk to Justice Ginsburg (OT 1999)

Deidre D. von Dornum
Law Clerk to Justice Ginsburg (OT 1999)

Sandy Weisburst
Law Clerk to Justice Thomas (OT 1999)

Sonja R. West
Law Clerk to Justice Stevens (OT 1999)

Shirley Woodward
Law Clerk to Justice O'Connor (OT 1999)

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THOMAS B. GRIFFITH
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April 21, 2021

Via E-Mail

Dick Durbin, Chairman
Charles Grassley, Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

I write in enthusiastic support of President Joe Biden's nomination of Ketanji Brown Jackson to be a judge on the U.S. Court of Appeals for the D.C. Circuit, a court on which I served from 2005-2020.

Judge Jackson has demonstrated a record of excellence throughout her academic and professional career. She graduated *magna cum laude* from Harvard College, *cum laude* from Harvard Law School, and clerked at every level of the federal court system, for judges appointed by both Democratic and Republican presidents: Judge Patti B. Saris of the U.S. District Court for the District of Massachusetts, Judge Bruce M. Selya of the U.S. Court of Appeals for the First Circuit, and Justice Stephen Breyer of the U.S. Supreme Court. Prior to her service on the bench, Judge Jackson distinguished herself with an exemplary legal career in both public and private practice, as a federal public defender, private trial and appellate attorney, and as Vice Chair of the U.S. Sentencing Commission. This wide experience prepares her well for service on the D. C. Circuit.

Although she and I have sometimes differed on the best outcome of a case, I have always respected her careful approach and agreeable manner, two indispensable traits for success in a collegial body. This is a critical moment for the D. C. Circuit. With the untimely death of Judge Stephen Williams last summer, my retirement last fall, the appointment in January of Judge Garland to be Attorney General of the United States, and Judge David Tatel's recent announcement that he will take senior status, it is vital for the well-being of the court and the unique role it plays in the federal judiciary that its new members carry on the tradition of collegiality that has been the hard-won hallmark of the D. C. Circuit for the last thirty years. Judge Jackson will do that with distinction.

HUNTON
ANDREWS KURTH

Sincerely,



Judge Thomas B. Griffith (ret.)
U. S. Court of Appeals for the D. C. Circuit (2005-2020)

cc: Phillip Brest, Esq.
Ms. Emily Hampsten
Ms. Jenna Valle-Riestra
Michael Fragoso, Esq.
Mr. Aaron Cummings



PRESIDENT
NAN ARON

CHAIR
PAULETTE MEYER

April 26, 2021

The Honorable Richard Durbin
Chairman
Senate Judiciary Committee

Dear Chairman Durbin:

On behalf of the Alliance for Justice (AFJ), a national association representing over 120 public interest and civil rights organizations, I write to strongly support the confirmation of Judge Ketanji Brown Jackson to the United States Court of Appeals for the D.C. Circuit. Judge Jackson is eminently qualified to serve on the D.C. Circuit. Twice confirmed by a unanimous Senate, experienced in both civil and criminal appellate practice, and a former law clerk for judges at every level of the federal judiciary, including for Associate Justice Stephen G. Breyer on the Supreme Court, she will be an invaluable addition to the Circuit Court.

After graduating cum laude from Harvard Law School, Jackson clerked for Judge Bruce M. Selya on the First Circuit Court of Appeals and Judge Patti B. Saris on the U.S District Court for the District of Massachusetts. She briefly left the judiciary to work on civil subject matters as a litigation associate for Miller, Cassidy & Larroca; but soon returned to complete a yearlong clerkship with Justice Breyer. Judge Jackson then began her appellate law practice at Goodwin Procter LLP, where she represented clients in criminal and civil matters, including before the Supreme Court.

In 2009, when President Obama nominated Judge Jackson to serve as Vice Chair for the U.S. Sentencing Commission, she was unanimously confirmed by the Senate. And in that role, she collaborated with Democratic and Republican appointees to create more equitable sentencing guidelines. She also served as an Assistant Federal Public Defender in the District of Columbia, representing low-income criminal appellants in the D.C. Circuit Court, before returning to private practice as Of Counsel for Morrison & Foerster LLP. There, she continued to develop her appellate practice, working on civil and criminal cases in state and federal court and as counsel of record on several amicus briefs to the Supreme Court. Judge Jackson's deep and wide range of experience as a lawyer clearly prepared her for exemplary service on the D.C. District Court and will also serve her well as a judge at the appellate level.

During her eight years on the District Court for the District of Columbia, Judge Jackson has written nearly 600 opinions and been reversed less than twelve times. Her record on the District Court demonstrates that she is a fair, impartial jurist with a clear commitment to equal justice.

Further, Judge Jackson would be only the third African American woman to ever serve on the D.C. Circuit Court, reflecting the overall dearth of Black women on the federal appellate bench. The federal bench needs more judges who, like Judge Jackson, are experientially and demographically diverse, have represented the most vulnerable members of our society, and have fought for the constitutional rights of all. We believe that Judge Jackson will be a stellar addition to the D.C. Circuit Court and, as with her District Court nomination, the Senate should unanimously confirm her.

Sincerely,

Nan Aron
President

April 26, 2021

The Honorable Richard J. Durbin
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Chuck E. Grassley
Ranking Member, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Letter in Support of Honorable Ketanji Brown Jackson, nominee for United States Court of Appeals for the District of Columbia Circuit

Dear Chairman Durbin and Ranking Member Grassley:

We are former United States Attorneys from federal districts across the country and other former senior Department of Justice officials. We write to you and Members of the Committee in support of President Joe Biden's nomination of Judge Ketanji Brown Jackson to serve as a Circuit Court Judge on the United States Court of Appeals for the District of Columbia Circuit. Each of us fully appreciates the significant authority of the United States Court of Appeals for the District of Columbia Circuit and understands how critical it is to have appellate jurists with a steadfast commitment to independence, impartiality, and integrity. Judge Jackson possesses these values and is exceptionally qualified for the position.

Many of us and our colleagues have interacted with Judge Jackson and have found her to possess incredible intellect, excellent legal ability, and a commitment to the highest ethical and professional standards. Throughout her career, she has promoted compassion, dignity, and respect for all parties. As demonstrated by her eight years on the United States District Court for the District of Columbia, Judge Jackson is a fair and impartial jurist. She has authored more than 560 judicial decisions, adjudicating her fair share of complex legal questions in ways that have significantly advanced the legal profession and our understanding of principles enshrined in the Constitution. Her decisions are invariably well-reasoned and thoughtful, and she is singularly prepared to assume the role of appellate jurist.

Prior to her years on the bench, she held several positions at the highest level of our profession—federal public defender, private sector appellate and trial attorney, and Vice Chair of the

bipartisan United States Sentencing Commission—that make her an ideal candidate for the U.S. Court of Appeals. Her familiarity with public and private litigation on various legal issues makes her well-suited to deliberate on the spectrum of issues she will encounter as a U.S. Court of Appeals judge. Indeed, her broad and deep experience led the Senate to confirm her twice before.

Judge Jackson distinguished herself as a thoughtful legal mind and skilled practitioner early on, graduating *magna cum laude* from Harvard College and *cum laude* from Harvard Law School, where she served as an editor of the *Harvard Law Review*. She went on to three federal court clerkships—at every level of the federal court system, for both Republican and Democratic-appointed judges—Judge Patti B. Saris of the U.S. District Court for the District of Massachusetts, Judge Bruce M. Selya of the U.S. Court of Appeals for the First Circuit, and Justice Stephen Breyer on the United States Supreme Court.

Judge Jackson is eminently qualified to serve on the U.S. Court of Appeals for the District of Columbia Circuit. She has devoted her life to justice and possesses the brilliance, judgment, temperament, and experience required for an appellate jurist. We support Judge Ketanji Brown Jackson's nomination without reservation, and we urge the Senate Judiciary Committee to advance her nomination to the full Senate.

Thank you for your consideration.

Sincerely,

Jamie S. Gorelick
Deputy Attorney General, 1994 – 1997

David W. Ogden
Deputy Attorney General, 2009 – 2010; Assistant Attorney General for the Civil Division, 1999 – 2001

Tony West
Associate Attorney General, 2012 – 2014; Assistant Attorney General for the Civil Division, 2009 – 2012

Tristram Coffin
U.S. Attorney, District of Vermont, 2009 – 2015

Michael W. Cotter
U.S. Attorney, District of Montana, 2009 – 2017

Gregory K. Davis
U.S. Attorney, S. District of Mississippi, 2012 – 2017

Steven M. Dettelbach
U.S. Attorney, N. District of Ohio, 2009 – 2016

Jenny A. Durkan
U.S. Attorney, W. District of Washington, 2009 – 2014

Wifredo Ferrer
U.S. Attorney, S. District of Florida,
2010 – 2017

Booth Goodwin
U.S. Attorney, S. District of West Virginia,
2010 – 2015

Dwight C. Holton
U.S. Attorney, District of Oregon,
2010 – 2011

William C. Killian
U.S. Attorney, E. District of Tennessee,
2010 – 2015

Ronald C. Machen Jr.
U.S. Attorney, District of Columbia,
2010 – 2015

Eric S. Miller
U.S. Attorney, District of Vermont,
2015 – 2017

Florence Nakakuni
U.S. Attorney, District of Hawaii,
2009 – 2017

Bill Nettles
U.S. Attorney, District of South Carolina,
2010 – 2016

Wendy Olson
U.S. Attorney, District of Idaho, 2010 – 2017

Carter Stewart
U.S. Attorney, S. District of Ohio,
2009 – 2016

Joyce White Vance
U.S. Attorney, N. District of Alabama,
2009 – 2017

Deborah R. Gilg
U.S. Attorney, District of Nebraska,
2009 – 2017

Barry R. Grissom
U.S. Attorney, District of Kansas,
2010 – 2016

Brendan V. Johnson
U.S. Attorney, District of South Dakota,
2009 – 2015

James A. Lewis
U.S. Attorney, Central District of Illinois,
2010 – 2016

Barbara L. McQuade
U.S. Attorney, E. District of Michigan,
2010 – 2017

Michael J. Moore
U.S. Attorney, Middle District of Georgia,
2010 – 2015

Peter F. Neronha
U.S. Attorney, District of Rhode Island,
2009 – 2017

Charles Oberly
U.S. Attorney, District of Delaware,
2010 – 2017

Sarah R. Saldaña
U.S. Attorney, N. District of Texas,
2011 – 2014

Edward J. Tarver
U.S. Attorney, S. District of Georgia,
2009 – 2017

John W. Vaudreuil
U.S. Attorney, W. District of Wisconsin,
2010 – 2017

John Walsh
U.S. Attorney, District of Colorado, 2010 – 2016

Vincent H. Cohen, Jr.
Acting U.S. Attorney, District of Columbia, 2015

Stephanie Yonekura
Acting U.S. Attorney, Central District of California, 2014 – 2015

Danny Williams
U.S. Attorney, N. District of Oklahoma, 2012 – 2017

Benjamin G. Greenberg
Acting U.S. Attorney, S. District of Florida, 2017 – 2018

National Council of Jewish Women
2055 L St NW Suite 650
Washington, DC 20036

T: 202. 296. 2588

NCJW
National Council of Jewish Women

April 26, 2021

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin, Ranking Member Grassley, and Committee Members:

On behalf of the 180,000 advocates of National Council of Jewish Women (NCJW), I write to express our support for the nomination of Judge Ketanji Brown Jackson to the US Court of Appeals for the District of Columbia Circuit. NCJW has been fighting for the rights of women, children, and families for over 125 years, and celebrates Jackson's record championing issues such as reproductive health care, civil rights, disability rights, and labor rights throughout her career.

In 2013, Jackson was unanimously confirmed to the United States District Court in the District of Columbia, where she made a number of important rulings. She supported workers' rights by invalidating attempts to limit collective bargaining in *AFGE, AFL-CIO v. Trump*; overturned attempts to terminate federal funding for the Teen Pregnancy Prevention Program — a critical educational program; and upheld the Americans with Disabilities Act in *Pierce v. District of Columbia*, ruling that prison officials had acted with "deliberate indifference" when they denied a deaf inmate's request for reasonable accommodations. Further, Jackson rejected the Trump administration's claim of absolute immunity for a former White House counsel by stating "presidents are not kings," illustrating her commitment to a nonpartisan and independent judiciary that protects the constitution.

During her tenure as an Assistant Special Counsel on the US Sentencing Commission, Jackson reduced sentencing minimum guidelines for crack cocaine related offences. She later represented low-income appellants before the US Court of Appeals for the DC Circuit as an Assistant Federal Public Defender.

The Jewish value of *tzedek tzedek tirdof,* the pursuit of justice, obligates us to strive for a just judiciary. Federal judges are important decision-makers, whose rulings impact the day-to-day lives of millions of people — and so they must be fair, independent, and qualified. Jackson's record demonstrates her commitment to equal justice for all under the law.

NCJW strongly urges you to support the nomination of Ketanji Brown Jackson to the US Court of Appeals for the District of Columbia Circuit.

Sincerely,

Jody Rabhan
Chief Policy Officer
National Council of Jewish Women



April 26, 2021

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin, Ranking Member Grassley, and Committee Members:

On behalf of our 1.5 million supporters nationwide, People For the American Way urges the Senate to confirm Judge Ketanji Brown Jackson to the U.S. Court of Appeals for the District of Columbia Circuit. President Biden has made a truly inspired choice. Judge Jackson's brilliance, her commitment to justice, and her years of experience both on and off the bench make her extremely well qualified to serve on this critically important federal court.

Jackson's Background

After graduating with honors from Harvard Law School, where she had been supervising editor of the Harvard Law Review, Jackson clerked for three federal judges. That early period of her career culminated in a Supreme Court clerkship with Justice Stephen Breyer in 1999-2000. When he learned in 2012 that Washington D.C. Congresswoman Eleanor Holmes Norton was considering recommending her to the White House for a district court nomination, Breyer is reported to have enthusiastically described her as "great," as "brilliant," and as having "the mix of skills and experience we need on the bench."[i]

Ketanji Brown Jackson could have easily pursued an extremely lucrative career in private practice advancing the interests of wealthy and powerful people and businesses. What she chose to do instead was dedicate most of her career to public service, using her abilities to advance justice and fairness for all people. For instance, she worked at the Office of the Federal Public Defender from 2005-2007. As an assistant federal public defender, she represented indigent men and women in Washington D.C. who were accused of crimes but who could not afford a lawyer. She stood with them to make sure their rights were not violated by prosecutors or law enforcement.

Public defenders play a vital and underappreciated role in protecting freedom, not only of defendants in criminal cases but of all people in the United States. We have given our government the power to take a person away from their homes, imprison them, and even execute them. That power is subject to terrifying abuse. So if our government is going to use that power against someone, it must do so in a way that complies with the safeguards set forth in the Bill of Rights. Otherwise, we make it easier for abusive government officials to take away *anybody's* liberty. That basic tenet of the United States Constitution is vital to protecting all of us. Jackson's work defending indigent people accused of crimes also gave her insight into how the system

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works in real life and often fails to serve justice—insight that circuit panels could use to make more informed decisions.

Jackson also worked at the United States Sentencing Commission from 2003-2005 and again as a vice chair and commissioner from 2010-2013. While there, she championed ending the unjust discrepancy between sentences for crack cocaine and powder cocaine, a discrepancy that had a devastating impact on Black communities. When the sentencing guidelines for crack cocaine were reduced, she supported making that reform retroactive, calling it a question of "fundamental fairness." She recognized that no federal sentencing provision is "more closely identified with unwarranted disparity and perceived systemic unfairness than the 100:1 crack/powder penalty distinction." Her statements to fellow commissioners made clear her vision of the law as a tool to advance fairness, not as a weapon to target certain vulnerable populations:

> In my view, now that Congress has taken steps to clear the air by making significant downward adjustments to the mandatory statutory penalties for crack cocaine offenses, there is no excuse for insisting that those who are serving excessive sentences under the long-disputed and now discredited prior guideline must carry on as though none of this has happened. I believe that the Commission has no choice but to make this right. Our failure to do so would harm not only those serving sentences pursuant to the prior guideline penalty, but all who believe in equal application of the laws and the fundamental fairness of our criminal justice system.
>
> The decision we make today, which comes more than 16 years after the Commission's first report to Congress on crack cocaine, reminds me in many respects of an oft-quoted statement from the late Dr. Martin Luther King, Jr. He said: 'The arc of the moral universe is long, but it bends toward justice.' Today the Commission completes the arc that began with its first recognition of the inherent unfairness of the 100:1 crack/powder disparity all those years ago. I say justice demands this result."[ii]

Jackson has taken her commitment to justice with her to the federal bench, recognizing that—as she said to Sen. Chuck Grassley when she was nominated to be a federal district judge—"courts have a role in making sure that everyday citizens have access to justice."[iii] She so impressed senators then that when her nomination came before them in 2013, they voted to confirm her unanimously.

Jackson's Record on the Bench

Given Jackson's background, it is no surprise that she has excelled as a judge during these past eight years. She has handled cases of extreme complexity, setting forth the parties' arguments in detail and carefully explaining her in-depth analysis. She has respected the dignity of all litigants, given fair consideration to their arguments, and adhered to the principle that courts exist to protect the rights of all, not just the powerful or the popular.

A typical example is *Pierce v. District of Columbia*, in which Judge Jackson demonstrated a keen insight into the injustices experienced by—and indignities visited upon—people who are deaf.[iv] The case involved William Pierce, a deaf man who communicates by American Sign Language (ASL), which is his native language. He does not speak English words, nor does he read or write English with the fluency of someone whose first language is English. He had been sentenced to serve 60 days for assault, the time to be served in Washington's Correctional Treatment Facility rather than the D.C. Jail so that he could be helped by its domestic violence intervention program and mental health services.

But Pierce alleged that corrections officials denied him the most basic communications accommodations for his disability, including denying him an ASL interpreter. As a result, he could not effectively communicate with others or understand what officials were telling him, nor could he effectively participate in crucial anger management, mental health, or substance abuse programs. Officials even handcuffed him when his partner and his mother visited him, making it impossible for him to sign. After another prisoner attacked him, Pierce was put into solitary confinement for two weeks. He alleged that he had not understood when officials explained that "protective custody" meant solitary confinement, or that it was voluntary and he could end it at any time. He sued the District for refusing to accommodate his disability as required by the Rehabilitation Act and the American With Disabilities Act.

