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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

JUNE 9, 2021

Serial No. J–117–8

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CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

WEDNESDAY, JUNE 9, 2021

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

The Committee met, pursuant to notice, at 10 a.m., in Room 216, Hart Senate Office Building, Hon. Richard J. Durbin, Chairman of the Committee, presiding.

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

Also present: Senators Murray, Schumer, Bennet, Gillibrand, and Hickenlooper.

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

Chair DURBIN. This hearing will come to order. Today we have five judicial nominees: Eunice Lee, nominated to the second circuit; Veronica Rossman, to the tenth; three nominees to the Western District of Washington, Judge David Estudillo, Lauren King, Tana Lin. Several of our colleagues will formally introduce the nominees. I'd like to make a few observations before we start.

First, with these five nominees, the Biden administration and Senate Democrats continue to strive for professional balance on the bench across America. Today's slate includes, for example, two Federal public defenders, a former immigration attorney, an expert in Tribal law, and a civil rights champion.

I will concede that, historically, there are many former prosecutors who ascend to the bench, and many of them do an extraordinary job, so it's no reflection on their backgrounds, what I'm about to say, but we need in our judiciary a reflection of America across the board: demographics and professional experience. To date, Federal judges have come from that narrower pool of professional backgrounds, which I've said, nothing wrong with that, they make great contributions to justice in America, but we want to see if we can bring diversity to the bench across America, and I think that's a good goal.

Consider how many active circuit court judges have experience as Federal prosecutors, active circuit court judges in the Federal system: 48. How many have experience serving as public defenders across America? Two. The numbers are even more stark when it comes to the second and seventh—second and tenth circuits, where

50 percent of the active circuit court judges have Federal prosecutorial experience and not one as a Federal public defender. I'm pleased to see efforts now underway to address this imbalance, including the nominations of Ms. Lee and Ms. Rossman to the second and tenth circuits, respectively.

My second observation is to note a fact that has been raised many times by my Republican colleagues in previous meetings, and that is about an organization known as Demand Justice. To my knowledge, Demand Justice has no role in choosing judicial nominees, and certainly the group has no special influence over me. They've taken after me from time to time, which is their right. Moreover, it's critically important to look at who actually is driving the judicial selection process in this administration. The answer is simple: the President of the U.S. Senate.

Think about the five nominees before us today. They've been recommended by and have the strong support of their home State Senators. They were vetted and nominated by the White House.

Compare that to the role in previous Congress, where the Federalist Society played an outsized role in selecting nominees. Then-candidate Trump said, in a radio interview in 2016, and I quote, "We're going to have great judges. Conservative. All picked by the Federalist Society," he said. Then-White House Counsel Don McGahn boasted in 2017 about the prominence of the Federalist Society in choosing Trump's judicial nominees. It's quite ironic that those who acquiesced or even supported the Federalist Society's determinative role in picking judges now have overstated the role of another organization, Demand Justice.

My third observation is this. We should not expect or require every judicial nominee coming before this Committee to ascribe to originalism as their judicial philosophy. As my friend Lori Lightfoot, the Mayor of Chicago, pointed out, there's a very good reason why support for originalism should not be a litmus test. This is what she said last year, and I quote, "You ask a gay, Black woman if she's an originalist? No, ma'am, I'm not. That Constitution didn't consider me a person in any way, shape, or form before I was a—because I was a woman, because I am Black, and because I am gay. I'm not an originalist," said the Mayor of Chicago.

She continued, and I quote, "Originalists say, 'Let us go back to 1776, and whatever was there in the original language, that's it.' That language excluded, incidentally," she said, "over 50 percent of the people living in America today. So," the Mayor went on to say, "I am not an originalist," she's rather outspoken, as you noticed.

Our most important lodestar should be whether nominees before us have the hallmarks of what makes a good judge. Independent? Can they set aside personal beliefs and leave partisan politics in the robing room? Will they apply the law to the facts? Will they approach every case in a fair-minded way? I firmly believe we can answer yes to these questions for each of these nominees before the Committee today.

With that, I turn to my friend and Ranking Member Chuck Grassley.

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

Senator GRASSLEY. I think any originalist would admit that we take into consideration all the constitutional amendments, 27 or 28 of them, that's been added to the Constitution. Today, we're here to congratulate the nominees and to hear from five of them, two for the circuit, three for the district. I want to thank Chairman Durbin for following standard practice of dropping a district court nominee from the second panel when putting two circuit nominees on the first panel.

The two circuit nominees continue President Biden's trend of nominating criminal defense judges. Both are Federal defenders: one in Colorado, the other in New York. I've said repeatedly why we need to evaluate such nominees carefully, both because of how Democrats looked at Trump nominees and because of what liberal activists say about how these defense judges will behave on the bench.

I want to go into all that—I'm not going to go into all that again, because I spoke to that in a previous circuit nominees before us, but my concerns still apply. I think this trend also presents other problems. A circuit judge needs to be a generalist. Criminal defense lawyers aren't going to be Criminal Defense judges. They'll be hearing every kind of Federal appeal. We need to make sure that they're ready to do just that job.

Ms. Rossman, the nominee for the tenth circuit, is a Federal defender in Colorado and Wyoming. She would replace Judge Carlos Lucero, who was the first and only Hispanic judge on the tenth circuit. While Ms. Rossman may bring the diverse experience of being a criminal defense lawyer, I want to know if she has the kind of deep diversity of experience that we saw in Trump's tenth circuit nominees.

Judge Joel Carson, for example, was a criminal defense lawyer, as well, but he also had experience in oil and gas, employment law, land use, and commercial litigation. Judge Allison Eid had significant experience in Indian law, constitutional law, employment law, criminal law, and civil litigation, and she did it all from the perspective of a government lawyer, a private lawyer, a legal academic, and a State judge. I want to ask Ms. Rossman about her other legal experiences beyond being a criminal defense lawyer.

It's a similar situation with Ms. Lee. She has spent her career specialized in criminal appeals in State and Federal courts. I'm sure that will bring a diverse perspective on criminal matters, but what about the rest of the court's docket?

Sure, Trump nominee, Judge Michael Park, brought the perspective of being a civil rights lawyer fighting to end racial discrimination in college admissions, but he also had experience in a broader constitutional law, environmental law, and banking. He did this in big firms, small firms, and within the Justice Department. Likewise, Judge Steven Menashi, the first Iraqi-American on the second circuit, brought the important perspective of a legal academic and executive branch official, while also having wide experience in issues beyond constitutional law, like antitrust, securities regulation, and products liability.

In many ways, the second circuit is a commercial circuit. What background will Ms. Lee bring to that aspect of the job?

As for the district court, we have three nominees for the Western District of Washington. There are seven authorized judgeships for that court, and currently only two judges. That's because of the blue slip policy. Neither Chairman Graham nor I contemplated doing anything to pressure our colleagues from Washington on the district court, even though it was being kept empty. As far as we were concerned, that was between those Senators and the White House.

As to the nominee Judge Estudillo—brings an interesting perspective from Eastern Washington, what he has called "East Washington values." Ms. King seems well respected in the bar. Ms. Lin seems to have been very involved with so-called legal resistance during the Trump years. I expect to have questions about that for her to answer. Thank you, Mr. Chairman.

Chair DURBIN. Make sure I get the proper starting point, here. We have a number of colleagues who are going to join us this morning to introduce several of the nominees. I was thinking the Majority Leader——

Unidentified Speaker: He's still on his way. He's on his way, so if we start with Senator Gillibrand.

Chair DURBIN. On his way? Then we're going to reward early attendance by the Junior Senator from the State of New York, Senator Gillibrand.

STATEMENT OF HON. KIRSTEN E. GILLIBRAND, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator GILLIBRAND. Thank you, Mr. Chairman. Chairman Durbin, Ranking Member Grassley, and Members of the Judiciary Committee, it's my honor to join you today to introduce Eunice Lee, nominee to be judge on the Second Circuit Court of Appeals. Ms. Lee grew up in a military family and saw the importance of public service from an early age. That committee to—that commitment to serving your community and protecting the rights of others has been a cornerstone of her legal career, which she has spent in service to those most in need.

Following her graduation from Yale Law School and clerkships in both the Southern District of Ohio and the Sixth Circuit Court of Appeals, she joined the Office of the Appellate Defender in New York City. During her 20 years at the Office of the Appellate Defender, Ms. Lee served as a supervising attorney and represented clients who were in great need of legal assistance but could not afford representation. She dedicated her practice to ensuring that everyone interacting in our legal system, regardless of their financial circumstances, was able to be heard.

In 2019, Ms. Lee joined the Federal Defenders of New York, where she has advocated on behalf of her appellate clients throughout the sentencing process by developing and presenting a full picture of their lives that is not exclusively defined by their mistakes.

Throughout her career, Ms. Lee has represented more than 380 indigent clients in proceedings before State and Federal appellate courts on direct appeal, in post-judgment motions, and in habeas proceedings. Working on those cases gave her an acute awareness

of the awesome power of our judicial system. She fundamentally understands the staggering effects that the laws can have on people's lives and its disproportionate impact on low-income individuals convicted of crimes. Her clients are people who desperately are relying on the promise of fairness from the legal system, and she's fought to deliver on that promise throughout her professional life. She's uniquely positioned to bring a critically important perspective to the bench and to the second circuit.

If confirmed, Ms. Lee would be the first and only judge on the circuit with experience as a public defender and just the second Black woman to serve on the circuit's bench. Her recognition that every decision has far-reaching effects and her commitment to fairness throughout the entire legal process, regardless of the outcome for individual clients, will be among her greatest strengths as a judge. Her approach to the law will ensure that all who come before the court are given the chance to be heard, and her voice and her experience will bring an important and much needed new perspective to the bench. I now defer to my Senior Senator.

Chair DURBIN. We'd like to welcome Senator Schumer back to the Senate Judiciary Committee. Senator.

STATEMENT OF HON. CHARLES E. SCHUMER,
A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Thank you, Mr. Chairman. It's good to be back at the Judiciary Committee. I spent many, many years, actually, between my House and Senate service. I got on the Judiciary Committee in 1982 in the House; was on the Judiciary Committee from the very beginning, in 1999, when I got to the Senate. I miss you all very much, but I'm glad to be here on this auspicious occasion.

I'm glad to be here with Senator Gillibrand and Senator Bennet, and I have the pleasure to introduce Eunice Lee—she's an incredible public servant—to be nominated for the Second Circuit Court of Appeals, where she will succeed the great Judge Robert Katzmann, who we pray for, he's ailing right now, a model public servant who took senior status this year after more than two decades on the second circuit.

Ms. Lee is the daughter of an Air Force veteran—thank you for your service, sir—born on base in West Germany. Ms. Lee is a first-generation college student who graduated summa cum laude from Ohio State before receiving her J.D. from Yale Law School. Beyond that, she hasn't taken the typical path to the seat she now occupies, a nominee for the second circuit, which we in New York believe is the most important circuit court. Some don't, but we do. DC is very important, and they all are, but we love the second circuit.

Ms. Lee is not a former prosecutor or a product of a big corporate law firm. Instead, Ms. Lee spent her entire career in public service, dedicating herself to representing those criminal defendants who cannot afford counsel. If confirmed, she would be the only Federal defender among the second circuit's active judges. The only one.

Let me take a note here, Mr. Chairman. I recommended her to President Biden, and not only because she was outstanding, but because we want to bring a great diversity of experience, as well as

other parts—other reasons for diversity, racial and religious and LGBTQ, et cetera, but we want experience diversity. I have been proud, now, to ask two people to join the second circuit and ask President Biden to nominate them, Ms. Lee and, now, of course, a second nominee, who was the leading voting rights defender from the Brennan Institute, Ms. Perez, Myrna Perez.

We're changing who sits on the bench. It's not just going to be partners in fancy law firms or prosecutors, but people who have that diverse experience. Ms. Lee personifies not only excellence as a lawyer but that diverse experience.

She's currently a member of the Federal Defenders. She has spent more than two decades in the Office of the Appellate Defender in New York. She's represented over 400 indigent clients on direct appeal and in post-conviction proceedings, as well as in Federal habeas corpus petitions. She has argued cases both at the State level and before the second circuit, and over the course of her career, Ms. Lee has helped defendants receive fairer sentences, get fairer treatment during incarceration, make sure their constitutional right to counsel was not infringed.

You know, we've all heard those words in the Miranda warning, "You have the right to an attorney. If you cannot afford an attorney, one will be provided to you." It's one of those fundamental rights we have here in a democratic society, our great democratic society. It's—you know, along with the Fifth Amendment, it's vital to the fairness of our judicial system, but it takes dedicated public servants, lawyers willing to work longer hours for lower pay, to make those rights real in American courtrooms every day. That's Ms. Lee: someone who has dedicated her career to making sure that equal justice under law is faithfully applied for the impoverished as well as the privileged.

Eunice Lee would bring a unique breath of fresh air to the Federal bench that has sorely lacked the perspective of lawyers like her. I just want to say to Ms. Lee and to the audience here, she will not be the only person from this type of background. There will be many more.

I mentioned Myrna Perez. Dale Ho—I just suggested President Biden nominate him to the Southern District of New York. He's the leading voting rights lawyers of the ACLU. There will be many more. The bench will be filled with appointments who will restore the balance that we believe has shifted way over to the hard right during the Trump years, but it will also shift in terms of experience and represent much more of America than it had represented in the past, under our Democratic majority and under President Biden.

Let me just conclude, again, with some of Ms. Lee's great qualifications. She's been described by her colleagues as a brilliant advocate, a first-rate legal writer, a natural teacher, and a mentor. She's also been an adjunct Professor at New York University, and her clinic on criminal appellate advocacy, which she designed herself, is one of the courses in highest demand at the law school. When I met with her, I saw for myself the breadth of her knowledge but also her measured, judicious approach to the law. She combines that experience with the understanding that you always have to try to walk in someone else's shoes.

Someone else's shoes. Just this week, a group of over 70 former New York Federal prosecutors, the folks who often found themselves on the opposite side of Ms. Lee, called her a brilliant, accomplished advocate who's supremely well qualified to serve on the bench. Again, those were the folks who came up against Ms. Lee, urging the Committee to confirm her. I can't think of a higher compliment.

The Committee should also be aware that, if confirmed, Ms. Lee would break another barrier. She would become only the second African-American woman to ever sit on the second circuit. After 4 years of confirming nominees that were predominantly male and predominantly white, we have a lot of work to do, to make sure the Federal judiciary reflects the diversity of our Nation.

As the Senator from New York, as I mentioned, as well as the Senate Majority Leader, it's my intent to recommend and work to confirm judges who would bring both demographic but also professional diversity to the bench. Expanding the range of experiences and perspectives on the bench strengthens the public's trust in our judiciary system and strengthens the courts' ability to apply the law fairly, impartially. Ms. Lee's confirmation would do precisely that for the prestigious and important Second Circuit Court of Appeals. She carries my fervent and strongest recommendation. Thank you, Mr. Chairman, and it's good to see you as Mr. Chairman over there.

Chair DURBIN. Thank you, Senator Schumer. We know you have a busy schedule and appreciate you coming by to introduce the nominee. Senator Gillibrand, thank you, as well. Senator Bennet.

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

Senator BENNET. Thank you, Mr. Chairman, for having me today, and to the Ranking Member Senator Grassley. Thank you very much for holding this hearing and for inviting me to introduce Veronica Rossman, President Biden's nominee for the U.S. Court of Appeals for the Tenth Circuit, the most important circuit in the United States of America.

Before I begin, I want to welcome her husband, Ken, and her daughter, Sophie, who join us today. Thank you guys for making the trip to Washington. I also want to say a word of thanks to Carlos Lucero, who held this seat before this nomination, who served the tenth circuit and our country with such extraordinary distinction. Thank you to him and to his family.

Ms. Rossman comes to this Committee with broad legal experience and a sterling reputation in Colorado. Ms. Rossman cares deeply about justice and the rule of law, because she knows what it means to live without them.

Mr. Chairman, Veronica was born in Russia, where her family faced anti-Semitism at every turn. Her grandparents couldn't openly practice their faith because they feared retaliation at work. Her father was a brilliant cancer scientist, but he was routinely denied promotions. Her mother, who's a pianist and music teacher, never openly shared her faith, and the family fled Russia. Veronica was a child at the time, and she came, like so many other people, to

America as a political refugee, and from virtually nothing, she built a distinguished legal career.

After earning her B.A. from Columbia and J.D. from the University of California, Hastings, she clerked for the Nevada Supreme Court. She then practiced appellate litigation at Morrison & Foerster, where she worked on some of the largest international patent cases in history. Later, she served as a staff attorney for the U.S. Court of Appeals for the Ninth Circuit and taught law at the University of Denver.

At this point, Veronica could have pursued any number of high-paying legal jobs. Instead, she became a Federal Public Defender for the Districts of Colorado and Wyoming, and over the past 12 years, Ms. Rossman developed rare expertise as an appellate specialist handling direct criminal appeals from every judicial district in the tenth circuit.

She also represented more than 250 indigent clients. Mr. Chairman, from controversial defendants to people sentenced to lengthy terms for a nonviolent offense, despite having no criminal history. She fought for every one of those Americans, often against the longest odds. More than that, she fought for the American ideal that everyone deserves equal justice under the law.

If confirmed, Veronica would be the only judge on the tenth circuit with experience as a public defender. We need more judges like Veronica who are not only highly qualified but who know what it means to be on the wrong end of the legal system that too often fails the most vulnerable in our society. Ms. Rossman's qualifications are unparalleled. She's been a first-rate lawyer, and she would make an outstanding judge. I urge the Committee to approve this outstanding nominee. Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Bennet. Concluding the circuit court nominees, we have Senator Hickenlooper. I hope he's available for this.

Senator HICKENLOOPER. Yes, I am. I'm on the video, and I apologize. Can you hear me?

Chair DURBIN. We can hear you loud and clear. Proceed.

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

Senator HICKENLOOPER. Great. I apologize for not being there in person, but thank you, Chairman Durbin and Ranking Member Grassley, for inviting me to share a few words about Veronica Rossman, President Biden's nominee to serve on the Tenth Circuit Court of Appeals. Senator Bennet did an excellent job of summing up her background, coming over from Russia as a political and religious refugee, having dealt with anti-Semitism for much of her early life, and then working through that and being able to go graduate from Columbia, get a law degree from Berkeley, from Hastings College at Berkeley.

I think that what I'd like to emphasize is her commitment to trying to deal with those most difficult cases. She really is a seasoned practitioner. Ninety-five percent of her practice has taken place in Federal courts, and in that time as a public defender, she's personally handled and supervised over 100 criminal appellate matters arising out of, as Michael said, every judicial district in the tenth

circuit. In private practice, she specialized in these numerous complex civil litigation cases, including appellate cases and a number of matters involving antitrust law and intellectual property.

Ms. Rossman, in dedicating her life and the majority of her career in the legal practice to serving the Office of the Federal Public Defender for the Districts of Colorado and Wyoming, she brings that perspective that, I think, too often is missing from the bench: an understanding of the real-world impact of sentencing decisions and disparities. I think she will bring a significant new perspective to how decisions are made on this court of appeals.

Over the course of her career, Veronica has earned a reputation for being not only fair but being tenacious and really dedicated to equal justice under the law. I think she is well respected. I can't tell you how strong her recommendations were from fellow lawyers, from peers and colleagues, but including many of those who have served as opposing counsel on cases where she's worked.

I have absolutely no doubt that Veronica will serve with impartiality, with honesty, and with integrity, and so I enthusiastically support Senator Bennet's recommendation that this Committee will approve her nomination, that the Senate will act swiftly to confirm her. Thank you, Chairman Durbin and Ranking Member Grassley, and every Member of the Committee, for your consideration and hopefully approval and confirmation of this outstanding nominee. Thank you.

Chair DURBIN. Thanks, Senator Hickenlooper. Yesterday, on the floor of the Senate, Senator Murray told me how excited she and Senator Cantwell were about the three nominees she's about to introduce. Senator Cantwell, unfortunately, can't be here in person but has sent a letter of support. I now turn to Senator Murray for a formal introduction of those nominees.

STATEMENT OF HON. PATTY MURRAY,
A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator MURRAY. Thank you, Chairman Durbin and Ranking Member Grassley. It is really my honor and I am excited to introduce you to three nominees for Federal district court vacancies in the Western District of Washington. As this Committee knows, Washington State has had these vacancies open for a number of years, so let me start by thanking President Biden and this Judiciary Committee for working so quickly to provide some long-awaited reinforcements to our bench in Seattle and Tacoma.

In addition, I especially want to thank our nonpartisan Judicial Merit Selection Committee, comprised of ten Washington State lawyers and co-chaired by Ian Warner and Rob McKenna, who guided us in selecting these highly qualified nominees that are before you today. I will introduce them alphabetically.

First, I would like to introduce Judge David Estudillo. He is here today with his family, his wife Sandra and three children, Sophia, Sarah, and Sebastian. Judge Estudillo currently serves as a Grant County Superior Court judge and has a distinguished career as a litigator and immigration attorney before his current role as the presiding judge of the Grant County Superior Court.

He is a graduate of the University of Washington School of Law and is a Washington State native whose parents came to the

United States from Mexico through the Bracero Program in the 1960s. Throughout his career, Judge Estudillo has consistently provided pro bono services and legal education to Latino communities across Washington State, helping people to better understand immigration policy and procedure at community forums. Judge Estudillo works hard to ensure that every person who enters his courtroom is treated with respect and dignity. I know he will bring that same approach to the Federal bench in Tacoma and is well prepared to serve as a Federal district court judge.

Turning to Ms. Tana Lin, Ms. Lin is today here with her family: her husband, Paul Michael Holland; her son, Patrick; and her daughter, Julia. Ms. Lin is a litigator with Keller Rohrback in Seattle, where she practices in the Complex Litigation Group. Her career has been dedicated to serving the public, having served as president of the board of directors of the ACLU of Washington, as a public defender for the District of Columbia, a trial attorney with the Civil Rights Division at the Department of Justice, and as an attorney with the Michigan Poverty Law Program.

Ms. Lin has consistently sought opportunities to help train the next generation of lawyers, having also served as an adjunct professor for Seattle University School of Law and developing trainings for the National Institute for Trial Advocacy and National Legal Aid & Defenders Association.

Ms. Lin would also make history, if confirmed. She would be the first Asian-American Federal judge in Washington State history. A Chinese-American, Ms. Lin immigrated from Taiwan with her family when she was a child. She would strive to run a courtroom where all litigants are seen, heard, and treated fairly. I wholeheartedly support her nomination.

Finally, turning to Ms. Lauren King, Ms. King is here today with her father, Jeff; her mother, Lisa; and her fiance, Sean. Ms. King currently chairs Foster Garvey's Native American Law Practice Group and has served as a pro tem appellate judge for the Northwest Intertribal Court System. She has served as a commissioner on the Washington State Gambling Commission and taught Federal Indian law at Seattle University School of Law.

Ms. King is a citizen of the Muscogee Nation, and she would make history by being the first Native American Federal judge in Washington State. She would join only two other currently serving Native American Federal judges and become the fifth ever in United States history. Washington State is home to 29 federally recognized Indian Tribes, and it is absolutely essential that Federal judges better reflect and understand the unique histories of Native people and the legal principles that protect and preserve Native American standing under Federal law. Ms. King will bring important experience and a critical perspective to the Federal bench.

Mr. Chairman, I am extraordinarily proud of these three nominees before the Committee today. They represent the best of Washington State and their country. It is my honor to submit their names to President Biden, and I hope all the Members of this Committee will join me in supporting these three highly qualified nominees. Thank you.

Chair DURBIN. Thank you very much, Senator Murray. We appreciate that. As I mentioned, Senator Cantwell's letter of support will be made an official part of the record.

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

Chair DURBIN. We're going to change over the table to accept the first panel of circuit court nominees, so if you'll just bear with us for a moment, stand at ease.

If the two nominees would come to the table, please? If they'll remain standing for a moment, I'll administer the oath.

[Witnesses sworn.]

Chair DURBIN. Let the record reflect that the witnesses answered in the affirmative and that we have had a conversation here during this brief recess of correcting the record so that Ms. Lee's college of undergraduate work is officially noted as "The Ohio State University."

[Laughter.]

Ms. LEE. Thank you.

Chair DURBIN. Now, I give each of you an opportunity to make an opening statement. Ms. Lee.

STATEMENT OF EUNICE LEE, NOMINEE TO SERVE AS UNITED STATES CIRCUIT JUDGE FOR THE SECOND CIRCUIT

Ms. LEE. Thank you, Chairman Durbin, Ranking Member Grassley, and all the Members of the Committee for inviting me to appear today and for considering my nomination. I would also like to thank my home State Senators, Majority Leader Schumer and Senator Gillibrand, for their very kind and warm introductions of me.

I'd also like to thank President Biden for nominating me to fill the seat currently held by Judge Robert Katzmann. Judge Katzmann is a very distinguished and well-regarded judge on the second circuit, and he's someone whom I respect very much.

I have with me today four family members who came to support me. They traveled here by car from Columbus, Ohio. They are my parents, John and Irma Lee, and my brother and sister-in-law, Eric and Noelle Lee. My sister, Edith Webster, who is a public school teacher in Rockford, Illinois, could not be here today because school is not quite out yet, but she's cheering me on, as well. I also have many extended family members from around the country who are supporting me and watching at home.

I appreciate the support from all of my family members, but I would just like to take one moment to express particular gratitude to my parents, who are with me today. During this period of being—going through this process and receiving this incredible honor and this incredible opportunity has made me think a lot about my parents and their opportunities and what they've experienced.

Both of my parents grew up poor in small-town Arkansas with very limited opportunities. When my father joined the Air Force, it was with the hope that they could have a better life for them and for their family, and my siblings and I have benefited greatly from the many sacrifices that my parents have made for both of us—well, for all of us, during their lives, and I am truly appreciative of that, and I feel truly blessed to have them in my life. I feel very

confident that I would not be here today without their love and support.

Then, last, I would like to also thank my friends and present and former coworkers who've also been incredibly supportive throughout this process. It means a lot to me, and so I'd like to thank them, as well.

Again, thank you to the Committee for having me appear today, and I welcome your questions.

Chair DURBIN. Thanks, Ms. Lee. Ms. Rossman.

I think the microphone is not turned on. I think if you slide your thumb across, it might work.

Ms. ROSSMAN [continuing]. To get it——

Chair DURBIN. There you are, I think. Believe me, we struggle with these mics all the time, so it's not unusual.

Ms. ROSSMAN. Thank you.

Chair DURBIN. Thanks, Mike. Senator Lee, thank you very much.

STATEMENT OF VERONICA ROSSMAN, NOMINEE TO SERVE AS UNITED STATES CIRCUIT JUDGE FOR THE TENTH CIRCUIT

Ms. ROSSMAN. Thank you. Sorry about that. Thank you, Chairman Durbin and Ranking Member Grassley, and thank you to all the Members of the Committee for your time this morning. I'd like to thank President Biden for the honor of this nomination, and thank you to Senators Bennet and Hickenlooper for their support and their generous words this morning.

I'd like to acknowledge Hon. Carlos Lucero, senior judge now, who has ably served the Tenth Circuit Court of Appeals since 1995. Judge Lucero is an exemplary jurist and a role model for all of us in Colorado and in the tenth circuit.

I'd like to introduce some members of my family, beginning with two very important people who were unable to travel here today, my parents: my father, Michael Illich Parkansky, and my mother, Zoya Josif Parkansky. My parents and I came to the United States from the former Soviet Union in the mid–1970s. We were refugees. Like so many immigrants to our great Nation, my parents left behind all that they knew to build a better life in the United States. I still remember the day that we became citizens. I was in middle school.

My parents led by example and instilled in me values I hold dear today: hard work, perseverance, integrity, and generosity. I want to thank them for their unwavering love and support and for the many sacrifices they made for me. Given how our American story began, it is beyond any of our wildest dreams that I would be sitting here today.

Next, I'd like to introduce my husband and daughter, who are seated just behind me. Kenneth Fisher Rossman IV is a wonderful husband, father, and a brilliant lawyer. Our daughter, Sofia Rebecca Rossman, just graduated high school last week and will be starting college in California this fall. Sofie, you are my greatest inspiration.

Thanks to my many other family members and dear friends throughout the country who are watching this hearing and supporting me. Finally, I would like to acknowledge the head of my of-

fice, Virginia Grady, for encouraging me to pursue this incredible opportunity, and to all my wonderful colleagues in Colorado and Wyoming, my sincere thanks. I'm so grateful to appear before you today, and I will do my very best to answer your questions.

Chair DURBIN. Thanks very much, Ms. Rossman. We'll do a round of questions here from the Senators in attendance and let me start. I'm not going to question your backgrounds and experience. They are extensive and impressive. There's no point in repeating for the record what has been already said about what you have done with your lives and the time that you've spent in professional service to the cause of justice.

I'm going to ask a more general, softball type question, just to ask you to reflect for a moment. At any moment in American history, if we had had this hearing, we could certainly say we still face challenges in the United States when it comes to justice based on race, gender, poverty, religious belief, ethnic background. It still is a problem that haunts us. You've seen that in real time, in your practice of law. Would you comment on the present state of the national debate on this issue of justice, Ms. Lee?

Ms. LEE. Thank you, Chairman. I think one of the critical issues relating to justice, one of the critical concerns, is the idea of equal access to justice, equal access to competent counsel, in particular. One of the reasons that, in my background and my experience, I've participated in a lot of training programs with other attorneys is the idea that not only is it important that people have access to counsel but that the counsel that they have be competent and able to vigorously argue their positions. Part of the calculus of justice is—one important part is, of course, a fair and neutral decision-maker, but also parties to vigorously pursue the claims.

I think between the issues of access to the courts, representation, fair decision-makers—all of those are necessary to achieving justice, because the process is the thing that we have. We can't guarantee outcomes, we can't rely on assumptions about what's going to happen. We have to have a fair and equitable process, and so with those in place, with that kind of process, there can be a measure of justice, regardless of the outcome. I think that, again, the question of access is something, I think, that's really important to address in our current system.

Chair DURBIN. Thank you. Ms. Rossman.

Ms. ROSSMAN. Thank you. I would echo what Ms. Lee just said and simply add that, in my role as an appellate Federal public defender, one thing that I have witnessed that has really stayed with me is the importance of appellate courts in the lives of ordinary people. People come to the appellate courts wanting to be heard, wanting for the judges to be impartial, neutral, receptive, in the sense of not an outcome-determinative way in every case, but knowing they're going to get a fair hearing before the court.

I see that in the tenth circuit with judges who are open-minded and receptive, and I think that that is very significant to ordinary Americans, in terms of how people understand the judiciary, that they will get a fair day in court with impartial, neutral decision-makers.

Chair DURBIN. Ms. Rossman, let me be specific in one area. I notice that you've devoted a significant portion of last year raising the

alarm about the spread of COVID–19 among our Federal prison inmates. Senator Grassley and I have joined in asking the head of the Bureau of Prisons a year ago what plans were being made for this looming pandemic and crisis, and we were told at the time not to worry, things were under control, there were only three cases when it came to inmates and three cases when it came to staff.

We know what happened afterwards, unfortunately. Many hundreds died in our prisons. The rate of infection was six times what it was with the general population, and we still have genuine concerns and issues, such as compassionate release, being debated. Tell us a little bit about your background with this issue.

Ms. ROSSMAN. Thank you. The First Step Act, which this body has passed, is incredibly significant legislation. My work, specifically, in the last year has focused on the so-called compassionate release portion of the Act, which amended the statute that allowed—that previously only allowed the Director of the Bureau of Prisons to seek compassionate release for inmates and changed the law in a way to allow inmates, if they exhausted their claims appropriately, to pursue relief directly with the court.

That change was significant, and what we saw during the pandemic is a true crisis with individuals who were experiencing COVID within the prison system. All actors, in my view, were doing their very best under extraordinarily difficult circumstances, but the availability of relief for eligible individuals—certainly not for everyone, but for our eligible clients—was an incredibly important avenue to pursue.

Chair DURBIN. Thank you. Senator Grassley.

Senator GRASSLEY. Before I ask you questions, I assume, your family fleeing Russia, that the names of Sakharov and Sharansky are important heroes for you. Would that be fair for me to conclude?

Ms. ROSSMAN. Sure.

Senator GRASSLEY. Okay. Because they suffered a lot for the work of the people that we call refuseniks.

Ms. ROSSMAN. Yes.

Senator GRASSLEY. Okay. You have a lot of experience when it comes to criminal appeals. In 2019, the tenth circuit had 368 total criminal appeals, compared to 1,135 civil appeals. There were over 150 appeals under diversity of citizenship alone, to say nothing of the appeals involving contracts, labor, torts, environment, tax, Social Security, and even marine injury. You know where I'm coming from? What's your experience that makes you a good fit for the generalist docket of the tenth circuit?

Ms. ROSSMAN. Thank you for that question, Senator. I have been an attorney now for over 20 years and have had a variety of different types of legal experience. In addition to clerking for the Nevada Supreme Court and serving as a staff attorney for the Ninth Circuit Court of Appeals, my training ground was in civil litigation at a large law firm. I've benefited tremendously from that experience. In my role as a litigation associate, I worked on cases involving a wide range of civil subject-matter areas, specifically antitrust law, intellectual property law, contracts law, business litigation, things like that.

This was certainly a long time ago, as I've spent the last 11 years at the Federal Public Defenders Office, but I consider the work that I have done before as accessible to me. I think that if I were so fortunate as to be confirmed and a case came before me involving an area of civil litigation, that I would approach it diligently, get back up to speed on areas that I think I could access readily, and because I have spent the last decade as—I call it "at home in the tenth circuit," practicing appellate litigation in the tenth circuit, I would be able to hit the ground running, in the sense that I'm very familiar with the structure within which these various appeals in a large range of subject areas would arise, and I'm confident that, if confirmed, I could rise to the challenge.

Senator GRASSLEY. Thank you for that answer. I think the next answer you can give me a short answer to. You have an impressive family story of fleeing the Soviet Union when you were a child. I'd like to read to you something another nominee whose family fled communism, Judge Barbara Lagoa, had to say. Quote, "If we are not bound by what the Constitution means, then we are no different from the country my parents fled, Cuba, because Cuba has a Constitution and a Bill of Rights, and it means nothing because there is no one to say, 'This is what the definition of the Constitution means,' if it's already—if it's always ever-changing." End of quote. In your words, a fixed-meaning Constitution helps prevent tyranny. Do you agree with Judge Lagoa on this?

Ms. ROSSMAN. Thank you for that question, Senator. I'm not familiar with his remarks, other than what you just read. I have a deep, abiding love and respect for our Constitution and our democratic system, largely borne of my experience as a political refugee, but also with my experience as a practicing lawyer, especially in the criminal justice area. The Constitution is an enduring document, and it is amazing in its ability to adapt over the years in countless Supreme Court decisions that have interpreted it, but I believe the Constitution is an enduring document.

Senator GRASSLEY. One question for Ms. Lee. You've been a public defender for nearly your entire career. According to your questionnaire, you have no civil litigation experience. In 2019, the second circuit had 660 criminal appeals, compared to 2,294 civil appeals. To pick a few examples, there were almost 300 appeals in diversity, over 200 in labor and employment, and well over 100 in intellectual property, securities, and antitrust. This court's grab-bag category of "all other civil appeals" is among the biggest in the Federal court system. What's your experience that makes you fit for the generalist docket of the second court?

Ms. LEE. Thank you for the question, Ranking Member Grassley. Certainly, my practice has not been specifically in those civil areas; however, over the course of my career as an appellate litigator, I have often been confronted with topics and subject areas with which I'm not familiar, and certainly the experience of having to learn new topics in the context of a specific case is something I'm very familiar with.

I've also had the occasion of—for many years, I was practicing in State court, and making the switch from State law to Federal law, as well, was a change. I think as an appellate attorney and as an appellate judge, should I be confirmed, you're presented with

very discrete claims, one at a time, and I have, as I said, a lot of experience learning new issues and figuring out how to address the law that applies to a particular case. Certainly, I have, as I said, no specific experience in most of those topics that you raised, but I am very confident in my ability to get up to speed and to handle the cases that come before me.

Senator GRASSLEY. Thank you, Mr. Chairman.

Chair DURBIN. Thanks, Senator Grassley. Senator Lee.

Senator LEE. Thank you very much, Mr. Chairman. Ms. Lee, after Justice Thomas's 1991 confirmation hearing, in a letter to the editor of The Ohio State Lantern, you made the assertion that Justice Thomas, as a Black conservative, subscribed to the view that racism isn't an obstacle to success. With this ill-conceived assumption, which is a view that, by the way, I've never heard Justice Thomas express or espouse, you proceeded to criticize Justice Thomas's identification of his confirmation hearing as a high-tech lynching, and in your words, you said, quote, "When it would make Thomas look better and garner sympathy, he was willing to acknowledge that there is racism and that it is an obstacle for millions of other Blacks," close quote.