The case was before Judge Jackson, who ruled that even under the District's version of what happened, they had failed to follow the law. When Pierce first arrived at the correctional facility, the District's employees and contractors did nothing to evaluate his need for accommodation, despite their knowledge that he was disabled.

Judge Jackson did more than simply make a dry legal observation that the laws create an affirmative obligation to accommodate people with disabilities. Instead, she explained *why* Congress made this choice: to end the harm to people with disabilities so often caused by the thoughtlessness, indifference, and "benign neglect" of others. She understood that the laws at issue are not just scraps of paper with dried ink on them. They are the living expression of the nation's commitment to stop accepting discrimination against people with disabilities as a fact of American life. As she wrote, "an entity that provides services to the public cannot stand idly by while people with disabilities attempt to utilize programs and services designed for the able-bodied..."

Judge Jackson's commitment to see the humanity of all people who appear in her courtroom also shows through in the terms she uses to describe them. For instance, in immigration cases, she makes a point to include a footnote informing readers that she is using the term "non-citizens" for people born abroad rather than the term "aliens" used in the relevant federal statute.[v] In the case of *Kiakombua v. Wolf*, she allowed several women seeking asylum to join the case with pseudonyms, recognizing that their "significant interest in maintaining anonymity at this early

stage in the litigation is more than sufficient to overcome any general presumption in favor of open proceedings."[vi]

Kiakombua involved a training manual created by the Trump administration to teach frontline asylum officials how to determine if an asylum seeker has a credible fear of persecution or torture. The five women in this case had been given negative findings and sued, claiming that the guidance within the training manual was inconsistent with congressional statutes and federal immigration regulations. After a careful analysis, Judge Jackson concluded that several provisions of the manual were "patently at odds with the credible fear screening scheme that Congress has crafted." She ordered officials to re-evaluate the women's cases using legal criteria, but she realized that more had to be done. Because the unlawful provisions "cannot be effectively severed from the remainder of the document," Judge Jackson chose "to vacate the entire Lesson Plan."[vii]

But several weeks later, she discovered that the Trump administration had not obeyed her order. Instead of rewriting the manual as directed, they had simply redacted portions. In a hearing, Judge Jackson forcefully rebuked the Trump administration's counsel: "You can't just redact out the unlawful portion, the six unlawful portions ... and call that a new lesson plan."[viii] Future asylum seekers can be grateful that Judge Jackson does not let government officials slough off the court's directives when people's lives are on the line.

Judge Jackson also showcased her commitment to the nation's constitutional values and protections in *Committee on the Judiciary of the U.S. House of Representatives v. McGahn*, a high-profile case involving former White House Counsel Don McGahn.[ix] In 2019, then-President Trump ordered his former staffer to defy a subpoena and not appear before a House Judiciary Committee hearing investigating Russia's interference into the 2016 presidential election and the Special Counsel's findings concerning potential obstruction of justice by Trump. After three months of failed negotiations, the committee went to court and sought an injunction ordering McGahn to obey the subpoena.

The Trump administration and McGahn argued that the court lacked jurisdiction to hear the case because it involved a conflict between the two political branches. Judge Jackson rejected this contention, citing the foundational case of *Marbury v. Madison*. She wrote that the court has jurisdiction because the Judiciary Committee's claim presented a legal question, and it is "emphatically" the role of the Judiciary to say what the law is. She recognized that it advances, not subverts, separation of powers concerns for the court to hear the case, since "it is a core tenet of this Nation's founding that the powers of a monarch must be split between the branches of the government to prevent tyranny."

On the merits of the case, Judge Jackson rejected McGahn's and the Trump administration's argument that senior executive branch officials have absolute immunity from testifying. Recognizing the danger of unaccountable executive authority, she wrote that "the primary

takeaway from the past 250 years of recorded American history is that Presidents are not kings." She ruled that McGahn would have to appear and assert any claims of privilege to the committee in response to particular questions. Any such claims could then be litigated on their merits.[x]

The McGahn case was hardly the only time Judge Jackson has heeded the call to remind those in power that we live in a society governed by the rule of law. In *Policy & Research, LLC v. HHS*, she considered a challenge to the Trump administration's decision to terminate teen pregnancy prevention grant funding to a number of organizations without explanation.[xi] Judge Jackson called it "striking" that the Department of Health and Human Services "*provided no explanation whatsoever* for its decision." Because HHS had failed to follow its own rules on funding, she ruled they had acted contrary to law. She opened the case with a clear statement of principle emphasizing that a presidential administration cannot simply ignore the law: "As far as the Administrative Procedures Act … is concerned, this much is clear: a federal agency that changes course abruptly without a well-reasoned explanation for its decision or that acts contrary to its own regulations is subject to having a federal court vacate its action as arbitrary and capricious." When officials deem themselves above the law, judges such as Jackson are a vital part of the constitutional framework protecting the nation.

The courtroom also plays a vital role in protecting the American people from abuse of power by law enforcement officials. In one case before her, three law enforcement officials arrested Anthony Michael Patterson, an Occupy Wall Street protester, simply for cursing.[xii] At the police station, one of the arresting officers even admitted to Patterson that "profanity is protected under freedom of speech, but when you use profanity it causes a hostile environment for the police." Ultimately, they dropped the charges, and Patterson later sued the police officers for the wrongful arrest. Judge Jackson rejected the officers' claim that they had qualified immunity, stating the case plainly: "A police officer is unquestionably on notice that arresting a speaker solely based on the content of his speech and without probable cause to believe that he has committed a crime is a violation of the First Amendment."

Judge Jackson has also made clear that she respects constitutional precedents recognizing the ability of the American people to use their government to impose reasonable limits on the power of corporations. This is especially important at a time when far-right judges are increasingly open in their efforts to undo the New Deal by judicial fiat. In 2013, she rejected an effort by business interests to constitutionalize their opposition to ordinary commercial business disclosure requirements by framing them as impermissible "compelled speech." At issue was a federal regulation strengthening the country-of-origin labeling on certain meats. After carefully considering the parties' arguments and the relevant precedents, Judge Jackson upheld the regulations, and her judgment was affirmed on appeal.[xiii]

Conclusion

Judge Ketanji Brown Jackson is a brilliant jurist with a demonstrated record of commitment to the legal rights and dignity of all people. Her skills and experience will enrich the D.C. Circuit. Indeed, she is exactly the kind of person the Constitution contemplates as being in place to protect our democracy and our rights.

Sincerely,



Marge Baker
Executive Vice President

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[i] https://www.judiciary.senate.gov/meetings/judicial-nominations-2012-12-12, time 0:29:25.
[ii] United States Sentencing Commission, Transcript of Public Meeting of June 30, 2011, https://web.archive.org/web/20110725020445/https://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20110630/Meeting_Transcript.pdf, p. 13.
[iii] Response of Ketanji B. Jackson to the Written Questions of Senator Chuck Grassley, published in "Confirmation Hearings on Federal Appointments, 112th Congress, Second Session," Senate Judiciary Committee, S. Hrg. 112-4, Pt. 9, p. 771.
[iv] *Pierce v. District of Columbia*, 128 F. Supp. 3d 250 (D.D.C. 2015).
[v] E.g., *Make the Road New York v. McAleenan*, 405 F. Supp. 3d 1 (D.D.C. 2019) (addressing the Trump administration's dramatic expansion in the categories of non-citizens subjected to expedited removal from the country without any hearing or review before immigration judges).
[vi] *Kiakombua v. Wolf*, No. 19-cv-1872 (KBJ), 2020 U.S. Dist. LEXIS 203294 (D.D.C. Oct. 31, 2020).
[vii] *Id.*
[viii] "US used 'unlawful' Trump administration guide to rule on asylum," Al Jazeera, Dec. 5, 2020, https://www.aljazeera.com/news/2020/12/5/us-used-unlawful-trump-administration-guide-asylum-claims-court-transcript-shows.
[ix] *Committee on the Judiciary of the U.S. House of Representatives v. McGahn*, 415 F. Supp. 3d 148 (D.D.C. 2019).
[x] The case remains pending in the D.C. Circuit. After a divided panel ruled that the committee had lacked standing under the Constitution to go to court to enforce its subpoena, the full circuit quickly issued an *en banc* order vacating the panel on that issue and ultimately upheld Judge Jackson's ruling that the committee had standing to sue. 968 F.3d 755 (D.C. Cir. 2020). Additional jurisdictional questions remain before the circuit court, while the substance of Judge Jackson's decision has not been addressed yet on appeal.
[xi] *Policy & Research, LLC v. U.S. Department of Health and Human Services*, 313 F. Supp. 3d 62 (D.D.C. 2018). *See also Healthy Futures of Texas v. HHS*, 315 F. Supp. 3d 339 (D.D.C. 2018).
[xii] *Patterson v. United States*, 999 F. Supp. 2d 300 (D.D.C. 2013).
[xiii] *American Meat Institute v. U.S. Department of Agriculture*, 968 F. Supp. 2d 38 (D.D.C. 2013).

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Interim President & CEO
Wade Henderson

April 27, 2021

The Leadership Conference

SUPPORT THE CONFIRMATION OF JUDGE KETANJI BROWN JACKSON TO THE U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 220 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, we write to express our strong support for the confirmation of Judge Ketanji Brown Jackson to the U.S. Court of Appeals for the District of Columbia Circuit.

Judge Jackson is exceptionally qualified and has devoted her career to pursuing equal justice under the law. Throughout her entire career she has demonstrated a strong commitment to civil and human rights, and since 2013, she has proven to be a fair-minded jurist on the U.S. District Court for the District of Columbia. Prior to serving on the bench, she served as vice chair of the U.S. Sentencing Commission, engaged in private practice, served as a federal public defender, and clerked for Judge Patti Saris of the U.S. District Court for the District of Massachusetts, Judge Bruce Selya of the U.S. Court of Appeals for the First Circuit, and Associate Justice Stephen Breyer of the U.S. Supreme Court. Judge Jackson graduated from Harvard-Radcliffe College and Harvard Law School.

Judge Jackson's professional background as a federal public defender brings much-needed experience to the bench. Public defenders play a critical role in our legal system, yet they are underrepresented in the federal judiciary. There are four times as many former prosecutors on the federal bench than former public defenders;[1] just over 2 percent of federal appellate judges have experience as a public defender.[2] The judiciary needs to reflect the diversity of the legal profession, including more judges experienced in ensuring that defendants have counsel and that their rights are recognized. Judge Jackson would bring this meaningful experience to the D.C. Circuit.

If confirmed, Judge Jackson would be the first Black woman appointed to any federal appellate court in nearly 10 years. The historic exclusion of Black women from the judiciary is a well-documented problem.[3] A federal bench that represents and reflects the vast diversity

[1] Neily, Clark. "Are a Disproportionate Number of Federal Judges Former Government Advocates?" *Cato Institute*. September 18, 2019.
[2] "Biographical Directory of Article III Federal Judges, 1789-present." *Federal Judicial Center*. Accessed April 2021.
[3] Sen, Maya. "Diversity, Qualifications, and Ideology: How Female and Minority Judges Have Changed, or Not Changed, Over Time." 2017 Wis. L. Rev. 367 (2017).

of our nation is vital to robust and informed decision-making and helps foster more public trust in our judiciary.[4] Judge Jackson's confirmation would build that needed trust.

Judge Jackson's vast experience and record make her eminently qualified to serve on the D.C. Circuit. For four years, Judge Jackson served as vice chair and commissioner of the U.S. Sentencing Commission. During that time, the commission implemented crucial bipartisan reforms to federal sentencing guidelines that had a disproportionate impact on Black and Brown defendants, as well as their families and communities.[5] For example, when the commission voted to retroactively apply the new guidelines reducing significant sentencing disparities between crack cocaine and powder cocaine offenses, Judge Jackson argued the necessity of doing so based on data and public comments, as well as fundamental fairness.[6] She noted that failure to apply the amended guidelines retroactively would harm not only those serving sentences pursuant to the prior guidelines, but all people who believe in fairness and in equal application of the law.[7] During a public meeting, she said, "Today the commission completes the arc that began with its first recognition of the inherent unfairness of the 100:1 crack/powder disparity all those years ago. I say justice demands this result."[8] While our criminal-legal system is still in desperate need of reforms to make it more fair for more people, this was an important step to address sentencing disparities.

Since 2013, Judge Jackson has served with distinction on the U.S. District Court for the District of Columbia. In this time, she has issued rulings in more than 550 cases.[9] Throughout her tenure, she has demonstrated her commitment to civil and human rights and her even-handed approach to the law. For example:

- Judge Jackson has repeatedly upheld the rights of people with disabilities. She ruled in favor of William Pierce, a deaf person who was unlawfully denied accommodations while in prison.[10] She also ruled that Uber may be held liable for failing to provide transportation services that can be fully and equally enjoyed by people who use wheelchairs.[11]
- Judge Jackson has approached the rights of working people with fair-mindedness. After labor unions challenged a number of Trump administration executive orders designed to eviscerate the right to collective bargaining for federal workers, she ruled that several provisions — including limitations on official time, bans on employees communicating with Congress, and other provisions impacting collective bargaining and employee removals — were unlawful.[12]

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[4] *Id.* at 373.
[5] These changes included bipartisan efforts to reduce draconian sentencing practices and ensure that sentencing guidelines aligned with federal law. *See, e.g.,* "**U.S. Sentencing Commission Public Meeting Minutes**." *U.S. Sentencing Commission.* April 6, 2011. Pgs. 11-12. (Reducing the 100:1 sentencing disparity between crack cocaine and powder cocaine offenses and ending mandatory minimums for simple possession of crack cocaine); "**U.S. Sentencing Commission Public Meeting Minutes**." *U.S. Sentencing Commission.* April 10, 2014. Pg. 16. (Reducing guideline ranges for certain offenses that tied punishment to drug quantities); "**U.S. Sentencing Commission Public Meeting Minutes**." *U.S. Sentencing Commission.* July 18, 2014. Pg. 8. (Reducing guidelines for certain nonviolent drug trafficking offenses retroactively).
[6] "**U.S. Sentencing Commission Public Meeting Minutes**." *U.S. Sentencing Commission.* June 30, 2011. Pg. 3.
[7] *Id.* at 4.
[8] "**Crack Cocaine Sentencing**." *C-SPAN.* June 30, 2011. Remarks at 18:33.
[9] Jackson, Ketanji Brown. *U.S. Senate Committee on the Judiciary: Questionnaire for Judicial Nominees*. Pg. 41.
[10] *Pierce v. District of Columbia*, 128 F.Supp.3d 250 (D.D.C. 2015).
[11] *Equal Rights Center v. Uber Technologies, Inc.*, 2021 WL 981011 (D.D.C. 2021).
[12] *AFGE v. Trump*, 318 F.Supp.3d 370 (D.D.C. 2018).

- Judge Jackson has a record of upholding the rights of immigrants, including undocumented residents and asylum seekers. She found that the Trump administration's efforts to dramatically expand the government's expedited deportation powers could cause irreparable harm to immigrant communities.[13] She also blocked a U.S. Citizenship and Immigration Services practice that unlawfully limited the number of immigrants who could successfully prove their need for asylum.[14]
- Judge Jackson defended reproductive health and rights. In one case surrounding the Trump administration's dismantling of the Teen Pregnancy Prevention Program,[15] she found that the decision to terminate the grant program without any explanation and in violation of clear regulations was unlawful.[16]
- Judge Jackson's record on environmental protections also demonstrates her fair-mindedness as she has ruled in favor of government transparency and public access to Food and Drug Administration data that impacts health and environmental concerns.[17] She also found that the Coast Guard acted lawfully when it detained and investigated ships that had violated environmental laws on oil spills.[18]
- Judge Jackson has carefully approached questions dealing with the separation of powers and executive authority to defend the Constitution and its principles. Judge Jackson ordered former White House Counsel Don McGahn to appear before the House Judiciary Committee after the committee issued a subpoena to him related to its investigation of Russia's interference in the 2016 election and potential obstruction of justice by President Trump.[19] She rejected the Department of Justice's arguments that senior presidential advisors have absolute immunity from congressional subpoenas, powerfully saying, "The primary takeaway from the past 250 years of recorded American history is that Presidents are not kings... Rather, in this land of liberty, it is indisputable that current and former employees of the White House work for the People of the United States, and that they take an oath to protect and defend the Constitution of the United States."[20]

Judge Jackson's vast record and fair-minded approach to the law demonstrate that she is exceedingly qualified to be elevated to the D.C. Circuit. Indeed, the Senate has already found Judge Jackson qualified, unanimously confirming her twice — in 2010 for the Sentencing Commission, and again in 2013 for the U.S. District Court for the District of Columbia. Her vast experience as a public defender, a private attorney, a federal judge, and the vice chair of the Sentencing Commission show her record of defending and upholding fair sentencing practices, access to justice, disability rights, workers' rights, immigrants' rights, reproductive rights, environmental protections, and other essential civil and human rights.

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[13] *Make the Road New York v. McAleenan*, 405 F.Supp.3d 1 (D.D.C. 2019).
[14] *Kiakombua v. Wolf*, 2020 WL 6392824 (D.D.C. 2020).
[15] Chuck, Elizabeth. "**Trump Administration Abruptly Cuts Funding to Teen Pregnancy Prevention Programs**." *NBC News.* August 25, 2017.
[16] *Policy and Research LLC v. HHS*, 313 F.Supp.3d 62 (D.D.C. 2018).
[17] *Government Accountability Project v. Food & Drug Administration*, 206 F.Supp.3d 420 (D.D.C. 2016).
[18] *Watervale Marine Co. v. U.S. Department of Homeland Security*, 55 F.Supp.3d 124 (D.D.C. 2014).
[19] *Committee on Judiciary, U.S. House of Representatives v. McGahn*, 415 F.Supp.3d 148 (D.D.C. 2019).
[20] *Id.* at 213.

The Leadership Conference

As Judge Jackson said in March 2021 while accepting Columbia Law School's Constance Baker Motley Award for empowering women of color lawyers and advancing the rights of people of color, "We are now charged with the responsibility... of doing the work that is necessary to protect the rule of law and to promote equality and justice for all."[21] That responsibility to work towards equal justice is an essential duty of our judicial branch, and Judge Jackson's record proves that she is immensely qualified to render that justice on the D.C. Circuit — which decides cases of significant importance to all communities.

We strongly urge the Senate to swiftly confirm Judge Ketanji Brown Jackson to the D.C. Circuit. If you have any questions or would like to discuss this matter further, please contact Lena Zwarensteyn, Senior Director of the Fair Courts Campaign, at (202) 466-3311. Thank you for your consideration.

Sincerely,

Wade Henderson
Interim President & CEO

LaShawn Warren
Executive Vice President of Government Affairs

[21] Jackson, Ketanji Brown. "Remarks for the Empowering Women of Color Sixth Annual Constance Baker Motley Gala, Columbia Law School." March 12, 2021. *Questionnaire for Judicial Nominees: Attachments to Question 12(a)*. Pg. 455.

NATIONAL WOMEN'S LAW CENTER
Justice for Her. Justice for All.

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May 5, 2021 *VIA EMAIL*

The Honorable Dick Durbin
Chair
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C., 20510

The Honorable Chuck Grassley
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C., 20510

Re: *Letter in Support of Ketanji Brown Jackson for the U.S Court of Appeals for the District of Columbia Circuit*

Dear Chairman Durbin and Ranking Member Grassley:

On behalf of the National Women's Law Center (the "Law Center"), I write to express support for the confirmation of Ketanji Brown Jackson for the U.S Court of Appeals for the District of Columbia Circuit. The Law Center fights for gender justice – in the courts, in public policy, and in society – working across the issues that are central to the lives of women and girls. The Law Center uses the law in all its forms to change culture and drive solutions to the gender inequity that shapes society and to break down the barriers that harm women and girls – especially those who face multiple forms of discrimination, including women of color, LGBTQ people, and low-income women and families. For nearly 50 years, the Law Center has been on the leading edge of every major legal and policy victory for women.

Judge Jackson is a dedicated public servant and seasoned legal practitioner with experience defending equal justice and constitutional rights. [1] As Assistant Special Counsel and later Vice Chair of the Sentencing Commission, she worked on bipartisan reforms to the federal sentencing guidelines that disproportionately harm Black and brown communities. She also spent two years working as Assistant Federal Defender where she represented indigent criminal appellants before the D.C. Circuit. Additionally, while working as an associate at Proctor Gamble, she drafted an amicus brief on behalf of a range of Massachusetts-based groups and health centers in *McGuire v. Reilly*, defending the constitutionality of Massachusetts' law aimed at protecting people who seek abortion care and health care providers from harassment, violence, and unwanted contact from anti-abortion demonstrators.[2]

[1] Ketanji Brown Jackson, Senate Judiciary Committee Questionnaire.
[2] Brief in Support of Defendant-Appellant Women's Bar Ass'n of Mass., Abortion Access Project of Mass., AIDS Project of Worcester, Alternative Medical Care of Mass., American Ass'n of Univ. Women–Mass., Big Sister Ass'n of Greater Boston, Boston Women's Health Book Collective, Everywoman's Center, Four Women, Inc., League of Women Voters of Mass., Mass. NARAL, Mass. Chapter of NOW, Mass. Public Health Ass'n, National Council of Jewish Women–Mass., Religious Coalition for Reproductive Choice, Tapestry Health Systems, Union of American

Judge Jackson is eminently qualified to be a circuit court judge. She is a respected jurist who has opined on over 550 cases during her eight-year tenure on the District Court for the District of Columbia.[3] Her record shows careful consideration of the law and facts in each case, including ones that touched on issues relating to reproductive health care and education, labor rights, and disability rights. For example, in *Healthy Futures of Texas v. HHS* and *Policy and Research v. HHS*, Judge Jackson blocked the government's unlawful attempts to terminate federal teen pregnancy prevention funding to non-profits providing essential health education.[4] She protected the rights of federal employees to collectively bargain in *American Federation of Government Employees v. Trump*.[5] In addition, she affirmed the rights of people with disabilities, including people who were systematically discriminated against by the ride-sharing company Uber, as well as an incarcerated deaf person who was denied necessary accommodations by the D.C. Department of Corrections.[6] Given her record safeguarding civil rights, it is unsurprising that Judge Jackson has reputation as a fair and impartial jurist who is committed to the rule of law.

Judge Jackson's professional experience and personal background and identity add much needed diversity to the Circuit Courts of Appeals, which have historically failed to reflect the rich diversity of this country. Only about one percent of sitting circuit court judges have spent most of their career working as public defenders or within a legal aid setting.[7] Currently, women make up only 34 percent of the federal judiciary, and women of color a mere seven percent.[8] We have not had a Black woman confirmed to a circuit court in almost 10 years.[9] The D.C. Circuit needs a thoughtful, dedicated, and experienced attorney like Judge Jackson who will bolster the rights of everyone.

Furthermore, Judge Jackson demonstrated at her hearing that she is ready to transfer her exemplary legal career to an appellate judgeship. Both her testimony and her judicial record prove she

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Hebrew Congregations–Northeast Council, Womancare/Repro Associates, and YWCA of Cambridge, amici curiae, *McGuire, et al. v. Reilly, et al.*, 260 F.3d 36 (1st Cir. 2001); *McGuire v. Reilly*, 386 F.3d 45 (1st Cir. 2004), cert. denied, 544 U.S. 974 (2005).

[3] Ketanji Brown Jackson SJQ

[4] *Healthy Futures of Texas v. Dep't of Health & Hum. Servs.*, 315 F. Supp. 3d 339 (D.D.C. 2018); *Pol'y & Rsch., LLC v. United States Dep't of Health & Hum. Servs.*, 313 F. Supp. 3d 62 (D.D.C. 2018)

[5] *Am. Fed'n of Gov't Emps., AFL-CIO v. Trump*, 318 F. Supp. 3d 370 (D.D.C. 2018), *rev'd and vacated*, 929 F.3d 748 (D.C. Cir. 2019) Judge Jackson found that certain provisions of the executive orders conflicted with the Federal Service Labor- Management Relations Statute (FSLMRS). The D.C. Circuit reversed on the threshold issue of subject-matter jurisdiction, without reaching the merits of her determination concerning the lawfulness under the FSLMRS.

[6] *Equal Rts. Ctr. v. Uber Techs., Inc.,* No. 17-CV-1272 (KBJ), 2021 WL 981011 (D.D.C. Mar. 15, 2021); *Pierce v. D.C.,* 128 F. Supp. 3d 250 (D.D.C. 2015)

[7] Maggie Jo Buchanan, *Pipelines to Power: Encouraging Professional Diversity on the Federal Appellate Bench,* CENTER FOR AMERICAN PROGRESS, Aug. 13, 2020, https://www.americanprogress.org/issues/courts/reports/2020/08/13/489312/pipelines-power-encouraging-professional-diversity-federal-appellate-bench/

[8] CENTER FOR AMERICAN PROGRESS, *Examining the Demographic Compositions of U.S. Circuit and District Courts*, Feb. 13, 2020, https://www.americanprogress.org/issues/courts/reports/2020/02/13/480112/examining-demographic-compositions-u-s-circuit-district-courts/

[9] LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS, *We Need More Black Women on Our Federal Appellate Courts*, Feb. 25, 2021, https://civilrights.org/blog/we-need-more-black-women-on-our-federal-appellate-courts/

will approach cases guided by a consistent methodology of analyzing the facts, the law, and record of the case. She also expertly answered questions from the Committee and displayed her brilliance, temperament, and exemplary qualifications to serve as an appellate judge.

The Law Center offers its support of the nomination of Ketanji Brown Jackson to serve on the Court of Appeals for the District of Columbia Circuit and urges the Committee to approve her nomination quickly. Please feel free to contact me, or Theresa Lau, Senior Counsel, at (202) 956-3064 should you have any questions.

Sincerely,



Fatima Goss Graves
President and CEO

AFSCME
We Make America Happen

Lee Saunders
President
Elissa McBride
Secretary-Treasurer
Vice Presidents
Jody Barr
New Britain, CT
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Anthony Wells
New York, NY
Mike Yestramski
Olympia, WA
#201-20

May 3, 2021

United States Senate
Washington, D.C. 20510

Dear Senator:

On behalf of the 1.4 million members of the American Federation of State, County and Municipal Employees (AFSCME), I urge you to support the nomination of Judge Ketanji Brown Jackson to the United States Court of Appeals for the D.C. Circuit.

Confirming Judge Ketanji Brown Jackson to the D.C. Circuit will ensure the life experiences of all people in America are better represented on this important federal court. For too long, special interests have rigged the system to favor corporations instead of people. We need judges who will not pick and choose whose rights they care about and will put equal justice first. We create a more just system when we put judges like Jackson on our courts. That is how we will protect and advance civil rights, workers' rights, health care access, and ensure we emerge from this pandemic a more equitable society.

Judge Brown Jackson's 2018 ruling blocking an attempt by the Trump administration to decimate the collective bargaining rights of federal employees is but one example of her well-reasoned decisions upholding the rights and freedoms of working people. Her nomination represents the kind of fair-minded jurisprudence we can expect from nominees whose careers show an understanding of and a dedication to workers' rights, and whose backgrounds reflect the racial, ethnic and cultural diversity of our country.

Judge Brown Jackson's lived experiences and deep commitment to equal justice make her uniquely qualified for this position. Jackson would be the first Black woman confirmed to a Circuit Court in 10 years.

We urge Congress to quickly confirm Jackson to the D.C. Circuit. She will be a powerful supporter of the rights of all people in America and prioritize equal justice for all.

Sincerely,

Bailey K. Childers

Bailey K. Childers
Director of Federal Government Affairs

BKC:cg

American Federation of State, County and Municipal Employees, AFL-CIO
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AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

Please reply to:
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Randy.Noel@butlersnow.com

April 27, 2021

Via Email
The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

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

Re: Nomination of Ketanji Brown Jackson to the United States Court of Appeals for the District of Columbia Circuit

Dear Chairman Durbin and Ranking Member Grassley:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Judge Ketanji Brown Jackson, who has been nominated by the President to the United States Court of Appeals for the District of Columbia Circuit. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Judge Jackson is **"Well Qualified"** to serve on the United States Court of Appeals for the District of Columbia Circuit.

Very truly yours,

Randall D. Noel
Chair, Standing Committee
On the Federal Judiciary

cc: Dana Remus, White House Counsel (*via email*)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
The Honorable Ketanji Brown Jackson (*via email*)
ABA Standing Committee on the Federal Judiciary (*via email*)
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary, Staff Counsel (*via email*)



April 27, 2021

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin, Ranking Member Grassley, and Committee Members:

On behalf of our 1.5 million supporters nationwide, People For the American Way enthusiastically supports the nomination of Candace Jackson-Akiwumi to the Seventh Circuit Court of Appeals. Her brilliance, her experience, and her demonstrated commitment to civil rights make her an excellent choice who will help inspire confidence in the courts.

From her early years to her current position as a partner at Zuckerman Spaeder, Candace Jackson-Akiwumi's entire career demonstrates a pattern of excellence and a commitment to equal justice. Jackson-Akiwumi graduated from Princeton University with honors in 2000. At Yale Law School, she was a Senior Editor of the *Yale Law Journal* and an NAACP LDF Earl Warren Legal Scholar, graduating in 2005. She then had two clerkships, one for Judge David H. Coar of the United States District Court for the Northern District of Illinois, and another for Fourth Circuit Judge Roger L. Gregory. Jackson-Akiwumi then spent three years as an associate at Skadden Arps in Chicago, practicing complex litigation in both state and federal court at both the trial and appellate level. While representing the firm's clients, she also maintained a strong pro bono practice. She dedicated 30 percent of her time to giving vital legal assistance to disadvantaged people in the areas of adoption, civil rights, criminal law, immigration, and tort matters.

At the age of 30, she left the law firm and began her decade-long service as a public defender that has been the hallmark of her career. Using her abilities to advance justice and fairness for all people, she represented indigent men and women in Illinois who were accused of crimes but who could not afford a lawyer. She stood with them to make sure their rights were not violated by prosecutors or law enforcement.

Public defenders play a vital and underappreciated role in protecting freedom, not only of defendants in criminal cases but of all people in the United States. We have given our government the power to take a person away from their homes, imprison them, and even execute them. That power is subject to terrifying abuse. So if our government is going to use that power against someone, it must do so in a way that complies with the safeguards set forth in the Bill of Rights. Otherwise, we make it easier for abusive government officials to take away anybody's liberty. That basic tenet of the United States

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Constitution is vital to protecting all of us. Jackson-Akiwumi's work defending indigent people accused of crimes has also gave her insight into how the system works in real life and often fails to serve justice—insight that circuit panels could use to make more informed decisions.

Jackson-Akiwumi's groundbreaking work on "phony stash houses" provides an example. These are sting operations in which law enforcement—usually the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)—identify a confidential informant to recruit individuals to participate in the robbery of a fictional "stash house" that contains a substantial amount of drugs or cash. When the recruited individuals meet with the informant and an undercover ATF agent, their conversations are recorded, and they are told that the stash house is heavily armed and are encouraged to bring weapons. At an arranged "pre-meeting," the targeted individual is arrested on charges relating to drugs, robbery, and firearms.[i] Seventh Circuit Judge Richard Posner has called this a "disreputable tactic … to increase the amount of drugs that can be attributed to the persons stung, so as to jack up their sentences."[ii]

While representing two men charged in a "phony stash house" prosecution, Jackson-Akiwumi worked with counsel in related cases to identify and quantify the racial disparities in how ATF was bringing such cases in the Northern District of Illinois. Specifically, while the district's adult population was approximately 18 percent Black, 11 percent Latinx, and 63 percent white, the defendants set up in phony stash house cases were 78.7 percent Black, 9.6 percent Latinx, and 11.7 percent white. Based on the evidence Jackson-Akiwumi presented in the case, Judge Rubén Castillo wrote that it is "time for these false stash house cases to end and be relegated to the dark corridors of our past."[iii] Because of the work Jackson-Akiwumi has done on the issue, the U.S. Attorney for the Northern District of Illinois stopped bringing charges based on phony stash houses.[iv]

No current judge on the Seventh Circuit has had a career as a public defender. Jackson-Akiwumi would bring the court priceless insight into how the criminal justice works in real life. She would also help restore racial diversity to the Seventh Circuit. Because former President Trump filled all five vacancies on this court during his term with white judges, it has the dubious distinction of being the only geographic circuit court in the United States to have reverted back to an all-white bench. So Jackson-Akiwumi, who is Black, would enhance the racial as well as the professional diversity of the Seventh Circuit. The panels she would participate in would better understand the lived experiences of those whose cases come before them, enabling them to more effectively achieve justice and fairness.

Jackson-Akiwumi's impressive skills and experience make her among the nation's top lawyers. The U.S. Senate should take advantage of the opportunity President Biden has offered and confirm her to the Seventh Circuit.

Sincerely,



Marge Baker
Executive Vice President

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[i] "Racial Profiling and Other Challenges in Stash House Cases," Candace R. Jackson, Staff Attorney, Federal Defender Program, 2014 Criminal Justice Act Annual Fall Criminal Defense Seminar, reproduced in Senate Jackson-Akiwumi Judiciary Committee Questionnaire response attachments at p. 796.
[ii] *U.S. Kindle*, 698 F.3d 401, 414 (7th Cir. 2012, Judge Posner concurring and dissenting).
[iii] *U.S. v. Brown*, 299 F. Supp. 3d 976, 983 (2018).
[iv] *Id.*, 984 n. 2.

April 16, 2021

The Honorable Richard Durbin
Chair

The Honorable Charles Grassley
Ranking Member

Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Candace Jackson-Akiwumi to the United States Court of Appeals for the Seventh Circuit

Dear Chairman Durbin and Ranking Member Grassley:

We write in enthusiastic support of Candace Jackson-Akiwumi for confirmation to the United States Court of Appeals for the Seventh Circuit. Like Candace, we are former law clerks to the Honorable Roger L. Gregory, Chief Judge of the United States Court of Appeals for the Fourth Circuit. Many of us know Candace personally; all of us know her to be exceptional—a rare combination of intellect and judgment, with a temperament that is ideal for the post she has been nominated to occupy.

Professionally, Candace has distinguished herself through her intelligence and accomplishments. She is a seasoned litigator and a dedicated public servant, having worked for ten years as a federal defender. She has clerked for two federal judges, Judge Gregory and the Honorable David H. Coar of the Northern District of Illinois, one of the districts in the circuit she has been nominated to serve. And she is a distinguished graduate of Princeton University and Yale Law School. She has excelled at every stage of her career. This one will be no different.

Candace's intelligence and acumen are matched by her humanity and warmth. She is patient and kind, even when she disagrees with you. (We know from experience.) Candace will treat litigants and their disputes with attentiveness and respect, always remembering the people whose lives lie behind the legal briefs. She will be the sort of judge before whom any lawyer would be grateful to appear, and to whom any litigant could entrust their dispute with the confidence that it will be skillfully and fairly resolved. Candace thrives in the sort of environment required of a judge on a United States Court of Appeals. Firm in her analytical viewpoint, she has the ability to hear the voice of dissent and make a reasoned choice based on her understanding of the facts and the law, as well as consideration of the analysis of her colleagues. Candace will also be an inspiration to the attorneys who appear before her and a phenomenal mentor to the law clerks she hires to aid her.

In Judge Gregory's chambers, Candace was a trusted resource, both for the judge and for us, her colleagues. She saw both sides of every issue and was always ready to engage with any problem. Her considerable intellect elevated the level of analysis in chambers, and her skill as a collaborator brought out the best in the rest of us. She approached each case with passion, but never let that passion cloud her judgment.

Although we are all former clerks of Judge Gregory, we are diverse in our viewpoints, backgrounds, and careers. We are immigration attorneys, commercial litigators, law professors, directors at non-profits, counsel for government agencies, in-house lawyers, data scientists, and civil rights attorneys. We are former federal and state prosecutors, public defenders, JAG officers, labor lawyers, government trial lawyers, plaintiff and defense counsel, congressional staffers, and foreign relations officers. Despite these differences, we are united in our support for Candace.