Then, in concluding your remarks, you added the following. Quote, "I might stop short of calling Thomas a hypocrite, but I'm reminded of the saying that there are no atheists in foxholes. Perhaps you can also say that there are no Black conservatives when in the political hotseat."

First of all, what did that mean? I've got some follow-up questions about that but tell me what that means.

Ms. LEE. Thank you for the question, Senator. First, I would note that the letter that I wrote as a 20-year-old college student 30 years ago does not reflect the views that I have today. With regard to the nature of the letter, as I said, I was a student in college, a political science major, and the confirmation hearings were something that we talked about in classes, and that's something—the views I expressed at that time were the beliefs that I held, but in the time, in the 30 years since then, certainly I have learned and matured and interacted with clients and lawyers and developed in a way where I don't espouse the generalizations that are in that letter, and that doesn't reflect the person who I am today or the beliefs that I would bring to the bench, should I be confirmed.

Senator LEE. Okay. You no longer regard Justice Thomas as someone who denies that racism is an obstacle?

Ms. LEE. Senator, as I said, I don't espouse the views in that letter now, and I also, as a judicial nominee subject to the Code of Conduct for Judges, I don't think it would be appropriate for me to comment specifically on Justice Thomas or his—speculate on his views or his beliefs, but at the time when I wrote that letter as a 20-year-old, those were my beliefs. As I've said, those are not my beliefs. The letter does not reflect my current beliefs.

Senator LEE. What about the contempt that you expressed for Black conservatives in 1991? Do you still hold that view?

Ms. LEE. As I said, it's not reflective of my current views, and I would also say that, to the extent that—my personal views on any topic would not influence the decisions that I would be making, should I be confirmed as a judge. I know it's critically important

that judges don't put—don't bring personal beliefs to the judging act, and I am confident I would not do that.

Senator LEE. Given your vast experience as a defender, as a criminal defense attorney, do you—are you confident in your ability to be objective in cases involving criminal prosecutions?

Ms. LEE. Thank you, Senator. Actually, I am. One of the tasks of being a criminal defender, public defender, is, I've had to, over time, put aside my personal feelings about the case or the client or the issue, and I've had to put aside concern about public opinion or perception of the work that I'm doing, and so that experience of making the difficult decisions and putting aside personal beliefs is something that I have had to do. I think in the context of criminal cases that would come before me, should I be a judge, I—you know, to the extent that I have more experience in that than perhaps some of the other judges, the beauty of the appellate process on the circuit, and the fact that it's a collaborative process, I think, is something that also ensures that many different views will be heard and that a fair hearing of the issue will occur.

Senator LEE. Thank you. Thank you, Mr. Chairman.

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

Senator COONS. Thank you, Chairman Durbin, and my thanks to both of you for your long service. It is inspiring to me to have such highly qualified and impressive candidates before us. Both of you have demonstrated a commitment to justice and fairness throughout your extraordinary legal careers.

You would also bring greatly needed professional diversity to the circuit courts to which you've been nominated, given your long experience as public defenders, and I'm proud to support President Biden's commitment to diversity of all kinds, but in your cases particularly, professional diversity. I look forward to supporting your nominations.

Ms. Lee, I was struck to learn that over 70 former Federal prosecutors in New York—so, the very people against whom you were litigating over and over and over in court—signed a letter in support of your confirmation. They called you brilliant and accomplished and said you are the right candidate at the right time for this important seat. Can you speak to how you've maintained mutual respect and collegiality with the very prosecutors against whom you were often in court and how that approach will translate to your service as a judge on the second circuit?

Ms. LEE. Yes. Thank you for the question, Senator. I think one important factor for me, over my career, that I've learned, is that everyone is fulfilling their role in the system. You go up in court against another attorney who's representing the government, and it's about the role. They're supposed to do their best. We're supposed to do our best. It's not about—it's not personal. I think that a lot of the attorneys who I have gone up against in court have recognized or realized that I also understand that, and that I'm serving an important role and that we're—you know, we make vigorous and strong arguments against one another, but it's what the system requires. I think that the attorneys who I've appeared with and against respect that and understand that. I think when you're dealing with other attorneys in a fair and open way, they do respond to that, as well.

More broadly, in terms of prosecutors signing on and encouraging the appointment of someone with a public defender background, I think many of the attorneys in the criminal field, in particular, also understand the importance of balance and do respect the role of a public defender in the system. I think that's part of the reason for the support.

Senator COONS. Thank you for that answer and for your conduct as a public defender that would lead to such a sterling letter of support from the very prosecutors against whom you were often in court.

Ms. Rossman, you similarly received a letter from a broad range of over 90 members of the Colorado legal community. It includes former prosecutors but also government attorneys and many others, and that letter describes you as having an abiding respect for your colleagues on the other side of the aisle in the courtroom and a commitment to fairness and collegiality.

I have the same question for you. Can you speak to how you developed this professional courtesy, this collegiality, and how would that bear on your service on the circuit court?

Ms. ROSSMAN. Thank you for that question, Senator. Again, I have to echo Ms. Lee. Everyone plays their role in the system, and in my experience, it has been a privilege and a collegial experience. The thing that I have recognized is that each party represents their interests, but we are all officers of the court, and that informs our practice, that everything that each side does is done ethically, within the bounds of the rule of law, because doing it any other way wouldn't be appropriate, wouldn't advance the cause.

I've just found, in my experience, that it is one of mutual respect, even when it's a contentious case or contentious issue, and I think that that sort of mutual respect and professionalism is so important to the integrity of the legal profession, and it restores the public's faith, I would hope, in the justice system.

Senator COONS. Ms. Rossman, Ms. Lee, as public defenders, part of your role is to be an advocate: to be an advocate for your clients, to be an advocate for justice. The role of a judge is distinct from the role of an advocate. Could you just take a moment and distinguish the difference, in your mind, between your service as a public defender and your service should you be confirmed as a judge on the circuit? Ms. Rossman first, then Ms. Lee.

Ms. ROSSMAN. Thank you, Senator. The roles could not be more different. The role of an advocate is nothing like the role of a judge, and I have reflected on this quite deeply. A judge needs to be neutral, impartial. An advocate proceeds within the rule of law, is also an officer of the court, but has a very different, focused objective. Over the course of my career, I have had a number of different roles that have required a number of different types of behavior and conduct and approaches, and I am confident that recognizing the difference between what an advocate does and what a judge does will serve me well if I am confirmed.

Senator COONS. Thank you. Ms. Lee.

Ms. LEE. Yes. I would echo what Ms. Rossman said about the importance and the distinct nature of the roles. Really the only point I would add is that being a public defender for all of these years, I critically recognize the importance of a fair decision-maker. That

is the thing that all of the clients who I have represented over the years have wanted, and so I would take that duty to be that kind of decision-maker incredibly serious, should I be so fortunate to be confirmed.

Senator COONS. Thank you, Ms. Lee and Ms. Rossman. I appreciate your answers, and I look forward to supporting your nominations. Thank you, Mr. Chairman.

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

Senator TILLIS. Thank you, Mr. Chairman. Congratulations, Ms. Rossman and Ms. Lee, for being here, and to your, I'm sure, very proud family. Ms. Lee, one thing I want to say up front. I thought your answer to Senator Lee's question about being a 20-year-old—maybe your thoughts have changed over the years—I'd like for that to be the standard for all nominations hearings. I think that if you've—you've stipulated that perhaps if you wrote today, you wouldn't have written the same thing, and I think it would be nice, as we consider future judges and other nominees, that we take that into account, versus going to yearbooks and dumb texts and letters and all the body of work that we're going to have when your daughter graduates from college, so be careful on the phone.

Ms. Lee, I want to ask you a question. You were at a criminal defense lawyers'—I think it was the New York State Association, and the—I think that the panel was crafting a persuasive statement of facts and argument, very important thing for a defense attorney to take into mind. You went on to submit notes and, I think, have some discussion about avoiding cop talk. Can you tell me a little bit about, you know, what you were focused on there? I have a few points, but just to give me an idea of why that was important and what was discussed.

Ms. LEE. Thank you, Senator. It's been a while since I have looked at those specific notes.

Senator TILLIS. It was 2013.

Ms. LEE. I believe in that particular training, the suggestion is to not craft your brief in a way where you're just automatically using the language of the transcript or describing things in the way that perhaps that the police officers at trial testified, and so I think the suggestion it was making was, when you are writing your statement of facts, don't just parrot what the witnesses at trial say. Try to present the facts in a way that most favorably describes the facts of the case and sets up the narrative for what you're doing on your brief on appeal.

Senator TILLIS. Ms. Rossman, I know during the height of the COVID pandemic, you supported, as I do, compassionate release of prisoners, but you seemed to take a position on a broader swath of those who were incarcerated. The question I have there is, we heard the Chair talk about a number of statistics and the incidence of infections in the prisons, but if you dig below the surface, the incidence of infections in the broader community, in certain at-risk populations, were roughly the same as the prison population. What was the rationale behind that focus on a broader swath of prisoners?

The reason I ask the question is, I really believe in criminal justice reform, did it as Speaker of the House when I was in North Carolina, for early release, and I wonder sometimes if we go too

far, if it could actually put efforts further back. What was the rationale behind the broader release of prisoners?

Ms. ROSSMAN. Thank you, Senator. I guess I'd look at it a little bit differently. We didn't go into the work thinking that there was going to be necessarily an enormous flood of release. The compassionate release——

Senator TILLIS. I'm assuming they were nonviolent offenders that we were referring to?

Ms. ROSSMAN. The compassionate release statute has certain criteria.

Senator TILLIS. On compassionate release, I was talking to the broader population. Was it your opinion that that would be limited to nonviolent offenders, or——

Ms. ROSSMAN. That's—the criminal history of the defendant certainly factored into the court's decision, but when we were making a decision about whether to pursue compassionate release, it was a multifaceted one. We have a standing order of appointment in our district, where we review every pro se compassionate release petition. It serves the court; obviously, also serves the client. We're looking first at eligibility—is this someone who would satisfy the letter of the law?—before we turn to whether we file a motion that also advocates under the sentencing statute.

The situation with COVID, alone, was not necessarily something that would satisfy the criteria for release. It was looking at the individual, which is what sentencing law does. It looks at the individual defendant. In the case of compassionate release, it looks at it in terms of how the COVID pandemic, the situation within the Bureau of Prisons, for that individual—it was always about the individual—whether that would merit a motion for release.

Senator TILLIS. Okay. If I could just ask you all both to respond. I'm very concerned right now with what we're seeing in the law enforcement community. We've got a lot of brave men and women making split-second decisions, and there's a discussion about qualified immunity. If you all could just very briefly—thank you for indulging me, Mr. Chair. Just what do you think the proper scope of qualified immunity should be, for men and women in law enforcement being granted qualified immunity? Ms. Lee, we'll start with you.

Ms. LEE. Thank you, Senator. Certainly, I know that the topic of qualified immunity is one that many bodies, including this one, is looking at. My—as a judge, should I be confirmed, I'm bound by what the current law is, and the Supreme Court has upheld a standard for qualified immunity, and so that's what I would impose. In terms of the policy considerations or whether or not it should be changed or modified in some way, certainly that's not——

Senator TILLIS. That's our job.

Ms. LEE. That's—that is your job, and so——

Senator TILLIS. Ms. Rossman.

Ms. ROSSMAN. Thank you, Senator. I agree with Ms. Lee. I'd say that law enforcement has a tremendously important and challenging job. If I'm confirmed as a circuit judge, I would follow the law of qualified immunity as developed by the Supreme Court in cases like *Harlow* and others and the caselaw that's developed in

the tenth circuit. With respect to any policy positions that may implicate the doctrine of qualified immunity as a doctrinal judicial matter, that would be outside the scope of what I would be concerned with as a judge, if I'm confirmed.

Senator TILLIS. Thank you. Thank you, Mr. Chair.

Chair DURBIN. Thanks, Senator Tillis. We have a remote visit from the Senator from New Jersey, Cory Booker. Can you hear us, Senator?

Senator BOOKER. I hear you loud and clear. Can you hear me, Chairman?

Chair DURBIN. Yes, we can. Proceed.

Senator BOOKER. I'm really grateful, and especially to Senator Lee and Senator Tillis. I thought the thoughtful discussion about one of the nominees' background was handled the right way, and I think it is fair to ask people about their past writings, even if it goes back to college or high school, but as I think Senator Lee—Senator Tillis just sounded, that it should be viewed within the totality of grace, of the understanding of grace and that all of us evolve. I'd like to ask Ms. Lee a quick question. Ms. Lee, how do you know me?

Ms. LEE. We went to law school together.

Senator BOOKER. Yes. If I had known back then of the potentiality for this moment, I would've really demanded that you share your notes with me back then, because this is a great moment for me, to an old friend. I did not know you in college, and—but I will tell you this: I knew you as a law student. You were universally viewed, by people of all different perspectives—and we had a highly charged intellectual environment, back then, but you were one of these people that everybody saw that did walk with grace and had a extreme abundance of generosity of spirit to everybody you greeted.

I just want to give testimony to the fact that you are an extraordinary person in terms of your values, and what also was very impressive to me back then, you are an extraordinary person in terms of your brilliance. I got into, probably, Yale because they needed someone to help them win the Intramural Basketball Championship. You got in there because of your extraordinary intellectual gifts. I'm excited that someone like you that I knew back when there was not Senate hearings or a public spotlight, you are a kind and decent and gracious human being, and I cannot tell you how excited I am about your potentially sitting on the United States Federal circuit.

I just want to ask you, maybe to that spirit—you know, we had conservative professors and we had more liberal professors. We had conservative classmates and more liberal classmates. You were someone that I thought was intellectually honest and open to different ideas, but we were in our 20s then, and I'm curious just for you to speak maybe to what maturity, what 20 years has done to your heart and your experience with serving in a capacity as a judge, to balancing differing views, differing ideals, and coming to what we want from our jurists, coming to analyze what's before you in a way that speaks to the highest values that I know my colleagues on both sides of the aisle hold dear.

Ms. LEE. Thank you for that question and also for your kind words, Senator. One of the things, I think, that has had the biggest effect on how I've grown and developed as a person, since being in my 20s, has been representing clients. I have represented people from so many different walks of life, people whose views and values, on a host of topics, have often differed from mine. When you are dealing with someone as a client, you know, you're in a particular role, and your role is not to judge or to persuade someone to your point of view. It's to advocate zealously for them.

Being exposed to so many different people over my career, working with so many people—I've worked with a lot of pro bono attorneys at law firms, again, coming from a very different perspective than the one that I started with, and just being—dealing in the realm of criminal defense, where there are so many tough choices and so many different situations that you're confronted with, I think you do naturally grow as a person.

I think the fact that I've had so many opportunities and worked and dealt with so many different people in my career really has shaped who I am and shaped the views that I have on the world, that the generalizations and assumptions that I had and that I made when I was younger—they don't exist in the same way. I've—my views on life and the law are much more complicated and nuanced than they were, and so it's really been a learning experience and a growing experience over the last 30 years.

Senator BOOKER. My friend, I'm thrilled, and I look forward to voting for both you and Ms. Rossman, but I will say this. As I look behind you—my mom would embarrass me during one of my recent campaigns by going around and telling people, "Behind every successful child is an astonished parent." She tells me I have astonished her. I also know what James Baldwin said, that children are never good at listening to their elders, but they never fail to imitate them.

I just want to say to your family behind you that when I knew you in our mid–20s, you—they raised an extraordinary human being who's lived a life that should make all of us feel a sense of gratitude. Your life and your commitment to serving others was evident in law school, and you have stayed in fierce allegiance to that, and it's a tribute to your parents, to your family, to your ancestors, and may God bless you both in your continued journey of helping our Nation to live up to its ideals of justice for all.

Ms. LEE. Thank you.

Chair DURBIN. Thank you, Senator Booker. Ms. Lee, I'd just say, for those of us who work with Senator Booker on a daily basis, we, too, wish you would've shared your notes with him.

[Laughter.]

Senator Hawley.

Senator HAWLEY. Thank you very much, Mr. Chairman. Thanks to the witnesses for being here. Congratulations on your nominations, your respective nominations.

Ms. Rossman, if I could just start with you, I want to come back to the compassionate release topic that Senator Tillis was pursuing with you a minute ago, if I could. You wrote during the pandemic a great deal about the compassionate release of inmates from jails and prisons, if I'm not mistaken.

I want to talk about, first, the case *U.S. v. Wilson*, which you might remember. That's where you sought compassionate release of a prisoner on the basis of his age. I think he was 58, had an underlying health condition, diabetes. He had been sentenced to 4 years in prison for being a felon possessing a firearm. He'd only been in prison, though, about a third of his sentence. The district court denied your motion. The court found that Mr. Wilson's criminal history and the circumstances of the incidence—of the incident offense, rather, suggest that he's a danger to the community.

Here's what I want to ask you about. You wrote in your brief that the length of the prison term already served is not dispositive or disqualifying in the compassionate release analysis. Again, he'd only served less than a third of his term. Let me just ask you, do you think that the length of term served, or the prison term served is relevant in any way to the compassionate release analysis? Give us some indication of your thinking on this.

Ms. ROSSMAN. Thank you, Senator. Certainly, the length of the term served is a factor. It is a multi-factor analysis, as all sentencing decisions are. They're individualized decisions where, especially in the compassionate release context, if the individual is eligible—and what that means in the context of that statute is that they've demonstrated an extraordinary and compelling circumstance warranting release—then the court needs to balance a number of sentencing factors, and certainly the amount of time that the individual has served is one of many.

Senator HAWLEY. In your view, is there a reasonable percentage of a sentence that ought to be completed before consideration of compassionate release or consideration for compassionate release?

Ms. ROSSMAN. Thank you, Senator. You know, in the abstract, that's a difficult question to answer, and that's because these are such fact-specific inquiries that, again, the amount of time an individual has served their custodial sentence—certainly, a sentence has multiple components. There's the custodial component, there's also supervised release, which is part of the sentence, but the district court has the discretion in these cases to consider all of those factors.

Senator HAWLEY. What about if—well, let's say the defendant only served a day. Would that be too little?

Ms. ROSSMAN. A day, you know, perhaps might be too little, but certainly the—it would all be a very fact-specific inquiry, and I only hesitate to take a position on this because some of the cases that we were litigating in the compassionate release context involved individuals who were seriously ill and elderly. Again, because sentencing, as the Supreme Court has told us, is an individualized process, it's very difficult to answer those questions in the abstract.

Senator HAWLEY. Let me ask you about another case, the *Moon* case, *United States v. Moon*. You made a similar argument for the pretrial release of a 52-year-old individual male who'd been diagnosed, I think, with head and neck cancer.

What got Mr. Moon indicted in that case was that his adult children reported that he was threatening them. The government's brief explained that, when he was arrested, the defendant—that is, the police found 12 firearms, multiple shotguns, multiple rifles, a loaded handgun underneath his pillow, a revolver, two self-made,

fully automatic machine guns. They also found two self-made silencers, a ballistics vest, and 4,602 rounds of ammunition. Neither the machine guns nor the silencers had serial numbers, making them untraceable. This is somebody who had an arsenal, basically, in his home.

We're seeing an epidemic of gun violence in this country. This is somebody who was ready to engage in such violence and unfortunately also had a history of doing that. His criminal history included willful poisoning, witness-victim bribing, third-degree assault, and harassment. His children were placed in protective custody after they reported him to the police. Moon sent people to go after the children, and one of the people told Moon's roommates, "Those kids are done for."

You argued Mr. Moon should've been released to home detention. I want to ask why you felt the risk of this repeat offender, who is clearly dangerous, someone who is stockpiling illegal firearms—why would the danger to the community be outweighed by, in this case, health issues? I mean, give us a sense of how you balance this with a violent offender like Mr. Moon, who was engaged in all manner of violent, illegal activity?

Ms. ROSSMAN. Thank you for that question, Senator. I think that, in the abstract, it might seem like there's absolutely no balancing to be done, but when we approach these cases, we're not asking the court to simply release an individual onto the streets. We don't even approach the court unless we have a release plan, something that we believe, in good faith, under the bounds of the law, we can bring to the court and say, "Here are terms and conditions that the probation department can weigh in on, that we believe will satisfy all of the concerns, including the risks to the community."

In Mr. Moon's case, in particular, he was suffering from terminal cancer, and at the time that he was arrested and so forth, he was—his cancer treatment was interrupted, and the type of disease that—progression that he had, the concern was, he would get much, much worse if his treatment wasn't immediately reinstated.

Senator HAWLEY. This is my last question, Mr. Chairman. You—in the case of Mr. Moon, Ms. Rossman, you don't think that somebody like that poses severe danger to the community, a violent felon, someone who has an arsenal in his home, who is threatening his children, is hiring hit men to go after them? I mean, help me understand why this person doesn't pose such a risk that you would say, "Sorry. I mean, you have a history here of violent felonies. We're just not going to release you."

Ms. ROSSMAN. Thank you, Senator. I understand the concern, and I'm—it's been a long time since I litigated that case, so I don't recall all of the specific facts that you're referencing, but I can assure you that I've never brought a case or an appeal or made an argument to a court that wasn't made in good faith according to the bounds of the law, and in Mr. Moon's case, it was no different. I applied the law that I thought was consistent with the position that I was advancing and asked the court to do its job, which in this context is to exercise its discretion, to weigh and balance the appropriate factors. We didn't prevail in that case, but the argument was made in good faith.

Senator HAWLEY. Thank you, Mr. Chairman.

Chair DURBIN. Thank you. I think Senator Kennedy is next.

Senator KENNEDY. Thank you, Mr. Chairman. Ms. Lee, congratulations. Do you think the United States Constitution should be interpreted according to how people understood it at the time it was adopted?

Ms. LEE. Thank you for the question, Senator. With regard to the interpretation of the Constitution, should I be confirmed as a circuit judge, I'll be bound by Supreme Court and second circuit precedent.

Senator KENNEDY. I know that. I know that, and I'm not going to ask either of you—I know you've been coached. The Trump White House coached the Republicans when they were nominated, to always carefully say you're going to follow Supreme Court precedent. I stipulate that. I'm asking your opinion, your judicial philosophy, not how you're going to rule on a case.

Let me rephrase it. Do you think the United States Constitution should be interpreted according to how people understood it at the time it was adopted?

Ms. LEE. Thank you, Senator. I don't have a personal judicial interpretation philosophy, apart from what the——

Senator KENNEDY. You're going to be on the United States Court of Appeals, if you're confirmed, and you don't have a judicial philosophy about how the United States Constitution should be interpreted?

Ms. LEE. Senator, I—in terms of how it would be interpreted, I'm going to be bound by how others have said we, the circuits, the judges, interpret it. And so——

Senator KENNEDY. Yes, but we don't decide cases using algorithms and just take all the U.S. Supreme Court cases and put them in. They haven't addressed every issue. Very few cases get to the U.S. Supreme Court.

Let me ask it again. Do you think the United States Constitution should be interpreted according to the way that people understood it at the time it was adopted? If you don't, that's cool. Some don't. Many don't. What—how do you think it should be interpreted? It's a very simple question for a court of appeal nominee.

Ms. LEE. Thank you, Senator. I think the question actually is a little more complicated. The Supreme Court has——

Senator KENNEDY. No, it's not. It's about as basic as you can get.

Ms. LEE. In—it——

Senator KENNEDY. It's Con Law 101.

Ms. LEE. Thank——

Senator KENNEDY. I'm not trying to be disrespectful, but—and I know both—you know, the thing now, but with all Presidents, Republican and Democrat, is to coach the nominees, but you're going to be on the court of appeal, if confirmed, and I'm asking you, how do you interpret the Constitution?

Ms. LEE. I—oh, I'm sorry. We're——

Senator KENNEDY. I'm done. I'm sorry.

Ms. LEE. No, no, I'm sorry, Senator. No, I think certainly the interpretation of the Constitution has to start with the text, and to the extent that that's not—to the extent that that's unambiguous, that's what we work with, but in terms of whether or not—when there's lack of clarity and there's a need to look to something else,

I do think that, in fact, precedent gives us a lot of examples of when——

Senator KENNEDY. Let me—let me try it again. The problem may be mine. The United States Constitution: do you think it should be interpreted according to the way that people understood it at the time it was adopted, or another way?

Ms. LEE. I think there are many circumstances where it should be interpreted according to what people thought at the time it was adopted.

Senator KENNEDY. When? When?

Ms. LEE. For instance, in the case of *Heller*, the Supreme Court applied original meaning to determine the scope of the Second Amendment right, and so we——

Senator KENNEDY. When shouldn't we apply original meaning?

Ms. LEE. I think when there are Supreme Court precedents that apply something—have applied something other than that——

Senator KENNEDY. On an original question.

Ms. LEE. On the—I'm sorry.

Senator KENNEDY. When, on a situation or a right or a privilege that—and I'm sorry to have to interrupt you, but we have so little time. When do you—under what circumstances do we not interpret the Constitution according to the way that people understood it at the time it was adopted?

Ms. LEE. There are circumstances where the Supreme Court has not interpreted the Constitution explicitly in that fashion, and so I would always, as——

Senator KENNEDY. Give me an example.

Ms. LEE. I would——

Senator KENNEDY. What example are you thinking about?

Ms. LEE. There are times, in the context of judging what is cruel and unusual punishment under the Eighth Amendment, when the Supreme Court has looked to——

Senator KENNEDY. That's a good example.

Ms. LEE [continuing]. Looked to prevailing norms, in terms of interpreting what——

Senator KENNEDY. Let me just—I've got 15 seconds left. I'm sorry. Let me try it again. You get a constitutional case. There's no precedent on it. You've got to interpret the Constitution. I think I understand your testimony to be that sometimes we interpret the Constitution according to the way that people understood it at the time the Constitution was adopted, and sometimes we don't. How're you going to proceed? How're you going to decide which of those philosophies you're going to use on a particular case?

Ms. LEE. Thank you, Senator.

Senator KENNEDY. If there's no precedent.

Ms. LEE. I think that when there is not—I think the circumstances where there's not going to be either controlling or, at the least, instructive precedent from the Supreme Court or from the second circuit, I think is fairly rare, and so I can't say in the abstract, "Well, this is the philosophy that I would apply," because, again, I'd be driven by what the precedent says, and so I can't give you a specific judicial philosophy.

Senator KENNEDY. Okay. I'm way over. Listen, I'm going to send you both a letter. I can't vote for you if I don't know, and I didn't

get a chance to talk to you, Ms. Rossman. I can't vote for you if I don't know how you're going to—what approach you're going to use to interpret the United States Constitution, and I don't believe for a second you both haven't thought about it. You couldn't have gotten through law school without thinking about it. I need to know what you think about it. Okay? Thank you for your time, and I'm sorry I had to interrupt.

Ms. LEE. No.

Chair DURBIN. Thank you, Senator Kennedy. Senator Cotton is online. Senator, begin. Can you speak?

Senator COTTON. Yes. I hear you, Mr. Chairman. Thank you. Oh, and thank the witnesses, too, for their appearances.

Both of you have spent your careers as a criminal defense attorney. Have you ever represented a terrorist detained at Guantanamo Bay? We'll start, Ms. Rossman, with you.

Ms. ROSSMAN. No, Senator.

Senator COTTON. Ms. Lee?

Ms. LEE. No, Senator.

Senator COTTON. Have you ever represented someone charged with a terrorism offense under Federal law, Ms. Rossman?

Ms. ROSSMAN. I have not, personally, no.

Senator COTTON. Ms. Lee?

Ms. LEE. No, I have not, Senator.

Senator COTTON. Okay. Thank you. Ms. Lee, in a civil case in Federal court, when do the parties have a right to a jury trial?

Ms. LEE. Thank you for that question, Senator. My practice has been primarily in criminal, and so I'm not familiar with all of the rules of civil procedure in terms of entitlement to jury trials and the like. Certainly, though, I have experience, as I noted before, in terms of figuring out new issues when they've been presented to me and determining what the law is and how it applies to the particular circumstances.

Senator COTTON. Ms. Lee, I understand you've spent most of your career in criminal law, but it's a fairly basic question about when a civil litigant has a right to a jury trial. You don't have an answer to that question?

Ms. LEE. Thank you, Senator. No, I don't, off—I do not know what the requirement is, or the rule is for entitlement to a jury trial in the civil context. As I said, I have a lot of experience in figuring out unfamiliar areas of law, and certainly when those are presented to me, I start with the specific claim being presented and work through the law and what I need to figure out to answer the question at issue.

Senator COTTON. Okay. The Seventh Amendment guarantees a right to trial by jury in all cases where the value in controversy exceeds $20. How many jurors are there on a Federal civil jury, Ms. Lee?

Ms. LEE. Thank you, Senator. My understanding is that, in the context, as well, of a civil jury trial, that an individual is still entitled to 12 jurors, although, as I said, I have not practiced in the civil context, and so the specific procedural rules, I'm not—I have not had occasion to be familiarized with—familiarize myself with, I should say.

Senator COTTON. Okay. They're entitled to at least 6 and no more than 12. Can subject matter jurisdiction be waived in Federal court, Ms. Lee?

Ms. LEE. Subject matter jurisdiction?

Senator COTTON. Yes.

Ms. LEE. I do not—thank you for the question, Senator. I do not believe that subject matter jurisdiction can be waived; however, as I said, I'm not—I have not practiced civil litigation.

Senator COTTON. That's right, it cannot be waived. For the purposes of determining diversity jurisdiction in a Federal civil case, in what States is a corporation considered a citizen?

Ms. LEE. Thank you, Senator. I'm not positive about that. My understanding—well, I will say, I'm not positive what the rules are on when a corporation can be considered—did you say a citizen or a party to a——

Senator COTTON. For purposes of diversity jurisdiction.

Ms. LEE. Right.

Senator COTTON. For purposes of diversity jurisdiction, in what State is a corporation considered a citizen?

Ms. LEE. Correct. Okay. Thank you, Senator. No, I'm not—I cannot answer for you what the circumstances are for that.

Senator COTTON. The State where the corporation is incorporated and/or has its principal place of business. In a Federal civil jury, each side is guaranteed at least three peremptory strikes. Can civil litigants remove potential jurors because they don't like their political beliefs?

Ms. LEE. Thank you, Senator. I am not positive on what the rules are on that. It does not present the same claim, the same issue, certainly, in the criminal context, where there are limitations on peremptory strikes, but I am not familiar with the rules for the jury service and use of peremptories in the civil context.

Senator COTTON. The answer is, yes, they can. They can't use their strikes, of course, due to race or sex, though.

Ms. Lee, you've said several times that you've spent your career in criminal practice, which I understand. However, you did work for 2 years as a law clerk in the Federal courts, where the caseload is more than two-thirds civil, and these are fairly basic questions of civil procedure. These are not obscure questions about, say, riparian rights. I'm surprised that you weren't prepared to answer these questions today, one of the most important moments in your professional career, and it raises concerns to me about what litigants should expect from you, should you be confirmed, at the level of preparation you will bring into oral arguments. I have some more questions, but my time is expired, so I'll yield back to the Chairman.

Chair DURBIN. Thank you, Senator Cotton. I believe Senator Blackburn is next.

Senator BLACKBURN. Thank you, Mr. Chairman, and congratulations to each of you on being here today. Ms. Lee, I want to return to the question that Senator Tillis started with you on your 2013 comments to the Criminal Defense Lawyers CLE program——

Ms. LEE. Yes.

Senator BLACKBURN [continuing]. About avoiding cop talk. In the piece that I read on this, you said it was—to avoid that because—

and I'm quoting. This may refresh your memory. You made the mention that you had used this to most favorably describe an outcome that you were seeking, but in what I read, you said, and I'm quoting you, "It legitimizes the behavior of the police," end quote. What did you mean by that?

Ms. LEE. Thank you, Senator. I don't—without—I don't know the portion of the document that you're reading. I'm not—without hearing what preceded it and what comes after, it's difficult for me to respond specifically on that. I believe, though, that what I was—the point that I was trying to make with that was the idea of, by, again, parroting exactly how the witnesses or a police officer in a trial transcript described what occurred, by presenting it that way in your brief, you are accepting, this is what happened, this is the version of events that should be—the judge on appeal should accept, and so as an advocate, we don't want to just present the facts in the way that supports what the witnesses are claiming. I believe that's what I was getting at with that description.

Senator BLACKBURN. Would you review that and then submit an answer in writing for us? I think that would be helpful, especially as we look at the environment. Law enforcement is one of the main concerns when I talk to Tennesseans. Safe communities, safe streets. Then, to hear that you, as recently as 2013, would have said, "avoid cop talk" and then state that it legitimizes the behavior of the police, I think you can understand why this would give us pause and why we would seek further clarification from you. I would ask that you submit something in writing that you review that and clarify.

Okay. Ms. Rossman, let me come to you. I'm—I like to know where someone stands with the Constitution and the rule of law. No one wants to see activist judges on the bench. They want them to abide by the rule of law. Same type question that Senator Kennedy got into with Ms. Lee, over, are you—how do you believe the Constitution would be interpreted? Are you a textualist? What do you believe?

Ms. ROSSMAN. Thank you for that question, Senator. I don't have a specific judicial philosophy, and I think in part that's——

Senator BLACKBURN. Okay. I'm going to stop you right there, because I find it astounding that neither of you have a judicial philosophy as to how you feel about the Constitution. Mr. Chairman, I think this is something that should cause all of us a little bit of concern.

Let me return to the cases on the compassionate release. I read through some of this in your background and the *Wilson* case and then also, specifically, the *Moon* case that Senator Hawley was referring to. You know, if you think compassionate release should be used, and in the *Wilson* case, you argued that Mr. Wilson being in—a felon in possession of a gun is a nonviolent gun possession offense and that he should be released because of that and given compassionate release, and then you turn around with the *Moon* case, and there are several felonies and the threats, but you have not been able to explain where you think the court finds its balance.

Each of these are violent offenders with felony records, but yet in your mind, you thought they deserved that release because of a

health issue and without consideration of danger to the public and public safety. It is very difficult to understand how you would approach that balance, and that is something that you—we would be well served if you could explain to us in writing: how should the courts balance compel early release cases? Where would you find that? I know I'm out of time, and I will yield back. Thank you, Mr. Chairman.

Chair DURBIN. Thank you very much, Senator Blackburn. I thank the nominees for appearing before the Committee, and please be mindful, as was noted, that some Senators may submit written questions. We'd ask you to work diligently to respond to those. Thank you very much, and as they would say in court, you're excused.

At this point, we are going to move to our second panel. I'd ask for everyone's patience for a few moments while we finalize the setup for this panel, with the three nominees coming to the witness table.

[Pause.]

Chair DURBIN. If you would approach the table and raise your right hand?

[Witnesses are sworn in.]

Chair DURBIN. Let the record reflect that the three witnesses have answered in the affirmative. Judge Estudillo? Did I pronounce that correctly? I've heard two or three versions, and I may have gotten it wrong. Is that correct, Estudillo?

I'm sorry about these microphones. They're tricky. That's the first test before the Judiciary Committee. Phil, could you help with these crazy microphones? There we go. We start off by saying, Judge, did I get your name right?

Judge ESTUDILLO. Yes. Thank you, Senator Durbin. If I were speaking with my parents, it would be Estudillo.

Chair DURBIN. Estudillo.

Judge ESTUDILLO. Everybody goes by—or refers to me as Estudillo.

Chair DURBIN. That sounded the same to me, so I'm going to stop right there.

Judge ESTUDILLO. There's a slight difference. Slight difference.

Chair DURBIN. Please proceed with your opening statement.

STATEMENT OF DAVID ESTUDILLO, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON

Judge ESTUDILLO. Thank you, Senator. First, let me thank you, Chairman Durbin and Ranking Member Grassley, and the rest of the Members of the Committee, here, for allowing me to be here and to answer your questions. I also want to thank President Biden for the honor of this nomination. I am truly honored and humbled for even being considered for a possible judicial position.

I want to thank my home State Senators, Senator Murray and Senator Cantwell, for the trust they have placed in me in recommending me to President Biden, and I want to thank Senator Murray for her kind words this morning, introducing myself. I also want to thank those members of the Judicial Selection Committee that forwarded my name to my home State Senators, and I want

to thank all of those colleagues, attorneys, friends, individuals that I've known throughout my life who have supported me and helped me in my career and my personal choices.

I'd like to briefly recognize the family who has accompanied me here today. First, my spouse, Sandra, who's right here next to me. She is my best friend and my confidante, and I don't know where I would be, quite frankly, without her today. I want to acknowledge my children: my oldest, Sophia, my daughter Sarah, and then my son, Sebastian. They are so wonderful and doing their best to listen today and be attentive. I want to acknowledge my mother-in-law, Adelina Gonzalez, who is here, as well, traveled with us to be with us here today and help out with the children.

I also want to acknowledge my nine siblings, although I will not give their names and their spouses' names, but they've all provided really good role modeling for me, growing up, in particular my older siblings, as I am the ninth of ten children and the older ones were true role models for me. Last, I want to acknowledge my parents, Eloy and Esperanza Estudillo, who are no longer with us. It was their faith and their belief in the promises of the United States that gave my siblings and I the opportunity to live out the continuing chapters of their American Dream. If it weren't for them, I don't know where I would be at this moment in time.