Candace personifies excellence and integrity. If confirmed, she will represent those virtues and more. Like Judge Gregory, she will be an inspiration to others—a symbol of what can be achieved and the good that can be accomplished by a person with heart. We emphatically support her confirmation without reservation.

Sincerely,

Matthew Peller

Brian A. Pérez-Daple

– Law Clerks to Judge Gregory, 2006–2007 –



Juan A. Arteaga
2003–2004
Charles D. Austin
2013–2014
Portia R. Bamiduro
2003–2004
John Clopper
2001–2002
Chandra C. Davis
2004–2005
Maya M. Eckstein
2001
Sara A. Fairchild
2017–2018
Daniel Fryer
2019–2020
Shimica D. Gaskins
2007–2008
Daniel S. Harawa
2012–2013
Brandon Hasbrouck
2015–2016
Antonio Lavelle Ingram, II
2017–2018
Christopher M. Jackson
2011–2012
Cale Jaffe
2002–2003
Eamon P. Joyce
2003–2004
Chimnomnso N. Kalu
2014–2015
Cortelyou Kenney
2011–2012
Neel Lalchandani
2016–2017
LaDonne C. Lankster
2001–2002
Jon J. Lee
2008–2009
A. Anne Lloyd
2009–2010
Kapil Longani
2007–2008

Estalyn Smyke Marquis
2018–2019
Paul Meyer
2014–2015
Mercedes Montagnes
2010–2011
Tamra Tyree Moore
2002–2003
Zachary K. Nguyen
2019–2020
Erin K. Pitts
2005–2006
Hallie Jay Pope
2014–2015
Jessica L. Roberts
2007–2008
Kathryn Robinette
2015–2016
Deuel Ross
2010–2011
JP Schnapper-Casteras
2010–2011
Lillian V. Smith
2016–2017
Carson H. Sullivan
2001–2002
Dan Svirsky
2013–2014
Brian Tengel
2018–2019
Lartease Tiffith
2007–2008
Thais-Lyn Trayer
2014–2015
Melissa A. Valladares
2018–2019
Kristin L. Woeste
2005–2006

April 19, 2021

The Honorable Richard Durbin
Chairman

The Honorable Charles Grassley
Ranking Member

Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Candace Jackson-Akiwumi to the United States Court of Appeals for the Seventh Circuit

Dear Chairman Durbin and Ranking Member Grassley:

We write to express our enthusiastic support for Candace Jackson-Akiwumi's nomination to the United States Court of Appeals for the Seventh Circuit. We are lawyers who benefitted from Candace's mentorship early in our careers. We believe that the qualities of character evident in her mentorship are among those that will make her a superb addition to the court.

Having encountered Candace at points throughout her career, from her early days as an associate in private practice through her successful tenure as a Federal Public Defender, we collectively represent Candace's steadfast commitment to proactive mentorship. She takes a hands-on, interactive approach: she included us in strategy conversations and encouraged us to offer our opinions even though we were junior attorneys; she gave us opportunities to draft important motions and then offered rigorous feedback even though it would have been faster not to; she encouraged us to jump into the deep-end of trial practice to make sure we got real experience, secure in the knowledge that we were conducting our first cross-examination of a witness or first client meeting under her attentive eye. And she has made a point of staying in touch, serving as a sounding board for our subsequent career decisions, thinking of us as opportunities crossed her desk, and connecting us to further resources and networks. If confirmed as a judge, Candace's dedication to "lifting as she climbs" will richly benefit the generations of judicial clerks to pass through her chambers, and in turn, the legal profession.

Much as Candace chose to make time for mentorship, we sought her out as a mentor because she exemplified the kind of lawyer we wanted to be. Candace's passion for public service, excellence in legal advocacy, and justice has inspired each of us in our own careers. Her incredible work ethic set a high bar for us to aspire to. We admire Candace's unflinching integrity and have seen first-hand how foundational ethics guide her decisions. Her sense of fairness, honesty, and grace infuse her professional conduct, whether dealing with clients, opposing counsel, or colleagues. We have seen her exercise exquisite discernment. Her capacity to listen to different perspectives is one of her most special talents, whether addressing a client's family's questions, or an opposing counsel's demands. She is a highly effective communicator, sensitive to the needs of

a wide range of people, from clients with little familiarity with the legal system, to students with minimal legal exposure, to judges before whom she appears. She moves through the world with kindness and wit. The unique gifts that made us choose Candace as a mentor would make her an exceptional judge, and a great credit to the federal bench.

Each of us has seen Candace's character and talent shine when the spotlight is on and, perhaps as importantly, we have seen the character and talent she displays in quiet moments, when the spotlight is off. As a result, we are confident that she would serve the profession, the judiciary, and the country with distinction and integrity. We urge the Senate to confirm her nomination to the United States Court of Appeals for the Seventh Circuit without delay.*

Sincerely,

Shouvik Bhattacharya
Associate, Boies Schiller Flexner (UK) LLP

Lisa Bohl
Attorney, MoloLamken LLP

Sarah H. Catalano
Associate, Eimer Stahl LLP

Jordan Evans
Law Student, Loyala University Chicago School of Law

Sarah Grusin
Staff Attorney, National Health Law Program

Kara Kapp
Partner, Cozen O'Connor

Caroline Keig
Associate Attorney, Smith Blake Hill LLC

Cara Lindo

Abigail Leinsdorf Garber
Attorney, Spark Justice Law LLC

Prya Murad
Assistant Public Defender, Office of the Public Defender, 15th Judicial Circuit, Palm Beach County, Florida

Briana Payton
Policy Analyst, Chicago Community Bond Fund

Patricia Radkowski
Associate, Kirkland & Ellis LLP

Priya Raghavan
Staff Attorney, Appellate Advocates

Keimer E. Raymond
Trial Lawyer, Outside Counsel for the Los Angeles County Sheriff's Department

Katherine Reisner
Counsel, States United Action

Latiera Scott-Johnson
Litigation Associate, Morgan, Lewis & Bockius LLP

Theo Torres
Trial Attorney, Federal Defenders of San Diego

*Please note that that all organizational affiliations are listed for identification purposes only.



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April 23, 2021

The Honorable Richard J. Durbin
Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
U.S. Senate Committee on the Judiciary
135 Hart Senate Office Building
Washington, DC 20510

Re: Letter in Support of Candace Jackson-Akiwumi – Nominee for United States Court of Appeals for the Seventh Circuit

Dear Chairman Durbin and Ranking Member Grassley:

On behalf of the Black Women Lawyers' Association of Greater Chicago, Inc. (BWLA), we write to convey our enthusiastic and unequivocal support for the nomination of longtime BWLA member, Candace Jackson-Akiwumi, to the United States Court of Appeals for the Seventh Circuit. Through our work alongside Ms. Jackson-Akiwumi, we have witnessed her sterling intellect, sincere warmth, even temperament, and high integrity – qualities that make her an exceptional nominee for the federal appellate court.

Since its inception in 1987, BWLA has continuously worked to identify and address issues unique to Black women lawyers and judges, promote excellence in the legal profession, encourage the inclusion of Black women lawyers in the administration of justice in the legal system, provide professional development and resources, and further career opportunities and relationships to support Black women in the legal profession in Chicago. BWLA is comprised of thousands of members nationwide and has an opulent history of illustrious and influential members in the legal profession, including the first judge of color on the United States Court of Appeals for the Seventh Circuit, BWLA Co-Founder Ret. Judge Ann Claire Williams, as well as many other highly accomplished federal and state court judges and attorneys, international business leaders, corporate and non-profit general counsels, government leaders, partners and associates at law firms, professors in academia, and law students. Ms. Jackson-Akiwumi is a shining example of this rich legacy of Black women attorneys and has greatly contributed to the profession through stellar legal representation as a federal public defender and her tireless efforts to advance BWLA's mission during her time in Chicago.

In 2005, Ms. Jackson-Akiwumi came to Chicago to serve as a Judicial Law Clerk for the Honorable David H. Coar at the United States District Court for the Northern District of Illinois. She also immediately joined BWLA, becoming a dedicated member of our organization, volunteering her time and energy to support the mission of BWLA. She held multiple leadership positions within the organization, most notably as a

member of the Board of Directors and Scholarship Fund Board for several years. Additionally, she was instrumental to the development of new and innovative programming to advance BWLA's mission while serving as a mentor to law students and serving the community at large. Ms. Jackson-Akiwumi's outreach and service included leading efforts to provide meals and clothes to women and children shelters, coaching law students for mock trial competitions, developing a pipeline program to promote and increase Black woman lawyer representation at large law firms, and providing guidance to high school and grade school students that aspire to become lawyers, among other notable contributions.

Ms. Jackson-Akiwumi's superlative legal career speaks for itself and so does her unwavering personal dedication to BWLA's mission to serve and uplift the community and develop a pipeline of future legal professionals. Her exemplary vision, responsible stewardship, and compassion for her community are just a few attributes she would bring to the federal bench. Ms. Jackson-Akiwumi will serve our country with her wisdom and her warmth. BWLA strongly supports Ms. Jackson-Akiwumi's nomination to the U.S. Court of Appeals for the Seventh Circuit and urges her swift confirmation by the United States Senate.

Please do not hesitate to contact us if you have any questions.*

Sincerely,

Kenyatta S. Beverly
President, BWLA
Labor and Employment Counsel
The Davey Tree Expert Company

Nakhia C. Crossley
Vice President, BWLA
Central Region Director & Counsel
Solar Energy Industries Association

Judge Ann Claire Williams (Ret.)
U.S. Court of Appeals for the Seventh Circuit
Founder, BWLA

Ambassador Ertharin Cousin
Distinguished Fellow
Chicago Council on Global Affairs
Founder & Past President, BWLA

Patricia Brown Holmes
Managing Partner
Riley Safer Holmes & Cancila LLP
Founder & Past President, BWLA

Zaldwaynaka Scott
Attorney
Past President, BWLA

Sharon E. Jones
Chief Executive Officer
Jones Diversity Inc.
Founder & Past President, BWLA

Dorothy G. Capers
Executive Vice President and Group General Counsel
National Express Group PLC
Past President, BWLA

Hon. Robin D. Shoffner, Ret.
Partner
Nathan & Kamionski, LLP
Past President, BWLA

***Please note that the signatory organization affiliations are listed for identification purposes only. The positions expressed in this letter are those of the individual signatories only and not those of their affiliated organizations.**

Kenya A. Jenkins-Wright
General Counsel
Illinois Guardianship and Advocacy Commission
Past President, BWLA

Natalie Howse
Attorney
Past President, Cook County Bar Association

Alice V. Brathwaite
Counsel – Employment & Litigation
Upwork

Natasha E. Jenkins
General Counsel
Teamsters Local 700
Vice President, Cook County Bar Association

Camile Lindsay
Chief of Staff
Illinois Department of Corrections

Erica Kirkwood
Vice President and General Counsel
GMA Construction Group
Past President, BWLA

Ngozi C. Okorafor
Director of Employment Actions
Cook County Sheriff's Office
Past President, BWLA

Ashley S.A. Jackson, Esq.
Privacy Counsel & Officer
Olive AL, Inc.

Hon. Sybil C. Thomas
State of Illinois Circuit Court of Cook County
Past President, BWLA

Ava George Stewart
Chief, Misdemeanor/Traffic Division
Lake County State's Attorney's Office

Precious Jacobs-Perry
Equity Partner
Jenner & Block LLP

Tiffany Renee Harper
Lead, Strategy & Operations
Twitter
Past President, BWLA

Brenda Russell
Director & Client Relations Executive
PricewaterhouseCoopers

Elsa Andrianifahanana
Associate
Jones Day

Gray Mateo-Harris
Equity Partner
Fox Rothschild, LLP

Carrera Thibodeaux
Energy and Water Regulation and Litigation Associate
Whitt-Sturtevant LLP

Lora M. Whitticker
Manager of Alumni Relations & In-House Opportunities
Jenner & Block LLP

Brianna Panton
Law Student
Loyola University Chicago School of Law

Mercedes M. Hill
Associate General Counsel
Beam Suntory

***Please note that the signatory organization affiliations are listed for identification purposes only. The positions expressed in this letter are those of the individual signatories only and not those of their affiliated organizations.**

Chicago Urban League
Opportunity. Community. Impact.
www.ChiUL.org

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Sheila Talton
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Donald E. Wilbon

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An affiliate of the National Urban League

April 22, 2021

The Honorable Dick Durbin (D-IL)
Chairman, Senate Committee on the Judiciary
711 Hart Senate Office Building
Washington DC 20510

The Honorable Chuck Grassley (R-IA)
Ranking Member, Senate Committee
on the Judiciary
135 Hart Senate Office Building
Washington DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

Please consider this letter in enthusiastic support of Candace Jackson-Akiwumi, a nominee for the United States Court of Appeals for the Seventh Circuit. Ms. Jackson-Akiwumi is an alumnus of the Chicago Urban League's IMPACT program, having been a fellow in the Class of 2017. The program's mission is to build the next generation of Black leaders in Chicagoland. Executed in partnership with the University of Chicago Booth School of Business, it is a selective program that enhances the self-awareness, executive leadership skills and confidence of highly accomplished emerging professionals.

Through her participation in our program, we found Candace to be an individual of impeccable character, even temperament and high integrity. She is brilliant, fair-minded, thoughtful and careful in reaching decisions. Candace's passion for and commitment to justice inspired her cohort and makes her an ideal nominee for the United States Court of Appeals for the Seventh Circuit.

As a federal public defender and a long-term resident of Chicago's South Side, Candace is also mindful and deliberative in applying her skills as a lawyer to facilitate fair decisions, engage in open dialogue, and positively impact those in underserved communities. Additionally, she displays great analytical and communication skills, an effortless rapport with her peers, and a profound respect and enthusiasm for human dignity and community development.

Candace has impressive credentials and extensive professional experience. As you may know, Candace received her A.B., with honors, from Princeton University and her J.D. from Yale Law School. She is a partner at Zuckerman Spaeder, LLP in Washington, D.C., where she focuses on complex civil litigation, white collar criminal defense, and investigations. Previously, Candace worked as a staff attorney at the Federal Defender Program in the Northern District of Illinois where she represented more than 400 indigent clients accused of federal crimes.

Candace began her legal career as a law clerk to Judge David H. Coar on the U.S. District Court for the Northern District of Illinois and then for Judge Roger Gregory on the U.S. Court of Appeals for the Fourth Circuit. Candace also has prior experience as a litigation associate at Skadden, Arps, Slate, Meagher & Flom LLP in Chicago, Illinois.

Candace is a remarkable woman balancing the demands of professional legal practice, motherhood, and community service/engagement. In short, we think Candace Jackson-Akiwumi is an incomparable candidate for appointment to the United States Court of Appeals for the Seventh Circuit. We all urge the members of the United States Senate Judiciary Committee and the United States Senate to confirm her nomination.

Sincerely,

Karen Freeman-Wilson
President & CEO
Chicago Urban League

The Honorable Dick Durbin
Chair
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510

April 26, 2021

Dear Chairman Durbin and Ranking Member Grassley:

We write to voice our strong and enthusiastic support for the nomination of Candace Jackson-Akiwumi to the United States Circuit Court for the Seventh Circuit, and urge her confirmation to the court.

Candace has had a diverse and distinguished career as a practicing lawyer in Chicago, and we have all had the opportunity to work with Candace as colleagues, co-counsel, opposing counsel or fellow leaders of the Chicago bar. We are a diverse group, including large law firm attorneys, former prosecutors, in-house corporate counsel, criminal defense lawyers, former members of the judiciary and legal advocates. We are unified in our support for Candace's nomination, as we know from our experience with her that she is a talented lawyer, a dedicated public servant, and will serve the court as a champion of justice and the rule of law.

These qualities of Candace have been evident from the earliest days of her career. As a lawyer at Skadden, Arps, Slate, Meagher and Flom LLP, she exhibited the ability to address complex legal issues, respond to fast-paced litigation, and exercised mature judgment well beyond her years of experience. She was also an active participant in the firm's pro bono program, representing domestic violence victims, indigent litigants and criminal defendants; in fact, her first argument before the Seventh Circuit was as part of the court's program to provide representation for indigent criminal defendants on appeal.

Candace went on to a full-time career of criminal defense work, spending a decade as a staff attorney for the Federal Defender Program in the Northern District of Illinois in Chicago. While there, she represented more than 400 indigent clients, from investigation and indictment to trial to appeal. She continued to argue before the Seventh Circuit, appearing before the court a total of six times in her career. Throughout her career, she earned a reputation of working respectfully with co-counsel and adversaries alike, fostering the culture of collegiality and dignity that marks the bench and bar of the Northern District of Illinois. Throughout her service as a public defender, she was a vigorous advocate, a compassionate attorney, and demonstrated the commitment to justice that she will bring to her role as a judge on the Circuit Court.

Candace has also been a leader in the Chicago legal community. She has been an active member of the Federal Bar Association and the Black Women Lawyers Association, serving as a leader, mentor and advocate for justice.

In sum, Candace has demonstrated the legal acumen, judgment and dedication necessary to serve as an outstanding judge on the Seventh Circuit Court of Appeals. In addition to her personal integrity and excellence, the experience she will bring as a former corporate litigator and public defender will expand the diversity so critical to the decision-making of a bench as important as the Seventh Circuit. If confirmed, she will be the only federal defender ever to sit on the court, and will be the only judge of color on the court. The Seventh Circuit is long overdue for diversifying the judges who sit on the court, and this nomination will start addressing this critical need.

We strongly urge the Committee to promptly review Candace's nomination and vote to confirm her appointment, so that the full Senate can promptly confirm her to the Seventh Circuit Court of Appeals.

Thank you for your consideration of our views. We are available to provide any additional information or to answer any additional questions.

Sincerely,

*References to law firms, corporations, or other institutions are for identification purposes only and do not constitute endorsements by those entities.

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The Honorable Dick Durbin
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152 Dirksen Senate Office Building
Washington, D.C. 20510

April 26, 2021

Dear Chairman Durbin and Ranking Member Grassley:

We write in support of the nomination of Candace Jackson-Akiwumi to serve as a judge on the United States Court of Appeals for the Seventh Circuit. We urge the Committee and full Senate to promptly review and confirm her nomination.

We are a cross-section of former prosecutors, private practitioners, corporate in-house counsel, and legal advocates who are representative of the broad diversity of the bar that practices in the Northern District of Illinois. Many of us have spent our entire careers practicing in the Northern District, have served in leadership roles in the public and private sectors, and we are all deeply committed to our judicial system and the fair administration of justice, which is the bedrock of our democracy.

The district, which includes Chicago and the surrounding 18 counties in Illinois, is a microcosm of our country, including rural areas and the third largest city in the nation; a racially and ethnically diverse populace; large corporate headquarters as well as some of the most economically challenged neighborhoods in the United States. The Northern District of Illinois bar is a community itself, with a strong tradition of collegiality and mutual respect amongst adversaries. The cases litigated in the federal courts in the Seventh Circuit, which, of course, includes Illinois, Indiana and Wisconsin, address a wide range of civil and criminal matters, and raise some of the most consequential legal issues of the day. As a result, the court has long been seen as a leader in American jurisprudence, and we are all proud of what small role those of us on this letter have been able to play in the work of the court.

A great strength of our nation and of our governmental institutions is that we are a representative government, representing the entirety of our nation. A circuit court that reflects the full diversity of the Seventh Circuit will only strengthen the court, its decisions and the administration of justice. It is with these crucial considerations in mind that we join together in support of the nomination of Candace Jackson-Akiwumi to the Circuit Court.

If confirmed, Ms. Jackson-Akiwumi would be the first federal defender ever seated on the court. Many of us on this letter are former prosecutors, as well as criminal defense lawyers, and we all agree that having a judge with this experience on the court would be an important addition. If confirmed, she will be the only judge of color on the court, and first to join since Judge Ann Claire Williams retired from the court in 2017. Again, this diversity of experience is critically important to reflect on the bench. And although we do not know Ms. Jackson-Akiwumi personally, her record and career reflect the commitment to the law and range of legal experience that will serve her well on the court.

Thank you for your consideration of this letter. We hope that the Committee and the Senate will consider the nomination of Candace Jackson-Akiwumi promptly, and confirm her to the Court of Appeals for the Seventh Circuit.

Sincerely,

*References to law firms, corporations, or other institutions are for identification purposes only and do not constitute endorsements by those entities.

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PRESIDENT
NAN ARON

CHAIR
PAULETTE MEYER

April 26, 2021

The Honorable Richard Durbin
Chairman
Senate Judiciary Committee

Dear Chairman Durbin:

On behalf of the Alliance for Justice (AFJ), a national association representing over 120 public interest and civil rights organizations, I write to strongly support the confirmation of Candace Jackson-Akiwumi as a judge on the United States Court of Appeals for the Seventh Circuit.

Ms. Jackson-Akiwumi is eminently qualified. She has extensive experience in federal court where she has represented hundreds of criminal and civil clients in both jury trials and appeals. Moreover, if confirmed, Ms. Jackson-Akiwumi will also be only the second Black woman to ever serve on the Court of Appeals for the Seventh Circuit and the only person of color on that Court today.

During her ten years as a public defender in Chicago, Ms. Jackson-Akiwumi represented over 400 indigent clients. In this role she was a fixture in Chicago's federal courthouse, representing clients in all facets of litigation, including many jury trials. Ms. Jackson-Akiwumi also briefed and argued multiple cases on behalf of clients before the Seventh Circuit, including cases related to immigration, sentencing, and the Fourth Amendment. In an article for Yale Law School's alumni directory, she noted that "…my job has meaning to me. I provide quality representation to people who would not be able to afford it, and I am there for clients at a most dreary and frightening juncture: when they are being judged for the worst day or days in their life."

Ms. Jackson-Akiwumi also has significant civil litigation experience. After finishing up her clerkships with Judge Roger Gregory of the U.S. Court of Appeals for the Fourth Circuit and Judge David H. Coar of the U.S. District Court for the Northern District of Illinois, she joined the Chicago office of Skadden, Arps, Slate, Meagher & Flom LLP. At the firm, she litigated complex civil cases involving contracts, patents, securities, and tax disputes in federal court. More recently, Ms. Jackson-Akiwumi joined the litigation firm of Zuckerman Spaeder LLP as a partner, where her practice is focused on complex civil litigation, investigations, and white-collar criminal defense.

Ms. Jackson-Akiwumi has excelled at every step of her career. She received her B.A. with Honors from Princeton University's School of Public and International Affairs. In 2005, Ms. Jackson-Akiwumi graduated from Yale Law School, where she served as a Senior Editor on the Yale Law Journal and was a

NAACP LDF Earl Warren Legal Scholar. During law school she was part of a legal team led by future Solicitor General Don Verrilli Jr. that challenged a death row inmate's sentence all the way to the Supreme Court, ultimately prevailing on an ineffective assistance of counsel claim. *Wiggins v. Smith*, 539 U.S. 510 (2003).

Given her exemplary qualifications, the Senate should expeditiously confirm Candace Jackson-Akiwumi to the United States Court of Appeals for the Seventh Circuit.

Sincerely,



Nan Aron
President

National Council of Jewish Women
2055 L St NW Suite 650
Washington, DC 20036

T: 202. 296. 2588

NCJW
National Council of Jewish Women

April 26, 2021

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin, Ranking Member Grassley, and Committee Members:

On behalf of the 180,000 advocates of National Council of Jewish Women (NCJW), I write to express our strong support for the nomination of Candace Jackson-Akiwumi to the United States Court of Appeals for the Seventh Circuit. For over 20 years, NCJW has advocated for judicial nominees who are fair, independent, qualified, and reflect the communities they serve. Candace Jackson-Akiwumi meets all of our criteria.

Jackson-Akiwumi is a highly qualified nominee who has spent the bulk of her career focused on the most vulnerable, from serving on a law school team that challenged a death row inmate's sentence to working as a public defender for ten years in Chicago. Indeed, while at the federal defender program in the Northern District of Illinois, Jackson-Akiwumi represented over 400 clients. During this time, she successfully argued that the US Bureau of Alcohol, Tobacco, and Firearms sting operations unfairly targeted racial minorities. Her favorable defense has allowed other defense attorneys to argue that certain cases should be thrown out in situations where the government has selectively prosecuted racial minorities.

In addition to public defense, Jackson-Akiwumi has a strong background in civil litigation, from litigating complex civil cases involving contracts, patents, securities, and tax disputes to investigations and criminal defense. Her cumulative experience in the public and private sector uniquely qualifies her to preside over a range of cases.

If confirmed, Jackson-Akiwumi would be the third appeals court judge to have spent the majority of her career as a public defender, the first-ever former federal defender on the Seventh Circuit, and the only Black woman on the Seventh Circuit — currently an all-white court. Candace Jackson-Akiwumi brings a critical perspective and a dedicated commitment to equal justice under the law, key attributes for a lifetime position on the federal court.

NCJW urges you to support the nomination of Candace Jackson-Akiwumi to the US Court of Appeals for the Seventh Circuit.

Sincerely,

Jody Rabhan
Chief Policy Officer
National Council of Jewish Women

The Leadership Conference
on Civil and Human Rights

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Interim President & CEO
Wade Henderson

April 27, 2021

The Leadership Conference

SUPPORT THE CONFIRMATION OF CANDACE JACKSON-AKIWUMI TO THE U.S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Dear Senator,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 220 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, we write to express our strong support for the confirmation of Candace Jackson-Akiwumi to the U.S. Court of Appeals for the Seventh Circuit.

Ms. Jackson-Akiwumi is highly qualified and has an exemplary record of defending and protecting the rights of all people. She is currently in private practice, though she spent most of her legal career as a public defender. For 10 years, Ms. Jackson-Akiwumi served as a staff attorney for the Federal Defender Program for the Northern District of Illinois, Inc., representing more than 400 clients who could not afford counsel. She has clerked for Judge David Coar of the U.S. District Court for the Northern District of Illinois and Judge Roger Gregory of the U.S. Court of Appeals for the Fourth Circuit. She is a graduate of Yale Law School and Princeton University. Ms. Jackson-Akiwumi is also an involved member of her community, as demonstrated by her service on the boards of the Federal Bar Association, the Black Women Lawyers' Association of Greater Chicago, and the Just the Beginning Foundation. She has a demonstrated commitment to upholding civil and human rights, and her experience at all levels of the federal court system qualifies her to fill this seat on the Seventh Circuit.

Ms. Jackson-Akiwumi has demonstrated her commitment to civil and human rights throughout her career. As a law student, she helped plan a conference at Yale Law School called "The Legacy of *Brown v. Board of Education:* Reflections on the Last Fifty Years."[1] Ten years later, she reflected further on this landmark civil rights case, writing, "we must continue to fight for equal opportunity with an energy that should match those who fought for civil rights fifty and sixty years ago."[2]

Indeed, she has dedicated her career to pursuing equal justice. If confirmed, Ms. Jackson-Akiwumi would be the first Seventh Circuit judge who spent most of their career as a public defender. Federal public defenders play a critical role in our criminal-legal system yet are underrepresented on the federal bench. For every former public defender on the federal bench, there are at least four former prosecutors.[3] Overall, just more than 2 percent of all

[1] Jackson-Akiwumi, Candace. *Questionnaire for Judicial Nominees: Attachments to Question 12(a).* Pg. 870.
[2] *Id.* at 530.
[3] Neily, Clark. "Are a Disproportionate Number of Federal Judges Former Government Advocates?" *Cato Institute*. September 18, 2019.

federal appellate judges have experience as a public defender.[4] Our judiciary needs to reflect the diversity of the legal profession, including more judges experienced in ensuring that defendants have counsel and that their rights are recognized in federal court. Ms. Jackson-Akiwumi's experience would bring significant value to the Seventh Circuit.

Public defenders play a meaningful role in our legal system by helping their clients navigate the complexities of federal law and ensuring their access to justice. Ms. Jackson-Akiwumi said of her work at the Federal Defender Program: "I am a counselor, helping clients to navigate difficult choices,"[5] and "I am an investigator: hunting down facts and evidence... I am a teacher, introducing clients and their families to the federal court system… I am a lay social worker: many of our clients have disadvantaged backgrounds, extensive mental health histories, substance abuse issues, and other everyday challenges."[6] This work has been meaningful to her — as she herself explained: "Representing clients and safeguarding the Sixth Amendment and Fourth Amendment is incredibly rewarding and meaningful and important work... I cherish the ability to walk clients through what were some of the most harrowing days of their life, when they were being judged for some of their worst days."[7]

During her time as a public defender, Ms. Jackson-Akiwumi demonstrated a deep commitment to upholding the rights of communities that have been marginalized by the criminal-legal system, including Black and Brown communities. She successfully argued that robbery stings run by the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) were unfairly targeting people by their race.[8] During a nearly two year period, 26 people in the Chicago area had been incarcerated as a result of the ATF stings, and all of them were either Black or Hispanic.[9] A court later found that there was a "strong showing of potential bias" in the stings.[10] This order, and the arguments advanced by Ms. Jackson-Akiwumi, illuminated the discriminatory practice of selective prosecution of people by their race.[11] She has used this experience to train other defense lawyers on how to spot racial bias in proceedings.[12] Her experience as a public defender would bring a much-needed perspective to the currently all-white Seventh Circuit created by the previous administration.

In addition to the professional experience Ms. Jackson-Akiwumi would bring to the bench, it is notable that if confirmed she would be the only judge of color on the Seventh Circuit and would be only the second judge of color to ever serve on that court. She would also be the first Black woman to be confirmed to a federal appellate court in nearly 10 years. In 2016, President Obama nominated Myra Selby, the first woman and first Black justice on the Indiana Supreme Court, to serve on the Seventh Circuit. Unfortunately, her nomination expired, and the Seventh Circuit has had an all-white bench since 2017. More than 7.5 million people of color reside within the court's jurisdiction, including 2.8 million

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[4] "**Biographical Directory of Article III Federal Judges, 1789-present**." *Federal Judicial Center*. Accessed April 2021.
[5] Jackson-Akiwumi, Candace. "**Alumni & Student Profiles: Candace Jackson-Akiwumi '05**." *Yale Law School.*
[6] *Id.*
[7] Jarvis, Sarah. "**Former Federal Public Defender Joins ZuckermanSpaeder**." *Law 360.* December 1, 2020.
[8] Heath, Brad. "**Judge: ATF stings may be targeting minorities**." *USA Today.* August 1, 2013.
[9] *Id.*
[10] Meisner, Jason and Annie Sweeney. "**ATF sting operation accused of using racial bias in finding targets, with majority being minorities**." *Chicago Tribune*. March 3, 2017.
[11] *Id.*
[12] Jackson-Akiwumi, Candace. "**Racial Profiling and Other Challenges in Stash House Cases**." *Questionnaire for Judicial Nominees: Attachments to Question 12(a)*. Pg. 796-827.

The Leadership Conference

Black residents, 3.1 million Latino residents, and 1 million Asian American residents.[13] It is shameful that any 21st-century federal court has an entirely White bench.

Our courts depend upon the public's trust for legitimacy, and it is vital that decision-makers share characteristics with the people their decisions impact — especially for those who are a party to a case.[14] Diversity helps improve decision-making and ensures that judicial rulings reflect a broad set of viewpoints, particularly from perspectives that have historically been left out of the federal judiciary — including Black, Brown, and Asian American and Pacific Islander individuals, women, LGBTQ people, and people with disabilities.[15] The nomination of the eminently qualified Ms. Jackson-Akiwumi is a step towards ensuring that our federal judiciary reflects the rich diversity of our nation.

Throughout her career, Ms. Jackson-Akiwumi has proven to be an experienced, dedicated defender of the rights of all people. She has demonstrated a commitment to upholding constitutional and legal rights and protections for defendants that is needed on the federal bench.

We strongly urge the Senate to confirm Candace Jackson-Akiwumi to the Seventh Circuit. If you have any questions or would like to discuss this matter further, please contact Lena Zwarensteyn, Senior Director of the Fair Courts Campaign, at (202) 466-3311. Thank you for your consideration.

Sincerely,

Wade Henderson
Interim President & CEO

LaShawn Warren
Executive Vice President of Government Affairs

[13] "QuickFacts." *United States Census Bureau.* Accessed April 2021.
[14] Sen, Maya. "Diversity, Qualifications, and Ideology: How Female and Minority Judges Have Changed, or Not Changed, Over Time." 2017 Wis. L. Rev. 367 (2017).
[15] *Id.*

NATIONAL WOMEN'S LAW CENTER
Justice for Her. Justice for All.

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May 5, 2021 *VIA EMAIL*

The Honorable Dick Durbin
Chair
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C., 20510

The Honorable Chuck Grassley
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C., 20510

Re: *Letter in Support of Candace Jackson-Akiwumi for the U.S Court of Appeals for the Seventh Circuit*

Dear Chairman Durbin and Ranking Member Grassley:

On behalf of the National Women's Law Center (the "Law Center"), I write to express support for the confirmation of Candace Jackson-Akiwumi for the U.S Court of Appeals for the Seventh Circuit. The Law Center fights for gender justice – in the courts, in public policy, and in society – working across the issues that are central to the lives of women and girls. The Law Center uses the law in all its forms to change culture and drive solutions to the gender inequity that shapes society and to break down the barriers that harm women and girls – especially those who face multiple forms of discrimination, including women of color, LGBTQ people, and low-income women and families. For nearly 50 years, the Law Center has been on the leading edge of every major legal and policy victory for women.

Ms. Jackson-Akiwumi is incredibly qualified to be a circuit court judge, possessing extensive criminal and civil litigation experience.[1] She started her career clerking for Judge Coar of the U.S. District Court for the Northern District of Illinois and Judge Gregory of the U.S. Court of Appeals for the Fourth Circuit. While working as a public defender in Chicago for a decade, she represented over 400 indigent defendants in all stages of litigation accused of federal crimes– fraud, firearms, immigration, employment discrimination, sentencing, and Fourth Amendment cases– including cases before the Seventh Circuit and the U.S. Supreme Court. She also has significant civil litigation experience involving contracts, patents, securities, and white-collar crime as a partner at Zuckerman Spaeder LLP and associate at Skadden, Arps, Slate, Meagher & Flom LLP. She worked on several pro-bono cases when she was in private practice, including advocating successfully for an immigrant mother seeking Violence Against Women Act protection and representing an employment discrimination plaintiff in an EEOC mediation.

Ms. Jackson-Akiwumi would also add much needed diversity to the Circuit Courts of Appeals, which has historically failed to reflect the rich diversity of this country. Currently, women make up only

[1] Candace Jackson-Akiwumi, Senate Judiciary Committee Questionnaire

34 percent of the federal judiciary, and women of color a mere 7 percent.[2] We have not had a Black woman confirmed to the Circuit Courts in almost 10 years.[3] In fact, the court she is nominated for, the Seventh Circuit, serves more than 7.5 million people of color but is the only all-white circuit in the country. Additionally, as a career public defender for the most vulnerable and underserved communities, Ms. Jackson-Akiwumi's embodies the mission and values of equal justice for all. Only about one percent of sitting circuit judges have spent the majority of their career working as public defenders or within a legal aid setting.[4] This Circuit deserve a court that is representative of its community, and Ms. Jackson-Akiwumi's lived experiences and steadfast commitment to equal justice makes her the ideal nominee for this Circuit.

Moreover, Ms. Jackson-Akiwumi showcased her intellect, even-handedness, and qualifications during her nomination hearing. She gave thoughtful and well-reasoned answers and proved that she is ready to apply her invaluable experience as a public defender to become a phenomenal jurist who is grounded in the rule of law.

The Law Center offers its support of Candace Jackson-Akiwumi for the U.S Court of Appeals for the Seventh Circuit and urges the Committee to approve her nomination quickly. Please feel free to contact me, or Theresa Lau, Senior Counsel, at (202) 956-3064 should you have any questions.