Thank you, again, for listening, and I am happy to answer your questions.

Chair DURBIN. Thanks, Judge. Ms. King.

Ms. KING. Thank you. Can you hear me?

Chair DURBIN. Yes.

STATEMENT OF LAUREN KING, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON

Ms. KING. Thank you. I would like to thank Chairman Durbin, Ranking Member Grassley, and Members of the Committee for having this hearing today. I would also like to thank President Biden for the honor of this nomination; Senator Murray, for the very kind introduction; and Senators Murray and Cantwell, for recommending me to this important position of public trust.

The fact that I am here today is a credit to the public servants who came before me. The first lawyer in my family was my great-grandfather, John Jacobs, who also served in the House of Kings and the House of Warriors in the Muscogee Nation government. My great aunt, Irene Cleghorn, was the first woman to serve on the Muscogee Nation National Council; and my grandmother, Anna Jacobs, proudly served her country in the United States Army in the Korean War. There is a saying in Native America that we should devote our lives to protect and benefit the next seven generations, and they certainly did.

I have many others to thank for the amazing honor of being here today. I have spent my career surrounded by many inspiring attorneys, judges, and community leaders. The privilege of working with all of them has made me a better judge, a better attorney, and a better person.

I would also like to acknowledge my family. With me today is my father, Jeff; my mother, Lisa; and my fiance, Sean. My stepmother,

Sharon; my mother's partner, Henrik; my future parents-in-law, Susan and William; and my brothers, Michael, Tim, and Sam could not be here today, but they're watching this hearing from home. I have many other members of my family and loved ones who also could not be here at this time, located all around this country and the world. I'm deeply grateful to them all for their support.

I've struggled to find words, and, in fact, I think there are none, to express how much my family means to me. They are the best part of me, and I would not be who I am or where I am today without their support.

Thank you, and I look forward to answering your questions today.

Chair DURBIN. Thank you very much. Ms. Lin.

Ms. LIN. Is this on?

Chair DURBIN. Now it is.

STATEMENT OF TANA LIN, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON

Ms. LIN. Thank you. I'm humbled, honored, and grateful to be sitting here before you today as a nominee for the Western District of Washington. I thank Senators Murray and Cantwell for recommending me to the White House and President Biden for the nomination.

I also thank you, Senator Durbin, and Ranking Member Grassley, as well as each Member of this Committee and your staff, for taking time out of your very busy schedules to participate in this hearing. This Chinese-American woman, immigrant, and first lawyer in her family would not be sitting here but for the sacrifices and support of so many.

First, my parents, Chung Chao Lin and Ejung Fong Lin, also known as Peter and Jane. My father came to America as a graduate student in 1966, shortly after the U.S. resumed admitting Chinese nationals. He decided to stay, to give his daughters a better chance of success, and part of his dream came true when my older sister, Wendy Lin, became a doctor, like we were all supposed to. My father was unhappy with my decision to go to law school, because he feared that the law was no place for an immigrant, someone whose first language was not English, and women.

It also knocked my younger sister, Betty Lin-Fisher, off track. She became a journalist for the Akron Beacon Journal, one of just a handful of Asian-Americans with a regular column. My father passed 2 years ago, but I know that if he were here today, he would tell me that he's glad I didn't listen to him all those years ago and that he's proud of me.

My mother, who will be watching from Seattle, worked overtime shifts for years and sacrificed so much so that her daughters could go to college, an opportunity that she never had, and have a chance at a better life. Thank you, Mom, and I love you.

I also thank my husband and children, who are here with me today, for lifting and inspiring me every single day. My husband of 28 years, Paul Holland, is a law professor at Seattle University School of Law, and he's the most amazing partner, father, and friend. My son, Patrick Holland Lin, a 2019 Northwestern Univer-

sity graduate, is a chemistry teacher at a charter school in Chicago and, perhaps making up for my errant ways, an aspiring future doctor. My daughter, Julia Holland Lin, is a rising junior at Annenberg School of Journalism at the University of Southern California. I also thank my big Chinese family, my husband's family, my friends and mentors for their love and support over the years.

Finally, I thank my colleagues at Keller Rohrback and my former colleagues at PDS, DOJ, the EEOC, and the Michigan Poverty Law Program, from whom I have learned so much and with whom I had the opportunity to do truly meaningful work. Thank you, Senators, and I look forward to answering your questions.

Chair DURBIN. Thank you very much. I'm going to have a few questions. I want to make one observation from the previous panel. There was an effort by several of my colleagues to pin people down about their theory of the Constitution, and, of course, that is a misleading question or at least a dangerous question, because there are different people who put different labels on things and come to different conclusions.

In fact, the nominees who were presented by the previous president avoided that question completely and came back with a standard answer that was given over and over again: "I tend not to label myself, because the term 'originalist' or 'textualist' may mean different things to different people." But obviously the preparation for the previous panel did not include that standard response. I encourage consistency from nominees of both political parties on that question and response.

This is an amazing panel. When I look at your backgrounds and what you bring to this Judiciary Committee meeting and this court, I feel good about this country, because each one of you has something affirmative to say about opportunity and also about a struggle that you or someone in your family has been through so that you could be here today.

Judge, that your parents or grandparents were in the Bracero Program. Ms. King, that your background with Native Americans—I was amazed as she talked about generations in the Muscogee Nation and their leadership in that regard. Ms. Lin, as an Asian, coming to this country, I know that you struggled many times, your family did, with prejudice. Yet, despite all those things, here you sit today, taking an oath and aspiring to serve in the Federal judiciary. It's a great testimony to our Nation, that we've been able to overcome some of the prejudices of our past and that you, with your determination, come before us.

Ms. Lin, you immigrated to the U.S. from Taiwan at the age of three, initially settling with your parents in Kansas and later moving to Chicago. You didn't speak English until age 5, is that correct? Your family faced some prejudice as you were growing up. How did your childhood and immigration experience factor into your decision to become a civil rights lawyer?

Ms. LIN. You know, it factored greatly into my decision to try and help others that were in my situation. As you stated, Senator Durbin, I did not speak English when I first started school, and so my earliest memory really is of the teacher who thought I wasn't listening to her, because I didn't understand what she was saying,

pointing at me and telling me to put my head on my desk. I spent most of my first year in school with my head on the desk, not because I was disobeying her, but I didn't listen to her.

You know, another deeply formative experience for me was when my parents moved us to the suburbs, someplace where they thought it would be safe, because there was a lot of gun violence in the neighborhood that we were living in. We were one of the first families of color, and along with that came, apparently, you know, the inability to use swings, because I remember being on a swing when a much larger girl came up and shoved me off, yelled an expletive, and asked why I thought I could use it. The principal, when I was sent to the office, asked me what I had done to provoke the girl, and I was sent home.

Those experiences were deeply formative for me, and—you know, and I've also watched my parents. My mom, everything about her is about helping others. My father and his dream for us to become doctors is about servicing others, so service and helping and doing good has been the bedrock of sort of my upbringing.

Chair DURBIN. Ms. King, it appears that you have come from two different worlds: the regular world of law, as we have learned it, many of us, and the world of Intertribal law and custom. How have you been able to reconcile those in your mind?

Ms. KING. Thank you, Chairman. In my 8 years of experience as an appellate judge on the Northwest Intertribal Court System, it's been a very valuable experience, because that system serves over 20 member Tribes, so when I'm assigned to a new case, I have to familiarize myself with the new sovereign's code and constitution. It's helped me keep an open mind and at the same time contributed to faithful adherence to the law, because I'm working within a different system every time.

Chair DURBIN. Judge Estudillo, I'm sure I'm mispronouncing your name again, but you know what I'm trying to do and to be respectful of you. As you hear conversations about immigration and the Hispanic population in America and reflect on your own family story, how does it affect your role or how you envision your role as judge?

Judge ESTUDILLO. Thank you, Senator, for the question. My parents' immigration story is both unique but the same as many other immigrants that have arrived here in the United States and sought a better life. I recognize that, so when people come in front of me, I'm open-minded about different backgrounds, different, you know, histories, et cetera, and I want to make sure I have an inclusive environment in everything that I do, because I recognize people are different, just—and you don't have to be an immigrant to be different. Sometimes people are just different than you, and you need to be open-minded about people's differences and be willing to work with everyone. That is an approach I take with me every single day on the bench.

Chair DURBIN. Thank you. Senator Grassley.

Senator GRASSLEY. Yes. My first question is to Ms. Lin, to see if there's some consistency in her position. In 2017, you wrote a letter to Sessions about Trump's rhetoric toward Judge Robart in Seattle. You said Trump's efforts, quote, "to publicly vilify individual

judges was a wholly inappropriate assault on the independence of the judicial branch."

Last week, San Diego Judge Roger Benitez, who is a Latino immigrant, issued an opinion striking down California's AR–15 ban. The Governor of California called the opinion, quote, "a disgusting slap in the face to those who lost loved ones to gun violence" and, further quoting, "a direct threat to public safety and innocent Californians." One prominent liberal commentator called Judge Benitez, quote, "a death-worshipping fascist," while a liberal law professor called it, quote, "a diatribe disguised as a judicial opinion."

You don't have to agree with this opinion, but those statements, including by the Governor of California, go beyond disagreement. Given what you said in 2017, do you condemn these attacks by Judge Benitez on—as inappropriate assaults on judicial independence?

Ms. LIN. Senator, I would note that I didn't write the letter. I did sign onto the letter, along with thousands of other attorneys, and the reason I signed onto the letter is because I think that the impartiality and independence of the judiciary is a bedrock, again, of our judicial system, and so I think comments that attack judges for just doing their job aren't helpful, and I think, as Judge Gorsuch said during his confirmation, are disheartening and demoralizing.

Senator GRASSLEY. You have been very involved with the ACLU, including at a leadership level. A recent article in the New York Times catalogued how the ACLU seems to be abandoning its traditional role as a protector of free speech regardless of its content. The article says, quote, "Some ACLU lawyers and staff members argue that the First Amendment is more often a tool of powerful than the oppressed," end of quote. Do you agree with that statement?

Ms. LIN. Your Honor, I—Senator, I understand that there was a New York Times article about the ACLU, and I would note that I'm involved with the ACLU of Washington, which is an affiliate of the organization. I believe that free speech is a fundamental right that is important to be protected.

Senator GRASSLEY. The article goes on to say, in 2018, the ACLU, quote, "unfurled new guidelines that suggest that lawyers should balance taking a free speech case representing right-wing groups because such a case might give offense to marginalized groups," end of quote. Did you agree with these guidelines when they were set out? If not, what did you do from your leadership position to oppose them?

Ms. LIN. Senator, I believe that article was talking about the ACLU National, and so I'm not familiar with the guidelines that were issued there, because, again, I am a member of an affiliate board.

Senator GRASSLEY. I might ask you to respond in writing to further that discussion, because I think that's pretty basic to how things would be. I've got one question for Ms. King.

I've received lots of letters supporting you, from Native American Tribes. You obviously have an impressive support within that community. In some ways, it's a mirror image of what happened when Eric Miller was nominated for the ninth circuit. At that time, I got

countless letters from Tribes opposing him. While I appreciated their respectives, I thought the arguments against Miller was pretty unfair, namely, that because he frequently litigated against Tribes, he'd be biased as a judge. I think our legal system works best when both sides of the case are well represented, including Indian law cases, and we should evaluate nominees based on their records more than their clients. What do you think?

Ms. KING. Thank you, Senator, for that question. I know and respect Judge Miller, and he was certainly a zealous advocate who took very seriously his obligation to be the voice of his clients. As a judge, he takes very seriously his oath to be the voice of the law, and if I were so fortunate as to be confirmed, I would do the same.

Senator GRASSLEY. Okay. I yield. I'll submit questions to Judge E. later on.

Chair DURBIN. Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman. Thank all of you for your service already to our Nation and to your State of Washington and your willingness to serve in this very important position. I'm tremendously impressed by your qualifications and experience. You will bring to the bench really a lifetime of service in our courts, with a very detailed knowledge about what fairness looks like in our legal system, at a time when the rule of law and norms that underlie our judicial system are very much under challenge.

You also bring diversity to our system, as the Chairman has remarked. President Biden has really, in his nominees so far, demonstrated the importance of diversity in our judicial system, but I would be interested in all of your views, maybe beginning with Judge King and Ms. Lin—because, if confirmed, you will be, respectively, the first Native American Federal judge in the Western District of Washington; and, Ms. Lin, you will be the first Asian-American appointed to either of Washington's judicial districts—what you see the value and importance of diversity being, in our judicial system, if you could comment.

Ms. KING. Thank you, Senator. I believe diversity of all kinds is very important to the Federal judiciary. I believe that it improves public confidence, and it also serves and important modeling function, so everybody who might aspire to be public servants is aware that this path is open to them. With respect to Washington, in particular, as Senator Murray mentioned at the outset, there are 29 federally recognized Tribes in the State, and to my knowledge, we've not had a Federal judge in the Western District with a background in Indian law, so I believe that my unique background in that area of the law would serve me well if I'm so fortunate as to be confirmed. Thank you.

Senator BLUMENTHAL. Thank you. Ms. Lin.

Ms. LIN. I echo what Ms. King said about diversity increasing public confidence. As far as role modeling, I would say that, you know, in my nearly 30 years of practice, I haven't yet had the pleasure of appearing before somebody that looks like me, and I was stunned, when I was thinking about applying for this job and looking into the past judges, to learn that there had not yet been an Asian American, because, according to the last census, in King County alone, 20 percent of the population is made up of AAPI people.

I certainly hope that, if I am lucky enough to be confirmed, as Ms. King said, it will be—it will demonstrate that the bench is open to people of all different backgrounds. For me personally, and given my personal story, you know, I certainly hope that it will also assure or reassure some immigrant parents that the law is an honorable and good profession for their children, especially their daughters.

Senator BLUMENTHAL. Thank you. Judge Estudillo, if you have any comment, I'd welcome it.

Judge ESTUDILLO. Yes. Thank you, Senator. I'll just be brief. I do agree with the public confidence aspect that diversity brings, as well as the role modeling, and just to add, on the role modeling, I regularly meet with young individuals that are students, in the juvenile court system, and many of them are from Latino backgrounds and whose parents also work in the fields.

Even though I don't know if I can truly change their thoughts and what they're doing and some of the decisions they've been making, I've tried to use that role modeling in front of them and say, "Hey, look, there are opportunities if you just are willing to try. Your parents are here to help you, and the juvenile justice system's here to help you, as well." I hope—I hope—that, at some point, I'm able to at least inspire one of those students or individuals in the juvenile justice system to make better decisions. That's my hope, anyway.

Senator BLUMENTHAL. Thank you. Thank you all. Thanks, Mr. Chairman.

Chair DURBIN. Senator Lee.

Senator LEE. Ms. Lin, I'd like to start with you. A moment ago, one of my colleagues referenced a letter that you signed from a group called DOJ Alumni. I'd like to refer to another letter you signed with that group about a year ago. In that letter, you condemned the Department of Justice's decision to dismiss charges against General Michael Flynn, and in that same letter, you also urged District Court Judge Emmet Sullivan to, quote, "closely examine the Department's stated rationale for dismissing charges and to deny the motion and proceed with sentencing if appropriate."

Is this an appropriate thing? Is it a proper role for an Article III judge to determine whether a criminal prosecution should proceed, after the Government has sought dismissal?

Ms. LIN. I think, as a matter of the checks and balances, it is the role of the judge to look at the specific—I'm not saying always, but it would really depend on the specific facts of the case, as—you know, as well as the arguments put forth by the parties.

Senator LEE. Ms. King, I want to turn next to you. In 2016, you opposed a proposal that would've prohibited religious practices at Washington State Bar events. You argued that an opening blessing or ceremony before or after an event was an inherent and normal part of Native American culture and that blaming religious practices was inconsistent with principles of diversity, equality, and cultural understanding. You also quoted the Supreme Court's holding that such practices are, quote, "deeply embedded in the history and tradition of this country."

Ms. King, I just wanted to applaud you for those statements. I think they're spot on. Can you explain to us briefly why it's vital that we be willing to respect religious freedom and religious expression in the public square?

Ms. KING. Thank you, Senator. I take freedom of religion very seriously. I think it's no coincidence that freedom of religion is included in the very first of our amendments, in the Bill of Rights, and the arguments that we put forth in that letter were consistent with the Supreme Court holding in *Marsh v. Chambers*, I believe.

Senator LEE. In 2018, you gave a presentation that described arguments based on the plain meaning of a treaty's text as, quote, "ethnocentric." Could you explain how arguments based on plain meaning of a legal text could be considered ethnocentric?

Ms. KING. Thank you, Senator, for that question. I don't recall making that argument. I believe you're referring to the *United States v. Washington* case, where our task was to prove on behalf of our client the meaning of a treaty term in 1855. The strongest evidence and the evidence that we relied upon was from treaty time.

Senator LEE. Okay. Yes, this was taken from a PowerPoint that you presented in that presentation, so these were your words, not mine. I wasn't sure what you meant by ethnocentric. You wouldn't regard that as a wrong thing to do, to look to the text of a legal document being interpreted by the court.

In this—getting back to some questions asked earlier today with other nominees, without regard to whether you call yourself a textualist or originalist, if people are uncomfortable using those, that's surprising to me, given that this focuses on the text, let me just ask it this way. Is it the case that courts should look at the text of a statute and look to ascertain the understanding at the time of enactment or adoption into the Constitution of those words and how they're understood at the time?

Ms. KING. Thank you, Senator. The text of a statute is certainly the most probative evidence of legislative intent. With respect to the Constitution, though——

Senator LEE. It's the most probative evidence. If it's the most probative evidence, what other evidence could there be?

Ms. KING. Well——

Senator LEE. I mean, isn't that your job, is to figure out what is said? How do you ascertain the collective and—how do you ascertain the subjective intent of anyone and everyone? Don't we view that by looking at the text?

Ms. KING. The analysis starts with the text, and if the text is clear and unambiguous, your task is generally done. I would look to text, statutory context, apply the canons of construction, if needed, and if needed, could also look to legislative intent, or legislative history.

Senator LEE. Okay. Ms. Lin, do you share that view?

Ms. LIN. I do.

Senator LEE. Mr. Estudillo?

Judge ESTUDILLO. Yes, I agree.

Senator LEE. Right. These are questions that I believe are not remarkable. They're not controversial, given that it is the job of the judicial branch of Government to say what the law is, and as Ham-

ilton explained it in Federalist 78, or to decide cases and controversies using the language of Article III of the Constitution, meaning when multiple parties come together and they disagree as to what the law says, and it's a matter before the jurisdiction of the court, the court has to decide what that means. In defining that, it's important for us to know how jurists will approach that task. I'm pleased to hear that each of you would be driven by the text in that analysis. Thank you.

Chair DURBIN. Thanks, Senator Lee. Before I adjourn today's hearing, I want to enter a number of letters into the record and make a few logistical notes.

We've received letters of support for today's nominees from across political, professional, and ideological spectra. These include letters of support from national civil rights organizations, Federal prosecutors and law enforcement, support from numerous Native American Tribes and Tribal groups. They'll all be entered into the record without objection.

[The information appears as submissions for the record.]

Questions for the record that may be directed toward the nominees will be due to the nominees by 5 p.m. on Wednesday, June 16th. The record will likewise remain open until that time, to submit letters and similar materials. With that, this hearing is adjourned.

[Whereupon, at 12:18 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).

   David Estudillo – legal name

   David Gonzalez Estudillo

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

   United States District Judge for the Western District of Washington

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: Grant County Superior Court
   35 C Street Northwest
   P.O. Box 37
   Ephrata, Washington 98823

   Residence: Moses Lake, Washington

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

   1973; Sunnyside, Washington

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.

   1996 – 1999, University of Washington School of Law; J.D., 1999

   1993 – 1996, University of Washington; B.A., 1996

   1991 – 1993, Columbia Basin Community College; A.A., 1993

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
State of Washington, Grant County
35 C Street Northwest
P.O. Box 37
Ephrata, Washington 98823
Superior Court Judge

2005 – 2015
Estudillo Law Firm, PLLC
604 West Third Avenue
Moses Lake, Washington 98837
Attorney, Managing Member

2002 – 2005
Scheer & Zehnder, LLP (now known as Scheer Law, PLLC)
2101 Fourth Avenue, Suite 830
Seattle, Washington 98121
Senior Associate Attorney

1999 – 2002
Jeffers, Danielson, Sonn & Aylward, P.S.
2600 Chester Kimm Road
Wenatchee, Washington 98801
Associate Attorney

1996 – 1999
Estudillo, Inc.
2601 Sheller Road
Sunnyside, Washington 98944
Store Clerk/Bookkeeper

Summer 1998
Columbia Legal Services
101 Yesler Way, Suite 300
Seattle, Washington 98104
Extern

Summer 1998
Allied Employers
811 Kirkland Avenue, Suite 100
Kirkland, Washington 98033
Extern

1996

UTemp Staffing – University of Washington
4300 Roosevelt Way Northeast
Seattle, Washington 98105
Office Assistant/Laborer

Other Affiliations (uncompensated)

2020 – present
Washington State Superior Court Judges' Association
P.O. Box 41170
Olympia, Washington 98504
Member of Board of Trustees

2006 – 2009
Washington State Bar Association – Washington Young Lawyers Division
(now known as Washington Young Lawyers Committee)
1325 Fourth Avenue, Suite 600
Seattle, Washington 98101
Member of Board of Trustees

2001 – 2002
Moses Lake Community Health Center
605 South Coolidge Street
Moses Lake, Washington 98837
Member of Board of Directors

Summer 1997
King County Prosecuting Attorney's Office
516 Third Avenue, W400
Seattle, Washington 98104
Extern

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 registered for the selective service upon turning 18.

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.

   None.

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 Immigration Lawyers Association, Washington Chapter (2005 – 2015)
- Vice-Chair, Professional Responsibility & Consumer Protection Committee (2007 – 2008)
- Pro Bono Committee (2006 – 2007)
- Young Lawyers Division Committee (2006 – 2007)

Grant County
- Law and Justice Judicial Representative (2020 – present)
- Community Justice Treatment Account Panel (2018 – present)

Grant County Bar Association (1999 – 2002; 2012 – present)

King County Bar Association (2002 – 2012)
- Councils of Law Section (2006)

Latina/o Bar Association of Washington (2005 – present)
- Immigration Committee (2006 – 2007)

Superior Court Judges' Association (2015 – present)
- President (2021 – present)
- President-Elect (2020 – 2021)
- Legislative Committee (2020 – present)
- Ethics Committee (2017; 2019 – present)
- Rural Courts Committee (2017; 2019 – present; chair, 2021 – present)
- Liaison to District & Municipal Courts Judges' Association (2020 – 2021)

Washington State Association for Justice (formerly Washington State Trial Lawyers Association) (2005 – 2015)
- Membership Committee (2009 – 2010)
- New Member Committee (2007 – 2008)

Washington State Bar Association (1999 – present)
- Washington Young Lawyers Division
  - Liaison to Washington State Bar Association Practice of Law Board (2007 – 2009)
  - King County Trustee (2006 – 2009)
  - Liaison to Washington State Bar Association CLE Committee (2006 – 2009)
- Court Rules and Procedures Committee (2003 – 2005)
- Rules of Professional Conduct Committee (2002 – 2005)

Washington State Board for Judicial Administration (2020 – present)
- Co-Chair Technology Committee, Court Recovery Task Force (2020 – present)

Remote Trials Workgroup (2021 – present)
Policy and Planning Committee (2020 – 2021)

Workgroup on Deskbook on Language Access in Washington Courts (2017)

Workgroup on Washington State COVID-19 Resource Judges Plan as part of the National Courts and Sciences Institute's project entitled, *Exponentially Sustainable Case and Evidentiary Adjudication Support for State Court Cases Emanating from the COVID-19 Pandemic* (2021 – present)

10. **Bar and Court Admission**:

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

Washington, 1999

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 Ninth Circuit, 2010
United States District Court for the Eastern District of Washington, 2001
United States District Court for the Western District of Washington, 2003

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.

City of Moses Lake, Park and Recreation Commission (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, Moses Lake's Park and Recreation Commission does not currently discriminate and did not formerly discriminate 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.

Candidate Statement, Voters' Guide 2020 General Election. Copy supplied.

Candidate Statement, Voters' Guide 2016 General Election. Copy supplied.

Judge David Estudillo – in his own words, Columbia Basin Herald, Oct. 20, 2016. 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.

Washington State Superior Court Judges' Association, *Rural Courts Committee 2021 Annual Spring Meeting Report* (Apr. 2021). Copy supplied.

Board for Judicial Administration – Court Recovery Taskforce, *Technology Committee: Guiding Principles for Identifying, Developing, Implementing, and Utilizing Court Technology* (Apr. 2021). Copy supplied.

Administrative Office of the Courts, *Deskbook on Language Access in Washington Courts* (2017). Copy supplied.

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

Letters or statements included from the Washington State Superior Court Judges'

Association identified below are letters or statements in which I provided input and/or voted on approving prior to being published by the Washington State Superior Court Judges' Association.

Letter from Superior Court Judges' Association to Washington State Senator Manka Dhingra regarding Proposed Striker to SB 5476 [*State v. Blake* legislation] (Apr. 12, 2021). Copy supplied

Letter from Superior Court Judges' Association to Washington State Legislators regarding *State v. Blake* and requested statutory amendments (Mar. 31, 2021). Copy supplied.

Email to State Senator Jim Honeyford regarding request for negotiated capital budget to fund courthouse security (Mar. 31, 2021). Copy supplied.

Letter from the Superior Court Judges' Association to Washington State Senate Ways & Means Committee and House Appropriations Committee regarding American Rescue Plan of 2021 Funds (Mar. 25, 2021). Copy supplied.

Statement from Superior Court Judges' Association and District and Municipal Courts Judges' Association on commitment to eliminate racism (Mar. 25, 2021). Copy supplied.

Letter from the Superior Court Judges' Association to Washington State Senator Manka Dhingra regarding amendments proposed by the Association, E2SHB 1320 (Mar. 14, 2021). Copy supplied.

Letter from the Superior Court Judges' Association to Washington State House Members regarding 2SHB 1320, Modernizing, Harmonizing, and Improving Efficacy and Accessibility of Laws Concerning Civil Protection Orders (Feb. 28, 2021). Copy supplied.

Letter from the Superior Court Judges' Association and partners to state legislative leaders regarding the impact of 2021 proposed legislation (Feb. 23, 2021). Copy supplied.

Letter to Grant County Commissioners regarding 2021 state legislative session (Feb. 12, 2021). Copy supplied.

Superior Court Judges' Association and Administrative Office of the Courts, *Cost Estimate Regarding Minor and Adult Guardianships* (Feb. 8, 2021). Copy supplied.

Letter from the Superior Court Judges' Association to State Senator Jamie Pedersen regarding Uniform Guardianship Act court funding (Feb. 8, 2021). Copy supplied.

Letter from the Superior Court Judges' Association to Chair and Ranking Member of State Senate Rules Committee regarding SSB 5122 and jurisdiction of juvenile court (Feb. 4, 2021). Copy supplied.

Letter from the Superior Court Judges' Association to State Senator Karen Keiser regarding SB 5122 and jurisdiction of juvenile court (Feb. 3, 2021). Copy supplied.

Letter to State Senator Judy Warnick regarding SB 5122 and jurisdiction of juvenile court (Feb. 3, 2021). Copy supplied.

Letter from the Superior Court Judges' Association to State Senator Jamie Pedersen regarding Uniform Pretrial Release and Detention Act (Feb. 1, 2021). Copy supplied.

Comments by the Superior Court Judges' Association regarding proposed legislation, Eviction Reform 2021 (Feb. 2021). Copy supplied.

Comments by the Superior Court Judges' Association regarding requested changes to Uniform Guardianship Act (Feb. 2021). Copy supplied.

Letter from the Superior Court Judges' Association to State Senator Jeannie Darnielle regarding SB 5122 and jurisdiction of juvenile court (Jan. 26, 2021). Copy supplied.

Letter from the Superior Court Judges' Association to State Senator Jeannie Darnielle regarding SB 5122 and jurisdiction of juvenile court (Jan. 20, 2021). Copy supplied.

Letter from the Superior Court Judges' Association to Chief Justice Debra Stephens regarding Washington Defenders Association/Washington Association of Criminal Defense Lawyers and request for emergency order restricting warrants (Dec. 30, 2020). Copy supplied.

Letter from the Superior Court Judges' Association to State Senator Jamie Pedersen regarding implementation and funding of Uniform Guardianship Act (Dec. 17, 2020). Copy supplied.

Letter from the Superior Court Judges' Association to State Senator Jamie Pedersen regarding delay of provisions of the Uniform Guardianship Act related to minor guardianship (Nov. 20, 2020). Copy supplied.

Letter from the Superior Court Judges' Association regarding commitment to racial justice (Aug. 11, 2020). Copy supplied.

Presentation to Grant County Commissioners regarding grant request to establish an adult felony drug court (June 11, 2019). PowerPoint presentation supplied.

At present time, I am a non-voting member of the Washington State Board for Judicial Administration. Though I do not vote at meetings, I may offer comments about issues presented during the meetings. Meeting minutes supplied.

I am a member of the Washington State Board for Judge Administration's Court Recovery Task Force. This task force is charged with addressing court impacts from COVID-19. We discuss and vote on issues related to court operations affected by COVID-19. Meeting minutes supplied.

While serving as a Trustee for the Washington State Bar Association's Washington State Young Lawyers Division (now known as the Washington Young Lawyers Committee) from 2006 to 2009, we discussed and voted on issues of importance to young lawyers. Meeting minutes supplied.

While serving as a member of the Washington State Bar Association's Court Rules and Procedures Committee from 2003 to 2005, we discussed and voted on proposed modifications to Washington State's Court Rules. Meeting minutes supplied.

While serving as a member of the Washington State Bar Association's Rules of Professional Conduct Committee from 2002 to 2005, we discussed and voted on ethical issues presented by bar members. Meeting minutes 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.

April 28, 2021: Speaker, Superior Court Judges' Association annual meeting, Superior Court Judges' Association. Notes supplied.

April 21, 2021: Speaker, TRiO Upward Bound, Moses Lake, Washington. I delivered remarks on pursuing higher education during the induction ceremony. I have no notes, transcript, or recording. The address for the local TRiO Upward Bound Program is Big Bend Community College, 7662 Chanute Street Northeast, Building 1000, Room 1012, Moses Lake, Washington 98837.

March 31, 2021: Speaker, "Our Courthouse: Stories of Belonging and Why It

Matters, Advancing Racial Equity in Rural Courts," Superior Court Judges' Association Rural Courts Committee. Notes supplied.

February 25, 2021: Panelist, "Zoom Jury Selection," Court Recovery Task Force, Remote Trials Workgroup. PowerPoint presentation supplied.

January 18, 2021: Presenter, Superior Court Judges' Association, Association of Washington State Association of Counties, Ephrata, Washington. PowerPoint presentation supplied.

October 14, 2020: Panelist, "Pathways to the Bench," Washington Judicial Institute, Seattle, Washington. PowerPoint presentation supplied.

April 29, 2020: Speaker, TRiO Upward Bound, Moses Lake, Washington. I delivered remarks on pursuing higher education during the induction ceremony. I have no notes, transcript, or recording. The address for the local TRiO Upward Bound Program is Big Bend Community College, 7662 Chanute Street Northeast, Building 1000, Room 1012, Moses Lake, Washington 98837.

February 20, 2020: Speaker, College and Career Night, Moses Lake School District, Moses Lake, Washington. I discussed my career as a judge and opportunities to work in the justice system. I have no notes, transcript, or recording. The address for the Moses Lake School District is 1620 South Pioneer Way, Moses Lake, Washington 98837.

January 31, 2020: Panelist, "Court Interpreters Language Access in Washington Courts," Judicial College, Administrative Office of the Courts, Vancouver, Washington. PowerPoint presentation supplied.

November 1, 2019: Participant, Tri-Cities Youth & Justice Forum, Washington State Minority & Justice Commission, Pasco, Washington. I provided remarks and discussed my role as a judge and the judicial system. I have no notes, transcript, or recording. The address for the Washington State Minority & Justice Commission is P.O. Box 41170, Olympia, Washington 98504.

June 6, 2019: Speaker, Chief for a Day ceremony, Thomas A. Boruff Foundation, Ephrata, Washington. I provided general comments regarding families raising children with special needs. I have no notes, transcript, or recording. Press coverage supplied and available at https://www.ifiberone.com/15-kids-honored-as-chief-for-a-day-in-ephrata/video_550e1cd0-88c3-11e9-bdfe-f365047ef85f.html. The address for the Thomas A. Boruff Foundation is 451 Diamond Drive, Ephrata, Washington 98823.

April 29, 2019: Speaker, Campaign for Equal Justice, Legal Foundation of Washington, Spokane, Washington. I was a guest speaker and discussed my experience volunteering with a civil legal services organization. I have no notes,

transcript, or recording. The address for the Legal Foundation of Washington is 1325 4th Avenue, Suite 1335, Seattle, Washington 98101.

April 25, 2019: Presenter, Citizen Academy, Moses Lake Police Department, Moses Lake, Washington. Notes supplied.

April 23, 2019: Panelist, Grant County Sheriff's Town Hall Meeting, Moses Lake, Washington. I answered questions about the Grant County Superior Court. I have no notes, transcript, or recording. The address for the Grant County Sheriff's office is 35 C Street Northwest, P.O. Box 37, Ephrata, Washington 98823.

April 17, 2019: Speaker, TRiO Upward Bound, Moses Lake, Washington. I delivered remarks on pursuing higher education during the induction ceremony. I have no notes, transcript, or recording. The address for the local TRiO Upward Bound Program is Big Bend Community College, 7662 Chanute Street Northeast, Building 1000, Room 1012, Moses Lake, Washington 98837.

April 1, 2019: Panelist, "Upholding the Canons On and Off the Bench," Superior Court Judges' Association, Vancouver, Washington. PowerPoint presentation supplied.

March 28, 2019: Presenter, Upward Bound Program, Moses Lake, Washington. I was a speaker at Career Day and discussed my role as a judge with students. I have no notes, transcript, or recording. The address for the Upward Bound Program is Big Bend Community College, 7662 Chanute Street Northeast, Building 1000, Room 1012, Moses Lake, Washington 98837.

March 26, 2019: Panelist, Wenatchee Diversity Justice Day for Youth, Wenatchee, Washington. I discussed being a judge and answered questions from students. I am not certain of the organization sponsor, but coordinated my participation through attorneys from Arno Martinez Law, PLLC. I have no notes, transcript, or recording. The address for Arno Martinez Law, PLLC is 103 Palouse Street, #6, Wenatchee, Washington 98801.

March 23, 2019: Panelist, "Panel Discussion on Campaigning," Washington Judicial Institute, Seattle, Washington. The panel discussed campaigning experience in jurisdictions of different sizes. I have no notes, transcript, or recording. The address for the Washington Judicial Institute is 1001 4th Avenue, Suite 4200, Seattle, Washington 98154.

March 23, 2019: Panelist, "Panel Discussion on Race and Running for Election," Washington Judicial Institute, Seattle, Washington. The panel discussed preparing campaign speeches and campaign literature. I have no notes, transcript, or recording. The address for the Washington Judicial Institute is 1001 4th Avenue, Suite 4200, Seattle, Washington 98154.

February 1, 2019: Panelist, "Court Interpreters Language Access in Washington Courts," Judicial College, Administrative Office of the Courts, Vancouver, Washington. PowerPoint presentation supplied.

November 16, 2018: Speaker, National Adoption Day Celebration, Washington State Division of Child Youth and Family Services, Moses Lake, Washington. I provided comments about the importance of foster families and adoption. I have no notes, transcript, or recording. Press coverage supplied. The address for the Washington State Division of Child Youth and Family Services is 1651 South Pilgrim Street, Moses Lake, Washington 98837.

July 4, 2018: Speaker, George Community Hall 4th of July Celebration, George, Washington. I delivered comments introducing myself to the public. I have no notes, transcript, or recording. The address for the George Community Hall is P.O. Box 5064, 403 West Montmorency, George, Washington 98824.

June 15, 2018: Speaker, Commencement, Big Bend Community College, Moses Lake, Washington. Notes and press coverage supplied. Video available at https://nb-no.facebook.com/BigBendCC/videos/2018-commencement-speeches/10155381446806671.

June 7, 2018: Speaker, Chief for a Day ceremony, Thomas A. Boruff Foundation, Ephrata, Washington. I provided general comments regarding families raising kids with special needs. Notes and press coverage supplied. Video available at https://www.ifiberone.com/new-chiefs-take-over-at-annual-chief-for-a-day-ceremony-in-ephrata/youtube_73d263f0-6aac-11e8-8333-9fb2a44d666b.html.

April 26, 2018: Presenter, Citizen Academy, Moses Lake Police Department, Moses Lake, Washington. Notes supplied.