Sincerely,

Fatima Goss Graves
President and CEO

---

[2] CENTER FOR AMERICAN PROGRESS, *Examining the Demographic Compositions of U.S. Circuit and District Courts*, Feb. 13, 2020, https://www.americanprogress.org/issues/courts/reports/2020/02/13/480112/examining-demographic-compositions-u-s-circuit-district-courts/

[3] LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS, *We Need More Black Women on Our Federal Appellate Courts*, Feb. 25, 2021, https://civilrights.org/blog/we-need-more-black-women-on-our-federal-appellate-courts/

[4] Maggie Jo Buchanan, *Pipelines to Power: Encouraging Professional Diversity on the Federal Appellate Bench,* CENTER FOR AMERICAN PROGRESS, Aug. 13, 2020, https://www.americanprogress.org/issues/courts/reports/2020/08/13/489312/pipelines-power-encouraging-professional-diversity-federal-appellate-bench/

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AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

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April 27, 2021

Via Email
The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

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

Re: Nomination of Candace Jackson-Akiwumi to the United States Court of Appeals for the Seventh Circuit

Dear Chairman Durbin and Ranking Member Grassley:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Candace Jackson-Akiwumi, who has been nominated by the President to the United States Court of Appeals for the Seventh Circuit. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. A substantial majority of the Standing Committee is of the opinion that Ms. Jackson-Akiwumi is **"Well Qualified,"** and a minority determined that she is "Qualified" to serve on the United States Court of Appeals for the Seventh Circuit. The majority rating represents the Standing Committee's official rating.

Very truly yours,

Randall D. Noel
Chair, Standing Committee
On the Federal Judiciary

cc: Dana Remus, White House Counsel (*via email*)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Candace Jackson-Akiwumi (*via email*)
ABA Standing Committee on the Federal Judiciary (*via email*)
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary, Staff Counsel (*via email*)

Volunteer Lawyers for Justice
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April 21, 2021

The Honorable Charles E. Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC, 20510

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

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

Re: Appointment of Julien Neals to the United States District Court for the District of New Jersey

Dear Senators Schumer, McConnell, Durbin, and Grassley,

I am writing to offer my strong support for Julien Neals appointment to the United States District Court for the District of New Jersey. I am the executive director of Volunteer Lawyers for Justice (VLJ), a legal services office based in Newark, NJ that advances social, racial, and economic justice to people living in poverty across New Jersey. VLJ's service model works to make the most of limited resources by partnering with pro bono attorneys to provide free civil legal services alongside our talented staff. Mr. Neals served as a Trustee on VLJ's Board of Trustees from 2008 to 2013.

Mr. Neals quickly ascended into leadership roles at VLJ and served as the Board Chair from 2010 to 2013. Mr. Neals is a great champion of justice and, when serving as a leader at VLJ, made it a priority that all people, and especially people living in poverty, have equal access to the legal system Mr. Neals led VLJ through a period of great expansion, and was the Board Chair when Superstorm Sandy struck New Jersey. Mr. Neals provided steadfast leadership during this period of turmoil in New Jersey and worked with the board and staff to help lead the statewide legal response to the storm.

Mr. Neals was also heavily involved with the creation of VLJ's re-entry legal program, ReLeSe, that is even more vital today. ReLeSe helps people with criminal records address the civil legal barriers that serve as obstacles to their successful community reintegration. Recognizing that criminal records are a major barrier for people, especially Black, indigenous, and other people of color, seeking employment and housing, Mr. Neals made it a priority to ensure that a criminal record would not define a person's entire life.

Mr. Neals showed great skill in guiding VLJ's board through complex issues and his demeanor and judgement made him a particularly effective leader. The combination of his intellect, compassion, judgement, and demonstrated commitment to access to justice for all would make Mr. Neals an outstanding addition to the United States District Court for the District of New Jersey.

Please let me know if I can provide any additional information about Mr. Neals' leadership role at VLJ and his commitment to access to justice.

Very truly yours,



Cathy Keenan
Executive Director
ckeenan@vljnj.org

Center for Court Innovation

Research. Development. Justice. Reform.

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courtinnovation.org

Courtney Bryan. Director

April 20, 2021

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

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

Re: Nomination of Judge Julien Neals to the District Court for the District of New Jersey

Dear Chairman Durbin and Ranking Member Grassley,

On behalf of the Center for Court Innovation, I write your office in support of the nomination of Julien Neals to the U.S. District Court for the District of New Jersey.

President Biden could not have picked a wiser, more deserving nominee than Julien Neals for the United States District Court for the District of New Jersey. Over more than a decade, County Counsel Neals has been an important partner to my organization, supporting the development of visionary initiatives that brought new resources and ideas to New Jersey's courts. His creativity, even-handedness and compassion have played an essential role in strengthening how municipalities and courts work and improving outcomes for everyone--victims, litigants and the community at large.

Through his untiring efforts, he helped the City of Newark create numerous innovative programs, including Newark Community Solutions, New Jersey's first community court. This project served as a model for other courts by leveraging existing community resources to expand sentencing options for judges, allowing them to offer defendants social services to address the underlying causes that might contribute to offending, and he has inspired similar innovative problem-solving in Bergen County.

Throughout his career, he has made equity, fairness and compassion top priorities. And through his leadership, he has been able to change hearts and minds, welcoming new ideas that have benefited both the governments in which he has worked and the communities that he has served.

Please let me know if you have questions. I can be reached at 718.496.9363 or bryanc@courtinnovation.org.

Warm Regards,



Courtney Bryan, Executive Director

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April 21, 2021

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

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

Re: Nomination of Julien Neals to the District Court for the District of New Jersey

Dear Chairman Durbin and Ranking Member Grassley:

The New Jersey State Bar Association commends the nomination of Julien Neals to serve on the U.S. District Court of the District of New Jersey. Due to vacancies, the New Jersey federal bench has been operating in a state of emergency for several years and his nomination will help members of the public resolve their disputes in a timely fashion. Further, his confirmation will continue to ensure that our bench reflects the rich and diverse backgrounds of the people of this state.

Julien Neals has been an active member of the NJSBA's Commission on Racial Equity in the Law, which is studying the legal system to identify methods to address root causes of inequities in the profession and the law, and is a frequent speaker at educational programs. He has exemplary qualifications and extraordinary accomplishments that will be an asset to the federal bench and to the citizens of New Jersey.

Respectfully yours,

Kimberly A. Yonta, Esq.
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AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

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April 27, 2021

Via Email
The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

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

Re: Nomination of Julien Neals to the United States District Court for the District of New Jersey

Dear Chairman Durbin and Ranking Member Grassley:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Julien Neals, who has been nominated by the President to the United States District Court for the District of New Jersey. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Mr. Neals is **"Well Qualified"** to serve on the United States District Court for the District of New Jersey.

Very truly yours,

Randall D. Noel
Chair, Standing Committee
On the Federal Judiciary

cc: Dana Remus, White House Counsel (*via email*)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Julien Neals (*via email*)
ABA Standing Committee on the Federal Judiciary (*via email*)
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary, Staff Counsel (*via email*)



SABA-NJ
The South Asian Bar Association of New Jersey

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Committee on the Judiciary
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The Honorable Charles E. Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

April 21, 2021

Re: Nomination of Zahid N. Quraishi to the District Court for the District of New Jersey

Dear Chairman Durbin, Ranking Member Grassley, Majority Leader Schumer, and Minority Leader McConnell:

We would like to start by saying thank you. President Biden's historic nomination of Zahid N. Quraishi, U.S.M.J., to the District Court for the District of New Jersey is personal for us at the South Asian Bar Association of New Jersey ("SABA-NJ"). Judge Quraishi has deep ties to SABA-NJ and we have had the distinct pleasure to know him as an Assistant United States Attorney, as a partner at large New Jersey law firm, and now as a Magistrate Judge. Throughout his exemplar career, Judge Quraishi has stayed true to himself and to all those around him.

SABA-NJ's mission is to advocate for, educate, and ultimately provide opportunities for South Asian attorneys in New Jersey. We provide regular CLE events, panel discussions, networking events, job listings, and, have a Judicial and Prosecutorial Appointments Committee ("JPAC") for our members and all New Jersey attorneys. Judge Quraishi has been an active member of our organization for a

number of years by joining us at networking events, mentoring young attorneys, engaging in panel discussions, and giving us his unconditional support.

In fact, Judge Quraishi's service extends far beyond his involvement with SABA-NJ. Judge Quraishi is a member of various other minority bar associations in New Jersey, he was engaged heavily with the Association of the Federal Bar of New Jersey, APALA-NJ, NJMLA, he teaches a trial skills and advocacy course at Rutgers Law School, has engaged in panels at Seton Hall Law School, and too many more to count. In each of his endeavors, Judge Quraishi has enriched the lives of everyone he has encountered and has built a reputation of excellence, reliability, and, in our view, most importantly, a commitment to service.

If this Honorable Committee and the Honorable Senate do vote to confirm Judge Quraishi, he will be the first Asian-America and South Asian-American Judge appointed to the District Court for the District of New Jersey, and the first Muslim-American Judge appointed to the Federal Bench in the entire country. We add this not as an additional qualification of Judge Quraishi's, but rather to highlight the significant issue in our District and around the country: there is a lack of Federal Judges who look like us. We assure you, a lack of talent is not the cause. Though we ask you to consider the significance your vote will have for people like us at SABA-NJ, we strongly believe Judge Quraishi's qualifications and character are second to none. In our joint pursuit of a more perfect union, we must advocate for qualified candidates when they come before us.

SABA-NJ respectfully submits its strong endorsement for Zahid N. Quraishi. In our view, it is the perfect opportunity to confirm a nominee who is beyond qualified, having served his Country in various capacities, from serving in the Army, to the JAG Corp, to the Department of Homeland Security, to the United States Attorney's Office for the District of New Jersey, to his present role as a Magistrate Judge, has a stellar reputation among his colleagues on the Bench and in the Bar, and has shown his character as among the finest this nation has ever seen.

We advise all members of this Honorable Committee and all Senators to confirm Judge Quraishi unanimously, in a bipartisan fashion.

Respectfully submitted,

The South Asian Bar Association of New Jersey



April 26, 2021

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

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

Re: **Letter of Support for Zahid N. Quraishi for the U.S. District Court for the District of New Jersey**

Dear Chairman Durbin and Ranking Member Grassley:

The National Asian Pacific American Bar Association (NAPABA) extends its strong support for the historic nomination of U.S. Magistrate Judge Zahid N. Quraishi to serve on the U.S. District Court for the District of New Jersey. If confirmed, Judge Quraishi will be the first Asian Pacific American to serve as a federal district court judge in New Jersey and the first American Muslim to serve as an Article III judge in the United States.

NAPABA is the largest Asian Pacific American membership organization representing the interests of over 50,000 attorneys, judges, law professors, and law students, and nearly 90 national, state, and local affiliate bar associations. Its members include solo practitioners, large firm lawyers, corporate counsel, legal services and non-profit attorneys, and lawyers serving at all levels of government. NAPABA is the leading national voice for the Asian Pacific American legal profession.

Judge Quraishi has a distinguished legal career with extensive experience as prosecutor, in the private sector, and serving his country in uniform. In 2019, Judge Quraishi was appointed as a U.S. Magistrate Judge for the District of New Jersey, becoming the first Asian Pacific American to serve on the federal bench in New Jersey. Prior to his appointment, he was Chair of Riker Danzig's White Collar Criminal Defense and Investigations Group and the firm's first Chief Diversity Officer.

Judge Quraishi has an impressive record of public service evincing his longstanding commitment to justice and this country. His government service includes over five years as an Assistant U.S. Attorney for the District of New Jersey, where he tried numerous federal criminal cases involving public corruption, financial fraud, weapons, and drug cases as part of the Organized Crime Drug Enforcement Task Force and the Government Frauds Unit of the Criminal Division. He also served as Assistant Chief Counsel and trial attorney with the Department of Homeland Security.

A decorated war veteran, Judge Quraishi served as a military prosecutor with the U.S. Army Judge Advocate General's Corps, achieving the rank of Captain. He was assigned to the First Infantry Division and deployed to Iraq in support of Operation Iraqi Freedom, where he was awarded a Bronze Star

Medal; Army Combat Action Badge; Iraq Campaign Medal; Global War on Terrorism Service & Expeditionary Medals; Army Commendation and Achievement Medals, among other awards for his service to the United States.

Judge Quraishi is a *Magna Cum Laude* graduate of John Jay College of Criminal Justice in New York. He received a J.D. from Rutgers Law School in Newark, where he was a member of the Rutgers Moot Court Board and served as Managing Business Editor of the *Rutgers Computer and Technology Law Journal*.

Active in the Asian Pacific American community, Judge Quraishi is endorsed by NAPABA's affiliate, the Asian Pacific American Lawyers Association of New Jersey (APALA-NJ) and was the recipient of its Professional Achievement Award in 2019. He is also the recipient of the South Asian Bar Association of New Jersey Standing Ovation Award, the New Jersey Muslim Lawyers Association Trailblazer of the Year Award, and the Rutgers Muslim Law Student Association Trailblazer Award. Last year, Judge Quraishi was the Rutgers Asian Pacific American Law Student Association's Lunar Banquet Distinguished Honoree. He has also been recognized for his work by Best Lawyers, Chambers USA, and Super Lawyers.

Judge Quraishi is well qualified to serve on the U.S. District Court for the District of New Jersey and NAPABA strongly supports his nomination, and urges his swift confirmation by the Senate.

Sincerely,



Priya Purandare
Executive Director







The Honorable Charles E. Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

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

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

April 27, 2021

Dear Senators Schumer, McConnell, Durbin, and Grassley:

We write to support the confirmation of U.S. Magistrate Judge Zahid N. Quraishi to the U.S. District Court for the District of New Jersey.

If confirmed, Judge Quraishi would be the first Muslim-American to serve as an Article III Federal Judge. This information is based on reports available to us at this time.

Judge Quraishi has a distinguished record of service in the private and public sectors, including his time in the U.S. Army Judge Advocate General's (JAG) Corps, the Department of Homeland Security, and as an Assistant U.S. Attorney in the New Jersey U.S. Attorney's Office.

After leaving the U.S. Attorney's Office, Judge Quraishi was Chair of Riker Danzig Scherer Hyland & Perretti LLP's White Collar Criminal Defense and Investigations Group and the firm's first Chief Diversity Officer. In June 2019, he was sworn in as a Magistrate Judge in the U.S. District Court for the District of New Jersey. He also teaches as an adjunct professor at Rutgers Law School.

We appreciate Judge Quraishi's dedication to public service. He has proven himself an exceptional and dedicated jurist on the federal bench, and his practice of law serves as an example to young lawyers across the country. He has received numerous awards in recognition of his achievements, including the Asian Pacific American Lawyers Association of New Jersey's (APALA-NJ) Professional Achievement Award, the South Asian Bar Association of New Jersey's (SABA-NJ) Standing Ovation Award, and the New Jersey Muslim Lawyers Association's Trailblazer of the Year Award.

We hope that Judge Quraishi will be the first of many Muslim-American lawyers confirmed to serve as Article III Federal Judges, which will help to ensure that the Federal Judiciary more accurately reflects the full diversity of our country.

We ask that you confirm Judge Quraishi expeditiously.

Sincerely,

/s/
Salam Al-Marayati
President, Muslim Public Affairs Council

/s/
Arsalan Suleman
Board Chair, America Indivisible

/s/
Safaa Zarzour
President, Islamic Society of North America

CC: Senator Robert Menendez
Senator Cory Booker

APALA-NJ
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April 21, 2021

The Honorable Charles E. Schumer
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United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
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United States Senate
Washington, DC 20510

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

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

Re: APALA-NJ Endorsement of the Honorable Zahid N. Quraishi, U.S.M.J. to the District Court for the District of New Jersey

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Durbin, and Ranking Member Grassley:

The Asian Pacific American Lawyers Association of New Jersey (APALA-NJ) unequivocally supports the confirmation of U.S. Magistrate Judge Zahid N. Quraishi to the U.S. District Court for the District of New Jersey. Once confirmed, Judge Quraishi will be the first Muslim-American in our country and the first Asian-American in the District of New Jersey to serve as an Article III Judge.

The Judicial Conference of the United States has declared a judicial emergency with respect to the backlog of cases and judicial vacancies in our state, which is also one of the busiest districts. As of September 30, 2020, more than 46,000 cases were pending in New Jersey federal courts, which means 2,742 cases per judge if there were no vacancies, but New Jersey has six vacancies currently and a caseload that is well over three times the national average. Undeniably, New Jersey's federal bench is understaffed and New Jerseyans are in desperate need of judges to

APALA-NJ
Asian Pacific American
Lawyers Association of New Jersey, Inc.

fill these vacancies. Judge Quraishi is exceptionally qualified to be elevated to serve as a district judge to work towards alleviating this backlog.

In June 2019, Judge Quraishi became the first Muslim/Asian-American to serve on the federal court in our district as a magistrate judge. He has proven himself a dedicated and exceptional jurist on the federal bench. Judge Quraishi's unwavering dedication to excellence in the practice of law and service to the profession goes beyond the courthouse gates. He presently serves as an ambassador of the Court and regularly serves as a panelist and engages in outreach with federal, state, and affinity bar associations. He also endeavors to educate aspiring attorneys as an adjunct professor at Rutgers Law School, instructing law students on trial presentation.

Judge Quraishi has had an extensive career both in the public and private sector before becoming a judge. A Rutgers Law School graduate, events of 9/11 influenced Judge Quraishi to leave his lucrative career in the private sector and to join the US Army JAG Corps in 2002, where he was deployed to Iraq in support of Operation Iraqi Freedom in 2004 and 2006. Judge Quraishi achieved the rank of Captain before his honorable discharge.

Following his military service, Judge Quraishi returned to New Jersey to serve as a trial counsel for the Department of Homeland Security, followed by a career in the United States Attorney's Office. Prior to his appointment to the federal bench as a magistrate judge, Judge Quraishi was Chair of Riker Danzig Scherer Hyland & Perretti LLP's White Collar Criminal Defense and Investigations Group and the firm's first Chief Diversity Officer.