April 18, 2018: Speaker, TRiO Upward Bound, Moses Lake, Washington. I delivered remarks on pursuing higher education during the induction ceremony. I have no notes, transcript, or recording. The address for the local TRiO Upward Bound Program is Big Bend Community College, 7662 Chanute Street Northeast, Building 1000, Room 1012, Moses Lake, Washington 98837.

April 12, 2018: Panelist, Grant County Sheriff's Town Hall Meeting, Moses Lake, Washington. I answered questions about the Grant County Superior Court. I have no notes, transcript, or recording. The address for the Grant County Sheriff's office is 35 C Street Northwest, P.O. Box 37, Ephrata, Washington 98823.

April 9, 2018: Panelist, "Immigration and WA Evidence Rule 413," Superior Court Judges' Association, Chelan, Washington. PowerPoint presentation supplied.

March 28, 2018: Panelist, Grant County Sheriff's Town Hall Meeting, Moses Lake, Washington. I answered questions about the Grant County Superior Court. I have no notes, transcript, or recording. The address for the Grant County Sheriff's office is 35 C Street Northwest, P.O. Box 37, Ephrata, Washington 98823.

February 6, 2018: Panelist, Grant County Sheriff's Town Hall Meeting, George, Washington. I answered questions about the Grant County Superior Court. I have no notes, transcript, or recording. The address for the Grant County Sheriff's office is 35 C Street Northwest, P.O. Box 37, Ephrata, Washington 98823.

February 3, 2018: Panelist, "Bridging the Cascade Divide," Crosscut, Seattle, Washington. Recording available at https://www.listennotes.com/podcasts/crosscut/bridging-the-cascade-divide-A2TFpHDXrkj.

February 2, 2018: Panelist, "Court Interpreters Language Access in Washington Courts," Judicial College, Administrative Office of the Courts, Vancouver, Washington. PowerPoint presentation supplied.

November 3, 2017: Participant, Tri-Cities Youth & Justice Forum, Washington State Minority & Justice Commission, Pasco, Washington. I provided remarks and engaged students regarding my role as a judge and the judicial system. I have no notes, transcript, or recording. The address for the Washington State Minority & Justice Commission is P.O. Box 41170, Olympia, Washington 98504.

September 21, 2017: Panelist, Grant County Sheriff's Town Hall Meeting, Soap Lake, Washington. I answered questions about the Grant County Superior Court. I have no notes, transcript, or recording. The address for the Grant County Sheriff's office is 35 C Street Northwest, P.O. Box 37, Ephrata, Washington 98823.

June 15, 2017: Panelist, Grant County Sheriff's Town Hall Meeting, Moses Lake, Washington. I answered questions about the Grant County Superior Court. I have no notes, transcript, or recording. The address for the Grant County Sheriff's office is 35 C Street Northwest, P.O. Box 37, Ephrata, Washington 98823.

June 11, 2017: Participant, Criminal Investigations Class, Big Bend Community College, Moses Lake, Washington. I worked with students in reviewing mock warrants and discussing search and seizure standards. I have no notes, transcript, or recording. The address for Big Bend Community College is 7662 Chanute Street Northeast, Building 1000, Room 1012, Moses Lake, Washington 98837.

June 8, 2017: Speaker, Chief for a Day ceremony, Thomas A. Boruff Foundation, Ephrata, Washington. I provided general comments regarding families raising kids with special needs. I have no notes, transcript, or recording. The address for the Thomas A. Boruff Foundation is 451 Diamond Drive, Ephrata, Washington 98823.

May 3, 2017: Speaker, Mayor's Prayer Breakfast, Kiwanis of Moses Lake, Moses Lake, Washington. Notes supplied.

April 27, 2017: Presenter, Citizen Academy, Moses Lake Police Department, Moses Lake, Washington. Notes supplied.

April 13, 2017: Speaker, TRiO Upward Bound, Moses Lake, Washington. I delivered remarks on pursuing higher education during the induction ceremony. I have no notes, transcript, or recording. The address for the local TRiO Upward Bound Program is Big Bend Community College, 7662 Chanute Street Northeast, Building 1000, Room 1012, Moses Lake, Washington 98837.

January 21, 2017: Panelist, "The Reality of Race, Culture and Identity," Washington Judicial Institute, Seattle, Washington. The panel discussed being a judicial officer of color. I have no notes, transcript, or recording. The address for the Washington Judicial Institute is 1001 4th Avenue, Suite 4200, Seattle, Washington 98154.

November 22, 2016: Speaker, Naturalization Ceremony, United States Citizenship & Immigration Services, Quincy, Washington. I discussed the duties of citizenship. I have no notes, transcript, or recording. The address for United States Citizenship & Immigration Services is 415 North 3rd Street, Yakima, Washington 98901.

January 2016 – November 2016: I gave a number of campaign speeches and participated in candidate forums while running to retain my position as a Grant County Superior Court Judge. I spoke at various civic, political, and professional organizations. I also appeared at many forums. I have provided below information for all of the events I am able to recall and locate. In addition, during my 2016 election campaign, I produced campaign literature. Literature supplied. I recorded two radio advertisement spots broadcast over local radio. One advertisement was in English and the other advertisement was in Spanish. Recordings supplied. I also recorded a video for my 2016 election campaign. Committee to Retain Judge David Estudillo, *Retain Grant County Superior Court Judge David Estudillo*, YouTube (Aug. 27, 2016), https://www.youtube.com/watch?v=YkufQmj1HV0.

October 13, 2016: Panelist, "Latinos in the Judiciary," Latina/o Bar Association of Washington, Seattle, Washington. The panel discussed serving as a Latino judicial officer in Washington. I have no notes, transcript, or recording. The

address for the Latina/o Bar Association of Washington is P.O. Box 21134, Seattle, Washington 98111.

October 12, 2016: Speaker, American Legion Post 28, Ephrata, Washington. I delivered a candidate speech and answered questions at a candidate forum. I have no notes, transcript, or recording. The address for the American Legion Post 28 is 276 8th Avenue Northwest, Ephrata, Washington 98823.

October 10, 2016: Speaker, Moses Lake Chamber of Commerce, Moses Lake, Washington. I delivered a campaign speech and answered questions at candidate forum. I have no notes, transcript, or recording. Press coverage supplied and available at https://www.ifiberone.com/news/2016-candidate-forum/youtube_17a18d36-917d-11e6-a9f5-9b423e3f6c83.html. The address for the Moses Lake Chamber of Congress is P.O. Box 2435, Moses Lake, Washington 98837.

October 5, 2016: Speaker, Committee to Retain Judge David Estudillo, Moses Lake, Washington. I delivered a campaign speech at a fundraising event. I have no notes, transcript, or recording. The Committee to Retain Judge David Estudillo no longer operates.

October 1, 2016: Panelist, Latino Civic Alliance, Moses Lake, Washington. I participated in a panel discussion about community policing. I have no notes, transcript, or recording. Press coverage supplied. The address for the Latino Civic Alliance is 1037 Northeast 65th Street, Suite 194, Seattle, Washington 98115.

September 29, 2016: Speaker, Grand Coulee Dam Area Chamber of Commerce, Grand Coulee, Washington. I delivered a campaign speech and discussed drug court. I have no notes, transcript, or recording. Press coverage supplied. The address for the Grand Coulee Dam Area Chamber of Commerce is 17 Midway Avenue, Grand Coulee, Washington 99133.

September 17, 2016: Speaker, Grant County Republican Party, Moses Lake, Washington. I delivered a campaign speech at the Grant County Republican Party's endorsement meeting. I have no notes, transcript, or recording. The address for the Grant County Republican Party is 601 South Pioneer, Suite F, Moses Lake, Washington 98837.

September 16, 2016: Speaker, Committee to Retain Judge David Estudillo, Desert Aire, Washington. I delivered a campaign speech at a community center coordinated by the Committee to Retain Judge David Estudillo. I have no notes, transcript, or recording. The Committee to Retain Judge David Estudillo no longer operates.

September 9, 2016: Speaker, Moses Lake Senior Center, Moses Lake,

Washington. I delivered a campaign speech at the senior center. I have no notes, transcript, or recording. The address for the Moses Lake Senior Center is 608 East Third Avenue, Moses Lake, Washington 98837.

August 9, 2016: Speaker, Committee to Retain Judge David Estudillo, Wenatchee, Washington. I delivered a campaign speech at a fundraising event. I have no notes, transcript, or recording. The Committee to Retain Judge David Estudillo no longer operates.

July 30, 2016: Speaker, Committee to Retain Judge David Estudillo, Moses Lake, Washington. I delivered a campaign speech at a fundraising event. I have no notes, transcript, or recording. The Committee to Retain Judge David Estudillo no longer operates.

July 27, 2016: Speaker, Grant County Historical Society & Museum, Ephrata, Washington. I delivered a campaign speech at a candidate forum. I have no notes, transcript, or recording. The address for the Grant County Historical Society & Museum is 742 Basin Street Northwest, Ephrata, Washington 98823.

July 20, 2016: Speaker, Candidate Forum, Coulee City, Washington. I delivered a campaign speech and answered questions. I have no notes, transcript, or recording. Press coverage supplied.

July 19, 2016: Speaker, Moses Lake Chamber of Commerce, Moses Lake, Washington. I delivered a campaign speech and answered questions at a candidate forum. I have no notes, transcript, or recording. Press coverage available at https://www.ifiberone.com/news/gallery-moses-lake-chamber-of-commerce-candidates-forum/collection_0594a088-4fdd-11e6-9131-1f6cad733e57.html#15. The address for the Moses Lake Chamber of Commerce is P.O. Box 2435, Moses Lake, Washington 98837.

July 17, 2016: Speaker, Washington State Tejano Association, Moses Lake, Washington. I delivered a campaign speech. I have no notes, transcript, or recording. The address for the Washington State Tejano Association is 5746 Road 3, Moses Lake, Washington 98837.

July 11, 2016: Speaker, Grant County Republican Party, Ephrata, Washington. I attended a candidate forum and delivered a campaign speech. I have no notes, transcript, or recording. The address for the Grant County Republican Party is 601 South Pioneer, Suite F, Moses Lake, Washington 98837.

June 9, 2016: Speaker, Chief for a Day ceremony, Thomas A. Boruff Foundation, Ephrata, Washington. I provided general comments regarding families raising children with special needs. I have no notes, transcript, or recording. Press coverage supplied. The address for the Thomas A. Boruff Foundation is 451 Diamond Drive, Ephrata, Washington 98823.

July 7, 2016: Speaker, Moses Lake-Othello Association of Realtors, Moses Lake, Washington. I attended a candidate lunch forum. I have no notes, transcript, or recording. I am unable to locate the address for the Moses Lake-Othello Association of Realtors. Its website is https://www.mlobr.realtor.

July 4, 2016: Speaker, George Community Hall 4th of July Celebration, George, Washington. I delivered a campaign speech at an Independence Day celebration. I have no notes, transcript, or recording. The address for the George Community Hall is P.O. Box 5064, 403 West Montmorency, George, Washington 98824.

June 21, 2016: Speaker, North Central Washington Labor Council, Wenatchee, Washington. I delivered a campaign speech. I have no notes, transcript, or recording. The address for the North Central Washington Labor Council is 27 North Chelan Avenue, Wenatchee, Washington 98801.

May 25, 2016: Speaker, Committee to Retain Judge David Estudillo, Yakima, Washington. I delivered a campaign speech at a fundraising event. I have no notes, transcript, or recording. The Committee to Re-elect Judge David Estudillo no longer operates.

May 18, 2016: Speaker, Committee to Retain Judge David Estudillo, Moses Lake, Washington. I delivered a campaign speech at a fundraising event. I have no notes, transcript, or recording. The Committee to Retain Judge David Estudillo no longer operates.

May 17, 2016: Speaker, Grant County Tea Party Coalition, Moses Lake, Washington. I spoke at campaign forum about my qualifications and answered questions. I have no notes, transcript, or recording. Press coverage supplied and available at https://www.youtube.com/watch?v=s_efbndBxSM. I am unable to locate the address for the Grant County Tea Party Coalition. Its website is https://gctpc.wordpress.com/about.

May 13, 2016: Panelist, Big Bend Community College, Moses Lake, Washington. I was a panelist at the Latino Education Student Fair and spoke about my personal history and higher education. I have no notes, transcript, or recording. The address for Big Bend Community College is 7662 Chanute Street Northeast, Building 1000, Moses Lake, Washington 98837.

May 10, 2016: Speaker, Grant County Association of Realtors, Ephrata, Washington. I spoke about the Grant County Superior Court. I have no notes, transcript, or recording. I am unable to locate the address for the Grant County Association of Realtors. Its website is https://www.gcar1.realtor.

April 25, 2016: Speaker, Rotary Club of Moses Lake, Moses Lake, Washington. I spoke about the Grant County Superior Court. I have no notes, transcript, or

recording. The address for the Rotary Club of Moses Lake is 1373 Road F.2 Northeast, Moses Lake, Washington 98837.

April 19, 2016: Speaker, TRiO Upward Bound, Moses Lake, Washington. I delivered a keynote speech regarding my personal history and reasons for seeking higher education. I have no notes, transcript, or recording. The address for the local TRiO Upward Bound Program is Big Bend Community College, 7662 Chanute Street Northeast, Building 1000, Room 1012, Moses Lake, Washington 98837.

April 16, 2016: Speaker, Grant County Republican Party, Moses Lake, Washington. I delivered a campaign speech. I have no notes, transcript, or recording. The address for the Grant County Republican Party is 601 South Pioneer, Suite F, Moses Lake, Washington 98837.

April 14, 2016: Panelist, Grant County Sheriff's Town Hall Meeting, Moses Lake, Washington. I answered questions about the Grant County Superior Court. I have no notes, transcript, or recording. Press coverage supplied. The address for the Grant County Sheriff's office is 35 C Street Northwest, P.O. Box 37, Ephrata, Washington 98823.

April 13, 2016: Speaker, Meeting of the Kiwanis Club of Moses Lake, Moses Lake, Washington. I spoke about the Grant County Superior Court. I have no notes, transcript, or recording. The address for the Kiwanis Club of Moses Lake is believed to be P.O. Box 72, Moses Lake, Washington 98837.

April 11, 2016: Speaker, Committee to Retain Judge David Estudillo, Seattle, Washington. I delivered a campaign speech at a fundraising event. I have no notes, transcript, or recording. The Committee to Retain Judge David Estudillo no longer operates.

April 7, 2016: Speaker, Grant County Republican Party, Ephrata, WA. I delivered a campaign speech. I have no notes, transcript, or recording. The address for the Grant County Republican Party is 601 South Pioneer, Suite F, Moses Lake, Washington 98837.

March 31, 2016: Speaker, Meeting of Association of Grant County Cities and Towns, Quincy, Washington. I spoke about the Grant County Superior Court. I have no notes, transcript, or recording. I believe the Association of Grant County Cities and Towns is part of District 3 of the Association of Washington Cities. The address for the Association of Washington Cities is 1076 Franklin Street Southeast, Olympia, Washington 98501.

March 26, 2016, Speaker, University of Washington Office of Minority Affairs & Diversity, Moses Lake, Washington. I delivered a speech encouraging newly admitted college students to continue pursuing higher education. I have no notes,

transcript, or recording. The address for the University of Washington Office of Minority Affairs & Diversity is 320 Mary Gates Hall, P.O. Box 352835, Seattle, Washington 98195.

September 10, 2015: Speaker, Grant County Superior Court, Ephrata, Washington. Transcript and press coverage supplied.

May 12, 2015: Presenter, "Executive Action Programs Announced by Obama Administration, Grant County Association of Realtors," Ephrata, Washington. I presented information about the Obama administration's deferred action programs. I have no notes, transcript, or recording. I am unable to locate the address for the Grant County Association of Realtors. Its website is https://www.gcarl.realtor.

February 19, 2015: Presenter, "Executive Action Programs Announced by Obama Administration," Moses Lake-Othello Association of Realtors, Moses Lake, Washington. I presented information about the Obama administration's deferred action programs. I have no notes, transcript, or recording. I am unable to locate the address for the Moses Lake-Othello Association of Realtors. Its website is https://www.mlobr.realtor.

February 3, 2015: Presenter, "Executive Action Programs Announced by Obama Administration," OneAmerica With Justice For All, Mattawa, Washington. I presented information about the Obama administration's deferred action programs. I have no notes, transcript, or recording. The address for One America With Justice For All is 1225 South Weller Street, Seattle, Washington 98144.

January 28, 2015: Presenter, "Executive Action Programs Announced by Obama Administration," Migrant Parent Advisory Committee, Knolls Vista Elementary School, Moses Lake, Washington. I presented information about the Obama administration's deferred action programs. I have no notes, transcript, or recording. The address for Knolls Vista Elementary School is 454 West Ridge Road, Moses Lake, Washington 98837.

January 25, 2015: Presenter, "Executive Action Programs Announced by Obama Administration," OneAmerica With Justice For All, Royal City, Washington. I presented information about the Obama administration's deferred action programs. I have no notes, transcript, or recording. The address for OneAmerica With Justice For All is 1225 South Weller Street, Seattle, Washington 98144.

January 15, 2015: Presenter, "Executive Action Programs Announced by Obama Administration," Migrant Parent Advisory Committee, Red Rock Elementary School, Royal City, Washington. I presented information about the Obama administration's deferred action programs. I have no notes, transcript, or recording. The address for Red Rock Elementary School is 901 Ahlers Road, Royal City, Washington 99357.

December 14, 2014: Panelist, "Executive Action Programs Announced by Obama Administration," Northwest Immigration Rights Project, Moses Lake, Washington. I was present to answer questions and provide legal information after the presentation, which was provided by others. I have no notes, transcript, or recording. The address for the Northwest Immigrant Rights Project is 615 2nd Avenue, Suite 400, Seattle, Washington 98104.

October 21, 2014: Presenter, "Update on Proposed Administrative Fixes by White House," Tri-Cities Hispanic Chamber of Commerce, Pasco, Washington. I presented on immigration proposals being discussed by the Obama administration. I have no notes, transcript, or recording. The address for the Tri-Cities Hispanic Chamber of Commerce is 1600 North 20th Avenue, Suite D, Pasco, Washington 99301.

March 2014 to August 2015: Radio Guest, Cherry Creek Media, Wenatchee, Washington. I sponsored a weekly radio program in Spanish. I provided information to the public about immigration issues and news, and answered questions from callers regarding immigration. I have no notes, transcripts, or recordings. I contacted Cherry Creek Media and it no longer maintains any recordings. The address for Cherry Creek Media is 231 North Wenatchee Avenue, Wenatchee, Washington 98801.

May 24, 2014: Presenter, Immigration presentation on Deferred Action, Migrant Parent Advisory Committee, Red Rock Elementary School, Royal City, Washington. I presented information about deferred action to the general public. I have no notes, transcript, or recording. The address for Red Rock Elementary School is 901 Ahlers Road, Royal City, Washington 99357.

May 22, 2010: Presenter, "Immigration Presentation," Tacoma, Washington. I presented information on immigration and answered questions at a church in Tacoma, Washington. I have no notes, transcript, or recording. The pastor of the church was named Luis Parada. I believe his church is called Iglesia Cristiana La Aldea de Betania. Its address is 5428 South Pine Street, Tacoma, Washington 98409.

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.

Emily Thorton, *Grant County Superior Court suspends jury trials*, Columbia Basin Herald (Dec. 2, 2020). Copy supplied

Cheryl Schweizer, *Big Bend CC announces commencement speaker*, Columbia Basin Herald (May 25, 2018). Copy supplied.

David Kroman, *Trump style tactics fall flat in Eastern Washington Race*, Crosscut (Nov. 21, 2016). Copy supplied.

Sebastian Moraga, *Elections 2016: Estudillo v. Wallace, Part 2*, Quincy Valley Post-Register (Oct. 23, 2016). Copy supplied.

Sebastian Moraga, *Elections 2016: Estudillo v. Wallace (Part 1)*, Quincy Valley Post-Register (Oct. 22, 2016). Copy supplied.

Charles H. Featherstone, *Court candidates talk qualifications*, Columbia Basin Herald (Oct. 18, 2016). Copy supplied.

On October 2, 2016, I submitted responses to questions from the Wenatchee World newspaper located at 14 North Mission Street, Wenatchee, Washington 98801. I am unable to locate a copy of the article the Wenatchee World published containing my responses. I have, however, supplied a copy of the responses I submitted to the Wenatchee World.

Cameron Probert, *Politics: Wallace's campaign claims Estudillo's comment is misleading*, iFiberOne News (May 17, 2016). Copy supplied.

Cameron Probert, *Politics: Judge's campaign manager's history becomes issue*, iFiberOne News (May 16, 2016). Copy supplied.

Ryan Minnerly, *Judicial candidates clash on campaign ethics claims*, Columbia Basin Herald (May 15, 2016). Copy supplied.

Ryan Minnerly, *Estudillo campaigning to retain Superior Court bench seat*, Columbia Basin Herald (Mar. 2, 2016). Copy supplied.

Randy Bracht, *Estudillo seeks to retain judge's post*, Grant County Journal (Feb. 29, 2016). Copy supplied.

Ted Escobar, *New Superior Court judge earned his way through life*, Columbia Basin Herald (Aug. 26, 2015). Copy supplied.

Ryan Minnerly, *8 candidates want judge's seat*, Columbia Basin Herald (July 9, 2015). 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 to the Grant County Superior Court, State of Washington on August 19, 2015, and sworn in on September 10, 2015. On November 8, 2016, I was elected to a full

four-year term on the Grant County Superior Court. On January 1, 2020, I became the presiding judge for the Grant County Superior Court. On November 3, 2020, I was elected to an additional four-year term on the Grant County Superior Court. Washington superior courts are courts of general jurisdiction, handling all types of criminal, civil, and juvenile matters.

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

My best estimate is that I have presided over more than 1,000 cases that went to verdict, were resolved through entry of judgment, settled (with a later signed judgment), were nonsuited, and/or were dismissed. Since September 10, 2015, I have presided over 46 jury or bench trials that have gone to verdict or judgment. The percentages below represent the 46 cases that went to trial.

i. Of these cases, approximately what percent were:

jury trials:	67%
bench trials:	33%

ii. Of these cases, approximately what percent were:

civil proceedings:	33%
criminal proceedings:	67%

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

All orders, opinions, and decisions I have entered are available in the individual Grant County Superior Court case files maintained by the Grant County Superior Court Clerk's office. Opinions and orders from superior court judges are not published in the State of Washington.

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. *Moses Lake Irrigation & Rehabilitation District v. Pheasant*, No. 18-2-00303-9 (Wash. Sup. Ct. Grant Cnty. Feb. 5, 2021). Copy supplied.

Plaintiff, the Moses Lake Irrigation & Rehabilitation District, is the only combined irrigation and rehabilitation district in the State of Washington. Its principle funding source is revenue generated from assessments of residents in the district.

In separate litigation, a resident of the district had challenged an irrigation assessment issued by the Grant County Treasurer on behalf of the district, contending the assessment constituted an unlawful ad valorem tax on his property. While the separate litigation was pending, the Treasurer declined to issue the assessments on behalf of the district to other residents in the district.

In response, the district filed a petition for a writ of mandamus ordering the Grant County Treasurer to issue assessment statements to district residents. The Treasurer defended his decision, arguing the district's assessments, as formulated, constituted taxes and that the district lacked authority to tax its members. On summary judgment, I concluded the assessments, as formulated, were unauthorized by state statute and otherwise were unlawful taxes. I granted the Treasurer's motion for a declaratory judgment and denied the district's petition for a writ of mandamus. The district has filed an appeal.

Counsel for Plaintiff:

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Counsel for Defendant:

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2. *State of Washington v. Rodriguez,* No. 18-1-00325-6 (Wash. Sup. Ct. Grant Cnty.); *State of Washington v. Gutierrez,* No. 18-1-00326-4 (Wash. Sup. Ct. Grant Cnty.).

As they were driving to work early in the morning before sunrise, the two victims were stopped by three armed men. Two of the armed men forced themselves into the vehicle with the victims and directed them to drive to an unknown location while the third man followed. As they drove, a struggle ensued between the victims and their kidnappers, resulting in both victims being shot and one succumbing to his wounds. The three armed had been involved in another murder weeks prior. Prior to trial, one of the defendants entered into a plea agreement with the State and testified at trial against the other two defendants.

After a 15-day jury trial, the two defendants were convicted of first-degree premeditated murder, first-degree assault, and first-degree kidnapping. I ruled on multiple motions in limine and evidentiary issues, including the admissibility of evidence about one defendant's potential immigration status, the prior murder, the co-conspirator's plea agreement with the State, and cell phone location data. The defendants have appealed their convictions to the Washington State Court of Appeals.

Counsel for the State:

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3. *State of Washington v. Skone*, No. 18-1-00036-2 (Wash. Sup. Ct. Grant Cnty.); *State of Washington v. Skone,* No. 37147-6-III, 2021 WL 928668 (Wash. Ct. App. Mar. 11, 2021).

The defendant was seen possessing a revolver while ordering coffee at a drive-through coffee shop. Three days later, an associate of the defendant set up a drug deal with the victim, who agreed to meet at a secluded location. Thereafter, the defendant drove with the associate to the secluded location. The defendant then hid nearby as they waited for the victim. When the victim arrived, the defendant came out of hiding and shot the victim six times at close range. In prosecuting the case, part of the State's theory was that the defendant was either a gang member or trying to become a member of a gang, and that his actions were intended to further his standing within the gang. During the trial, one juror expressed concerns about possible gang retaliation against the jurors if the defendant was

convicted. This raised the issue of whether there was juror bias against the defendant and whether the jury had prematurely begun engaging in discussions about the case. With consent of the parties, I questioned each juror independently about their concerns, their possible discussions about gangs, and the effect on their ability to evaluate the evidence. I concluded there was no juror bias or misconduct and trial resumed. After a nine-day trial, the jury convicted the defendant of first-degree assault (with a firearm enhancement), two counts of unlawful possession of a firearm, and attempted bribery of a witness.

The defendant appealed his conviction to the Washington State Court of Appeals. He argued for the first time on appeal that there was insufficient evidence to support the two convictions for unlawful possession of a firearm, and that he should not have been assessed a DNA collection fee. The defendant also argued the jury expressed bias, engaged in misconduct, and that I failed to identify juror bias. The Washington State Court of Appeals held the second conviction for unlawful possession of a firearm violated the Double Jeopardy Clause in the Washington State Constitution because there was insufficient evidence to support the second conviction. The appellate court also held the DNA collection fee should not have been assessed because such fee had previously been assessed against this defendant in a separate matter. Furthermore, the appellate court rejected arguments regarding jury bias and misconduct, and commended me "for doing a conscientious job ensuring [the defendant's] right to a fair trial." The Washington State Court of Appeals remanded for resentencing.

Counsel for the State:

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Counsel for Defendant:

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4. *State of Washington v. Hernandez Sierra*, No. 18-1-00600-13 (Wash. Sup. Ct. Grant Cnty.); *State of Washington v. Hernandez Sierra*, No. 37065-8-III, 2021 WL 797253 (Wash. Ct. App. Mar. 2, 2021).

The defendant forcibly raped his 14-year-old stepdaughter while she was home

from school after having injured her ankle. During the trial, the defendant sought to impeach testimony from the victim and her mother, arguing their testimony was motived by the desire to obtain a U-visa for the victim's mother. I limited the scope of cross-examination about the mother's U-visa application. After a seven-day jury trial, the defendant was convicted of rape in the second degree, indecent liberties, and witness tampering. The defendant appealed his convictions to the Washington State Court of Appeals. He argued I erred in limiting the scope of cross-examination regarding the U-visa application. He also argued the State committed prosecutorial misconduct in closing argument and that his counsel provided ineffective assistance. The Washington State Court of Appeals rejected his arguments and affirmed the convictions.

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Counsel for Defendant:

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5. *State of Washington v. Villela*, No. 18-1-00030-3 (Wash. Sup. Ct. Grant Cnty. Jul. 24, 2018) (copy supplied); *State of Washington v. Villela*, 450 P.3d 170 (Wash. 2019).

After a traffic stop, the defendant was arrested on suspicion of driving under the influence. Despite being lawfully parked, the defendant's vehicle was impounded, as required by Revised Code of Washington § 46.55.360. As part of the impound process, law enforcement performed an inventory search of the vehicle. This led to the seizure of controlled substances and evidence of drug distribution. The defendant moved to suppress all evidence from the inventory search based on Article 1, Section 7 of the Washington State Constitution. He asserted impoundment of the vehicle constituted a warrantless seizure and that all evidence obtained during the inventory search should be suppressed.

Consistent with conclusions reached by other Washington Superior Court judges, I held that the impoundment of the defendant's vehicle under Section

46.55.360 was unlawful under the Washington State Constitution. The Washington Supreme Court affirmed.

Counsel for the State:

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Counsel for Defendant:

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6. *State v. Sandberg*, No. 17-1-00375-4 (Wash. Sup. Ct. Grant Cnty. May 14, 2018). Copy supplied.

The defendant was charged with operating an unlawful marijuana grow business. The defendant filed a motion to suppress all evidence obtained during the execution of a search warrant. He asserted it was not unlawful to possess marijuana for medicinal purposes and, although the law enforcement officer could smell marijuana outside of a shed, the officer never verified the quantity of marijuana in the shed. I analyzed Washington's 2015 Cannabis Protection Act and considered whether the warrant application contained sufficient information to overcome the protections afforded to individuals who use medicinal marijuana. I concluded the search warrant contained insufficient facts to establish probable cause and that all evidence obtained from the search was inadmissible at trial. The case was dismissed. The State appealed my decision to the Washington State Court of Appeals, but later withdrew the appeal.

Counsel for the State:

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7. *Rookstool v. Eaton*, No. 13-2-01463-3 (Wash. Sup. Ct. Grant Cnty.) (copies supplied); *Rookstool v. Eaton*, 457 P.3d 1144 (Wash. Ct. App. 2020).

Three siblings were injured in a school bus accident, and filed suit against the bus operator for negligence and against the school district for vicarious liability. One sibling suffered significant spinal injury that was expected to require ongoing therapeutic care and possible surgery. I ruled on numerous pretrial evidentiary issues, including whether expert opinion testimony offered by different experts was cumulative, whether to limit the amount of video of the accident shown to the jury, the admissibility of evidence of when and why medical care was sought, and comments contained in a medical care note. During closing arguments, plaintiffs' attorney read a text from the plaintiffs' family doctor that had not been admitted in evidence. I instructed the jury to disregard the text and comments by plaintiffs' attorney about the text. After an eight-day trial, the jury awarded the plaintiffs $1.2 million.

The defendants filed a motion for new trial, arguing that the plaintiffs' attorney committed misconduct during closing by reading the family doctor's text. I denied the motion, ruling that despite the attorney's conduct, the curative instruction I gave to the jury was sufficient and that the evidence before the jury supported the verdict. On appeal, the Washington Court of Appeals affirmed the verdict.

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Counsel for Defendants:

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8. *State of Washington v. Bennett*, No. 14-1-00778-0 (Wash. Sup. Ct. Grant Cnty.); *State of Washington v. Bennett,* No. 35297-8-III, 2020 WL 3467801 (Wash. Ct. App. June 25, 2020).

The defendant was accused of killing his 82-year-old landlord. It was determined the victim had sustained multiple significant head injuries, was likely manually strangled, had received two shallow cuts and a stab wound to her neck, and was stabbed 17 times in her chest, 11 of which penetrated her heart. The defendant denied any involvement in the victim's death. After a six-week jury trial, the defendant was convicted of second-degree intentional murder with aggravating circumstances.

The defendant appealed his conviction and sentence to the Washington State Court of Appeals, asserting governmental mismanagement in the prosecution, denial of the right to present other suspect evidence to the jury, prosecutorial misconduct in closing arguments, and imposition of an excessive sentence. The Washington State Court of Appeals affirmed the convictions and sentence.

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Counsel for Defendant:

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9. *State of Washington v. Hawkins,* No. 15-1-00100-3 (Wash. Sup. Ct. Grant Cnty. Sept. 27, 2016) (copy supplied); *State of Washington v. Hawkins*, No. 34898-9-III, 2019 WL 1785629 (Wash. Ct. App. Apr. 23, 2019).

The defendant was accused of raping and molesting his five-year-old daughter.

The State asserted he and his wife were grooming their daughter into a cult-like lifestyle where women are considered subservient and serve the primary purpose of pleasuring men. Among other things, I ruled on the admissibility of prior statements by the victim to law enforcement and her foster parent. I also ruled on the admissibility of the defendant's Facebook Messenger conversations. After a three-day bench trial, I found the defendant guilty of two counts of first-degree child rape and one count of first-degree child molestation. The Washington Court of Appeals affirmed the convictions.

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Counsel for Defendant:

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10. *Hopovac v. State Department of Corrections*, No. 14-2-00780-5 (Wash. Sup. Ct. Grant Cnty.); *Hopovac v. State Department of Corrections*, 391 P.3d 570 (Wash. Ct. App. 2017). Copy supplied.

While under Washington State Department of Corrections supervision, the plaintiff sought an expedited transfer for supervision to Idaho because he felt threatened by local gang members. The Department denied the plaintiff's request. Soon after, the plaintiff was assaulted by gang members and suffered significant injury. The plaintiff argued that the Department tortiously failed to protect him while he was under the Department's supervision. I granted summary judgment in favor of the Department, concluding that, under state law, the Department did not owe a felon subject to community custody a duty of care. The decision was affirmed on appeal.

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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.

Opinions and orders from superior court judges are not published in the State of Washington. All orders, opinions, and decisions I have entered can be found in the individual Grant County Superior Court case files maintained by the Grant County Superior Court Clerk's office.

1. *Hansen v. Moses Lake Irrigation & Rehabilitation District, et al.*, No. 14-2-001214-1 (Wash. Sup. Ct. Grant Cnty. June 1, 2020). Copy supplied.

Counsel for Plaintiff:

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Counsel for Defendant:

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2. *State of Washington v. Huff*, No. 19-1-00665-13 (Wash. Sup. Ct. Grant Cnty. Nov. 25, 2019). Copy supplied.

Counsel for the State:

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Counsel for Defendant:

No defense counsel was assigned because the State dismissed the charges after I made a finding that probable cause was lacking.

3. *State of Washington v. Torres*, No. 18-1-00732-13 (Wash. Sup. Ct. Grant Cnty. Nov. 30, 2018). Copy supplied.

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Counsel for Defendant:

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4. *Redwine v. Redwine*, No. 13-2-00609-6 (Wash. Sup. Ct. Grant Cnty. Oct. 24, 2018). Copy supplied.

Counsel for Plaintiff:

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5. *State of Washington v. Portillo Orozco*, No. 04-1-00298-5 (Wash. Sup. Ct. Grant Cnty. Oct. 4, 2018). Copy supplied.

Counsel for the State:

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Counsel for the Defendant:

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6. *State of Washington v. Sandberg*, No. 17-1-00375-4 (Wash. Sup. Ct. Grant Cnty. May 14, 2018). Copy supplied in response to Q.13c.

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7. *State of Washington v. Hawkins*, No. 15-1-00100-3 (Wash. Sup. Ct. Grant Cnty. Sept. 27, 2016) (copy supplied in response to Q.13c); *State of Washington v. Hawkins*, No. 34898-9-III, 2019 WL 1785629 (Wash. Ct. App.

Apr. 23, 2019).

Counsel for the State:

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8. *State of Washington v. Westwood*, Nos. 15-8-00039-8, 15-8-00116-5 (Wash. Sup. Ct. Grant Cnty. May 19, 2016). Copy supplied.

Counsel for the State:

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Counsel for Defendant:

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9. *State of Washington v. Hyduk*, No. 09-1-00249-8 (Wash. Sup. Ct. Grant Cnty. Apr. 29, 2016). Copy supplied.

Counsel for the State:

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Counsel for Defendant:

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10. *State of Washington v. Robertson*, No. 14-1-00057-2 (Wash. Sup. Ct. Grant Cnty. Feb. 5, 2016). Copy supplied.

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Counsel for Defendant:

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

State of Washington v. Bennett, No. 20-1062 (petition for cert. filed Jan. 29, 2021).

I know of no other 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.

State of Washington v. Nickels, No. 10-1-00322-6 (Wash. Sup. Ct. Grant Cnty. Jun. 1, 2017) (copy supplied); *State of Washington v. Nickels*, 456 P.3d 795 (Wash. 2020).

In 2012, a jury convicted the defendant of first-degree murder. The conviction was vacated on appeal and the case was remanded for a new trial. During the first prosecution, Garth Dano, a private criminal defense attorney, played a

limited role in consulting with lead defense counsel. Mr. Dano also had contact with the defendant and appeared in at least one hearing before the Superior Court. Between the defendant's first trial and the date of remand, Mr. Dano became the elected Grant County Prosecutor. The defendant therefore moved to disqualify the Grant County Prosecutor's Office from handling the case following remand, despite Mr. Dano having played no role in the prior prosecution or appeal, and despite Mr. Dano having been "walled off" from the office's case file upon return of the matter to the trial court.

I denied the defendant's motion to disqualify, concluding that Mr. Dano's role during the prior prosecution was limited. In addition, because Mr. Dano did not have, and would not have, any role in prosecuting the case on remand, I did not find any basis to disqualify the entire Grant County Prosecutor's Office. The Washington State Court of Appeals reversed, and the State appealed. The Washington Supreme Court affirmed in a split decision, holding that the Grant County Prosecutor's Office was presumptively disqualified from participation in the prosecution following Mr. Dano's election due to his prior representation of the defendant in the same case.

State v. Dalluge, No. 17-1-00401-7 (Wash. Sup. Ct. Grant Cnty.); *State of Washington v. Dalluge*, No. 36015-6-III (Wash. Ct. App. Feb. 25, 2020).

After a three-day jury trial, the defendant was convicted of failure to register as a sex offender. At sentencing, I assessed certain legal financial obligations against the defendant, including a DNA collection fee. While the matter was on appeal, Washington law changed. The change prohibited the imposition of a DNA collection fee when a defendant's DNA previously was collected. The Washington Court of Appeals affirmed the defendant's conviction, but remanded with instructions to strike the DNA collection fee because the defendant's DNA had been previously collected.

State of Washington v. McLeod, No. 16-1-00503-1 (Wash. Sup. Ct. Grant Cnty.); *State of Washington*, No. 36353-8-III, 2019 WL 3229687 (Wash. Ct. App. July 18, 2019).

The defendant had pleaded guilty to vehicular homicide and two counts of vehicular assault. At sentencing held on September 14, 2018, I entered a judgment and sentence that imposed the statutory victim penalty assessment against the defendant. The form used to enter the judgment and sentence contained language imposing interest on the victim penalty assessment. Approximately three months prior to entry of the judgment and sentence, however, there was a change in Washington law. The change in the law prohibited the imposition of interest on nonrestitution legal financial obligations. The Washington Court of Appeals remanded with instructions to strike any interest accrual on the victim penalty assessment.

Matter of Estate of Rathbone, No. 15-4-00010-5 (Wash. Sup. Ct. Grant Cnty. Jan 8, 2016) (copy supplied); *Matter of Estate of Rathbone*, 412 P.3d 1283 (Wash. 2018).

This matter involved interpretation and application of Washington's Trust and Estate Dispute Resolution Act. The petitioner, a named beneficiary under the decedent's will, filed a petition seeking judicial construction of a nonintervention will. He argued his brother, the estate's personal representative, was engaging in self-dealing and breaching his fiduciary duties as personal representative. The beneficiary's petition did not specifically rely on Revised Code of Washington § 11.68.070, which allows a court to intervene in the administration of an estate if there is evidence the personal representative has breached his fiduciary duties. The personal representative accordingly asserted the court lacked jurisdiction to intervene. I concluded the court still had authority under § 11.68.070 to intervene based on the allegations of self-dealing and breach of fiduciary duties.

The Washington Supreme Court reversed, holding that because the beneficiary had not specifically relied on Revised Code of Washington § 11.68.070, I erred in concluding the court had authority to intervene in the estate's administration.

State of Washington v. Buche, No. 16-1-00023-4 (Wash. Sup. Ct. Grant Cnty.); *State of Washington v. Buche*, No. 34960-8-III, 2018 WL 722503 (Wash. Ct. App. Feb. 6, 2018).

Following a bench trial, I found the defendant guilty of second-degree burglary and bail jumping. I orally explained the basis for my ruling and sentenced the defendant. The Court of Appeals found that I erred by not issuing written findings of fact and conclusions of law but deemed the error harmless and affirmed the convictions.

State of Washington v. Lewis, No. 15-1-00824-5 (Wash. Sup. Ct. Grant Cnty.); *State of Washington v. Lewis*, No. 34347-2-III, 2017 WL 6054911 (Wash. Ct. App. Dec. 7, 2017).

After a three-day jury trial, the defendant was convicted of two counts of burglary. I imposed a prison-based drug offender alternative sentence, which included community custody provisions after confinement. The sentence prohibited the defendant from using or possessing any controlled substances unless prescribed by a "physician." The Washington Court of Appeals held that, under applicable state law, the restriction should have instead prohibited the defendant from possessing or consuming controlled substances aside from "lawfully issued prescriptions." It therefore remanded for adjustment of the defendant's community custody provisions.

State of Washington v. Henderson, No. 15-1-00775-3 (Wash. Sup. Ct. Grant Cnty.); *State of Washington v. Henderson*, No. 34170-4-III, 2017 WL 1163144

(Wash. Ct. App. Mar. 28, 2017).

The defendant pleaded guilty to unlawful possession of a firearm and taking a motor vehicle without permission. The parties and the court agreed on the defendant's criminal offender score. I informed the defendant of the standard range sentence for his crimes based on the agreed offender score and sentenced him within that standard range. The defendant later moved to withdraw his guilty plea for various reasons, including an allegedly erroneous calculation of his offender score. I orally denied the motion. The Washington Court of Appeals held that I had erred in the offender score calculation. Because Washington law requires withdrawal of a guilty plea if a defendant is misinformed about his offender score, the Washington Court of Appeals remanded for withdrawal of the defendant's guilty plea.

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 state trial court judge, I do not author any published opinions. All written opinions I have issued are entered via orders or judgments. They are placed in individual case files maintained by the Grant County Superior Court Clerk. Copies of all orders and judgments can be requested through the Grant County Superior Court Clerk's office website located at https://www.grantcountywa.gov/Clerk.

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.

State of Washington v. Coles, No. 19-1-00414-13 (Wash. Sup. Ct. Grant Cnty. June 10, 2020). Copy supplied.

State of Washington v. Huff, No. 19-1-00665-13 (Wash. Sup. Ct. Grant Cnty. Nov. 25, 2019). Copy supplied in response to Q.13d.

State of Washington v. Torres, No. 18-1-00732-13 (Wash. Sup. Ct. Grant Cnty. Nov. 30, 2018). Copy supplied in response to Q.13d.

State of Washington v. Stickel, No. 18-1-00466-13 (Wash. Sup. Ct. Grant Cnty. Nov. 13, 2018). Copy supplied.

State of Washington v. Portillo Orozco, No. 04-1-00298-1 (Wash. Sup. Ct. Grant Cnty. Oct. 4, 2018). Copy supplied in response to Q.13d.

State of Washington v. Sandberg, No. 17-1-00375-4 (Wash. Sup. Ct. Grant Cnty. May 14, 2018). Copy supplied in response to Q.13c.

State of Washington v. Toulou, Jr., No. 17-1-00108-5 (Wash. Sup. Ct. Grant Cnty. Jan. 12, 2017). Copy supplied.

State of Washington v. Solis, No. 16-1-00396-9 (Wash. Sup. Ct. Grant Cnty. Dec. 8, 2016). Copy supplied.

State of Washington v. Avalos, No. 16-1-00566-0 (Wash. Sup. Ct. Grant Cnty. Nov. 29, 2016). Copy supplied.

State of Washington v. Hyduk, No. 09-1-00249-8 (Wash. Sup. Ct. Grant Cnty. Apr. 29, 2016). Copy supplied in response to Q.13d.

State of Washington v. Turner, No. 08-1-00687-8 (Wash. Sup. Ct. Grant Cnty. Apr. 21, 2016). Copy supplied.

State of Washington v. Shadeed, No. 16-1-00010-2 (Wash. Sup. Ct. Grant Cnty. Apr. 21, 2016). Copy supplied.

State of Washington v Turner, No. 15-1-00629-3 (Wash. Sup. Ct. Grant Cnty. Mar. 31, 2016). Copy supplied.

State of Washington v. Kunes, No. 15-1-00490-8 (Wash. Sup. Ct. Grant Cnty. Mar. 30, 2016). Copy supplied.

State v. Keller, No. 15-1-00768-1 (Wash. Sup. Ct. Grant Cnty. Jan. 14, 2016). Copy supplied.

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.

I am bound by Washington State's Code of Judicial Conduct. Specifically, Rule 2.11 governs when a judicial officer must disqualify (recuse) himself or herself from a matter. I consult that rule when evaluating whether I should disqualify myself. Where the need for disqualification is debatable, I consult with colleagues to further evaluate duties and obligations under Rule 2.11. If I believe there is a potential conflict of interest or possible appearance of partiality, I will disqualify myself or, at a minimum, raise the issue with the parties to provide an opportunity to request recusal. After evaluating comments or requests from a party, I evaluate and ultimately decide whether to disqualify myself from a matter.

Beyond the requirements of Rule 2.11, I will recuse myself *sua sponte* for all matters involving family, close friends, colleagues, and persons with whom I interact with on a frequent basis, such as my children's teachers, coaches, etc. I also recuse myself from matters involving my wife's former employer.

State of Washington v. Walters, 21-1-00109-13 (Wash. Sup. Ct. Grant Cnty.). At arraignment on a fugitive complaint based on a warrant issued by the State of Oregon, defense counsel questioned whether a document filed in support of a fugitive complaint was a certified original, which he argued was required by state statute. During the hearing, I mentioned the court clerk stated the stamp on the document could be an original. Thereafter, defense counsel asked me to recuse asserting I was considering evidence outside the record. I denied the request to recuse.

State of Washington v. Rivera Gonzalez, 20-1-00290-13 (Wash. Sup. Ct. Grant Cnty.). Defendant's counsel asked me to recuse after I questioned the State about the evidence supporting the plea agreement between the defendant and the State. The defendant's counsel felt I had exceeded my authority in questioning the State's position. I denied the request and, upon further consideration of the parties' positions and the evidence identified, I accepted the plea.

State of Washington v. Hunt, No. 20-1-00121-13 (Wash. Sup. Ct. Grant Cnty.). The *pro se* defendant asked me to recuse after I denied a number of his motions, claiming without evidence that I was biased against him. I denied the request.

Redwine v. Redwine, No. 13-2-00609-6 (Wash. Sup. Ct. Grant Cnty. Oct. 24, 2018). Defendant's counsel asked me to recuse because he asserted he had publicly supported my election opponent in 2016 and because he had a contentious relationship with a court clerk. I reviewed Rule 2.11, read relevant ethics decisions, and contacted the Washington Judicial Ethics hotline. I denied the motion to recuse.

My 2016 election opponent informally asked me to recuse from all matters involving him or his firm. I reviewed Rule 2.11, read relevant ethics decisions, and contacted the Washington Judicial Ethics hotline. I denied his informal request.

I recall the following instances when I was asked to recuse myself but cannot remember the specific cases in which the requests arose:

During a plea hearing when the defendant was expected to plead guilty to an assault against his spouse, I noted that I had previously presided over the victim's petition for a civil protection order against the defendant. I further noted that I understood the facts that had given rise to the plea to be more serious than those asserted at the plea hearing. Defense counsel asked me to recuse myself because of my comments about the prior hearing involving the defendant's spouse. I reviewed Rule 2.11 and consulted the Washington Judicial Ethics Hotline. I decided to recuse myself to avoid an appearance of partiality.

A defendant asked me to recuse myself during a sentencing hearing after learning the victim's former spouse worked as a clerk in the Grant County Superior Court Clerk's Office and seeing that former spouse in the audience during the hearing. I granted the request to avoid any appearance of partiality.

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 2015, the then-mayor of Moses Lake, Dick Deane, appointed me to the City of Moses Lake Park and Recreation Commission. I resigned from this position later that year after being appointed to the Grant County Superior Court.

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.

With the exception of my own 2016 retention election, I have not held any position or played any role in any political campaign, nor held office in or provided services to any political party or election committee.

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 to a judge.

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

2005 – 2015
Estudillo Law Firm, PLLC

2012 – 2015
Main Office:
604 West Third Avenue
Moses Lake, Washington 98837

Satellite Office:
16825 48th Avenue West, #213
Lynnwood, Washington 98037

2010 – 2012
9630 Roosevelt Way Northeast
Seattle, Washington 98115

2006 – 2010
9500 Roosevelt Way Northeast, Suite 301
Seattle, Washington 98115

2005 – 2006
720 3rd Avenue
Seattle, Washington 98104

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;

1999 – 2002
Jeffers, Danielson, Sonn & Aylward, P.S.
2600 Chester Kimm Road
Wenatchee, Washington 98801
Associate Attorney

2002 – 2005
Scheer Law, PLLC
(formerly Scheer & Zehnder, LLP)

2101 Fourth Avenue, Suite 830
Seattle, Washington 98121
Associate Attorney

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.

From 1999 to 2002, I was an associate attorney with Jeffers, Danielson, Sonn & Aylward, P.S. I was assigned to the firm's Moses Lake office, which has since closed. I assisted various partners with litigation matters, both defense and plaintiff work. I worked on researching legal issues, preparing pleadings, drafting and responding to motions, drafting and responding to discovery, and trial preparation (such as preparing motions in limine and trial notebooks). I also performed assignments not related to litigation, such as drafting business formation documents, litigating child support enforcement, drafting estate planning documents, and researching real property issues.

From 2002 to 2005, I was an associate attorney with Scheer & Zehnder, LLP. My practiced focused on complex, multiparty litigation. I represented developers and general contractors sued by property owners, usually involving condominium developments, multi-residential housing, or other commercial projects. I also handled personal injury defense claims, some plaintiff personal injury claims, and occasionally performed insurance coverage analysis. I performed all aspects of litigation.

From 2005 to 2015, I operated my own law firm focused on immigration law. I represented immigrants in removal proceedings, both detained and non-detained, which included filing claims for asylum, withholding of removal, protection under the Convention Against Torture Act, and cancellation of removal. I also filed affirmative applications for relief with United States Citizenship & Immigration Services, which included citizenship applications, U-visa applications, temporary protected status, Deferred Action for Childhood Arrivals, and requests for work authorization. I also continued to engage in civil litigation, including insurance defense work, plaintiff personal injury claims, and plaintiff breach of contract claims.

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

While at Jeffers, Danielson, Sonn, & Aylward, P.S., my typical clients included local municipalities, large farming and fruit packing companies, insurance companies (insurance defense assignments), and individuals who sought legal advice in business and personal matters.

While at Scheer & Zehnder, LLP, my typical clients were large developers and general contractors insured by insurance companies such as Zurich, Lloyd's of London, Insurance Corporation of British Columbia, The Hartford, Liberty Mutual, Safeco, and other regional insurance companies.

As a sole practitioner, my typical clients were individuals. I also represented contractors insured by Liberty Mutual Insurance Company.

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.

Between 1999 and 2002, approximately 70% of my practice focused on litigation matters. During this time, I occasionally appeared in Washington Superior Court for default or discovery motions. Between 2002 and 2005, the entirety of my practice involved litigation. My court appearances became more frequent, as I argued discovery motions and motions for summary judgment. Between 2005 and 2015, 70% of my practice involved litigation. My practice included civil litigation as well as removal defense work before the Seattle and Tacoma Immigration Courts. I appeared in Immigration Court on a frequent basis and in Washington Superior Court on an occasional basis.

i. Indicate the percentage of your practice in:
   1. federal courts: 1%
   2. state courts of record: 49%
   3. other courts: 0%
   4. administrative agencies: 50%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 99%
   2. criminal proceedings: 1%

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.

As a litigator and sole counsel, I tried 26 cases to verdict, judgment, or final

decision. Of these cases, I tried two cases to jury verdict in Washington Superior Court and 24 cases before an administrative law judge in Immigration Court.

i. What percentage of these trials were:
   1. jury: 7%
   2. non-jury: 93%

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 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.

Though I believe them to be significant litigation matters, I am not including information about former immigration clients I represented in Immigration Court. Immigration Court files are docketed based on an individual's alien registration number ("A number") and are not public records. I am not authorized to disclose former clients' A numbers or information about their individual immigration matters. Instead, I will note that I have successfully litigated numerous matters in Immigration Court, including complex cases turning on the interpretation and application of the Immigration and Nationality Act.

1. *Bort v. Parker*, 42 P.3d 980 (Wash. App. Ct. 2002); Judge Stephen M. Brown, Judge John A. Schultheis, and Judge Kenneth A. Kato.

Contractor filed claims for breach of a construction contract and equitable claims against a homeowner. The construction contract incorrectly identified the contractor's company name, but listed the contractor's correct contractor registration number under the Washington Contractor Registration Act. The trial court granted summary judgment in favor of the homeowner, concluding that the

company identified on the contract was not a registered contractor and, therefore, the plaintiff's suit was barred. The Court of Appeals reversed, finding reasonable inferences that could support a conclusion that the contractor's company, a registered contractor, was a party to the construction contract. The court remanded to allow the contractor to pursue his contractual and equitable claims.

I, along with attorney David E. Sonn, represented the contractor during the appellate proceedings. Mr. Sonn was the assigned partner. I was the assigned associate. I drafted our appellate brief, and Mr. Sonn reviewed and edited it. I presented oral argument before the panel. The appellate decision issued the same month I left the law firm.

Co-counsel:

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(509) 662-3685

Counsel for Respondent:

Hon. Robert E. Lawrence-Berry, Jr.
Washington Court of Appeals
500 North Cedar Street
Spokane, WA 99201
(509) 456-3082

Dates of representation: January 2001 – March 2002.

2. *Sabbatini v. Port of Seattle, et al.*, No. 01-2-00219-7SEA (Wash. Sup. Ct. King Cnty.); presiding judge unknown.

Plaintiff was a 69-year-old longshoreman injured when a shipping crane's main hoist rope became hooked on the hoist rope deflector. The hoist rope ripped the deflector from the crane. The deflector fell to the ground and bounced into the plaintiff. The defendants were entities that owned, operated, and maintained the crane. Dueling experts evaluated and offered opinions on the design, maintenance, and operation of the crane. The defendants contested their individual responsibility for the accident and disputed the damages plaintiff sustained from the injury. After engaging in significant discovery and shortly before trial, the parties settled.

I, along with attorney Mark P. Scheer, represented the plaintiff. I handled all aspects of discovery, worked with experts, and prepared the matter for trial and mediation.

Co-counsel:

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(509) 800-4070

Counsel for Defendants:

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Nielsen Law, PLLC
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Seattle, WA 98144
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Joseph P. Lawrence, Jr.
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11900 Northeast 1st Street, Suite 300
Bellevue, WA 98005
(206) 344-2001

Paul S. Smith
Forberg & Umlauf
901 5th Avenue, Suite 1400
Seattle, WA 98164
(206) 346-3948

Dates of representation: 2002 – 2003.

3. *Luna v. Crofton Constr., LLC, et al.*, No. 07-2-28976-3SEA (Wash. Sup. Ct. King Cnty.); Judge Michael C. Hayden.

Plaintiff suffered injuries while working as a plumber for a subcontractor on a condominium construction project. Plaintiff was utilizing a hand-held Victor VP-30 PVC pipe cutter when a piece of the pipe cutter broke and flew into plaintiff's right eye, resulting in a permanent percentage loss of vision. Plaintiff filed suit against the general contractor for failing to ensure compliance with worksite safety and health regulations, and against the Japanese product manufacturer for faulty design and construction of the pipe cutter. Both defendants denied liability. After overcoming foreign process of service issues, significant discovery, issues arising out of plaintiff's immigration status, and dueling expert reports, the parties settled.

I was sole counsel for the plaintiff through all stages of the litigation.

Counsel for Defendant Hanozo Tools Mfg. Co. Ltd.:

John A. Knox
(retired)

Counsel for Defendant Crofton Construction, LLC:

Gregory P. Turner
Lee Smart PS Inc.
701 Pike Street, Suite 1800
Seattle, WA 98101
(206) 624-7990

Dates of representation: December 2006 – April 2009.

4. *Eaton v. Gardner*, No. 05-2-3-7979-1SEA (Wash. Sup. Ct. King Cnty.); Judge William Downing.

The plaintiffs hired a roofing contractor to install a sheet metal roof on their residence. The roofing contractor failed to weather protect the project while the work was being performed, resulting in water damage to the interior. There also was continued water intrusion after the project was completed. The plaintiffs commenced suit against the contractor and the contractor's surety bond for breach of contract and violation of Washington's Consumer Protection Act. The case proceeded to jury trial. The plaintiffs prevailed on their contract claim but not their Consumer Protection Act claim.

I was sole counsel for the plaintiffs through all stages of the litigation.

Counsel for Defendants:

Alan B. Hughes
Alan B. Hughes, PS
7016 35th Avenue Northeast
Seattle, WA 98115
(206) 340-1944

Dates of representation: September 2005 – September 2007.

5. *Ledgett v. Kovavich*, No. 05-2-35644SEA (Wash. Sup. Ct. King Cnty.); Judge Sharon Armstrong.

The plaintiff suffered injuries following a motor vehicle accident, including brachial plexopathy and symptoms of left upper extremity paresthesias. Medical experts disagreed on the extent and cause of the plaintiff's injuries. The parties first engaged in arbitration, leading to an award of damages to the plaintiff. The defendant then requested a trial de novo in superior court. After a three-day trial, plaintiff again prevailed on her claims.

I was sole counsel for the plaintiff through all stages of the litigation.

Counsel for Defendant:

Thomas G. Richards
(retired)

Dates of representation: September 2005 – December 2006.

6. *Bergstedt v. Nicksic Constr.*, No. 07-00698-9 (Wash. Sup. Ct. Whatcom Cnty.); Judge Ira Uhrig.

Plaintiff homeowner sued the general contractor for defective work performed in the construction of her residence – a high-end home with a significant investment in custom landscaping around the residence. Plaintiff alleged significant defects and claimed over $2 million in recorded expenses related to repair work, fees, and personal relocation costs. The general contractor filed third-party claims against subcontractors who had performed work on the project, alleging breach of contract, breach of express and implied warranties, and implied and express indemnity. After significant discovery, motions practice, expert reports and analysis, and multi-party mediation, the parties settled all of the primary and third-party claims.

I, with co-counsel, pursued the third-party claims on behalf of the general contractor against the subcontractors. I engaged in all discovery, motion practice, mediation, and settlement.

Co-counsel for Defendant:

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Merrick Hofstedt & Lindsey
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(206) 682-0610

Josh Joerres
Dubin Law Group
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Seattle, WA 98103
(206) 800-8000

Counsel for Plaintiff:

Craig P. Hayes
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(360) 734-2000

Counsel for Third-Party Defendants:

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Michael K. Taylor
Murray Dunham & Murray
200 West Thomas, Suite 350
Seattle, WA 98119
(206) 234-4983

Norma S. Ninomiya
(retired)

John P. Hayes
(retired)

Geoffrey Knudsen
(deceased)

Dates of representation: December 2008 – August 2010.

7. *Brookwood Place Condo. Assoc. v. Brookwood Place, LLC, et al.*, No. 10-2-01746-0 (Wash. Sup. Ct. Snohomish Cnty.); presiding judge unknown.

The condominium association brought suit against the developer based on water intrusion and other construction defects. The developer filed a third-party suit against the general contractor, who initiated a fourth-party suit against the subcontractors. The third- and fourth-party claims involved breach of contract, breach of express and implied warranties, and implied and express indemnity.

I was sole counsel for a masonry subcontractor and handled motions practice and mediation on behalf of my client. The case eventually settled and the claims against my client were dismissed.

Counsel for Plaintiff:

Jesse Miller
Ashbaul Beal LLP
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Seattle, WA 98104
(206) 386-5900

Counsel for Defendant/Third-Party Plaintiff:

Philip G. Bardsley

(Deceased)

Counsel for Third-Party Defendant/Fourth-Party Plaintiff:

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Bret Simmons
Simmons Sweeney Smith PS
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Bellingham, WA 98225
(360) 752-2000

Melia M. Shears
P.O. Box 22677
Portland, OR 97269
(503) 513-5130

Dates of representation: January 2011 – January 2012.

8. *Serenity at Juanita Owners Assoc. v. Serenity at Juanita, LLC, et al.*, No. 10-2-11188-3SEA (Wash. Sup. Ct. King Cnty.); Judge Carol A. Schapira.

The owners association brought suit against the developer, seeking repair costs for water intrusion and other construction defects in buildings that had been converted from apartments to condominium units. The developer filed third-party claims against several subcontractors, including breach of contract, breach of express and implied warranties, and implied and express indemnity.

I handled all of the litigation for two of the subcontractors (a hot tub contractor and a sump pump contractor) and successfully defended them against the developer's third-party claims. The trial court entered summary judgment in favor of my clients on all but one claim, and the parties settled the final claim through mediation.

Counsel for Plaintiff:

Anthony L. Rafel
Rafel Law Group, PLLC

4126 East Madison Street, Suite 202
Seattle, WA 98112
(206) 838-2660

Counsel for Defendant/Third-Party Plaintiff:

Shane D. McFetridge
Randall Danskin
601 West Riverside Avenue, Suite 1500
Spokane, WA 99201
(509) 747-2052

Counsel for Third-Party Defendants:

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Rockey Stratton, P.S.
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Lake Forest Park, WA 98155
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Fort Lauderdale, FL 33308
(206) 292-9998

Dates of representation: April 2012 – December 2012.

9. *Zarapkar v. Hernandez, et al.*, No. 14-2-11913 (Wash. Sup. Ct. Pierce Cnty.); Judge Elizabeth Martin.

A homeowner contracted with a contractor for the installation of stucco on the

south and east exteriors of the residence. The contractor also installed stone veneer around the garage and pillars of the residence. The residence suffered water intrusion due to the contractor's defective work. Repair of the residence was estimated to be approximately $180,000. The plaintiff filed claims for breach of contract, negligent misrepresentation, and violation of Washington's Consumer Protection Act. The contractor denied the claims. The matter settled after mediation.

I was sole counsel for the plaintiff from the initial investigation of the claim through discovery and settlement.

Counsel for Defendants:

Jennifer D. Loynd
Washington State Attorney General's Office
7141 Cleanwater Drive Southwest
P.O. Box 40126
Olympia, WA 98504
(360) 586-6404

Dates of representation: July 2014 – August 2015.

10. *Renton Fifth & Williams Ltd. P'ship v. Synergy Constr., Inc., et al.*, No. 14-2-20239-3SEA (Wash. Sup. Ct. King Cnty.); Judge Douglas A. North.

The plaintiff, the owner of a 92-unit apartment complex, brought suit against a general contractor for breach of contract and breach of express and implied warranties of habitability. The general contractor filed third-party claims against several subcontractors who performed work during construction. The general contractor asserted claims for breach of contract, breach of express and implied warranties, and implied and express indemnity.

Along with co-counsel, I represented one of the subcontractors. This included investigating the claims against my client, handling discovery, working with experts, and initial motions practice. I unsuccessfully moved for dismissal of the claims based on the applicable statute of limitations and statute of repose. I was preparing a motion for discretionary review, but I withdrew from the case and was not able to pursue appeal following my appointment to the superior court.

Co-counsel:

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Counsel for Plaintiff:

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John Drotz
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100 West Harrison Street, Suite N350
Seattle, WA 98119
(206) 448-9595

Dates of representation: November 2014 – August 2015.

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 am active in the Washington State Superior Court Judges' Association and am the Association's president as of April 28, 2021. In this capacity, I am a member of the Board of Trustees and serve on our Legislative Committee, which is charged with reviewing, monitoring, evaluating, and suggesting proposed legislation that may affect superior court operations. I also serve as the chair of the Rural Courts Committee, which focuses on reviewing and addressing issues affecting rural courts in our state. I also serve on the Ethics Committee, which focuses on identifying and addressing ethical issues that arise in our superior courts. As part of my role with the Superior Court Judges' Association, I serve on the Washington State Board for Judicial Administration, which seeks to provide effective leadership to the state courts and develop policy to enhance the administration of the court system in Washington.

    Between 2007 and 2014, I volunteered in at least eight full-day Citizenship Day Clinics throughout Washington. In these clinics, immigration attorneys assist eligible legal permanent residents in completing their applications for citizenship and preparing the materials in support of their applications. The clinics were sponsored by OneAmerica With Justice For All and Washington New Americans organizations. Additionally, between 2008 and 2010, I volunteered at civil legal clinics sponsored by the Latino/a Bar Association of Washington.

    I have not performed any lobbying activities nor 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 have not taught any courses.

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

    As a Superior Court Judge, I am vested in Washington's public employee retirement

plan. I also have a personal 401k plan. Aside from these interests, I do not have any deferred income or expected future benefits from 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.

    None.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       I do not have any family members, persons, parties, litigation, or financial arrangements that are likely to present potential conflicts of interest if I am confirmed. If any potential conflict of interest were to arise, I would address it in the manner instructed by the Code of Conduct for United States Judges, Canon 3.

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

       If confirmed, I would recuse myself from all matters as required by 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, as well as the related advisory opinions issued by the ethics committee of the Judicial Conference. I would utilize the court's automated conflict checking system. I would assess any potential conflicts and determine for myself whether I believed they justified my recusal or not. In cases where any uncertainty exists, I would err on the side of recusal rather than non-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.

Between 2005 and 2015, I handled a number of immigration matters pro bono. This included representation of low-income individuals who were in removal proceedings before the Immigration Court. I assisted in filing and preparing claims for asylum, withholding of removal, Convention Against Torture Act, and cancellation of removal. I also assisted in applying for U-visa affirmative relief from United States Citizenship & Immigration Services. The individuals I assisted normally were single mothers of young United States citizen children, and who had fled relationships involving domestic violence. I would normally spend between 25 to well over 50 hours in handling these types of pro bono matters. The pro bono matters referred to me came from legal aid service organizations.

Between 2008 and 2010, I volunteered at civil legal clinics sponsored by the Latino/a Bar Association of Washington. I volunteered at least twice a year and spent over 15 hours participating in these clinics.

Between 2007 and 2014, I volunteered at Citizenship Day Clinics sponsored by OneAmerica and Washington New Americans organizations. The clinics were scheduled at different times of the year in different locations and were all day events. I spent more than 65 hours participating in these clinics.

Between 2010 and 2015, I presented at community forums and answered questions about immigration issues. Most of these presentations were delivered in Spanish. I spent at least 30 hours participating in these presentations.

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 4, 2021, I submitted my application to the bipartisan Judicial Merit Selection Committee created by Senators Maria Cantwell and Patty Murray in response to their call for applications for the position of United States District Court Judge for the Western District of Washington. On February 11, 2021, I interviewed with the 10-member Judicial Merit Selection Committee. On

February 24, 2021, I interviewed with staff from Senator Cantwell's office and separately interviewed with staff from Senator Murray's office. On March 8, 2021, I interviewed with Senator Murray by telephone. After this interview, Senator Murray's Senior Counsel informed me my name was being submitted to the White House for further consideration. On March 9, 2021, I interviewed with attorneys from the White House Counsel's Office. Since March 11, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 29, 2021, my nomination was submitted to the Senate.

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

No.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Lauren Jennifer King

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

   United States District Judge for the Western District of Washington

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.

   Foster Garvey, P.C.
   1111 Third Avenue, Suite 3000
   Seattle, Washington 98101

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

   1982; Oklahoma City, Oklahoma

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.

   2005 – 2008, University of Virginia Law School; J.D., 2008

   2000 – 2004, University of Washington; B.A. (with distinction), 2004

   Fall 2002, Universidad de Cádiz; study abroad program; no degree

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

Washington State Gambling Commission
4565 7th Avenue Southeast
Lacey, Washington 98503
Commissioner

Spring 2020
Seattle University School of Law
901 12th Avenue
Seattle, Washington 98122
Adjunct Professor

2013 – present
Northwest Intertribal Court System
20818 44th Avenue West, Suite 120
Lynnwood, Washington 98036
Pro Tem Appellate Judge

2012 – present
Foster Garvey, P.C. (formerly Foster Pepper PLLC)
1111 Third Avenue, Suite 3000
Seattle, Washington 98101
Principal (2019 – present)
Member (2016 – 2019)
Of Counsel (2015 – 2016)
Associate (2012 – 2014)
Executive Committee (2017, 2019)
Compensation Committee (2018 – 2019)

2010 – 2012
Byrnes Keller Cromwell LLP
1000 2nd Avenue, Suite 3800
Seattle, Washington 98104
Associate

Summer 2006, Summer 2007, 2008 – 2009
K&L Gates LLP (formerly Preston Gates & Ellis LLP)
925 4th Avenue, Suite 2900
Seattle, Washington 98104
Associate (2008 – 2009)
Summer Associate (2006, 2007)

2007 – 2008
Gold's Gym
1801 Hydraulic Road
Charlottesville, Virginia 22901
Personal Trainer

Summer 2007
Holme Roberts & Owen LLP (now Bryan Cave Leighton Paisner LLP)
1700 Lincoln Street, Suite 4100
Denver, Colorado 80203
Summer Associate

Jan. 2005 – Aug. 2005
PricewaterhouseCoopers LLP
405 Howard Street, Suite 600
San Francisco, California 94105
Systems and Process Assurance Associate

2004 – 2005
GEICO
5260 Western Avenue
Chevy Chase, Maryland 20815
Emerging Leader, Information Technology

Other Affiliations (uncompensated):

2020 – present
Mvskoke Reservation Protection Commission
Highway 75 & Loop 56
Okmulgee, Oklahoma 74447
Commission Member

2017 – 2019
Seattle Indian Health Board
611 12th Avenue South
Seattle, Washington 98144
Board Member

December 2007 – January 2008
Lummi Nation Prosecutor's Office
2665 Kwina Road
Bellingham, Washington 98226
Volunteer

January 2007
Peacekeepers Domestic Violence Program
216 Paseo Del Pueblo Norte
Taos, New Mexico 87571
Volunteer

December 2005 – January 2006

North American Indian Legal Services
1710 South Balsam
Lakewood, Colorado 80232
Volunteer

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 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.

   The Best Lawyers in America, Native American Law (2018 – 2021)

   Rising Star, Washington Super Lawyers (2013 – 2020)

   Native American 40 Under 40, National Center for American Indian Enterprise Development (2018)

   Law360's "Top Attorneys Under 40" in Native American Law (2016)

   Fellow, Washington State Bar Association Leadership Institute (2012)

   University of Virginia School of Law

   Virginia Journal of Law and Technology

   Editor-in-Chief (2007 – 2008)

   Articles Editor and Executive Editor (2006 – 2007)

   University of Virginia School of Law Academic Scholarship (2005 – 2008)

   Preston Gates & Ellis National Minority Fellowship recipient (Summer 2006)

   Mortimer Caplin Public Service Center pro bono award recipient (2005 – 2006)

   Bracewell & Giuliani Best Oralist Award for first-year oral arguments (2006)

   University of Washington

   Graduated with Honors (2004)

   Certificate of International Studies in Business (2004)

Dean's List (2000 – 2004)

Phi Eta Sigma Undergraduate Honor Society (2000 – 2004)

Golden Key Honor Society (2003 – 2004)

Puget Sound Energy Scholarship for Academic Merit (2001 – 2002; 2003 – 2004)

Bernice Strahl Caverly Scholarship for Academic Merit (2001 – 2002)

Eddie Bauer Scholarship for Academic Merit (2001 – 2002)

Certificate of High Scholarship (2000 – 2002)

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 (2011 – present)

Federal Bar Association (2016 – present)

Indian Law Section Conference Chair (2018 – present)

Federal Bar Association of the Western District of Washington (2009 – 2012, 2021 – present)

Fellows of the American Bar Foundation (2017 – present)

King County Bar Association (2009 – present)

Muscogee (Creek) Nation Bar Association (2015 – present)

National Native American Bar Association (2021 – present)

Northwest Indian Bar Association (2008 – present)

Board Member (2011 – 2016)

Northwest Tribal Court Judges Association (2015 – present)

Secretary (2018 – present)

At Large Board Member (2016 – 2018)

National American Indian Court Judges Association Representative (2015 – 2016)

University of Virginia School of Law Native American Law Students Association (2006

– 2008)

Vice President (2006 – 2008)

Washington State Bar Association (2008 – present)

Immediate Past Chair of the Indian Law Section (2016 – 2017)

Chair of the Indian Law Section (2015 – 2016)

Chair-Elect of the Indian Law Section (2014 – 2015)

Washington Women Lawyers (approximately 2008 – 2012)

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.

Washington State, 2008

Muscogee (Creek) Nation, 2015

Oklahoma State, 2016

Puyallup Tribe of Indians, 2020

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 Supreme Court, 2018

United States Court of Appeals for the Eleventh Circuit, 2021

United States Court of Appeals for the First Circuit, 2017

United States Court of Appeals for the Ninth Circuit, 2010

United States District Court for the Western District of Michigan, 2020

United States District Court for the Western District of Washington, 2009

Tribal Court for the Puyallup Tribe of Indians, 2020

Tribal Court for the Muscogee (Creek) Nation, 2015

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.

National Congress of American Indians (2016 – 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.

To the best of my knowledge, the organization listed above does not currently discriminate, and has not 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.

With Aaron Payment, *The Supreme Court's Decision in McGirt v. Oklahoma paves the way for improved safety and prosperity*, Aug. 26, 2020. Copy supplied.

With Rebecca Nagle, *Q&A: Lauren King on What the Five Tribes' Agreement-in-Principle Means for Oklahoma*, Native News Online, July 20, 2020. Copy supplied.