Judge Quraishi's confirmation would advance diversity in the United States District Court, District Court of New Jersey, which does not currently adequately reflect the entire constituency of New Jersey, 10% of whom are of Asian descent. We are confident that Judge Quraishi will bring the same level of dedication and success once confirmed as a District Judge. Without reservation, APALA-NJ highly endorses Judge Quraishi's candidacy as a United States District Judge for the District of New Jersey.

If APALA-NJ may be of any further assistance with regards to Judge Quraishi's candidacy, please do not hesitate to contact us directly: Qing H. Guo, Esq. | Work No: (973) 549-2524 | Email: qguo@grsm.com. We look forward to continuing our work together to achieve our common goal of diversity and excellence in our judiciary.

Sincerely,

THE ASIAN PACIFIC AMERICAN LAWYERS ASSOCIATION OF NEW JERSEY

By: _____
QING H. GUO, ESQ.
President-Elect, APALA-NJ
Member, APALA-NJ Judicial & Prosecutorial Appointments Committee

c: Senator Cory Booker (via email only)
Honorable Zahid N. Quraishi, U.S.M.J. (via email only)

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The Honorable Charles E. Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

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

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

Re: Nomination of Zahid R. Quraishi to the District Court for the District of New Jersey

Dear Honorable Senators:

I write as the President of the Association of the Federal Bar of New Jersey to express the Association's strong support for the confirmation of Zahid R. Quraishi to serve as a United States District Judge for the District of New Jersey.

Zahid N. Quraishi began serving as a Magistrate Judge for the District in June of 2019. Before his selection as a Magistrate Judge, he served in private practice at the Riker Danzig firm where he was the chair of the White Collar Criminal Defense and Investigations Group. He also served as the Chief Diversity Officer for the firm. Before his work in private practice, Magistrate Judge Quraishi served as an Assistant United States Attorney in the District of New Jersey and prior to that, he served as an Assistant Chief Counsel with the Department of Homeland Security. Magistrate Judge Quraishi also served honorably in the United States Army Judge Advocate General's Corps. Magistrate Judge Quraishi has had the opportunity to practice both criminal and civil law in the District of New Jersey. His experience on the bench, and before his appointment as a Magistrate Judge, makes him uniquely qualified to fill this critical vacancy in the District of New Jersey.

Magistrate Judges in the District of New Jersey play a critical role in the day-to-day management of litigation matters. On the civil side, they address the full spectrum of non-dispositive issues before the court including, case management, discovery disputes, and alternative dispute resolution. Magistrate Judges also handle an array of criminal proceedings, including initial appearances and bail hearings. As such, serving as a Magistrate Judge in the District of New Jersey is a position that comes with significant responsibility and experience.

Since the time that Magistrate Judge Quraishi took the bench, he has deftly implemented a practical and thoughtful approach to the management of litigation before the Court. In light of the significant caseload shouldered by the judges in this District, the bench is in need of efficient, fair, and practical jurists who can ensure that the objectives set forth in Rule 1 of the Federal Rules of Civil Procedure, which aspire to provide "just, speedy, and inexpensive determination" of proceedings, are met.

Association of the Federal Bar
of New Jersey

Magistrate Judge Quraishi's experience on the bench will prove invaluable for him in assuming the responsibilities of an Article III judge and his history of public service to his country and the citizens of this District make him highly qualified to continue his service as a district court judge.

Magistrate Judge Quraishi's commitment to the bench and bar in this District is demonstrated by his efforts off the bench as well. Before becoming a Magistrate Judge, he served diligently as an active Trustee for the Association. And since his appointment, he has become a valued member of our Advisory Board and has continued to be a zealous participant in AFBNJ programs. He has also been instrumental in the District Court's Re-Entry program, which is designed to help recently released federal inmates re-integrate successfully into society. For all of these reasons, this endorsement is enthusiastically sent on behalf of the Association of the Federal Bar.

I extend my personal endorsement as well. As a practitioner with more than 20 years of litigation experience before the District Court in the District of New Jersey, and a former law clerk to District Judge Garrett E. Brown, Jr., I have the familiarity and perspective to personally attest that Magistrate Judge Quraishi's experience, temperament, and work ethic make him uniquely qualified to serve as an Article III jurist.

In sum, Magistrate Judge Quraishi's mix of intelligence, practicality, fairness, humility, and humanity make him an excellent choice to serve lawyers and litigants alike in the District of New Jersey. Accordingly, the Association provides it unfettered endorsement in support of Magistrate Judge Quraishi's confirmation.

Very respectfully yours,

KERRI E. CHEWNING
President

DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
2200 ARMY PENTAGON
WASHINGTON, DC 20310-2200

April 23, 2021

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

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

Re: Nomination of Zahid N. Quraishi to the District Court for the District of New Jersey

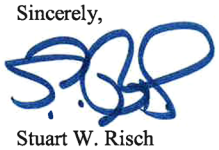
Dear Chairman Durbin and Ranking Member Grassley:

I am pleased to write in support of Zahid N. Quraishi. When he worked for me from 2003-2005, I found him to be a gifted and brilliant attorney, a courageous and deeply patriotic Army officer, and a genuine and trusted colleague.

Then-Captain (CPT) Quraishi signed in to the First Infantry Division at Schweinfurt, Germany as a new Judge Advocate attorney in 2003 when I served as the division Staff Judge Advocate, responsible for over 40 attorneys across several installations throughout Bavaria. As the division prepared to deploy to Iraq, CPT Quraishi's talent, selflessness and uncommon maturity made him a first choice to deploy with the team. From our combat march up from Kuwait to Tikrit, to his coordination of legal services to Soldiers as the Chief of Legal Assistance throughout the division's area of responsibility in Northern Iraq, CPT Quraishi worked tirelessly while always remaining calm under pressure and a genial teammate. Since our time together in Iraq and after redeploying to Germany through the end of our time together in 2005, I counted CPT Quraishi as one of the top officers and attorneys in the division.

I was always delighted when I would hear that he continued his career of stellar public service at the Department of Homeland Security, as Assistant U.S. Attorney, and later as U.S. Magistrate Judge. If confirmed, I am confident that the young man I knew will do honor to the bench in continued service to our Nation as U.S. District Judge for the District of New Jersey.

Sincerely,



Stuart W. Risch
Major General, U.S. Army
Deputy Judge Advocate General

NJMLA
NEW JERSEY MUSLIM LAWYERS ASSOCIATION
1075 Easton Avenue, Suite 11-302 | Somerset, NJ 08873 | NJMLA.com

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The Honorable Charles E. Schumer
Majority Leader
United States Senate
Washington, DC 20510

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

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

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

April 21, 2021

Dear Senators Schumer, McConnell, Durbin, and Grassley,

I am writing on behalf of the New Jersey Muslim Lawyer's Association (NJMLA). We are a volunteer association of lawyers, judges, and law students who work or reside in the New Jersey area. NJMLA was established in 2006 to advance the goals, needs, and interests of Muslim attorneys in the state through networking, mentorship and education. NJMLA also promotes Muslim participation in public service and addresses issues affecting our local and national community.

We enthusiastically support Judge Zahid N. Quraishi's nomination for a possible Article III judge appointment to the District Court of New Jersey.

Zahid N. Quraishi was appointed as a United States Magistrate Judge for the District of New Jersey in the Trenton Vicinage on June 3, 2019. Judge Quraishi is the first Muslim-American to serve on the Federal bench in New Jersey. This past year, Judge Quraishi also

joined the faculty at Rutgers Law School as an adjunct professor, teaching Trial Presentation to second and third year law students.

Prior to his appointment, he was Chair of Riker Danzig's White Collar Criminal Defense and Investigations Group and his firm's first Chief Diversity Officer. His practice focused on white collar criminal defense, internal corporate investigations, and complex civil litigation.

In private practice, Judge Quraishi had extensive experience representing clients with government enforcement and compliance issues involving potential criminal charges. He regularly managed complex federal and state court litigation on behalf of corporations, and their officers, directors, and employees. Judge Quraishi has represented both companies and individuals in connection with criminal investigations involving violations of securities law, healthcare fraud, money laundering, computer crimes, environmental statutes, public corruption, and tax laws among other white collar areas of law. His practice also extended to representing both corporations and individuals in complex federal and state civil litigation.

As Chief Diversity Officer, Judge Quraishi provided leadership in advancing the firm's diversity and inclusion values, and assumed overall responsibility for overseeing its diversity and inclusion goals.

Before joining Riker, Judge Quraishi served as an Assistant United States Attorney in the United States Attorney's Office for the District of New Jersey for over five years. He tried numerous federal criminal cases involving public corruption, financial fraud, perjury, firearms and narcotics offenses within the Special Prosecutions Division and Organized Crime Drug Enforcement Task Force and Government Fraud Units of the Criminal Division.

Judge Quraishi's government service and prosecutorial experience extends well beyond his years at the U.S. Attorney's Office. He previously represented the United States as an Assistant Chief Counsel and trial attorney with the Department of Homeland Security. He also served as a military prosecutor and achieved the rank of Captain in the U.S. Army Judge Advocate General's Corps.

Earlier in his career, Judge Quraishi worked as a litigation associate at LeBoeuf, Lamb, Greene & MacRae, LLP and clerked for the Honorable Edwin H. Stern, Presiding Judge, Superior Court of New Jersey - Appellate Division (retired).

Judge Quraishi previously served as a trustee of several prominent organizations to include the Association of the Federal Bar of New Jersey, the Association of Criminal Defense Lawyers of New Jersey, and the United States Attorney's Office Alumni Association (DNJ).

Judge Quraishi has been recognized in his legal field by Chambers USA: America's Leading Lawyers for Business as one of the country's leading white collar lawyers, Best Lawyers in America®, a peer review of U.S. lawyers, and "Super Lawyers" by Thomson Reuters. Most recently in 2019, Zahid received APALA-NJ's Professional Achievement Award, SABA-NJ's Standing Ovation Award, and NJMLA's Trailblazer of the Year Award. Additionally, he previously received Rutgers APALSA's alumni award for leadership and service in the profession in 2017. In 2014, shortly after entering private practice at Riker Danzig, he was named a "New Leader of the Bar" by New Jersey Law Journal.

Judge Quraishi received his law degree from Rutgers Law School - Newark where he was the Managing Business Editor of the Rutgers Computer and Technology Law Journal and a member of the Rutgers Moot Court Board.

Not only is Judge Quraishi a skilled litigator who will bring expertise to the bench, he will also bring much needed diversity of background and perspective to the federal judiciary. We are proud to support his nomination to serve on the Federal judiciary.

Sincerely,

/s/Faudia A. Hameed Clemenza
Faudia A. Hameed Clemenza
NJMLA JPAC Chair

cc: Dalya Youssef, NJMLA president
Umar Sheikh, JPAC

NEW JERSEY STATE BAR ASSOCIATION

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April 21, 2021

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

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

Re: Nomination of Judge Zahid Quraishi to the District Court for the District of New Jersey

Dear Chairman Durbin and Ranking Member Grassley:

The New Jersey State Bar Association commends the nomination of U. S. Magistrate Judge Zahid Quraishi to serve on the U.S. District Court of the District of New Jersey. Due to vacancies, the New Jersey federal bench has been operating in a state of emergency for several years and his nomination will help members of the public resolve their disputes in a timely fashion. Further, his confirmation will continue to ensure that our bench reflects the rich and diverse backgrounds of the people of this state.

Judge Quraishi has also been a leader in the legal community, notably giving his time generously to educate and mentor attorneys throughout their careers. He has served our country as a magistrate judge, assistant United States Attorney and during his deployment in Operation Iraqi Freedom. He will certainly also be an asset to the U.S. District Court and people of our state.

Respectfully yours,

Kimberly A. Yonta, Esq.
President

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AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

Please reply to:
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Randy.Noel@butlersnow.com

April 27, 2021

Via Email
The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

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

Re: Nomination of Zahid N. Quraishi to the United States District Court for the District of New Jersey

Dear Chairman Durbin and Ranking Member Grassley:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Judge Zahid Quraishi, who has been nominated by the President to the United States District Court for the District of New Jersey. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Judge Quraishi is **"Well Qualified"** to serve on the United States District Court for the District of New Jersey.

Very truly yours,

Randall D. Noel
Chair, Standing Committee
On the Federal Judiciary

cc: Dana Remus, White House Counsel (*via email*)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
The Honorable Zahid N. Quraishi (*via email*)
ABA Standing Committee on the Federal Judiciary (*via email*)
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary, Staff Counsel (*via email*)



April 26, 2021

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

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

Re: **Letter of Support for Regina M. Rodriguez for the U.S. District Court for the District of Colorado**

Dear Chairman Durbin and Ranking Member Grassley:

The National Asian Pacific American Bar Association (NAPABA) extends its strong support for the historic nomination of Regina M. Rodriguez to serve on the U.S. District Court for the District of Colorado. If confirmed, Ms. Rodriguez will be the first Asian Pacific American to serve as an Article III judge in the 10th Circuit.

NAPABA is the largest Asian Pacific American membership organization representing the interests of over 50,000 attorneys, judges, law professors, and law students and nearly 90 national, state, and local affiliate bar associations. Its members include solo practitioners, large firm lawyers, corporate counsel, legal services and non-profit attorneys, and lawyers serving at all levels of government. NAPABA is the leading national voice for the Asian Pacific American legal profession.

Regina M. Rodriguez has a distinguished reputation as one of Colorado's most accomplished attorneys with deep experience in both the public and private sectors and a demonstrated commitment to serving the public interest. Prior to joining WilmerHale, where she currently handles complex litigation matters and serves as co-chair of the trial practice group, Ms. Rodriguez served as an Assistant U.S. Attorney for the District of Colorado, rising to become Deputy Chief and later Chief of the Civil Division, where she oversaw all civil litigation for the District. She was the youngest person and the first of Japanese and Mexican descent to hold that role. She received her J.D. from the University of Colorado School of Law and her B.S. with honors from the University of Iowa.

Ms. Rodriguez is endorsed by NAPABA's affiliate APABA-CO and she is also active with our Coalition of Bars of Color (CBAC) partner, the Hispanic National Bar Association, where she serves as a member on its Law Enforcement Reform & Racial Justice Committee. Colorado Governor Jared Polis recently appointed her to serve on the Colorado Supreme Court Nominating Commission.

Ms. Rodriguez's own compelling family history has inspired her commitment to justice and helping underserved communities in Colorado. Her Japanese American mother's family was confined at the

Heart Mountain incarceration camp in Wyoming during the Second World War and her father's family emigrated to the U.S. from Mexico literally, at times, living on the railroad. At a time when our country is still binding the wounds of division, Ms. Rodriguez's remarkable background, which has strengthened her commitment to public service and a strong sense of justice, makes her nomination all the more timely and important.

Ms. Rodriguez is well qualified to serve on the U.S. District Court for the District of Colorado and NAPABA strongly supports her nomination and swift confirmation by the Senate.

Sincerely,

Priya Purandare

Priya Purandare
Executive Director

DSST PUBLIC SCHOOLS

April 14, 2021

The Honorable Richard Durbin
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

Re: Regina Rodriguez, Esq. CC: Senator Michael Bennet and Senator John Hickenlooper

Dear Chairman Durbin and Ranking Member Grassley:

Regina Rodriguez, Esq. (Gina), who has been recommended by Senators Bennet and Hickenlooper as a candidate for the U.S. District Court for the District of Colorado, is an extraordinary judicial choice given her track record of overcoming great odds to become an accomplished attorney and a recognized civil rights champion in our community. Gina serves on the board of directors of the DSST Public Schools. Our mission is to transform urban public education by eliminating educational inequity and preparing all students for success in college and the 21st century.

In these difficult times of COVID, economic collapse and racial injustice, the DSST Board has been challenged with life-impacting decisions for our students and families, who are primarily diverse and financially vulnerable. In all of our deliberations, Gina has brought the wisdom of a multi-racial woman, whose life story speaks to the challenges of finding success when few doors are open to you. Married to a black man, Arnold Woods, she herself is shepherding her children to overcome many obstacles in school and society.

Throughout her career, her commitment to the community has been front and center. She has founded and served on non-profit boards that span services for pre-school children, middle school and high school students and Colorado higher education. The pro bono legal work she has done to represent unaccompanied, undocumented minors abandoned by their parents, who were navigating the courts, speaks to her fundamental commitment to fairness and opportunity for all.

As the daughter of a mother who endured the indignity of a Japanese internment camp as a young child, and a Latino father, who surprisingly rose through the ranks of high school football coaching to achieve the distinction of serving as an assistant coach in the NFL, Gina understands the promise of this country and the work yet to be done. These life experiences have shaped her unwavering commitment to eliminating the achievement gap in education and advancing diversity and inclusion in all aspects of community life.

Gina's multi-racial life experiences, coupled with her values-driven approach to advance civil rights in her work and community, make her a stellar future jurist. We urge you to nominate Ms. Rodriguez to the U.S. District Court for the District of Colorado.

Gloria A. Zamora
Board Chair

Bill Kurtz
CEO

SAM CARY BAR ASSOCIATION

April 14, 2021

The Honorable Richard Durbin
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

Re: Official Endorsement of Regina Rodriguez for the United States District Court for the District of Colorado

Dear Chairman Durbin and Ranking Member Grassley:

The Colorado Sam Cary Bar Association ("SCBA") is excited to endorse judicial candidate Regina Rodriguez for the U. S. District Court for the District of Colorado Judgeship. The Sam Cary Bar Association consists of attorneys who have sworn to support the Constitutions of the United States and Colorado, and to use our knowledge of the law for the improvement of society and the legal system. As Black attorneys, we understand how the systemic inequities in our legal system disproportionately and negatively impact Black lives and communities throughout the United States. Based on Ms. Rodriguez's exemplary career, dedication to the people of the State of Colorado, enthusiasm for the law, and commitment to historically disadvantaged communities, we believe she is the best candidate for the position of U. S. District Court for the District of Colorado Judge.

Our SCBA Judiciary Committee undertakes a careful review of candidates we seek to endorse to ensure that individuals have impeccable credentials, proper temperament and character, commitment to maintaining the highest standards of the legal profession and most importantly, a history of ensuring equal access to justice, are promoted to these trusted positions. We also ensure that the candidates for endorsement meet the spirit of our organizational goals and values, which include a number of criteria such as professional qualifications and a demonstrated commitment to the advancement of minority communities. The seven criteria at the forefront were:

1. Diversity of legal professional experiences;
2. Knowledge of the District's demographics;
3. Diversity and degree of community service experiences;
4. Awareness of minority groups' perception of judicial district's court systems;
5. Knowledge and level of cultural competence;
6. Understanding the impact of implicit bias on underrepresented and minority communities; and,
7. Commitment to ensuring litigants are respected and heard.

Ms. Rodriguez has an extensive commitment to under-represented and historically disadvantaged groups. Service to her community, to the less fortunate, and to anyone who needs help are the people to whom Ms. Rodriguez is drawn. She is dedicated to assist from the disenfranchised to Big Business without differentiation of race, color or social class. Ms. Rodriguez has spent much of her time volunteering on school Boards, Boards for gangs and at-risk youth, publishing articles and presenting in Colorado Legal Education and community events developed to educate and assist disadvantaged groups. She has dedicated the majority of her legal career to improving the community through educating the public and service, in her attempt to make justice equal for all. Part of what distinguishes Ms. Rodriguez is that she is dedicated to righting injustice associated with anyone, especially with diverse and underrepresented groups. In support of Ms. Rodriguez's service, she has received numerous awards including Girl Scouts of Colorado Women of Distinction, Department of Justice Service Award, Overall Litigator, and Top Latino Lawyer, which not only speaks to her involvement but to the lives she has changed.

Ms. Rodriguez is keenly aware of the professionalism, decorum and work ethic required to be a U. S. District Court Judge. Ms. Rodriguez has been a Partner in litigation firms since 2002. She has been a litigator her entire career and an expert in all aspects of state and federal trials. Ms. Rodriguez is a former Legal Instructor, Mediator and Deputy General Counsel. As a member of the U.S. Attorney's Office, Ms. Rodriguez was Chief of the Civil Division. Ms. Rodriguez's work in the U. S. Attorney's Office, her 20+ years of legal experience, coupled with her many years of work as a litigation Partner, speaks volumes to her commitment, knowledge and professionalism.

In making the decision to endorse Ms. Rodriguez, SCBA considered her ability to identify and comprehend the impact of implicit bias on African-Americans and minorities in the state of Colorado. Ms. Rodriguez's appreciation of social justice issues and her deep commitment to access to justice have been consistent and steady throughout her distinguished career. She is committed to educating everyone about implicit bias, the need for diversity and the positive effects of inclusiveness, and fairness within the legal system, as well as speaking and publishing to provide legal knowledge. Ms. Rodriguez is a member of the Hispanic National Bar, is a member of the Colorado Supreme Court Nominating Commission, an American College of Trial Lawyers Fellow, a member of the Colorado Women's Bar Association and Asian Pacific American Bar Association, and a member of many Boards from Girl Scouts to Denver Metro Chamber of Commerce, which supports our position that she is the best candidate for the U. S. District Court for the District of Colorado Judgeship.

It is the considered opinion of the SCBA that Regina Rodriguez possesses the professional qualifications, skills, experience, and temperament for this position, and that she

would be a great addition and asset to the U. S. District Court bench. As a judge, Ms. Rodriguez will proudly serve the state of Colorado and be dedicated, fair, informed, an ally to her coworkers and a champion for justice. For these reasons, the SCBA is proud to endorse Regina Rodriguez for the position of Judicial Officer for the U. S. District Court for the District of Colorado.

Respectfully,

April D. Jones, President
Sam Cary Bar Association

April 14, 2021

The Honorable Richard Durbin
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

Re: Letter in Support of Regina Rodriguez for the United States District Court for the District of Colorado

Dear Chairman Durbin and Ranking Member Grassley:

I am delighted to submit this letter of unequivocal support for Regina Rodriguez to be a judge on the United States District Court for the District of Colorado. Ms. Rodriguez has been a significant contributor to the Colorado community for decades and has been deeply involved in civil rights and racial justice work. Her integrity, experience, and qualifications make her imminently qualified to serve on our federal bench, and our community will be better with Regina on the federal bench.

The Colorado Lawyers Committee is a nonpartisan consortium of almost 80 Colorado law firms dedicated to providing and increasing opportunities for children, the poor, and other disadvantaged communities through education, advocacy, negotiation, and litigation. For more than 42 years, lawyers and others who have donated their time through the Colorado Lawyers Committee have focused primarily on systemic legal changes to benefit disadvantaged communities.

Ms. Rodriguez's involvement with the Colorado Lawyers Committee includes her service as the Co-Chair of the CLC Racial Justice Task Force and the Chair of its Education Subcommittee. Ms. Rodriguez was selected to be Co-Chair of this important Task Force because of the abiding respect and leadership she has in the legal community here in Colorado. Ms. Rodriguez also has served on the Colorado Lawyers Committee project serving immigrant communities and asylum seekers preparing for credible fear interviews and other immigration proceedings.

While we are aware of criticism from groups outside of Colorado that Ms. Rodriguez spent part of her career at private law firms, such criticism fails to understand the pro bono model we have here in Colorado and at the Colorado Lawyers Committee in particular. The Lawyers Committee is a consortium of private law firms where lawyers in private practice committed more than 22,000 hours of pro bono service to marginalized communities in the last few years alone. Unlike many other states, the private bar here in Colorado serves our disadvantaged communities in a substantial and meaningful way through civil rights and other education and advocacy work.

Ms. Rodriguez's career exemplifies that type of service. In 2011, Ms. Rodriguez served as lead counsel for the Colorado Latino Forum and the Colorado Hispanic Bar Association in a multi-week congressional re-districting trial. She has represented a detained inmate in constitutional challenges arising from the failure to provide mental health care and has also advocated on behalf of children detained at the border in immigration and asylum proceedings. Ms. Rodriguez was a founding Board Member of Colorado Youth at Risk, a nonprofit dedicated to serving and mentoring marginalized young people in Colorado. She served on the Board of Directors for a Montessori and early head start school that served 90% children in poverty. She has worked to stop gang violence, served as a Commissioner on the Colorado Commission for Higher Education, and served on the Board of Directors of our partner specialty bar association, the Colorado Hispanic Bar Association.

I could go on with Mr. Rodriguez's many and diverse contributions to our Colorado community, but suffice to say that Regina has been a mentor and leader in our bar for several decades. Her list of honors is long, but it is more important to understand the quality of her character. There can be no dispute that she cares deeply about our community and is an outstanding lawyer. Having achieved so much and done such critical work for disadvantaged communities over her life and career, Ms. Rodriguez should not be penalized for achieving the heights at several law firms. Indeed, it would be a cruel irony to impose new roadblocks for a multi-racial woman of color who has been a leader in our legal community for more than two decades.

The communities we serve owe a lot to Ms. Rodriguez. She will make an excellent judge on the United States District Court.

Sincerely,

Constance C. Talmage

Constance C. Talmage, Esq.
Executive Director

JANET PERLSTEIN
3473 S. Cimarron Way
Aurora, Colorado 80014

To the Senate Judiciary Committee

Re: United States District Court Judge Nominee Regina Rodriguez

Dear Senators Durbin and Grassley and other members of the Senate Judiciary Committee:

I am writing today to urge you to support Regina Rodriguez's nomination for US District Court Judge and bring it to the Senate floor for confirmation.

Gina Rodriguez is a respected member of the legal community whose experience spans government and private sector representation. She has developed a reputation for integrity, excellence and keen legal judgment. Her work for companies large and small, individuals, and plaintiffs and defendants, earned her bipartisan support for her nomination in 2016. Republican Senator Cory Gardner gave this description in his support of her: "Regina Rodriguez is one of Denver's best litigators and has served Colorado well."

In addition to her legal work, Gina has provided hundreds of hours of pro bono representation. She has advocated on behalf of a Guatemalan family of four children who fled the violence and persecution in their country and inmates seeking to challenge the conditions of their confinement. She also represented the Colorado Hispanic Bar Association in litigation when the legislature did not agree on a Congressional District map after the 2010 census.

As a member of the Colorado Bar, I believe it is crucial to have qualified, ethical, fair minded judges on the court bench. Regina Rodriguez is an exceptionally qualified candidate, who should be approved by your committee and confirmed for elevation to the United States District Court, without further delay.

Thank you for your consideration,

Janet Perlstein

Latinas First Foundation
Girls Can Be What They Can See

1766 West 46th Avenue, Unit #11489
Denver, CO 80211-9998
www.latinasfirst.org

April 13, 2021

The Honorable Richard Durbin
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

Re: Regina Rodriguez

Dear Chairman Durbin,

There is no person better poised to effectively serve on the U.S. District Court than Regina Rodriguez from Colorado. Not only does she have the background and character necessary to understand and preside over complex litigation, but Regina has served as community advocate for more than thirty years. Her unwavering commitment to her Colorado communities, including the ever-growing Latinx communities, has provided Regina a perspective that is grounded, fair, and will serve Regina well on the U.S. District Court for the District of Colorado.

We have had the privilege of working in partnership with Regina for nearly 10 years in her capacity as a founding board member of the Latinas First Foundation. Established in 2011 the Latinas First Foundation was created to provide a critical network and support for Latinas to reach their highest potential. Our organization provides scholarships, mentorship and networking opportunities, and honors Latina Trailblazers and Unsung Heroines. Latinas First is focused on the cultural and historical contributions of Latinas to the state of Colorado and strives to herald a new generation of professional Latinas who will contribute to our communities. In her role on our Board of Directors, Regina was critical in fundraising which has enabled us to award over 140 scholarships to young Latinas.

Regina's advocacy for education does not stop with our organization, and her community commitments have spanned the entire student life cycle. She has advocated for preschool children in her role with Family Star Montessori and college completion as a Commissioner of Colorado Higher Education. With deep Colorado roots, strong evidence of action in minoritized and underserved communities, and a powerhouse legal background we find no candidate better suited to serve Colorado constituents than Regina Rodriguez. We strongly recommend her appointment to the U.S. District Court. The District of Colorado deserves no less.

Latinas First Foundation Co-Founders

Juanita Chacon, RE/MAX Alliance

Meshach Y Rhoades, Armstrong Teasdale, LLP

April 13, 2021

Mairead K. Dolan

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The Honorable Richard Durbin
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

I write to express my enthusiastic support for the confirmation of Regina Rodriguez to the U.S. District Court for the District of Colorado. Gina is undoubtedly qualified and has spent her career lifting up those around her. The people of Colorado would be well served by her confirmation.

I have been lucky enough to have a number of mentors in my life, but none have been as important or as impactful as Gina. Gina took me under her wing when I was a junior associate, and she transformed my understanding of what it means to be a woman practicing law and what it means to be an advocate for others. As a woman of color, Gina is not well represented among her peers. Rather than simply blend in with those around her, however, she has used her success to create a springboard for others who have been traditionally underrepresented. Gina offers unending support, advice, and opportunity to those who need it. She works to instill in young lawyers a confidence that is hard to muster when you come into a profession feeling like an outsider.

I have no doubt that Gina will approach the bench in the same way that she has approached the rest of her career—with thoughtfulness and grace and informed by her own unique experiences. Gina has already made real and lasting changes in the lives of many young lawyers, including myself, and her presence in the Colorado legal community has made it a more inclusive and equitable place. Gina is an outstanding person, role model, and friend, and I can think of no better candidate to serve the people of Colorado.

Best regards,

By: 
Mairead K. Dolan

Margit Cox Henderson
John Stalker Henderson
2112 S. Milwaukee Street
Denver, Colorado 80210

April 18, 2021

The Honorable Richard Durbin
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

I am writing to urge you to support the appointment of Regina Rodriguez as U.S. District Court Judge and to bring her nomination to the Senate floor for confirmation.

Regina Rodriguez is one of Colorado's top lawyers with extensive experience in the public and private sector and an abiding commitment to the community. She is highly respected for her integrity and sharp legal mind. Plus, as an American of Japanese and Mexican decent, Ms. Rodriguez will bring much needed diverse representation to the federal bench.

Ms. Rodriguez's nomination for U.S. District Court Judge has earned bipartisan support from Senators Bennet, Gardner and Hickenlooper. I encourage you to add your support for Regina Rodriguez, an exceptional nominee to the federal court, and to move her appointment process forward as soon as possible.

Sincerely,

Margit Cox Henderson

John Stalker Henderson

April 14, 2021

The Honorable Richard Durbin
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

Re: Nomination of Regina Rodriguez for U.S. District Court for the District of Colorado

Dear Chairman Durbin and Ranking Member Grassley:

We are former United States Attorneys (appointed by Presidents from both political parties) who have had significant experience in the civil and criminal justice system. We write this letter in support of the confirmation of Regina Rodriguez to the U.S. District Court for the District of Colorado.

There is a great need here to fill the vacant position on the federal bench. The population in Colorado has grown dramatically over the past decade which has increased the demands on our courts. Colorado federal judicial officers' caseload is one of the highest in the country, and an unfilled vacancy on our court adversely impacts our citizens and our state.

We believe that Ms. Rodriguez should fill this vacancy. Prior to moving to private practice, Ms. Rodriguez was an Assistant U.S. Attorney handling civil cases for the United States, and then Chief of the Civil Division in the District of Colorado, where she supervised and directed all active civil cases for the office. When she was elevated to Chief of the Civil Division, Ms. Rodriguez was the youngest person to serve in that role in Colorado and was the first of Japanese and Mexican descent. She also was appointed as a member of the U.S. Attorney General's Civil Chief's working group, and served in the Assistant Attorney General's Office for the Department of Justice as the Deputy Senior Counsel for Alternative Dispute Resolution. Working with senior counsel, she helped establish and implement a nationwide ADR program in order to obtain better and more efficient results in litigation. As part of this process, Ms. Rodriguez became a certified mediator for the Department of Justice. Ms. Rodriguez's career as a civil lawyer for the United States in the federal courts is truly distinguished.

Ms. Rodriguez has been practicing law for over 30 years, both in public service and private practice. She is an excellent trial attorney, and has been awarded countless honors for her work in the courtroom and the community.

We believe that Ms. Rodriguez's experience, knowledge, demeanor and work ethic make her an ideal candidate for the U.S. District Court for the District of Colorado. She would bring an even handed approach to cases that come before her, favoring neither plaintiff nor defendant, rich nor poor. Based upon this, we urge the confirmation of Regina Rodriguez to the U.S. District Court for the District of Colorado.

Sincerely,

Jason Dunn
United States Attorney, District of Colorado (2018-2021)

John Walsh
United States Attorney, District of Colorado (2010-2016)
Chair, Attorney General's Advisory Committee of United States Attorneys (2015-2016)

Troy Eid
United States Attorney, District of Colorado (2006-2009)

John Suthers
United States Attorney, District of Colorado (2001-2005)

Thomas Strickland
United States Attorney, District of Colorado (1999-2001)

Henry Solano
United States Attorney, District of Colorado (1995-1999)
Attorney General's Advisory Committee of United States Attorneys (1994-95)

Robert Miller
United States Attorney, District of Colorado (1981 – 1988)

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April 14, 2021

The Honorable Richard Durbin
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley,

We write in support of the nomination of Gina Rodriguez for appointment to the United States District Court for the District of Colorado.

We are Colorado trial lawyers with decades of experience trying cases in the federal courts. We each have known Gina for many years and hold her in the highest regard as a skilled and fair-minded lawyer, a civic-minded citizen of the community and a long-time role model for diverse young lawyers throughout our state.

Gina's qualifications for service on the federal bench are evident from her distinguished and varied career. Following graduation from law school, Gina found herself immediately in the crucible of civil trial practice as a junior lawyer in a small but well-respected Denver litigation firm. In this setting, Gina began honing her skills by trying cases with some of the best Colorado trial advocates of their day.

In a reflection of her deep commitment to public service, Gina left private practice to join the office of the U.S. Attorney for the District of Colorado, eventually rising to lead the Civil Division of that office. While serving as an Assistant U.S. Attorney, Gina handled a wide range of civil cases on behalf of the federal government, trying and winning a number of them. We can state without hesitation that Gina was known for being a fair but tough AUSA who enjoyed an outstanding reputation among the federal judges before whom she appeared.

After serving seven years with the U.S. Attorney's Office, Gina returned to private practice, working for larger national law firms on complex civil and criminal cases of the type frequently litigated in federal courts. Despite the often grueling demands of a busy practice, Gina has given generously and tirelessly of her time by taking on pro bono cases, engaging in civic projects and volunteering for community organizations, many of which are focused on enhancing educational and career opportunities for diverse youth. And she did all this while juggling the demands and challenges of working with her husband to raise their two young children.

We are each also acquainted with Gina through her membership as a Fellow in the American College of Trial Lawyers. We are Fellows as well and, notably, Mike O'Donnell is the incoming President-Elect of the College, while Jim Lyons and Michael McCarthy have served in leadership roles with the College's Colorado State Committee. Admission to the College is based on robust scrutiny of a candidate's trial experience and skills, as well as professionalism and civility. We can assure you from our personal knowledge that Gina met those standards with flying colors.

Beyond her many professional and civic accomplishments, it is Gina's core personal character that, in our judgment, best qualifies her to serve as a federal judge. That core character trait is, at bottom, Gina's deep and abiding commitment to fairness and justice. We are therefore hopeful that you will accept the joint recommendation of Senator Bennet and Senator Hickenlooper and nominate Gina Rodriguez for appointment to serve as a United States District Judge for the District of Colorado.

Very truly yours,

Michael L. O'Donnell

James M. Lyons

Michael S. McCarthy

cc: Senator Michael Bennet
Senator John Hickenlooper

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AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

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April 27, 2021

Via Email
The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

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

Re: Nomination of Regina M. Rodriguez to the United States District Court for the District of Colorado

Dear Chairman Durbin and Ranking Member Grassley:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Regina M. Rodriguez, who has been nominated by the President to the United States District Court for the District of Colorado. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Ms. Rodriguez is **"Well Qualified"** to serve on the United States District Court for the District of Colorado.

Very truly yours,

Randall D. Noel
Chair, Standing Committee
On the Federal Judiciary

cc: Dana Remus, White House Counsel (*via email*)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Regina M. Rodriguez (*via email*)
ABA Standing Committee on the Federal Judiciary (*via email*)
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary, Staff Counsel (*via email*)