Millennials and the Judiciary: Working with the Newest Generation of Judicial Clerks and Attorneys, Federal Magistrate Judges Association Bulletin, Sept. 2019. Copy supplied.

Quarterly Northwest Legal Update, Federal Bar Association Indian Law Section Newsletter, 2013 – 2014, 2016 – 2017. Copies of the Spring 2016 and Spring

2014 newsletters supplied. I am unable to obtain a copy of the other newsletters from this time period. The Federal Bar Association publishes the Indian Law Section Newsletter. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201. The Indian Law Section Newsletter's Quarterly Northwest Legal Update contains summaries of cases decided since the publication of the prior newsletter by courts in the Pacific Northwest.

Challenge to Oklahoma's American Indian Arts and Crafts Sales Act, Native American Legal Update, Foster Pepper, Nov. 30, 2016. Copy supplied.

Word from the Chair, Washington State Bar Association Indian Law Section Newsletter (Vol. 24, No. 1, Summer 2016). Copy supplied.

Word from the Chair, Washington State Bar Association Indian Law Section Newsletter (Vol. 23, No. 2, Fall 2015). Copy supplied.

9th Circuit denies immunity for individual tribal employees, Native American Legal Update, Foster Pepper, Sept. 14, 2012 Copy supplied.

Washington State Supreme Court holds that tribes are not indispensable parties in challenge to state-tribal fuel tax compacts, Native American Legal Update, Foster Pepper, Aug. 30, 2012. Copy supplied.

Suquamish Tribe sues over Navy wharf, Native American Legal Update, Foster Pepper, Aug. 29, 2012. Copy supplied.

Muscogee Creek Nation Demands Halt to Poarch Band Wetumpka Casino Project, Native American Legal Update, Foster Pepper, Aug. 14, 2012. Copy supplied.

South Carolina Supreme Court returns adopted child to Cherokee father under ICWA, Native American Legal Update, Foster Pepper, Aug. 2, 2012. Copy supplied.

Treasury and IRS Announce New Guidance for Tribal Economic Development Bonds, Native American Legal Update, Foster Pepper, July 20, 2012. Copy supplied.

Northwest Tribes Hold Climate Change Conference, Native American Legal Update, Foster Pepper, July 17, 2012. Copy supplied.

Western Shoshone continue battle to save sacred site, Native American Legal Update, Foster Pepper, July 12, 2012. Copy supplied.

Department of Interior files counterclaim against Cherokee Nation in freedmen

suit, Native American Legal Update, Foster Pepper, July 3, 2012. Copy supplied.

Indian Health Care Improvement Act survives along with Affordable Care Act, Native American Legal Update, Foster Pepper, June 29, 2012. Copy supplied.

Co-author, Indian Law, Washington Lawyers Practice Manual, 2009. I am unable to obtain a copy of this material. The King County Bar Association publishes the Washington Lawyers Practice Manual. The King County Bar Association is located at 1200 5th Avenue, Suite 700, Seattle, Washington 98101. The Washington Lawyers Practice Manual is a legal reference set that is updated annually and contains current information regarding various areas of law. The Manual's Chapter on Indian Law describes current law on tribal sovereign immunity, jurisdiction over civil and criminal cases involving Indians and Indian country, and the Indian Child Welfare Act.

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.

Letter from Northwest Tribal Court Judges Association to Washington State Bar Association Mandatory Malpractice Insurance Task Force (Sept. 12, 2018). Copy supplied.

Washington State Bar Association Indian Law Section Executive Committee Letter to the Washington State Bar Association Board of Governors Regarding a Proposed WSBA Policy re Religious Practices at WSBA Events, Including Indian Law Section Events (July 20, 2016). Copy supplied.

Washington State Bar Association Indian Law Section Executive Committee Letter to the Washington State Bar Association Sections Policy Workgroup Regarding Feedback on Workgroup's Section Memorandum and Policy Documents (Jan. 22, 2016). Copy supplied.

National American Indian Court Judges Association, Res. No. 2015-01, *Resolution to Support the Recommendations of the Indian Law and Order Commission* (Oct. 24, 2015). Copy supplied.

National American Indian Court Judges Association, Res. No. 2015-02, *Resolution to Support the Recommendation of the Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence* (Oct. 24, 2015). Copy supplied.

c. Supply four (4) copies of any testimony, official statements or other

communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

As a Commissioner on the Washington State Gambling Commission, I have attended monthly public meetings since June 2020. During my tenure, the Commission has issued two administrative orders:

> Order of Default (Dec. 29, 2020), available at https://www.wsgc.wa.gov/sites/default/files/public/regulation/admin-orders/2020-00673%20-%20Gibson%2C%20Tifannie%20-%20Order.pdf.
>
> Order of Default (Oct. 20, 2020), available at https://www.wsgc.wa.gov/sites/default/files/public/regulation/admin-orders/2020-00633%20-%20Bob%2C%20Russell%20-%20Order.pdf.

The minutes of the Washington State Gambling Commission meetings are available at the Washington State Gambling Commission's past public meeting archive: https://www.wsgc.wa.gov/commission/public-meeting-archive.

> March 2021 minutes are available here: https://www.wsgc.wa.gov/sites/default/files/public/agenda/2017/April%20Commission%20Packet_1.pdf.
>
> February 2021 and February 24, 2021 Special Commission Meeting minutes are available here: https://www.wsgc.wa.gov/sites/default/files/public/agenda/2017/March%20Commission%20Packet_1.pdf.
>
> January 2021 minutes are available here: https://www.wsgc.wa.gov/sites/default/files/public/agenda/2017/February%20Commission%20Packet_1.pdf.
>
> December 2020 minutes are available here: https://www.wsgc.wa.gov/sites/default/files/public/agenda/2017/January%20Commission%20Packet%20-%20revised_0.pdf
>
> November 2020 minutes are available here: https://www.wsgc.wa.gov/sites/default/files/public/agenda/2017/December%20Commission%20Packet_1.pdf.
>
> October 2020 minutes are available here: https://www.wsgc.wa.gov/sites/default/files/public/agenda/2017/11%202020%20Commission%20Packet_2.pdf.
>
> September 2020 minutes are available here:

https://www.wsgc.wa.gov/sites/default/files/public/agenda/2017/October%20Commission%20Packet_0.pdf

August 2020 minutes are available here: https://www.wsgc.wa.gov/sites/default/files/public/agenda/2017/September%20Commission%20Packet_2.pdf.

July 2020 minutes are available here: https://www.wsgc.wa.gov/sites/default/files/public/agenda/2017/August%20commission%20packet_F.pdf.

June 2020 minutes are available here: https://www.wsgc.wa.gov/sites/default/files/public/agenda/2017/Commission%20Packet_10.pdf.

Public Hearing on Gubernatorial Appointments, including SGA 9174 – Lauren King, Member, Gambling Commission, Before the Washington State Senate Labor, Commerce & Tribal Affairs Committee (Mar. 18, 2021), https://www.tvw.org/watch/?eventID=2021031296 (my testimony begins at approximately 32 minutes).

Listed as a "Prominent Tribal Community Leader" endorsing Joe Biden for President (Oct. 15, 2020). Copy of news coverage of the list supplied.

Letter from various lawyers and law professors to Attorney General Jeff Sessions (Feb. 23, 2017). Copy supplied.

Letter from various lawyers to House Speaker Paul Ryan (Nov. 23, 2016). Copy supplied.

Listed as a "Leader in the Judiciary, Government, and the Community" endorsing King County Superior Court Judge David Keenan (2016). 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.

April 9, 2021: Moderator, "Ethics Session," Federal Bar Association Indian Law Section, virtual event. Copy of remarks supplied.

April 8, 2021: Moderator, "McGirt: The Aftermath," Federal Bar Association Indian Law Section, virtual event. Copy of remarks supplied.

April 8, 2021: Moderator, "Sports Betting: Exploring a New Landscape in Tribal Gaming," Federal Bar Association Indian Law Section, virtual event. Copy of remarks supplied.

January 19, 2021: Guest lecturer, "Contemporary Issues in Native American Law: *McGirt v. Oklahoma*," Seattle University School of Law, virtual event. PowerPoint supplied.

January 5, 2021: Guest lecturer, "Property Law: Native American Law," University of Washington School of Law, virtual event. PowerPoint supplied.

November 13, 2020: Speaker, "Tribal Sovereignty and *McGirt v. Oklahoma*," Oregon State Bar Indian Law Section, virtual event. PowerPoint supplied.

September 15, 2020: Speaker, "The Saga of EPA and Washington's Human Health Criteria Standard," Tribal Water Law Conference, CLE International, virtual event. PowerPoint supplied.

May 8, 2020 and May 11, 2020: Panelist, "Tribal Employment Law Challenges: Returning Employees to the Workplace," Foster Garvey, P.C., virtual event. PowerPoint supplied.

October 25, 2019: Panelist, "*Murphy v. Sharp*: Reservation disestablishment in the new Supreme Court," Oregon State Bar Indian Law Section CLE, Eugene, Oregon. PowerPoint supplied.

October 4, 2019: Speaker, "Intersection of Municipal Law and Indian Law," 62nd Annual Washington State Association of Municipal Attorneys Fall Conference, Walla Walla, Washington. PowerPoint supplied.

October 3, 2019: Speaker, "Tribal Treaty Rights and Hydropower: the Culverts Case," The Seminar Group, Seattle, Washington. PowerPoint supplied.

July 23, 2019: Panelist, "Millennials and The Judiciary: Who You Think They Are, Who They Really Are, and Why We Should Care," Ninth Circuit Judicial Conference, Spokane, Washington. PowerPoint supplied.

June 6, 2019: Speaker, "Getting to Five in the Roberts Court: The New Supreme Court Landscape for Tribal Nations," Sovereignty Symposium, Oklahoma City, Oklahoma. PowerPoint supplied.

April 25, 2019: Speaker, "Software as a Service Agreements," Washington State Association of Municipal Attorneys Spring Conference, Vancouver, Washington.

PowerPoint supplied.

April 12, 2019: Moderator, "Supreme Court Strategy: What Tribes Should Know," Federal Bar Association Indian Law Section, Albuquerque, New Mexico. Notes supplied.

April 12, 2019: Moderator, "Treaty Fishing Rights and Sovereign Immunity at the Supreme Court," Federal Bar Association Indian Law Section, Albuquerque, New Mexico. I introduced speakers for this panel. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

April 11, 2019: Moderator, "Elections 2020: Campaigns and Elections in Indian Country," Federal Bar Association Indian Law Section, Albuquerque, New Mexico. I introduced speakers for this panel. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

February 7, 2019: Panelist, "Recent Appellate Cases Affecting Tribes: Cougar Den," 24th Annual Western Indian Gaming Conference & Trade Show, Funner, California. PowerPoint supplied.

January 29, 2019: Panelist, "Recent Decisions: Tribal Water & Treaty Rights in the U.S. Supreme Court: *United States v. Washington*," 6th Annual Advanced Conference on Tribal Water in California, Law Seminars International, Funner, California. PowerPoint supplied.

November 1, 2018: Speaker, "Recent Tribal Lands Decisions," Rainier Club Legal Roundtable, Seattle, Washington. PowerPoint supplied.

October 16, 2018: Speaker, "Hirst, Foster, Boldt, and Beyond: Indian Law Preceding RCW Chapter 90.94," American Water Rights Association Washington State Conference, Seattle, Washington. PowerPoint supplied.

October 11, 2018: Speaker, "Developing Litigation Claims: *Winans*-Based Fishery Claims," 7th Annual Tribal Water Law Conference, CLE International, Scottsdale, Arizona. PowerPoint supplied.

September 28, 2018: Guest Lecturer, "*United States v. Washington*, Subproceeding 09-1," Seattle University School of Law, Seattle, Washington. PowerPoint supplied.

September 24, 2018: Panelist, "Defined Terms in Federal Indian Law," Washington State Courts Judicial Conference, Yakima, Washington. PowerPoint supplied.

April 6, 2018: Moderator, "Ethics in the Trump Era," Federal Bar Association Indian Law Section, Scottsdale, Arizona. I introduced speakers for this panel. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

April 6, 2018: Moderator, "Treaty Rights & Subsistence Rights: Do Treaties Have Teeth?", Federal Bar Association Indian Law Section, Scottsdale, Arizona. I introduced speakers for this panel. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

April 6, 2018: Speaker, "*United States v. Washington*, Subproceeding 09-1," Federal Bar Association Indian Law Section, Scottsdale, Arizona. PowerPoint supplied.

April 5, 2018: Moderator, "30 Years Later: IGRA and Economic Development," Federal Bar Association Indian Law Section, Scottsdale, Arizona. I introduced speakers for this panel. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

April 5, 2018: Moderator, "IHS and the Opioid Epidemic," Federal Bar Association Indian Law Section, Scottsdale, Arizona. I introduced speakers for this panel. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

June 8, 2017: Speaker, "Tribal Access Program," Sovereignty Symposium, Oklahoma City, Oklahoma. PowerPoint supplied.

June 7, 2017: Speaker, "*United States v. Washington*, Subproceeding 09-1," Sovereignty Symposium, Oklahoma City, Oklahoma. PowerPoint supplied.

April 20, 2017: Speaker, "Hickory Ground: Alabama Homelands, Litigation and Cultural Preservation," Muscogee (Creek) Nation Bar Association, Tulsa, Oklahoma. PowerPoint supplied.

December 8, 2016: Speaker, "Litigation Update: Labor Law and Tribal Gaming," The Seminar Group, Seattle, Washington. PowerPoint supplied.

December 6, 2016: Speaker, "Paragraph 25(a)(6)," *United States v. Washington* Continuing Learning and Education Seminar, Tulalip, Washington. PowerPoint supplied.

June 9, 2016: Panelist, "The Concerns of the Judiciary – A Focus on Mutual Concerns of the State, Federal, and Tribal Bench," Sovereignty Symposium,

Oklahoma City, Oklahoma. I spoke about the background of the Northwest Intertribal Court System and the services it offers. I have no notes, transcript, or recording. The address for the Sovereignty Symposium is Oklahoma Judicial Center, 2100 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

June 8, 2016: Panelist, "When Can Tribal Officials/Officers be Sued?", Sovereignty Symposium, Oklahoma City, Oklahoma. PowerPoint supplied.

May 12, 2016: Program Chair, "Introduction of Traditional Opening Program" and "Welcome and Introductions by Program Chair," Annual Washington State Bar Association Indian Law Section Seminar, Seattle, Washington. I gave an introduction of the traditional opening program and provided a welcome statement and introduction to the program at the beginning of the seminar. I have no notes, transcript, or recording. The address for the Washington State Bar Association is 1325 Fourth Avenue, Suite 600, Seattle, Washington 98101.

March 7, 2016: Guest lecturer, "*United States v. Washington*, Subproceeding 09-1," University of Washington Indian Law Seminar, Seattle, Washington. PowerPoint supplied.

May 15, 2014: Speaker, "Tales from the Cryptocurrency," Northwest Summit for Financial Professionals, Seattle, Washington. PowerPoint supplied.

May 7, 2014: Speaker, "Defending Tribal Governments," The Seminar Group, Seattle, Washington. PowerPoint supplied.

November 20, 2013: Speaker, "Tribal Sovereignty, Strategic Planning, and Economic Development," MyLawCLE, virtual event. PowerPoint supplied.

November 7, 2013: Speaker, "Website Audits: IP Issues, Terms of Use and Privacy Policies," King County Bar Association, Seattle, Washington. PowerPoint supplied.

August 22, 2013: Speaker, "Virtual Currency," Washington Interactive Network, Seattle, Washington. PowerPoint supplied.

May 23, 2013: Speaker, "Protecting Native Artisans Through Non-Profit and IP Law," Washington State Bar Association Indian Law Section, Seattle, Washington. PowerPoint supplied.

April 30, 2013: Moderator, "Expert Gaming & Mobile Panel," ZINO Society, Bellevue, Washington. The panel I moderated discussed issues facing startup game developers, in-game monetization issues, and how the game industry is changing. I have no notes, transcript, or recording. The address for ZINO Society was 4130 First Avenue South, Suite B, Seattle, Washington 98134. ZINO Society no longer exists.

February 27, 2013: Speaker, "Protecting Native Artisans Through Non-Profit and IP Law," Foster Pepper PLLC, Seattle, Washington. PowerPoint supplied.

July 27, 2012: Speaker, "Legal Issues for Startups," SURF Incubator, Seattle, Washington. PowerPoint 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.

Grace Dixon, *Ala. Tribe Need Not Face Burial Grounds Suit, Judge Rules*, Law360, Mar. 16, 2021. Copy supplied.

Class Notes, UVA Lawyer, Fall 2020. Copy supplied.

This Land Podcast, *The Ruling*, Crooked Media, July 23, 2020, available at https://crooked.com/podcast/the-ruling (I speak at various times during this podcast, starting at 9:54 and ending at 24:24).

Jeremie Poplin Podcast, *Tribal Jurisdiction Decision*, Talk Radio AM 1170, July 10, 2020, available at https://post.futurimedia.com/kfaqam/playlist/25/listen-2400.html?cb=1594398366.473341&fbclid=IwAR35hd8jq4k2czGiPsyK7lQSWiz8Hrc12tEtWWNCe-RtlVWaoaMag0wNn4w.

Defending sacred places, Native America Calling Podcast, Aug. 12, 2019, available at https://nativeamericacalling.com/monday-august-12-2019-defending-sacred-places (my segment is from 48:35 to 55:58).

40 Under 40 Awards Gala, National Center for American Indian Enterprise Development, July 5, 2019, available at https://www.facebook.com/NCAIED/videos/596121464547571.

Ed Silverstein, *Alleged Mistreatment of Muscogee Sacred Site Leads to More Alabama Litigation Over Wind Creek Casino*, Casino.org, June 10, 2019. Copy supplied.

Stephen Lanzi, *Auburn University listed as defendant in lawsuit refiled by Muscogee (Creek) Nation*, Auburn Plainsman, June 6, 2019. Copy supplied.

Associated Press, *Oklahoma Creeks renew lawsuit over Alabama casino*, June 5, 2019. Copy supplied (reprinted in multiple outlets).

Victory at the Supreme Court for Quileute and Quinault in Ocean Fishing Area Case, Forks Forum, Oct. 11, 2018. Copy supplied.

King named as a Native American 40 under 40 award recipient, Bayak/The Talking Raven, Oct. 2018. Copy supplied.

Victory! Supreme Court Order for Quileute and Quinault in Ocean Fishing Area Case, Bayak/The Talking Raven, Oct. 2018. Copy supplied.

Jimmy Hoover, *7 High Court Petitions From Last Month You Shouldn't Miss*, Law360, June 1, 2018. Copy supplied.

Adam Lidgett, *9th Circ. Wrongly Expanded Fishing Rights Treaty, Tribe Says*, Law360, May 25, 2018. Copy supplied.

Darren Delaune, *Citizen helps tribes win case*, The Mvskoke News, Feb. 1, 2018. Copy supplied.

Adam Lidgett, *Tribes Win Bid To Pause Burial Grounds Suit Until April*, Law360, Jan. 16, 2018. Copy supplied.

Adam Lidgett, *Let Fishing Rights Ruling Stand, Wash. Tribes Tell 9th Circ.*, Law360, Dec. 15, 2017. Copy supplied.

Adam Lidgett, *Tribes Want Burial Grounds Suit Paused For Deal Talks*, Law360, Dec. 6, 2017. Copy supplied.

October in the news, Native America Calling Podcast, Oct. 27, 2017, available at https://soundcloud.com/native-america-calling/10-27-17-october-in-the-news (my segment is from 42:12 to 50:28).

RJ Vogt, *Whales Are Fish and Tribal Borders Need Fix, 9th Circ. Says*, Law360, Oct. 23, 2017. Copy supplied.

Christine Powell, *Wash. Tribes Ask 9th Circ. To Uphold Fishing Rights Ruling*, Law360, Oct. 12, 2016. Copy supplied.

Christine Powell, *Tribe Asks 9th Circ. To Undo Fishing Rights Ruling*, Law360, July 7, 2016. Copy supplied.

Eric Kroh, *Rising Star: Foster Pepper's Lauren King*, Law360, May 5, 2016. Copy supplied (reprinted in multiple outlets).

Mary Rekosh, *A Strong Advocate for Native American Rights*, UVA Lawyer, Spring 2016. Copy supplied.

Darren DeLaune, *Citizen helps tribe win landmark case*, Muscogee Nation News, Jan. 1, 2016. Copy Supplied.

Vidya Kauri, *5 Things Great Lawyers do to Keep Clients Coming Back*, Law360, Dec. 3, 2015. Copy supplied.

Vidya Kauri, *Wash. Tribes Win Contested Fishing Area in Pacific Ocean*, Law360, Aug. 28, 2015. Copy supplied.

Federal judge rules on Quileute, Quinault fishing grounds after Makah lawsuit, Peninsula Daily News, July 16, 2015. Copy supplied.

Greg Guedel, *Northwest Tribes Win Major Fishing Rights Ruling*, Native American Legal Update, Foster Pepper, July 13, 2015. Copy supplied.

Caroline Simson, *Wash. Tribes' Fishing Rights Reach Far Offshore, Judge Says*, Law360, July 10, 2015. Copy supplied.

Notice: July 9, 2015, Quileute Tribe, July 9, 2015. Copy supplied.

Caroline Simson, *Tribes Say Fishing Rights Exclude Sea Mammals*, Law360, April 17, 2015. Copy supplied.

Class Notes, UVA Lawyer, Fall 2009. 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.

2013 – present
Northwest Intertribal Court System
20818 44th Avenue West, Suite 120
Lynnwood, Washington 98036
Pro Tem Appellate Judge

I have been a pro tem appellate judge with the Northwest Intertribal Court System ("NICS") since 2013. Various Native American tribes contract with NICS to provide judges for their tribal courts. *See* NICS Member Tribes, https://www.nics.ws/tribes.html. Tribes often do not need full time appellate judges, so NICS appellate judges effectively serve as pro tem judges for NICS tribes. To become a NICS judge, applicants submit a letter of interest, resume, three writing samples, and references to NICS. *See* NICS Judicial Services Description, https://www.nics.ws/judicial.html. However, judges are assigned to cases based upon the requirements in the subject tribe's tribal code. For example, some (but not all) tribes require that judges be enrolled in a federally recognized tribe. Tribal courts exercise jurisdiction in accordance with applicable tribal and federal law.

a. Approximately how many cases have you presided over that have gone to verdict

or judgment?

Because I have not been a trial judge, I have not presided over any cases as a trial judge. As an appellate judge with the Northwest Intertribal Court System, I have participated in the disposition of 11 matters that have resulted in an opinion.

i. Of these cases, approximately what percent were:

jury trials:	N/A
bench trials:	N/A

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.

As an appellate judge, I have served on three-judge panels. Usually, one judge writes the initial draft of the panel's opinion, but all three judges contribute to the final draft. Therefore, I have provided citations for all opinions issued by panels on which I have served.

Opinions I authored:

Kalispel Tribe et al. v. Bisson, 18 NICS App. 54 (December 2020) – Kalispel Tribal Court of Appeals

In Re Anderson, 18 NICS App. 47 (December 2020) – Squaxin Island Tribal Court of Appeals

In Re Anderson, 18 NICS App. 13 (April 2020) – Squaxin Island Tribal Court of Appeals

Opinions to which I contributed:

Port Gamble S'Klallam Tribe et al. v. Lexington Insurance Company et al., Case No. POR-AP-2021-0001, 21 NICS App. __ (April 28, 2021) – Port Gamble S'Klallam Tribal Court of Appeals

In Re Welfare of M.G.G., Case No. 2020-001-AP-IC, 18 NICS App. (February 10, 2020) (unreported) – Kalispel Tribal Court of Appeals

Teeman v. Dick, Case No. PR-001-17, 15 NICS App. (May 23, 2017) (unreported) – Burns Paiute Tribal Court of Appeals

Shoalwater Bay Indian Tribe v. Shipman, Case No. SHO-2015-CV-HS-0034, 12 NICS App. 65 (February 22, 2016) (unreported) – Shoalwater Bay Tribal Court of Appeals

In Re A.A.F., 13 NICS App. 28 (July 2015) – Port Gamble S'Klallam Tribal Court of Appeals

In re the Custody of P.M., 12 NICS App. 76 (July 2014) – Port Gamble S'Klallam Tribal Court of Appeals

Shoalwater Bay Indian Tribe v. Zirbel, Case No. SHO-2013-CV-HS-0023, 12 NICS App. 97 (December 1, 2014) (unreported) – Shoalwater Bay Tribal Court of Appeals

In re the Welfare of J.J., Case No. MUC-AP-12/13-125, 12 NICS App. 95 (May 21, 2014) (unreported) – Muckleshoot Tribal Court of Appeals

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).

Reported cases listed below can be found in the Northwest Intertribal Court System's online database of tribal court appellate opinions: https://www.codepublishing.com/WA/NICS.

1. *Port Gamble S'Klallam Tribe et al. v. Lexington Insurance Company et al.*, Case No. POR-AP-2021-0001, 21 NICS App. __ (April 28, 2021) – Port Gamble S'Klallam Tribal Court of Appeals

The Port Gamble S'Klallam Tribe and Noo-Kayet Development Corporation sued various insurers in a dispute concerning an "all risk" insurance policy. The insurers contended that the trial court erred in denying their motion to dismiss the complaint. Three of the insurers filed a motion requesting my recusal on the bases that (1) I am a citizen of a tribe that was engaged in litigation with the insurers in a separate forum; and (2) attorneys at my law firm were handling matters adverse to one of the insurers. Because I voluntarily decided to recuse myself out of an abundance of caution with respect to the latter proffered basis for recusal, the Court of Appeals granted the insurers' motion. However, the Court of Appeals rejected the insurers' argument that I was required to recuse on the basis that I am a citizen of a tribe that was engaged in litigation with the insurers in a different forum in Oklahoma, holding that such facts failed to establish a reasonable basis to question my impartiality. Copy of opinion supplied.

Appellants' Counsel:

Lexington Insurance Company

Richard J. Doren, Matthew A. Hoffman, and Ryan S. Appleby
Gibson, Dunn & Crutcher
333 South Grand Avenue
Los Angeles, CA 90071-3197
Mr. Doren: (213) 229-7038
Mr. Hoffman: (213) 229-7584
Mr. Appleby: (213) 229-7353

Aspen Insurance UK Ltd.

Thomas Lether and Eric J. Neal
Lether Law Group
1848 Westlake Avenue North, Suite 100
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Mr. Lether: (206) 467-5444, extension 101
Mr. Neal: (206) 467-5444, extension 102

Hallmark Specialty Insurance and Aspen Specialty Insurance Company

Charles R. Hostnik
Curiale Hostnik PLLC
6914 Lakewood Drive West, Suite Al
Tacoma, WA 98467
(253) 201-6813

Thomas Lether and Eric J. Neal
Lether Law Group
1848 Westlake Avenue North, Suite 100
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Homeland Insurance Company of New York

Kristin Cummings and Shannon O'Malley
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Dallas, TX 75202
Ms. Cummings: (214) 749-4218
Ms. O'Malley: (214) 749-4220

Michael Ricketts

Gordon Thomas Honeywell
One Union Square
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Seattle, WA 98101
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Mr. Cardosi:
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Boston, MA 02199
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Respondents' Counsel: Port Gamble S'Klallam Tribe

Steven Moe
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(360) 297-2646

Gabriel Galanda
Galanda Broadman, PLLC
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Noo-Kayet Development Corporation

Vernie C. ("Skip") Durocher, Jr., Katie Pfeifer, and Stephen Weingold
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498
Mr. Durocher: (612) 340-7855
Ms. Pfeifer: (612) 492-6947
Mr. Weingold: (303) 629-3425

2. *Kalispel Tribe et al. v. Bisson*, 18 NICS App. 54 (December 2020) – Kalispel Tribal Court of Appeals

Bisson filed a tort complaint against a police officer and other officials of the Kalispel Tribe arising from a car accident involving the police officer's vehicle. The Kalispel Tribe's Tort Claims Code contained a limited waiver of the Tribe's immunity for tort claims brought in accordance with the Code. The Code specified a deadline for filing a tort complaint but did not specify a deadline for service. The Kalispel Tribe argued that the plaintiff did not timely serve his complaint in accordance with the Code, and the Tribe therefore retained sovereign immunity from the lawsuit. The Court of Appeals held that the complaint was timely served even under the strictest construction of the possible deadline for service under the Tribal Code because it was subject to a 30-day tolling order issued by the trial court at the onset of the COVID-19 pandemic.

Appellants' Counsel: Jerald Conner Sabin and Donald J. Colistro
Kalispel Legal Department
934 South Garfield Road
Airway Heights, WA 99001
Mr. Sabin: (509) 789-7610
Mr. Colistro: (509) 789-7623

Respondent's Counsel: Robert M. Seines for Appellee Bisson
P.O. Box 313
Liberty Lake, WA 99019-0313
(509) 844-3723

3. *In Re Anderson*, 18 NICS App. 47 (December 2020) – Squaxin Island Tribal Court of Appeals

In a prior appeal (discussed below), the Court of Appeals remanded this case to the trial court with instructions to apply the correct standard of review to the Squaxin Island Tribe Workers Compensation Plan Committee's decision affirming Tribal First's closure of Anderson's workers compensation claim. Tribal First argued that the trial court erred by failing to perform the required

review. Anderson contended for the first time in this appeal that the Court of Appeals lacked jurisdiction over appeals relating to the Tribe's Workers Compensation Plan. The Court of Appeals held that the appellate court lacked jurisdiction over the case because the Squaxin Island Tribal Workers Compensation Plan did not provide for appeals beyond the trial court level, and the Squaxin Island Tribal Code incorporated the Plan into its law. The Court of Appeals therefore vacated its prior opinion.

Appellant's Counsel:	James L. Gress Gress, Clark, Young and Schoepper 8705 Southwest Nimbus Avenue, Suite 240 Beaverton, OR 97008-7154 (971) 285-3525
Respondent's Counsel:	Cina Littlebird and Jennifer Yogi Northwest Justice Project 401 2nd Avenue South, Suite 407 Seattle, WA 98104-3811 Ms. Littlebird: (206) 707-0919 Ms. Yogi: (206) 464-1519

4. *In Re Anderson*, 18 NICS App. 13 (April 2020) – Squaxin Island Tribal Court of Appeals

Tribal First appealed the trial court's reversal of the Squaxin Island Tribe Workers Compensation Plan Committee's decision affirming Tribal First's closure of Anderson's workers compensation claim. The Court of Appeals held that the trial court applied an incorrect standard of review by erroneously treating the Squaxin Island Tribe Workers Compensation Plan Committee as the factfinder, when it was the Tribal First claims administrator who served as the factfinder and initial decisionmaker. The Court of Appeals held that the trial court also committed an error of law in ordering reinstatement of appellee's claim, because applicable law did not give the trial court authority to order such relief. The Court of Appeals reversed the trial court's decision and remanded for further proceedings.

Appellant's Counsel:	James L. Gress Gress, Clark, Young and Schoepper 8705 Southwest Nimbus Avenue, Suite 240 Beaverton, OR 97008-7154 (971) 285-3525
Respondent's Counsel:	Cina Littlebird and Jennifer Yogi Northwest Justice Project 401 2nd Avenue South, Suite 407 Seattle, WA 98104-3811 Ms. Littlebird: (206) 707-0919

Ms. Yogi: (206) 464-1519

Counsel for the Squaxin Island Tribe, Amicus Curiae:

LeeAnne Kane
Squaxin Island Tribe Legal Department
3711 Southeast Old Olympic Highway
Shelton, WA 98584-7734
(360) 432-1771, extension 2

5. *In Re Welfare of M.G.G.*, Case No. 2020-001-AP-IC, 18 NICS App. (February 10, 2020) (unreported) – Kalispel Tribal Court of Appeals

The Kalispel Tribe argued that the trial court erred in denying a motion for continuance in parallel trial court proceedings involving a youth in need of care case and a long-term guardianship case. During the pendency of the appeal, the trial court reset the hearings in both cases. The Court of Appeals held that the appeal was moot. Copy of opinion supplied.

Appellant's Counsel: Jerald Conner Sabin and Ashley Stetson
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Airway Heights, WA 99001
Mr. Sabin: (509) 789-7610
Ms. Stetson: (509) 789-7608

Respondent's Counsel: Elizabeth R. Tereno
Law Office of Elizabeth Tereno
1818 West Francis, Unit 142
Spokane, WA 99205
(509) 720-6999

6. *Teeman v. Dick*, Case No. PR-001-17, 15 NICS App. (May 23, 2017) (unreported) – Burns Paiute Tribal Court of Appeals

Ms. Teeman argued that the trial court erred when it replaced her as administrator of an estate with Mr. Dick. Because Ms. Teeman did not provide proof of service of the notice of appeal, the Court of Appeals issued an Order to Show Cause ordering Ms. Teeman to provide proof that the respondent had been timely and properly served with such notice. Because Ms. Teeman's "Proof of Service" indicated that the respondent was not timely served in accordance with the Burns Paiute Tribal Code, the Court of Appeals dismissed the appeal and ordered that the appellant pay all costs of the appeal. Copy of opinion supplied.

Appellant Teeman was not represented by counsel in this appeal.

Respondent did not appear in the appeal.

7. *Shoalwater Bay Indian Tribe v. Shipman*, Case No. SHO-2015-CV-HS-0034, 12 NICS App. 65 (February 22, 2016) (unreported) – Shoalwater Bay Tribal Court of Appeals

The appellant challenged his eviction from tribal housing for failure to pay rent. At oral argument, a spokesperson appeared on the appellant's behalf and stated that he could pay the appellant's late rent. The Court of Appeals informed the parties that it would delay any decision for approximately a month and a half for the parties to explore settlement. In February 2016, the Court of Appeals dismissed the appeal following the parties' settlement of the matter. Copy of opinion supplied.

Appellant's Counsel: A lay spokesperson represented Mr. Shipman.

Respondent's Counsel: Tim Rybka
Prosecutor, Shoalwater Bay Tribe
P.O. Box 2733
Ferndale, WA 98248-2733
(360) 318-4864

8. *In Re A.A.F.*, 13 NICS App. 28 (July 2015) – Port Gamble S'Klallam Tribal Court of Appeals

The mother of an enrolled minor tribal member filed a petition for writ of mandamus and writ of prohibition in the Court of Appeals seeking to vacate a contempt order issued by the trial court and to prohibit the trial court from making future findings of contempt on the existing facts. The trial court had issued an order holding the mother in contempt for removing the child from the State of Washington in violation of the parenting plan issued by the trial court. Because the mother failed to timely appeal the original contempt ruling and maintained the right to appeal any future contempt rulings, the Court of Appeals held that the mother failed to establish a clear ministerial duty to be compelled through issuance of a writ, and that because the mother had adequate remedies at law, the Court of Appeals did not need to decide the threshold question of whether it had authority to issue writs. The Court of Appeals denied the petition for writ.

Appellant's Counsel: Brian Kilgore
6332 31st Avenue Northeast, Suite B
Tulalip, WA 98271-7461
(360) 716-4785

David Howard
500 Yale Avenue North, Suite 140
Seattle, WA 98109-5680

(206) 234-7750

Respondent's Counsel: Mr. Fulton represented himself *pro se*.

Counsel for Intervenor-Appellant Port Gamble S'Klallam Tribe:

Tim Rybka
Prosecutor, Port Gamble S'Klallam Tribe
P.O. Box 2733
Ferndale, WA 98248-2733
(360) 318-4864

9. *In re the Custody of P.M.*, 12 NICS App. 76 (July 2014) – Port Gamble S'Klallam Tribal Court of Appeals

The appellant challenged the visitation schedule in the parenting plan ordered by the trial court. The Court of Appeals adopted Washington State courts' standard for review of a trial court's orders regarding visitation schedules under a parenting plan. Because the trial court's findings were supported by substantial evidence and the trial court applied the relevant factors in determining the visitation schedule, the Court of Appeals held that the trial court did not abuse its discretion and affirmed its order.

The parties appeared *pro se* in this appeal.

10. *In re the Welfare of J.J.*, Case No. MUC-AP-12/13-125, 12 NICS App. 95 (May 21, 2014) (unreported) – Muckleshoot Tribal Court of Appeals

The father of an enrolled minor tribal member challenged the Permanent Plan Order issued by the trial court. The respondent tribe filed a motion to dismiss the appeal on the grounds that it was not timely. Because the appeal was not timely filed in accordance with the requirements of the Muckleshoot Tribal Code, the Court of Appeals dismissed the appeal. Copy of opinion supplied.

Appellant's Counsel: Appellant represented himself *pro se*.

Respondent's Counsel: Annie Harlan
Prosecutor, Muckleshoot Indian Tribe
3815 South Othello Street, Suite 100
Seattle, WA 98118-3510
(253) 220-7710

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.

Reported cases listed below can be found in the Northwest Intertribal Court System's online database of tribal court appellate opinions: https://www.codepublishing.com/WA/NICS.

Opinions I authored:

1. *Kalispel Tribe et al. v. Bisson*, 18 NICS App. 54 (December 2020) – Kalispel Tribal Court of Appeals

Appellants' Counsel:	Jerald Conner Sabin and Donald J. Colistro Kalispel Legal Department 934 South Garfield Road Airway Heights, WA 99001 Mr. Sabin: (509) 789-7610 Mr. Colistro: (509) 789-7623
Respondent's Counsel:	Robert M. Seines P.O. Box 313 Liberty Lake, WA 99019-0313 (509) 844-3723

2. *In Re Anderson*, 18 NICS App. 47 (December 2020) – Squaxin Island Tribal Court of Appeals

Appellant's Counsel:	James L. Gress Gress, Clark, Young and Schoepper 8705 Southwest Nimbus Avenue, Suite 240 Beaverton, OR 97008-7154 (971) 285-3525
Respondent's Counsel:	Cina Littlebird and Jennifer Yogi Northwest Justice Project 401 2nd Avenue South, Suite 407 Seattle, WA 98104-3811 Ms. Littlebird: (206) 707-0919 Ms. Yogi: (206) 464-1519

3. *In Re Anderson*, 18 NICS App. 13 (April 2020) – Squaxin Island Tribal Court of Appeals

Appellant's Counsel:	James L. Gress Gress, Clark, Young and Schoepper 8705 Southwest Nimbus Avenue, Suite 240 Beaverton, OR 97008-7154 (971) 285-3525

Respondent's Counsel: Cina Littlebird and Jennifer Yogi
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Opinions to which I contributed:

4. *Port Gamble S'Klallam Tribe et al. v. Lexington Insurance Company et al.*, Case No. POR-AP-2021-0001, 21 NICS App. __ (April 28, 2021) – Port Gamble S'Klallam Tribal Court of Appeals

Appellants' Counsel: Lexington Insurance Company

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Mr. Doren: (213) 229-7038
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Hallmark Specialty Insurance and Aspen Specialty Insurance Company

Charles R. Hostnik

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Homeland Insurance Company of New York

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Mr. Weingold: (303) 629-3425

5. *In Re Welfare of M.G.G.*, Case No. 2020-001-AP-IC, 18 NICS App. (February 10, 2020) (unreported) – Kalispel Tribal Court of Appeals

A copy of the Court of Appeals' opinion in this case is supplied.

Appellant's Counsel: Jerald Conner Sabin and Ashley Stetson
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6. *Teeman v. Dick*, Case No. PR-001-17, 15 NICS App. (May 23, 2017) (unreported) – Burns Paiute Tribal Court of Appeals

A copy of the Court of Appeals' opinion in this case is supplied.

Appellant Teeman represented herself *pro se*.

Respondent did not appear in the appeal.

7. *Shoalwater Bay Indian Tribe v. Shipman*, Case No. SHO-2015-CV-HS-0034, 12 NICS App. 65 (February 22, 2016) (unreported) – Shoalwater Bay Tribal Court of Appeals

A copy of the Court of Appeals' opinion in this case is supplied.

Appellant's Counsel: Tim Rybka
Prosecutor, Shoalwater Bay Tribe
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(360) 318-4864

Respondent's Counsel: A lay spokesperson represented Mr. Shipman.

8. *In Re A.A.F.*, 13 NICS App. 28 (July 2015) – Port Gamble S'Klallam Tribal Court of Appeals

Appellant's Counsel: Brian Kilgore
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David Howard
500 Yale Avenue North, Suite 140
Seattle, WA 98109-5680
(206) 234-7750

Respondent's Counsel: Mr. Fulton represented himself *pro se*.

Counsel for Intervenor-Appellant Port Gamble S'Klallam Tribe:

Tim Rybka

Prosecutor, Port Gamble S'Klallam Tribe
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(360) 318-4864

9. *In re the Custody of P.M.*, 12 NICS App. 76 (July 2014) – Port Gamble S'Klallam Tribal Court of Appeals

The parties appeared *pro se* in this appeal.

10. *In re the Welfare of J.J.*, Case No. MUC-AP-12/13-125, 12 NICS App. 95 (May 21, 2014) (unreported) – Muckleshoot Tribal Court of Appeals

A copy of the Court of Appeals' opinion in this case is supplied.

Appellant's Counsel:	Appellant C.R.J. represented himself *pro se*.
Respondent's Counsel:	Annie Harlan Prosecutor, Muckleshoot Indian Tribe 3815 South Othello Street, Suite 100 Seattle, WA 98118-3510 (253) 220-7710

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

In all tribal courts in which I served as an appellate judge, there has been no reviewing court above the immediate appeals court.

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.

In all tribal courts in which I served as an appellate judge, there has been no reviewing court above the immediate appeals court.

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.

Unpublished opinions have been issued in five (45%) of my decisions. The Northwest Intertribal Court System files and stores unpublished opinions for ten years from the date of the opinion. After ten years, the unpublished opinions are destroyed. Summaries of unpublished decisions are included in the Northwest Intertribal Court System's "Notations of Orders in Unreported Cases." *See, e.g.*,

Shoalwater Bay Indian Tribe v. Zirbel, Case No. SHO-2013-CV-HS-0023, 12 NICS App. 97 (December 1, 2014) (unreported), *available at* https://www.codepublishing.com/WA/NICS/?12NICSApp/12NICSApp095.html. Copies of unpublished opinions are also provided to the applicable tribal court. Tribal courts store such records in accordance with their respective policies.

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 authored opinions on federal or state constitutional issues. Tribal court matters generally address questions of tribal law.

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.

I have assessed the necessity or propriety of recusal based on applicable law, including but not limited to the Northwest Intertribal Court System Standards for Judicial Conduct, applicable tribal code, and precedent. To avoid actual and perceived conflicts of interest, I have instructed the Northwest Intertribal Court System that I will not hear cases for any tribal court of a tribe that is a client of my law firm, regardless of whether the tribe is a party or is otherwise involved in the appeal.

I have been asked to recuse myself in one case. In *Port Gamble S'Klallam Tribe et al. v. Lexington Insurance Company, et al.*, Case No. POR-AP-2021-0001 (Port Gamble S'Klallam Tribal Court of Appeals), certain appellants requested my recusal after the appellate panel provided a notice to the parties disclosing that two of the panelists' law firms were handling matters in which one or more of the parties to the appeal was an adverse party. The notice informed the parties that the panelists did not believe that the disclosed matters affected their impartiality but were providing the disclosure in the interests of transparency and promoting confidence in the integrity and impartiality of the judiciary of the Northwest Intertribal Court System and its member tribes. The notice invited any party who believed there was a basis for recusal under applicable law to file a motion requesting recusal.

Hallmark Specialty Insurance Company, Aspen Specialty Insurance Company, and Aspen Insurance UK, Ltd. subsequently filed a motion requesting my recusal on the bases that (1) I am a citizen of a tribe that was engaged in litigation with the movants in a separate forum; and (2) attorneys at my firm were handling matters adverse to Aspen Specialty Insurance Company. After reviewing applicable law, including the Northwest Intertribal Court System Standards for Judicial Conduct, the Port Gamble S'Klallam Law and Order Code, and relevant precedent, and after conferring with the other two panelists, I voluntarily recused myself out of an abundance of caution regarding whether my impartiality might reasonably be questioned due of my firm's involvement in matters adverse to Aspen Specialty Insurance Company. The panel rejected the movants' argument that I was required to recuse on the basis that I am a citizen of a tribe engaged in litigation with movants in a different forum in Oklahoma, holding that such facts failed to establish a reasonable basis to question my impartiality under applicable law.

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 never been a candidate for or held an elected public office. I have held the following appointed positions:

       Member of the Mvskoke Reservation Protection Commission, August 2020 to present. Appointed in August 2020 by Muscogee (Creek) Nation Principal Chief David Hill.

       Commissioner on the Washington State Gambling Commission, June 2020 to present. Appointed in June 2020 by Washington State Governor Jay Inslee.

    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 to a judge.

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

I have not 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;

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2010 – 2012
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Associate

2012 – present
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Principal (2019 – present)
Member (2016 – 2019)
Of Counsel (2015 – 2016)
Associate (2012 – 2014)

2013 – present

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Pro Tem Appellate 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 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.

During my first year of practice from 2008 to 2009, I practiced in both transactional work and litigation. My transactional work consisted of licensing, copyright, and trademark work, including filings in the Trademark Trial and Appeal Board. My litigation work consisted of complex commercial litigation cases.

From 2010 to the present, I have had a diverse litigation practice, including construction litigation, treaty rights disputes, litigation before the Patent Trial and Appeal Board, commercial contract disputes, and complex litigation involving federal laws on historic preservation, tribal landholdings, and repatriation of Native American remains and other funerary items. I have written pleadings, briefs, motions, and research memoranda. I have conducted depositions, hearings, a trial, and oral arguments, including appellate arguments. My complex litigation practice has included litigation in various jurisdictions, including federal courts in Alabama, Michigan, and Washington State, state courts in Washington State, and a tribal court in Washington State. Since 2012, I have served as lead attorney on most of my cases, and have represented clients through discovery, pre-trial motions, trial, appeals, and remand.

Additionally, between 2012 and 2014, I built a transactional practice alongside my litigation work. My transactional work consisted of drafting and negotiating agreements and advising clients on legal issues in the mobile gaming industry. I continue to do some transactional work for clients, but my practice has largely been concentrated in litigation.

From 2013 to the present, I have served as an appellate court judge for the Northwest Intertribal Court System.

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

From 2008 to the present, my typical clients have been Indian tribes, technology companies, retailers, game developers, app analytics companies, municipalities, small and mid-size companies, and manufacturers.

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.

From 2010 to the present, my practice has consisted almost entirely of litigation. I prepared motions and briefs, took and defended depositions, presented oral argument, and appeared occasionally in court, including first-chairing a 23-day trial.

i. Indicate the percentage of your practice in:
   1. federal courts: 80% (approximate)
   2. state courts of record: 15% (approximate)
   3. other courts: 5% (approximate)
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 99% (approximate)
   2. criminal proceedings: 1% (approximate)

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 one case in courts of record to verdict, judgment, or final decision. I tried this 23-day trial as chief counsel.

i. What percentage of these trials were:
   1. jury: 0%
   2. non-jury: 100%

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 filed a brief in opposition to certiorari, 2018 WL 3740577, as counsel of record in *Makah Indian Tribe v. Quileute Indian Tribe et al.*, 139 S. Ct. 106 (2018) (cert.

denied).

In *Herrera v. Wyoming*, No. 17-532 (Sept. 11, 2018) I assisted in drafting an amicus brief in support of petitioner, 2018 WL 4381215, on behalf of the Quileute Tribe.

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. *Muscogee (Creek) Nation et al. v. Poarch Band of Creek Indians*, No. 2:12-cv-1079-MHT-CSC, 2021 WL 961743 (M.D. Ala. Mar. 15, 2021) (Thompson, J.)

I have represented Plaintiffs Muscogee (Creek) Nation, Hickory Ground Tribal Town, and Mr. Thompson in this case from 2017 until present.

In 2012, Plaintiffs Muscogee (Creek) Nation, Hickory Ground Tribal Town, and Mr. Thompson filed a lawsuit alleging that the Poarch Band of Creek Indians and its officials and the United States and its officials, among other parties, violated numerous federal laws (the National Historic Preservation Act, Archaeological Resources Protection Act, Native American Graves Protection and Repatriation Act, and the Indian Reorganization Act, among others) when the United States permitted the Poarch Band to exhume over 55 Muscogee (Creek) ancestors in order to build a casino over a site that is sacred to the Muscogee (Creek) Nation. I have served as lead counsel for Plaintiffs since 2017. In that role, I have drafted and filed a second amended complaint and an associated motion for leave to file that complaint, drafted responses to three motions to dismiss, managed new issues that have arisen under the Native American Graves Protection and Repatriation Act, and managed settlement discussions among the parties. On March 15, 2021, the district court issued an order finding that although the plaintiffs established a basis to sue the tribal defendants under the *Ex Parte Young* doctrine, a narrow and limited exception applied to that doctrine that preserved the sovereign immunity of the tribal defendants. Due to the immunity of the tribal defendants and the court's finding that the tribal defendants were indispensable to the case, the court dismissed the case. The case is now on appeal to the Eleventh Circuit.

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2. *State of Washington, et al. v. Fairweather, et al.*, No. C21-0002-JCC, 2021 WL 568267 (W.D. Wash. Feb. 16, 2021) (Coughenour, J.)

I have represented the Quileute Tribe in this case since its inception in January 2021.

Joined by the State of Washington, numerous other federally recognized Indian tribes, and other plaintiffs, the Quileute Tribe filed a lawsuit against the Director of the Office of Management and Budget, the Archivist of the National Archives and Records Administration, the Executive Director of the Public Buildings Reform Board, the Administrator of the General Services Administration, the National Archives and Records Administration, the Office of Management and Budget, the Public Buildings

Reform Board, and the General Services Administration, challenging the federal government's expedited sale of the National Archives building in Seattle. The lawsuit asserts that the sale violates the federal government's consultation obligations and the conditions Congress placed on agencies' ability to sell federal properties on an expedited basis. I drafted and edited portions of the complaint and subsequent briefing. On February 16, 2021, the district court granted the plaintiffs' motion for a preliminary injunction, blocking the sale of the National Archives building in Seattle. On April 8, 2021, the Office of Management and Budget announced that it was withdrawing its approval of the sale of the National Archives building in Seattle, and that any effort to sell the facility in the future must be preceded by meaningful and robust tribal consultation and must proceed through the appropriate administrative process. The case is currently stayed.

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3. *Makah v. Franz et al.,* No. 54945-0-II (Wash. Ct. App. Div. II) (Sutton, Cruser, Glasgow, JJ.)

I have represented the Quileute Tribe in this matter from 2020 to present.

The Makah Tribe filed a complaint against the Washington State Department of Natural Resources and its Director challenging the Department's land exchanges on the Olympic Peninsula in Washington State under the Washington State Environmental Policy Act and the Public Lands Act. The Makah Tribe claimed that the exchanges would prevent it from exercising treaty hunting rights in certain exchange areas. The trial court granted the Defendant Department of Natural Resources' motion to dismiss, and the Makah Tribe appealed. At the court of appeals, I filed a brief and presented oral argument on behalf of the Quileute Tribe as amicus curiae and on behalf of two other amici curiae, the Hoh Tribe and Quinault Indian Nation. The amici curiae tribes argued that, because the Makah Tribe's challenge to the land exchanges depended on a predicate finding that it had treaty hunting rights in areas where the amici curiae tribes possessed hunting rights, and because the amici curiae tribes possessed sovereign immunity, the case must be dismissed for failure to join indispensable parties. The court has not yet issued a decision on the Makah Tribe's appeal.

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4. *United States v. Michigan*, No. 73-cv-00026 (W.D. Mich.) (Maloney, J.)

I have represented Intervenor Plaintiff Sault Ste. Marie Tribe of Chippewa Indians from January 2020 to present in this case.

I represent the Sault Ste. Marie Tribe of Chippewa Indians in this 40-year-old treaty fishing rights case. Since 1985, the parties have entered into consent decrees of 15- to 20-year durations governing state and tribal fishing in treaty waters. The United States, Michigan, and five tribes are currently engaged in negotiations with a court-appointed facilitative mediator to establish a third consent decree governing state and tribal fishing in Lake Michigan, Lake Huron, and Lake Superior. I am the lead attorney in these negotiations, and I also drafted and filed motions and responses on behalf of the Sault Ste. Marie Tribe opposing extension of the 2000 decree because the equitable allocation doctrine prevented extension of the decree as written. The court held that the equitable allocation doctrine did not prevent it from extending an existing decree during the pendency of negotiations. Dkt. 1892 (July 24, 2020).

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5. *United States v. Washington*, 129 F. Supp. 3d 1069, 1073 (W.D. Wash. 2015), *aff'd sub nom. Makah Indian Tribe v. Quileute Indian Tribe et al.*, 873 F.3d 1157 (9th Cir. 2017), *cert. denied*, 139 S. Ct. 106 (2018).

I represented the Quileute Tribe, one of the defendants in this case, from April 2012 until the end of the case in 2020.

Courts and Judges:

United States District Court for the Western District of Washington
Judge Ricardo S. Martinez

Ninth Circuit Court of Appeals
First appellate panel:
Judge Richard A. Paez
Judge Jay S. Bybee
Judge Consuelo Callahan
Second appellate panel:
Judge M. Margaret McKeown
Judge Michael Daly Hawkins
Judge Elizabeth Erny Foote (Western District of Louisiana, sitting by designation)
Third appellate panel:
Judge M. Margaret McKeown
Judge Michael Daly Hawkins
Judge Jacqueline Hong-Ngoc Nguyen

Supreme Court of the United States

This case was a subproceeding within *United States v. Washington*, a 50-year-old treaty fishing rights case. In 2009, the Makah Tribe filed a Request for Determination asking the court to adjudicate the western boundaries of the Pacific Ocean treaty fishing areas of my client, the Quileute Tribe, and of the Quinault Indian Nation, and the northern boundary of the Quileute Tribe's Pacific Ocean treaty fishing area. To establish such areas, the Quileute Tribe and Quinault Nation were required to prove where they customarily fished in the Pacific Ocean in 1855, at the time they executed their treaty with the United States. In April 2012, the Quileute Tribe and Quinault Nation appealed the district court's order on summary judgment holding that the tribes did not have sovereign immunity from Makah's request. I briefed this appeal on behalf of the Quileute Tribe and argued on its behalf at the Ninth Circuit. The case was not stayed pending appeal, so the district court proceeded to trial. In 2015, I chaired a 23-day trial on behalf of the Quileute Tribe. This was the longest treaty rights trial ever in the Western District of Washington. Sixteen sovereigns participated in the case, including 14 Indian tribes, Washington State, and the United States. The case involved nine expert witnesses, two lay witnesses, and 472 admitted exhibits comprising thousands of pages. The district court determined that the Quileute Tribe and Quinault Nation understood their treaty right to take "fish" in their customary fishing places to include whales and seals, such that evidence of treaty-time whaling and sealing could be used to establish the tribes' treaty fishing areas. The district court held that the Quileute Tribe and Quinault Nation customarily fished 40 and 30 miles offshore, respectively, and they therefore have treaty rights to continue fishing there today for subsistence and commercial purposes. The district court used longitudinal lines to delineate these boundaries. The district court also

held that the northern boundary of the Quileute Tribe's Pacific Ocean treaty fishing area is west of a point named Cape Alava. The Quileute Tribe and Quinault Nation voluntarily withdrew their pending Ninth Circuit appeal following the district court's decision in July 2015. The Makah Tribe and Washington State appealed the district court's decision to the Ninth Circuit. These appeals were consolidated. I briefed this appeal (including briefing in response to the petition for rehearing) on behalf of the Quileute Tribe, and argued on its behalf and on behalf of the Quinault Indian Nation at the Ninth Circuit. Eleven other tribes submitted briefs as Real Parties in Interest (the district court uses an "Interested Party" designation in *United States v. Washington* that is not available at the Ninth Circuit). In October 2017, the Ninth Circuit affirmed the district court on all matters except how it delineated the Quileute Tribe's and Quinault Nation's western boundaries. The Ninth Circuit remanded the case to the district court for revised boundaries that were more tailored to the district court's factual findings. The Makah Tribe filed a petition for rehearing and rehearing en banc, which the Ninth Circuit denied in January 2018. The Makah Tribe filed a petition for certiorari to the Ninth Circuit in May 2018, and Washington State supported the petition. I wrote and filed a brief in opposition to the petition on behalf of the Quileute Tribe and the Quinault Nation. In October 2018, the Supreme Court denied certiorari. In the meantime, on remand, the district court had issued a decision delineating the western boundaries by precisely tracing the coastline 40 and 30 miles offshore. The Quileute Tribe and Quinault Nation appealed this decision to the Ninth Circuit in May 2018. I briefed this appeal on behalf of the Quileute Tribe. In September 2019, the Ninth Circuit panel filed a memorandum disposition affirming the district court. The Ninth Circuit denied the Quileute Tribe and Quinault Nation's petition for rehearing and rehearing en banc in June 2020.

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6. *Skytec, Inc. v. Logistic Sys., Inc.*, No. 3:15-cv-02104-BJM, 2018 WL 4372726 (D.P.R. Sept. 12, 2018) (McGiverin, J.)

I represented Defendant Logistic Systems, Inc. in this case from its inception in 2012 until the end of the case in 2019.

Logistic Systems, Inc., a Montana company, contracted with Skytec, Inc. to develop and implement various dispatch, geographic information, and records systems for Skytec's clients—public safety agencies in Puerto Rico. In 2012, Skytec filed a lawsuit against

Logistic Systems in the United States District Court for the District of Puerto Rico. Logistic Systems filed counterclaims against Skytec. Each party alleged breach of contract, and Skytec also alleged breach of Puerto Rico's Dealer's Act. I drafted pleadings, discovery requests and responses, and briefs on behalf of Logistic Systems. I also managed communications regarding discovery requests, responses, and disputes with Skytec's counsel. After protracted discovery disputes, the court granted Logistic Systems' motion for entry of default judgment in light of Skytec's misconduct in the discovery process.

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7. *United States v. Washington, Subproceeding 91-1*, No. C70-9213RSM (W.D. Wash.) (Martinez, J.)

I have represented the Quileute Tribe in this subproceeding from 2010 until present.

This *United States v. Washington* subproceeding has involved disputes among thirteen Indian tribes regarding inter-sovereign allocation and management of the commercial tribal halibut fishery in Puget Sound, the Straits of Juan de Fuca, and the Pacific Ocean since 1991. I have served as lead counsel for the Quileute Tribe in this matter since 2010. In this role, I have drafted numerous motions and briefs, presented numerous oral arguments, and represented the Quileute Tribe in weeks-long settlement proceedings with Magistrate Judge Brian Tsuchida. In 2012, following briefing and oral argument regarding six competing proposals for management of the commercial tribal halibut fishery in Puget Sound, the Straits of Juan de Fuca, and the Pacific Ocean, the district court denied all parties' motions and instead issued an order adopting new management measures that were agreed upon at a prior settlement conference. *United States v. Washington*, 20 F. Supp. 3d 899, 967 (W.D. Wash. 2008) (this is a compilation of various orders in *United States v. Washington*; although it is dated 2008, it encompasses the court's 2012 decision). In 2017, a dispute regarding those management measures arose at the beginning of the halibut season. I drafted, filed, and argued a motion for a temporary restraining order on behalf of the Quileute Tribe, and the court granted the motion. *United States v. Washington*, No. C70-9213RSM, 2017 WL 1064460 (W.D. Wash. Mar. 21, 2017).

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8. *Schuyler v. Unsworth & Dept. of Fish and Wildlife*, No. 14-2-02373-9 (Thurston County Sup. Ct.)

I represented the Quileute Tribe as one of six amici curiae tribes in this case from 2014 to 2016.

Court and Judges:

Thurston County Superior Court
Judge Erik D. Price (until December 2015)
Judge Ann Hirsch (January 2016 to October 2016)

Plaintiff Schuyler, a member of the Upper Skagit Tribe, sought a declaratory ruling that the Upper Skagit Tribe had treaty hunting rights in the ceded area of Intervenor-Defendant Yakama Nation. The parties (Plaintiff Schuyler, Defendant Washington State, Defendant Director of the Washington State Fisheries and Wildlife Department Unsworth, and Intervenor-Defendant Yakama Nation) and amici curiae (the Quileute Tribe, Hoh Tribe, Quinault Indian Nation, Port Gamble S'Klallam Tribe, Jamestown S'Klallam Tribe, and Sauk Suiattle Indian Tribe) disputed what evidence could be considered in determining a tribe's treaty hunting area. The parties and amici curiae also disputed whether the case could be adjudicated in the absence of the Upper Skagit Tribe.

I filed various amici curiae briefs on behalf of the Quileute Tribe and presented oral arguments on behalf of the Quileute Tribe, Quinault Indian Nation, and Hoh Tribe. Although the court ultimately dismissed the case for failure to join the Upper Skagit Tribe, Washington State used the briefing the amici curiae submitted in developing its standards to evaluate treaty hunting areas.

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9. *ABB, Inc. Petitioner v. Roy-G-Biv Corp. Pat. Owner*, No. Patent 6,513,058 B2, Cases IPR2013-00062; IPR2013-00282; 2014 WL 2112556 (P.T.A.B. May 16, 2014); *ABB Inc. Petitioner v. Roy-G-Biv Corp. Pat. Owner*, No. Patent 8,073,557 B2; Cases IPR2013-00074; IPR2013-00286; 2014 WL 1478219 (P.T.A.B. Apr. 11, 2014)

I represented the ROY-G-BIV Corporation in these matters from 2013 to 2014.

Court and Judge:

Patent Trial and Appeal Board
Administrative Patent Judges Thomas L. Giannetti, Jennifer S. Bisk, and Jeremy M. Plenzler

ABB, Inc. filed two separate petitions for *Inter Partes* Review of patents owned by the ROY-G-BIV Corporation. With co-counsel, I represented the ROY-G-BIV Corp. in these matters, which involved patents related to motion control software that ABB sought to invalidate on multiple grounds. I worked with co-counsel on discovery requests and responses, drafting briefs, and preparing for oral arguments. I worked with the inventor and several expert witnesses on issues of alleged obviousness and prior art. Giving significant weight to expert testimony, the Patent Trial and Appeal Board held that ABB failed to prove that any of the challenged claims in any of the patents were unpatentable. This was the first *Inter Partes* Review trial to result in confirmation and survival of all challenged claims.

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10. *Skokomish v. Goldmark*, 994 F. Supp. 2d 1168 (W.D. Wash. 2014) (Robart, J.)

I represented the Quileute Tribe in this matter from 2013 to 2014.

The Skokomish Tribe filed a lawsuit seeking a declaratory judgment determining the nature and scope of its treaty hunting rights. The Quileute Tribe participated in this case

as amicus curiae in lieu of intervening, seeking dismissal of the Skokomish Tribe's lawsuit due to failure to join the Quileute Tribe and other tribes whose treaty hunting rights would be affected by a ruling in favor of the Skokomish Tribe. I drafted various amicus briefs on behalf of the Quileute Tribe, as well as a motion to strike part of a Skokomish pleading, which the court granted. The district court dismissed the case on the basis that granting relief to the Skokomish Tribe would necessarily violate the treaty rights of absent tribes.

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Prior attorney for Defendant H. Steward Menefee:

James Garnet Baker (until 2013)
Grays Harbor Prosecuting Attorney's Office
102 West Broadway
Room 102
Montesano, WA 98563
(360) 249-3951

Attorneys for Defendant Jon Tunheim:

Scott C. Cushing
Thurston County Prosecuting Attorney's Office
Civil Division - Building No. 5
2000 Lakeridge Drive Southwest
Olympia, WA 98502
(360) 786-5574

David V. Klumpp (until 2013)
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Civil Division - Glenn Building
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Olympia, WA 98502
(360) 786-5574

Attorneys for Defendant Michael Dorcy:

Michael K. Dorcy and Timothy Whitehead
Mason County Prosecutor's Office
P.O. Box 639
Shelton, WA 98584
(360) 427-9670

Pamela Beth Loginsky
Washington Association of Prosecuting Attorneys
206 10th Avenue Southeast
Olympia, WA 98501
(360) 753-2175

Attorneys for Amicus Curiae Hoh Tribe:

Craig J. Dorsay and Lea Ann Easton
Dorsay & Easton LLP
1737 Northeast Alberta Street, Suite 208
Portland, OR 97211
(503) 790-9060

Attorney for Defendant Russell D. Hauge:

Shelley E. Kneip
Kitsap County Prosecutor's Office
614 Division Street
MS-35A
Port Orchard, WA 98366-7148
(360) 337-4992

Attorneys for Defendant Deborah Kelly:

Mark Burns Nichols (until January 2014)
Clallam County Prosecuting Office
P.O. Box 863
223 East 4th Street
Port Angeles, WA 98362-0149
(360) 417-2371

William B. Payne, John Allan Troberg, and Brian Patrick Wendt
Clallam County Prosecuting Office
P.O. Box 863
223 East 4th Street
Port Angeles, WA 98362-0149
Mr. Payne: (360) 417-2590
Mr. Troberg: (360) 417-2541
Mr. Wendt: (360) 565-2720

Attorneys for Washington State Defendants:

Joseph V. Panesko
Attorney General's Office
Natural Resources Division
P.O. Box 40100
Olympia, WA 98504
(360) 586-3276

Joseph Earl Shorin, III
2533 Wedgewood Court Southeast
Olympia, WA 98501
(360) 790-6528

Terence A. Pruit
Attorney General of Washington
P.O. Box 40100
Olympia, WA 98504
(360) 586-0642

Neil Lynn Wise
P.O. Box 40903
Olympia, WA 98504
(360) 664-9160

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.)

From 2013 to present, I have defended the treaty hunting rights of my client, the Quileute Tribe, and of two other signatory tribes to the same treaty (the Hoh Tribe and Quinault Indian Nation) (the "Treaty of Olympia Tribes") in an agency proceeding adverse to the

Lower Elwha Klallam Tribe, Port Gamble S'Klallam Tribe, and the Jamestown S'Klallam Tribe (the "S'Klallam Tribes"). The State of Washington applies state hunting laws to tribal members hunting outside of their treaty hunting areas. In late 2013, the S'Klallam Tribes and the Washington State Department of Fish and Wildlife ("WDFW") executed Memoranda of Understanding permitting the S'Klallam Tribes to exercise treaty hunting in portions of the Treaty of Olympia Tribes' treaty hunting area. The Memoranda of Understanding were executed without notifying the Treaty of Olympia Tribes. In July 2014, after repeated protests from the Treaty of Olympia Tribes and others, Governor Jay Inslee directed WDFW to provide due process to adversely affected tribes. Subsequently, the S'Klallam Tribes produced two expert reports, and the Treaty of Olympia Tribes produced three expert reports and legal analyses of the S'Klallam Tribes' assertions. I drafted the legal analyses on behalf of the Treaty of Olympia Tribes and worked with the expert anthropologists to produce their reports and supporting evidence. WDFW and its expert anthropologist reviewed the S'Klallam Tribes' evidence, conducted their own investigation, and in two separate reports concluded that the S'Klallam Tribes failed to establish any treaty hunting rights in the Treaty of Olympia Tribes' treaty ceded area.

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 taught at the Seattle University School of Law as an adjunct professor during the Spring Semester of 2020. The course, entitled "Federal Indian Law," is an introductory course that teaches the basic concepts of federal Indian law. 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.

    Under my Shareholder agreement with Foster Garvey, P.C., upon my resignation from the firm, I will receive my final compensation payment commensurate with my budgeted share for 2021 (based on my performance, percentage interest in the firm compensation, and the months with the firm during that year), and my share (based on my percentage interest in the firm) of the firm's capital account. Under the Shareholder agreement, my contributed capital is paid out over a three-year period; the Executive Committee has the discretion to expedite the capital payback, and if confirmed I would ask the Executive Committee to expedite my capital return 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.

I do not have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

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).

    My Financial Disclosure Report is being filed with the Administrative Office of U.S. Courts and I 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 will recuse in any litigation where I have ever played a role, including cases I handled or that were handled by my firm while I was associated with it. I will evaluate any other real or potential conflict, or relationship that could give rise to an appearance of conflict, on a case-by-case basis and determine appropriate action with the advice of parties and their counsel, including recusal where necessary.

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

        I will handle all matters involving actual or potential conflicts of interest through diligent and careful application of Canon 3 of the Code of Conduct for United States Judges, 28 U.S.C. § 455, and any and all other laws, rules, and practices governing conflicts of interest. I will also consult with the Administrative Office of the United States Courts for additional guidance.

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.

Throughout my career, I have dedicated time to serving the disadvantaged.

Since 2015, I have volunteered my time to serving on the board of the Northwest Tribal Court Judges Association, which strives to increase access to justice for the disadvantaged, including by promoting communication and cooperation between tribal, state, and federal court systems. As part of my work on the board of the Northwest Tribal Court Judges Association, we have coordinated regular meetings between tribal court and state court judges at the Washington State Courts Annual Judicial Conference and Tribal State Court Consortium meetings to conduct trainings and discuss how to address interjurisdictional problems preventing such access. My service to the Northwest Tribal Court Judges Association involves a few hours of work every month.

From 2017 to 2019, I volunteered my time to serving on the board of the Seattle Indian Health Board, a community health center located in Seattle's International District. The Seattle Indian Health Board's mission is to advocate for, provide, and ensure culturally appropriate, high quality, and accessible health and human services to American Indians and Alaska Natives. One of the organization's top goals is to increase access to healthcare for the disadvantaged; the organization serves all patients and offers discounted fees to those who qualify. My service to the Seattle Indian Health Board involved several hours of work each month.

From 2010 to 2016, I volunteered my time to serving on the board of the Northwest Indian Bar Association. One of the Northwest Indian Bar Association's purposes and goals is to encourage and promote pro bono legal work and civic involvement that benefits Indian people on reservations and in urban areas throughout the Pacific Northwest. During my time serving on the Northwest Indian Bar Association, the board helped secure funding and legal volunteers for the Urban Indian Legal Clinic, which provided free legal advice and referrals for a wide range of legal issues to Native Americans. The Northwest Indian Bar Association also provided annual scholarships for Native law students, a traditionally underrepresented demographic in the legal profession. My service to the Northwest Indian Bar Association involved several hours of work each month.

From 2012 to 2015, I performed pro bono work for the Indian Arts and Crafts Project in Washington State. The Project's goal was to design and implement a certification mark program to protect Native artisans' intellectual property in cooperation with the Northwest Justice Project and American Friends Service Committee.

In 2013, I performed pro bono work for the Northwest Intertribal Court System to facilitate litigants' access to court opinions of tribal courts within the Northwest Intertribal Court System. I negotiated an Indexing Services Agreement for publishing and indexing tribal court opinions online.

Finally, during each winter break during law school, I volunteered my time to providing pro bono legal services. During the 2005 to 2006 academic year winter break, I provided pro bono legal services to North American Indian Legal Services. During the 2006 to 2007 academic year winter break, I provided pro bono legal services to the Peacekeepers Domestic Violence Program. During the 2007 to 2008 academic year winter break, I provided pro bono legal services to the Lummi Nation Prosecutor's Office.

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 10, 2020, Senators Murray and Cantwell published an "Announcement of Judicial Appointments to the United States District Court for the Western District of Washington." The Announcement stated that the Senators had engaged a bipartisan committee to screen and interview candidates, and directed individuals who were interested in being considered for appointment to any of the five vacant positions on the federal bench in the Western District of Washington to submit an application to the committee by January 4, 2021.

On January 4, 2021, I submitted an application to the committee. On February 11, 2021, I interviewed with the committee. On February 16, 2021, I received a notification from the committee chairs that I had been recommended to Washington State's Senators for their consideration. I interviewed with Senator Murray's staff on February 23, 2021 and spoke with Senator Murray on March 8, 2021. I interviewed with Senator Cantwell's staff on February 26, 2021. On March 8, 2021, Senator Murray's staff informed me that the Senators had recommended my name along with six others for the vacancies.

On March 8, 2021, I was contacted by attorneys from the White House Counsel's Office to schedule an interview. On March 9, 2021, I interviewed with attorneys from the White House Counsel's Office. Since then, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 12, 2021, my nomination was submitted to the Senate.

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

so, explain fully.

No.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Eunice Cheryl Lee

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

   United States Circuit Judge for the Second 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.

   Federal Defenders of New York, Inc.
   52 Duane Street, 10th Floor
   New York, New York 10007

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

   1970; Wiesbaden, Germany (U.S. Air Force base)

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, Yale Law School; J.D., 1996
   Summer 1993, Oxford University/Ohio State University Pre-Law Program; no degree
   1989 – 1993, The Ohio State University; B.A. (*summa cum laude*), 1993

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
   Federal Defenders of New York, Inc.
   Appeals Bureau
   52 Duane Street, 10th Floor
   New York, New York 10007

Assistant Federal Defender

1998 – 2019
Office of the Appellate Defender
11 Park Place, Suite 1601
New York, New York 10007
Supervising Attorney (2001 – 2019)
Director of Recruitment (2003 – 2019)
Staff Attorney (1998 – 2000)

2003 – 2019
New York University School of Law
40 Washington Square South
New York, New York 10012
Adjunct Assistant Professor of Clinical Law,
Criminal Appellate Defender Clinic

1997 – 1998
United States Court of Appeals for the Sixth Circuit
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan 48226
Law Clerk to the Honorable Eric L. Clay

1996 – 1997
United States District Court for the Southern District of Ohio
Potter Stewart United States Courthouse
100 East Fifth Street
Cincinnati, Ohio 45202
Law Clerk to the Honorable Susan J. Dlott

1995 – 1996
Connecticut Supreme Court
231 Capitol Avenue, Suite 2
Hartford, Connecticut 06106
Research Assistant to Associate Justice Flemming L. Norcott, Jr.

Summer 1995
People for the American Way
1101 15th Street, Northwest, Suite 600
Washington, District of Columbia 20005
Intern

Summer 1995
United States Department of Justice
Civil Division

950 Pennsylvania Avenue, Northwest
Washington, District of Columbia 20530
Intern

Summer 1994
Shearman & Sterling
599 Lexington Avenue
New York, New York 10022
Summer Associate

Summer 1994
NAACP Legal Defense and Educational Fund, Inc.
40 Rector Street, 5th Floor
New York, New York 10006
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 did not serve 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.

   Frederick Douglass Moot Court Competition (Northeast Regional), Best Brief Award (1994)
   Shearman & Sterling NAACP LDF Scholarship (1993)
   The Ohio State University; *summa cum laude*, Dean's List (all quarters)
   Phi Beta Kappa (1993)
   OSU/Office of Minority Affairs Distinction Scholarship (1989 – 1993)
   OSU Distinguished Scholar Program (1991 – 1993)
   University Honors Scholarship (1989 – 1990)

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.

   Association of the Bar of the City of New York, Committee on Professional Responsibility (2001 – 2003)
   Metropolitan Black Bar Association (2021)

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 York, 1997

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 Second Circuit, 2010
United States District Court for the Eastern District of New York, 2019
United States District Court for the Southern District of New York, 2002

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.

Association of Legal Aid Attorneys (ALAA). Union representing Legal Aid and Federal Defenders attorneys, which is a subsidiary of the United Auto Workers (2019 – present)

New York State Office of Indigent Legal Services Working Group on Standards and Best Practices for Appellate and Post-Conviction Representation (July 2013 – 2014)

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 my knowledge, neither 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.

"Second Circuit rejects application of the categorical approach for determining an 'offense against property' under the MVRA," FDNY Second Circuit Blog (Jan. 8, 2021). Copy supplied.

"Second Circuit holds that district courts may grant compassionate release on expansive grounds and are not limited to the Sentencing Commission's criteria," FDNY Second Circuit Blog (Sept. 30, 2020). Copy supplied.

"Second Circuit grants suppression motion and holds that reasonable suspicion for stop was not established by defendant's match to suspect's race, even in combination with other factors, because a description based primarily on race is not particularized enough to guard against police overreach or harassment," FDNY Second Circuit Blog (July 17, 2020). Copy supplied.

"Second Circuit defines 'altered' serial number on a firearm for purposes of the four-level enhancement under U.S.S.G. § 2K2.1(b)(4)(B) to mean that at least one serial number on the firearm is illegible to the naked eye," FDNY Second Circuit Blog (May 27, 2020). Copy supplied.

"Second Circuit affirms grant of summary judgment dismissing claim of excessive force in handcuffing on grounds of qualified immunity, but notes that the right to raise such a claim is now 'clearly established' law," FDNY Second Circuit Blog (Oct. 28, 2019). Copy supplied.

"Second Circuit affirms application of Sentencing Guidelines enhancement under § 2D1.1(b)(16)(E) for criminal conduct committed as part of a livelihood, addressing for the first time what constitutes 'a substantial period of time' in this context and what it means for criminal activity to be engaged in as a 'primary occupation,'" FDNY Second Circuit Blog (Oct. 23, 2019). Copy supplied.

"Second Circuit holds that Fourth Amendment not violated by Suffolk County program that permits nonprofit organization to conduct home visits with individuals on the sex offender registry in order to confirm the accuracy of their registration address," FDNY Second Circuit Blog (Sept. 6, 2019). Copy supplied.

"Second Circuit upholds prolonged traffic stop based on suspicion that car was

stolen, despite database check confirming that it was not stolen," FDNY Second Circuit Blog (Sept. 6, 2019). Copy supplied.

Letter to the Editor, *Thomas' change*, The Ohio State Lantern, Oct. 18, 1991. 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.

New York State Office of Indigent Legal Services, Appellate Standards and Best Practices (effective January 5, 2015). Copy supplied.

Statement of the Committee on Professional Responsibility of the Association of the Bar of the City of New York Regarding the United States Department of Justice Final Rule Allowing "Eavesdropping" on Lawyer/Client Conversations (April 8, 2002). Copy supplied.

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

None.

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.

April 27, 2021: Guest Speaker, New York Law School, Professor Susan Abraham's Advanced Appellate Advocacy Class, New York, New York (Virtual). I served as a judge for a moot court conducted as part of the class. The argument concerned a hypothetical case involving the dismissal of a diversity action based on lack of personal jurisdiction. I have no notes, transcript, or recording. New York Law School is located at 185 West Broadway, New York, New York, 10013.

January 25 – 29, 2021: Presenter and Facilitator, National Legal Aid and Defender Association, 2021 Appellate Defender Training Conference (Virtual). On January 27, 2021, I co-presented at a plenary session on "Writing a Persuasive Brief." I also served as a facilitator at the daily small-group sessions, instructing practicing attorneys on brief writing as part of an intensive, five-day virtual training program. PowerPoint supplied.

November 16, 2020: Presenter, "Compassionate Release: Litigation and Strategy Updates," Federal Defenders of New York, Inc., Virtual CLE Program. The program, which featured several presenters, focused on strategies for filing compassionate release motions, including discussion of the Second Circuit decision in *United States v. Brooker*, 976 F.3d 228 (2d Cir. 2020). I have no notes, transcript, or recording. The address for the Federal Defenders of New York, Inc. is 52 Duane Street, 10th Floor, New York, New York, 10007.

April 28, 2020: Guest Speaker, New York Law School, Professor Susan Abraham's Advanced Appellate Advocacy Class, New York, New York (Virtual). I served as a judge for a moot court conducted as part of the class. The argument concerned a hypothetical case involving the dismissal of a diversity action based on lack of personal jurisdiction. I have no notes, transcript, or recording. New York Law School is located at 185 West Broadway, New York, New York, 10013.

February 7, 2019: Co-Presenter, "Preservation Training for Trial Lawyers," Neighborhood Defender Service of Harlem, CLE Program, New York, New York. PowerPoint supplied.

February 4, 2019: Co-Presenter, "Preservation Training for Trial Lawyers," Office of the Appellate Defender, CLE Program, New York, New York. Handout and PowerPoint supplied.

January 17 – 20, 2019: Facilitator, National Legal Aid and Defender Association, 2019 Appellate Defender Training Conference, New Orleans, Louisiana. As part of the faculty, I instructed practicing attorneys in small-group workshops as part of an intensive, four-day training program. I have no notes, transcript, or recording. The address for the National Legal Aid and Defender Association is 1901 Pennsylvania Avenue, Northwest, Suite 500, Washington, District of Columbia 20006.

May 23, 2018: Co-Presenter, "Requirements for Preservation and Issues in Select Subject Areas," The Legal Aid Society, CLE Program, New York, New York. PowerPoint supplied.

January 23, 2018: Co-Presenter, "Preservation Training for Trial Lawyers," Office of the Appellate Defender, CLE Program, New York, New York. Handout and PowerPoint supplied.

June 14, 2013: Presenter and Panel Speaker, "Crafting a Persuasive Statement of Facts and Argument," New York State Association of Criminal Defense Lawyers, CLE Program, Appellate Advocacy for the Criminal Defense Practitioner, Brooklyn, New York. Notes supplied. I have presented a lecture similar to this on other occasions using these same materials, but I do not recall the specific dates.

March 10 – 12, 2011: Facilitator, Dickinson School of Law and the Public Defender Association of Pennsylvania, Appellate Advocacy Training, Carlisle, Pennsylvania. As part of the faculty, I instructed practicing attorneys in small group and seminar settings during an intensive three-day appellate advocacy training program. I have no notes, transcript, or recording. The address for the Dickinson School of Law is 150 South College Street, Carlisle, Pennsylvania, 17013.

July 31, 2010: Panel Speaker, "From on High: Recent Supreme Court Litigation Affecting Our Practice," Public Defender Advocacy, Hiring & Training Conference (PATH), Washington, District of Columbia. This panel discussion focused on giving an overview of recent cases from the United States Supreme Court of particular relevance to criminal defense practitioners. I have no notes, transcript, or recording. The address for the Public Defender Service for the District of Columbia is 633 Indiana Avenue, Northwest, Washington, District of Columbia 20004.

October 6 – 8, 2006: Facilitator, Georgia Public Defender Services Commission, Appellate Advocacy Training, Atlanta, Georgia. As part of the faculty, I instructed practicing attorneys in small-group and seminar settings during an intensive three-day appellate advocacy training program. I have no notes, transcript, or recording. The address for the Georgia Public Defender Standards Council is 104 Marietta Street Northwest, Suite 600, Atlanta, Georgia, 30303.

In approximately 2005, I was a panel speaker at an event sponsored by the career services office of Yale Law School. I do not recall the specifics, and I have no notes, transcript, or recording. Yale Law School is located at 127 Wall Street, New Haven, Connecticut, 06511.

Additionally, at some point in approximately 2010, I served as a judge in a moot court competition. I do not recall the sponsoring organization or the location of the event.

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.

Ben Bedell, *Finding "Showup" Suggestive, Split Panel Upsets Convictions*,

N.Y.L.J., June 4, 2015. Copy supplied.

Ben Bedell, *False Testimony Not Enough to Toss Verdict, Panel Says*, N.Y.L.J., Apr. 2, 2015. Copy supplied.

Ben Bedell, *Citing 1878 Burglary Case, Panel Affirms Conviction*, N.Y.L.J., Jan. 14, 2015. 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 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).

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

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

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If

any of the opinions listed were not officially reported, provide copies of the opinions.

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

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

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

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held judicial office.

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations**:

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

None.

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 served as a law clerk to the following two judges:

The Honorable Susan J. Dlott
United States District Court for the Southern District of Ohio
1996 – 1997

The Honorable Eric L. Clay
United States Court of Appeals for the Sixth Circuit
1997 – 1998

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

I have not 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;

1998 – 2019
Office of the Appellate Defender
11 Park Place, Suite 1601
New York, New York 10007
Staff Attorney (1998 – 2001)
Supervising Attorney (2001 – 2019)
Director of Recruitment (2003 – 2019)

2003 – 2019
New York University School of Law
40 Washington Square South
New York, New York 10012

Adjunct Assistant Professor of Clinical Law,
Criminal Appellate Defender Clinic

2019 – present
Federal Defenders of New York, Inc.
Appeals Bureau
52 Duane Street, 10th Floor
New York, New York 10007
Assistant Federal Defender

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

I have never served as an arbitrator or a mediator.

b. Describe:

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

After completing my federal district and circuit court clerkships, I started practicing criminal law in 1998. From 1998 to 2019, I represented indigent clients on their appeals from various types of New York felony convictions. The representation consisted of direct appeals to the New York Appellate Division, First Department, and the New York Court of Appeals, as well as post-conviction motions in state trial court, and a limited number of federal habeas corpus petitions. While working at the Office of the Appellate Defender, my responsibilities also included training and supervising staff attorneys, as well as pro bono attorneys from law firms.

From 2003 to 2019, in conjunction with my position at the Office of the Appellate Defender, and as an adjunct assistant clinical professor at New York University School of Law, I co-taught law students and supervised their representation of clients in a criminal appellate defense clinic.

In May of 2019, I joined the Appeals Bureau at the Federal Defenders of New York, Inc. At that time, my practice changed to consist exclusively of criminal appellate defense of indigent clients in federal court. The majority of my practice is representation of clients on direct appeal in the Second Circuit, as well as in post-conviction proceedings in the Southern and Eastern Districts of New York. My practice also includes providing support to the attorneys in the Trial Division of the Federal Defenders.

ii. your typical clients and the areas at each period of your legal career, if

any, in which you have specialized.

For the entirety of my legal career, my clients in both state and federal court have been poor and working-class people convicted of felony offenses. In state court, my cases included many theft, drug-related, and violent offenses. My federal practice likewise has included many theft and gun-related offenses. However, I have not specialized in any particular areas and have handled all different types of cases.

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.

When I was at the Office of the Appellate Defender from 1998 to 2019, 100% of my work was criminal appellate and post-conviction litigation. I argued the appeal in court in almost every case for which I filed a brief. I also appeared in trial court on various post-conviction matters. Since starting at the Federal Defenders in May of 2019, my work continues to be exclusively in criminal appellate and post-conviction litigation. I have argued most of the appeals that I have filed in the Second Circuit. I also have appeared in court in the Southern District of New York on a post-conviction matter.

i. Indicate the percentage of your practice in:
   1. federal courts: 15 %
   2. state courts of record: 85 %
   3. other courts: 0 %
   4. administrative agencies: 0 %

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 0 %
   2. criminal proceedings: 100 %

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 not tried any cases.

i. What percentage of these trials were:
   1. jury: __%
   2. non-jury: __%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any

oral argument transcripts before the Supreme Court in connection with your practice.

I have not appeared before the Supreme Court of the United States, but I have filed one petition for a writ of certiorari. *Cummings v. New York*, 565 U.S. 862 (2011) (petition for certiorari) (cert. denied). 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. Simmons*, Docket Nos. 08-cr-1280, 16-cv-2055 (S.D.N.Y), District Judge Valerie E. Caproni; 2019 – 2021

I began representing Mr. Simmons in approximately June 2019, but other attorneys from the Federal Defenders had been representing him for years prior to that time. I worked with co-counsel in preparing a motion to dismiss the indictment, and argued the motion in the district court in October 2019.

Mr. Simmons was charged in 2008 with one count of being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g), 924(e), and after being found guilty following a bench trial on stipulated facts, was sentenced in 2010 to a mandatory minimum term of 180 months. After the Supreme Court decision in *Johnson v. United States*, 576 U.S. 591 (2015), Mr. Simmons filed a motion under 28 U.S.C. § 2255 challenging his sentencing enhancement under 18 U.S.C. § 924(e). With the consent of the Government, the sentence was vacated, and the district court released Mr. Simmons from custody in 2016 pending resentencing. The resentencing was stayed between 2016 and early 2019, pending the development of relevant Second Circuit law. When Second Circuit case law confirmed the propriety of Mr. Simmons's original sentencing enhancement, the district judge lifted the stay in April 2019. Before resentencing could occur, however, the Supreme Court's decision in *Rehaif v. United States*, 139 S. Ct. 2191 (2019), necessitated additional briefing in Mr. Simmons's case as to a different issue. Co-counsel and I then filed a motion to dismiss the indictment pursuant to Federal Rule of Criminal Procedure 12(b)(3)(B)(v), which was denied by the district court on October 30, 2020. Co-counsel subsequently negotiated a disposition resulting in Mr. Simmons's

guilty plea to a superseding information in April 2021.

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2. *United States v. Gargan*, Docket No. 18-cr-723 (S.D.N.Y), District Judge Paul G. Gardephe; 2020

In February 2020, I was assigned to handle Mr. Gargan's direct appeal in the Second Circuit. Other attorneys from the Federal Defenders had represented Mr. Gargan at trial. Mr. Gargan had been convicted on October 23, 2019, of one count of conspiracy to distribute narcotics, and was sentenced on December 16, 2019, to three years of imprisonment and three years of supervised release. As the coronavirus pandemic escalated and infections were beginning to spread in the federal prisons, I filed a motion (under seal) in the district court on April 15, 2020, seeking compassionate release for Mr. Gargan based on his heightened vulnerability to serious complications from COVID-19. I also submitted a reply to the Government's opposition. The district court granted Mr. Gargan's motion for compassionate release on May 5, 2020, and released him to home confinement. He subsequently withdrew his direct appeal from the Second Circuit.

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3. *People v. Coulibaly*, 172 A.D.3d 647 (1st Dep't 2019), New York Appellate Division, First Department (Sweeny, Justice Presiding, and Justices Renwick, Manzanet-Daniels, Tom, and Oing); 2017 – 2019

I represented Mr. Coulibaly from 2017 to 2019 while I was a supervising attorney at the Office of the Appellate Defender (OAD). I supervised the appellate representation, including reviewing all records and the trial transcript, collaborating with pro bono counsel Brenton T. Culpepper and Anna G. Dimon on issue selection and case strategy, and editing the opening brief and the reply brief. Because I left my employment with OAD after the briefing was complete, I was not involved in any of the subsequent representation, including the argument of the case in the Appellate Division.

Trial counsel for Mr. Coulibaly had filed a motion to dismiss the indictment based on a violation of Mr. Coulibaly's right to a speedy trial under New York Criminal Procedure Law § 30.30(1)(a). In arguing which periods of pre-trial delay should be charged to the prosecution, trial counsel made a dispositive mathematical error as to the number of days in an adjournment period that the prosecution had conceded was chargeable to it. Had the period been correctly calculated, the motion court would have found the speedy trial motion to be meritorious. On appeal, Mr. Coulibaly argued that this error by trial counsel constituted ineffective assistance of counsel. The Appellate Division agreed, reversing Mr. Coulibaly's conviction for second-degree assault and dismissing the indictment.

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Venable LLP (current)
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4. *People v. Joseph*, 28 N.Y.3d 1003 (2016), New York Court of Appeals (Chief Judge DiFiore, and Judges Pigott, Rivera, Abdus-Salaam, Fahey, Garcia, and Stein); 2014 – 2016

I represented Mr. Joseph from approximately 2014 to 2016. On appeal in the Appellate Division, First Department, *People v. Joseph*, 124 A.D.3d 437 (1st Dep't 2015), *aff'd as modified*, 28 N.Y.3d 1003 (2016), I supervised the representation, including editing the written work of pro bono counsel Matthew E.K. Howatt. On appeal to the New York Court of Appeals, I had exclusive responsibility for Mr. Joseph's representation, drafting all briefs and arguing the case.

Mr. Joseph was convicted of second-degree burglary of a "dwelling" under New York Penal Law § 140.25(2). His conviction was based on an unlawful entry into the basement of a deli through cellar doors that opened out onto a public sidewalk adjacent to the deli. His offense was deemed to be the burglary of a "dwelling," rather than third-degree burglary of a "building," based on the presence of residential apartments located on the floors above the deli. The New York Court of Appeals noted that the sidewalk entry to the basement was both entirely disconnected from the building and completely inaccessible to the residences in that building. Applying an exception to the general rule regarding the broad definition of a "dwelling," the court held that Mr. Joseph's entry should not be deemed burglary of a "dwelling." The court overturned the decision of the Appellate Division and vacated Mr. Joseph's conviction for second-degree burglary.

Opposing counsel
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5. *People v. Cruz (Marshall)*, 129 A.D.3d 119 (1st Dep't 2015), New York Appellate Division, First Department (Gonzalez, Presiding Justice, and Justices Tom, Renwick, Gische, and Kapnick); 2013 – 2016

I represented Mr. Marshall from 2013 to 2016. On appeal in the Appellate Division, First Department, 129 A.D.3d 119 (1st Dep't 2015), I supervised the appellate representation, including the written work of pro bono counsel Victorien Wu. After reversal on appeal, I represented Mr. Marshall with co-counsel from OAD at an independent source hearing in the trial court.

Mr. Marshall was one of three co-defendants convicted of robbery in the second degree, criminal possession of stolen property in the fourth degree, and resisting arrest, in connection with the theft of a woman's bag on the street. At a pre-trial suppression hearing, the defendants had moved to suppress a showup identification of them made by the complainant as the product of an unconstitutionally suggestive procedure. The Appellate Division agreed, vacating the convictions and remanding the case for retrial, to be preceded by an independent source hearing to determine if the identification of the complainant could be admitted at trial, notwithstanding the suggestive procedure. After the independent source hearing, the trial court ruled that the identification was admissible. Mr. Marshall then agreed to a guilty plea.

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Co-defendant's counsel in the Appellate Division and at the independent source hearing
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Co-defendant's counsel in the Appellate Division
Frances A. Gallagher
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(Current contact information unavailable)

6. *Cummings v. LaValley*, 582 F. App'x 49 (2d Cir. 2014) (Chief Judge Katzmann, and Circuit Judges Hall and Carney); 2008 – 2014

I represented Mr. Cummings from 2008 to 2014. I briefed and argued his appeal first in the New York Appellate Division, *People v. Cummings*, 66 A.D.3d 571 (1st Dep't 2009), and then the New York Court of Appeals, 16 N.Y.3d 784 (2011). I filed a cert petition to the United States Supreme Court, *Cummings v. New York*, 132 S. Ct. 203 (2011), which was denied, and then filed a federal habeas petition in the district court, *Cummings v. LaValley*, No. 12 Civ 7403, 2013 WL 5303763 (S.D.N.Y. Sept. 20, 2013). On appeal to the Second Circuit, pro bono counsel Caroline Lents assisted with the briefing, and I argued the appeal.

Mr. Cummings was convicted in New York state court of several offenses, including second-degree burglary of a "dwelling," based on his entry into a police precinct locker room and attempted theft of property. The police precinct was deemed a "dwelling" based on the presence in the precinct of a room with cots that officers occasionally used for overnight stays. While the trial attorney moved to dismiss this count of the indictment pre-trial, he did not renew this motion at trial. On appeal to the Appellate Division and the New York Court of Appeals, Mr. Cummings argued that he was denied the effective

assistance of counsel. In the habeas petition in the district court, and on appeal to the Second Circuit, he argued that the New York Court of Appeals erred in analyzing his claim under the New York standard for ineffective assistance of counsel rather than the federal standard. The Second Circuit held that the state court had implicitly applied the federal standard, and affirmed the conviction.

Opposing counsel in the Second Circuit
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Opposing counsel in the Southern District of New York
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Opposing counsel in the Appellate Division and the New York Court of Appeals
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(845) 486-2300

Co-counsel in the Second Circuit
Caroline I. Lents
Jones Day (at time of representation)
250 Vesey Street
New York, NY 10271
(No longer practicing law)

7. *Torres v. Ercole*, 421 F. App'x 6 (2d Cir. 2011) (Circuit Judges Winter, Pooler, and Hall); 2002 – 2011

I represented Mr. Torres from 2002 to 2011. I supervised the work of pro bono counsel Stephen R. DiPrima in briefing and arguing Mr. Torres's appeal in the New York Appellate Division, *People v. Torres*, 2 A.D.3d 367 (1st Dep't 2003). I had exclusive responsibility for representation of Mr. Torres on the habeas petition in the district court, including drafting the briefs and conducting an evidentiary hearing. *Torres v. Ercole*, No. 06 Civ. 674, 2009 WL 4067281 (S.D.N.Y. Nov. 24, 2009). I then briefed and argued the appeal to the Second Circuit.

Mr. Torres was convicted of robbery in the second-degree and grand larceny in the fourth degree, and sentenced, as a persistent felony offender, to 20 years to life imprisonment. He argued in the state court and before the Second Circuit, that he was denied the effective assistance of counsel by his trial counsel's failure to impeach the arresting officer with a statement from the first trial, which could have been used to obtain suppression of an inculpatory statement at the second trial. The Second Circuit affirmed the district court's finding that Mr. Torres received effective representation.

Opposing counsel in the Southern District of New York and the Second Circuit
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Opposing counsel in the Appellate Division
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Co-counsel in the Appellate Division
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8. *People v. Steward*, 17 N.Y.3d 104 (2011), New York Court of Appeals (Chief Judge Lippman, and Judges Ciparick, Pigott, Jones, Graffeo, Smith, and Read); 2009 – 2011

I represented Mr. Steward from 2009 to 2011. On appeal to the Appellate Division, First Department, *People v. Steward*, 72 A.D.2d 524 (1st Dep't 2010), *rev'd*, 17 N.Y.3d 104 (2011), I supervised the representation, including reviewing all records and the trial transcript, collaborating with pro bono counsel Christina M. McGill on issue selection and case strategy, and editing the written work on the appellate briefs and on the subsequent application for leave to appeal to the New York Court of Appeals. I argued the leave application at a leave conference. When leave was granted, I recruited a more junior attorney from OAD who had not previously had the opportunity to argue in the Court of Appeals, and I asked her to take on a primary role. I supervised her written work, and she argued the case in the Court of Appeals.

Mr. Steward was convicted of first-degree and second-degree robbery in a case in which the complainant was a prominent local radio personality. During jury selection, defense

counsel objected to the court's imposition of a five-minute limitation on counsel for the questioning of jurors during each round of voir dire. The Appellate Division concluded that the restriction was allowable, but the Court of Appeals held that it was an abuse of discretion for the trial court to adhere to the restriction in the face of counsel's objection. The court reversed Mr. Steward's conviction, and the prosecution ultimately decided not to retry him.

Opposing counsel
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9. *People v. Gonzalez*, Ind. 560/05, New York State Supreme Court, New York County, Part 44 (Justice Marcy L. Kahn); 2007 – 2009

I represented Mr. Gonzalez from 2007 to 2009. Mr. Gonzalez and a co-defendant had been convicted at trial of third-degree criminal sale of a controlled substance based on an allegation of a $20 sale of drugs. Mr. Gonzalez was sentenced to a term of 1 to 3 years in prison, which was the statutory minimum. I supervised an OAD staff attorney in preparing the opening brief for Mr. Gonzalez's appeal, and I then drafted the reply brief and argued the case to the Appellate Division, which affirmed the conviction, *People v. Gonzalez*, 50 A.D.3d 527 (1st Dep't 2008). The trial court had permitted Mr. Gonzalez to remain out on bail during the trial and throughout the duration of the appeal. Following the affirmance in the Appellate Division, I submitted a motion to the trial court to either dismiss or reduce his conviction in the interest of justice, or to vacate his sentence as illegally imposed or invalid, based on it being "cruel and unusual" punishment under the specific circumstances of the case. The court granted the motion on the constitutional claim and reduced Mr. Gonzalez's sentence to time served, with a concurrent sentence of

5 years' probation.

Opposing counsel on the motion in the trial court
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10. *People v. Gil*, 285 A.D.2d 7 (1st Dep't 2001) New York Appellate Division, First Department (Sullivan, Presiding Justice, and Justices Mazzarelli, Ellerin, Lerner, and Buckley); 1999 – 2001

I represented Mr. Gil on appeal from 1999 to 2001. Mr. Gil was convicted after trial of criminal impersonation, burglary, kidnapping, and robbery, and was sentenced to 50 ½ to 103 years in prison. I first filed a post-conviction motion to vacate his conviction, and then a direct appeal, arguing in both that Mr. Gil's trial counsel was ineffective for proceeding to trial on the date of Mr. Gil's arraignment on a multicount felony indictment without any prior investigation and after waiving all pre-trial motions and discovery. The Appellate Division agreed that counsel's actions could not be justified as reasonable strategy, and vacated Mr. Gil's conviction on direct appeal, remanding the case for further proceedings, at which Mr. Gil was represented by other counsel.

Opposing counsel
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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 have engaged in advocacy for clients that did not relate to their criminal appeals. Because my legal representation of clients generally begins after they have been convicted, most of my clients are incarcerated. When I practiced in state court, I frequently wrote letters in support of clients who were appearing before the parole board. Even since leaving state court practice, I have written such a letter for a former client. I also have assisted incarcerated clients with regard to conditions surrounding their confinement, including access to mental health and other treatment programs, through non-litigation advocacy and outreach to correctional facilities on their behalf.

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.

Between 2003 and 2019, I co-taught the Criminal Appellate Defender Clinic, as an adjunct assistant clinical professor at New York University School of Law, and in conjunction with the Office of the Appellate Defender (OAD). I taught during the following semesters:

Fall 2003
Spring 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011
Fall 2011
Spring 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019

Students in the clinic represented OAD clients appealing their convictions to the New York Supreme Court, Appellate Division, First Department. Under the supervision of an OAD supervising attorney, students read the trial record, researched issues, and prepared the opening appellate brief.

The clinic also consisted of weekly seminars covering three broad areas: (1) the lawyering and counseling skills necessary to represent indigent clients appealing their convictions; (2) substantive elements of criminal appellate advocacy, including standards of review, the preservation doctrine, harmless error analysis, and remedies; and (3) brief-writing skills, including analysis of a record, issue selection, and developing a theory of the case. The seminar sessions also dealt with oral advocacy, challenging a conviction by means of a post-verdict motion in trial court, and other types of advocacy appellate attorneys can engage in on behalf of their clients, such as parole advocacy, addressing prison-related problems, and social work assistance.

Copies of all syllabi supplied, except for Spring 2006, which I am unable to locate.

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

    None.

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

    I have no such plans, commitments, or arrangements.

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).

    My Financial Disclosure Report is being filed with the Administrative Office of U.S. Courts and I 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.

As a general matter, I would handle any matters involving actual or potential conflicts of interest in conformity with the Code of Conduct for United States Judges and any other relevant statutes, ethical canons, and rules.

I would recuse myself from any criminal case that I worked on while at the Federal Defenders of New York, as well as any case of a Federal Defender colleague of which I have personal knowledge. With respect to any other case involving a client of the Federal Defenders, I would look for guidance to the Code of Conduct for United States Judges and any other relevant statutes, ethical canons, and rules. I am not aware of any other persons, parties, categories of litigation, or financial interests that are likely to present any conflict-of-interest concerns.

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

I will adhere to the Code of Conduct for United States Judges in identifying and handling all matters involving any actual or potential conflict of interest. Further, should I learn of a situation that any party or observer might conceivably identify as a potential conflict of interest, I would alert the parties to the issue in question and offer them the opportunity to express their views. As appropriate, I would also consult with my judicial colleagues on these issues.

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.

The entirety of my legal practice has been dedicated to public service and representing the disadvantaged, first with the Office of the Appellate Defender, and then with the Federal Defenders of New York. I have represented only indigent clients throughout my career. In addition to legal representation, I have assisted my indigent clients with non-legal matters, including parole advocacy and non-litigation advocacy on their behalf with correctional facilities.

I also have tried to give back to the legal profession by fostering the development of other attorneys. As an adjunct clinical professor at New York University School of Law, I instructed numerous law students in appellate advocacy and representation of indigent clients. I have mentored law students both within the clinic and outside of the clinic, including offering career guidance.

Through my work as a supervising attorney at the Office of the Appellate Defender, I conducted numerous in-house training programs with new staff attorneys at the office.

This training included instruction on substantive legal topics as well as the practical skills necessary for effective appellate representation. I have mentored many staff attorneys over the years, both formally and informally, and served as a reference for many of these attorneys. As the director of recruitment at the Office of the Appellate Defender, I had the opportunity to interview and offer guidance to a large number of attorneys and law students seeking a career in public interest.

In addition, I have trained and supervised attorneys from private law firms in their pro bono representation of indigent clients on appeal, and I have volunteered my time to participate in various multi-day appellate training programs for public defenders from across the country.

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 29, 2021, I spoke with a member of Senator Charles E. Schumer's Judicial Screening Committee regarding the application process. On February 10, 2021, I submitted a judicial questionnaire to the Screening Committee regarding a potential opening on the Second Circuit Court of Appeals. I spoke by telephone with a member of Senator Schumer's staff on March 1, 2021. On March 3, 2021, I submitted a Judicial Position Interest Questionnaire to Senator Kirsten Gillibrand. On March 9, 2021, I spoke by telephone with a member of Senator Schumer's Screening Committee. On March 13, 2021, I interviewed with Senator Schumer. On March 19, 2021, I spoke by telephone with a member of Senator Gillibrand's staff. On March 22, 2021, I interviewed with attorneys from the White House Counsel's Office. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 11, 2021, I interviewed with President Biden and White House Counsel Dana Remus. On May 12, 2021, my nomination was submitted to the Senate.

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

No.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Tana Lin

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

   United States District Judge for the Western District of Washington

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.

   Keller Rohrback L.L.P.
   1201 Third Avenue, Suite 3200
   Seattle, Washington 98101

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

   1966; Taipei, Taiwan.

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, New York University School of Law; J.D., 1991

   1984 – 1987, Cornell University; B.A., 1987

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.

   Employment

   2004 – present
   Keller Rohrback LLP
   1201 Third Avenue, Suite 3200

Seattle, Washington 98101
Of Counsel (2020 – present)
Partner (2008 – 2019)
Associate (2004 – 2007)

2020
Seattle University School of Law
901 12th Avenue
Seattle, Washington 98122
Adjunct Professor

2001 – 2004
Michigan Poverty Law Program
611 Church Street, Suite 4E
Ann Arbor, Michigan 48104
Litigation Coordinator

1999 – 2001
United States Equal Employment Opportunity Commission
Chicago District Office
Legal Division
500 West Madison Street, Suite 2800
Chicago, Illinois 60661
Senior Trial Attorney

1995 – 1999
United States Department of Justice
Civil Rights Division
Employment Litigation Section
P.O. Box 65968
Washington, District of Columbia 20035
Senior Trial Attorney (1997 – 1999)
Trial Attorney (1995 – 1997)

1991 – 1995
Public Defender Service for the District of Columbia
633 Indiana Avenue Northwest
Washington, District of Columbia 20004
Staff Attorney

1989 – 1991
New York University School of Law
249 Sullivan Street
New York, New York 10012
Research Assistant to Prof. Randy Hertz (Sept. 1989 – May 1990; Aug. 1990 – May 1991)
Research Assistant to Prof. Paula Galowitz (approximately Jan. 1989 – May 1989)

Summer 1990
Public Defender Service for the District of Columbia
Compensated through New York University School of Law Root-Tilden-Snow Program
633 Indiana Avenue Northwest
Washington, District of Columbia 20004
Summer Law Clerk

1989 – 1990
The Correctional Association of New York
135 East 15th Street
New York, New York 10003
Legal Intern

Summer 1989
Riordan & Rosenthal
I believe I was compensated through New York University School of Law Public Interest Law Foundation Program
523 Octavia Street
San Francisco, California 94102
Summer Associate

Summer 1989
Oregon Legal Services: Farm Worker Program
I believe I was compensated through New York University School of Law Public Interest Law Foundation Program
230 Northeast Second Street, Suite A
Hillsboro, Oregon 97124
Law clerk

Summer 1988
American Civil Liberties Union of Alaska
310 K Street Suite 309
Anchorage, Alaska 99501
Legal Intern

Summer 1988
Alaska Public Interest Research Group
430 West Seventh Avenue
Anchorage, Alaska 99501
Canvasser

Winter/Spring 1988
The Financial Relations Board
111 East Wacker Drive
10th Floor

Chicago, Illinois 60601
Administrative Assistant

Winter/Spring 1988
National Center on Institutions and Alternatives
Uncompensated
Chicago, Illinois
Researcher

Other Affiliations

2016 – 2021
American Civil Liberties Union of Washington
P.O. Box 2728
Seattle, Washington 98111
Board President (2019 – 2021)
Board of Directors (2016 – 2021)

2016 – 2021
American Civil Liberties Union of Washington Foundation
P.O. Box 2728
Seattle, Washington 98111
Board President (2019 – 2021)
Board of Directors (2016 – 2021)

2010 – 2012
Asian Bar Association of Washington
There is no physical address for this organization
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.

   I did not serve 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.

   Super Lawyers of Washington (2012, 2014 – 2020)
   Washington State Supreme Court Pro Bono Publico Honor Roll (2017 – 2019)
   Keynote Speaker, Seattle University School of Law Journal for Social Justice (Annual Banquet, 2017)
   United States Department of Justice Special Achievement Award (1997)

New York University School of Law Root Tilden Snow Scholar (1989 –1991)
Cornell University National Scholar (year unknown)
Cornell University Mortar Board National Honor Society (year unknown)
Cornell University Dean's List (year unknown)

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
American Bar Association
American Bar Association Gun Violence Advisory Committee
Asian Bar Association of Washington
    Board of Directors (2010 – 2012)
    Member (2006 - present)
Asian Pacific American Bar Association DC
Washington State Joint Asian Judicial Evaluation Committee
    Chairperson (2010 - 2013)
    Member (2006 – 2008, 2010 – 2013, 2015 - 2018)
King County Bar Association
Mother Attorneys Mentoring Association
National Asian Pacific American Bar Association
National Employment Lawyers Association
National Trial Lawyers
Washington State Association for Justice
Washington State Bar 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.

    District of Columbia, 1991
    Illinois, 2000
    Michigan, 2001
    Washington, 2004

    There have been no lapses in membership. I retired from the Illinois Bar effective December 31, 2020, and resigned from the Michigan Bar effective September 30, 2020.

    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 Ninth Circuit, 2008
United States District Court for the Central District of Illinois, 2000
United States District Court for the Northern District of Illinois, 1999
United States District Court for the Eastern District of Michigan, 2008
United States District Court for the Eastern District of Wisconsin, 2011
United States District Court for the Western District of Washington, 2005

I also have been admitted pro hac vice in a number of federal district courts.

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.

American Civil Liberties Union of Washington (2011 – 2021)
Board President (2019 – 2021)
Executive Committee (2017 – 2021)
Budget Committee (2017 – 2018)
Board of Directors (2016 – 2021)
Member (2011 – 2020)

American Civil Liberties Union of Washington Foundation (2016 –May 5, 2021)
Board President (2019 – 2021)
Executive Committee (2017 – 2021)
Budget Committee (2017 – 2018)
Board of Directors (2016 – 2021)
Cooperating Attorney (2015 – 2021)
Legal Committee (2015 – 2018)

Michigan Prisoner Reentry Initiative (2004)
Michigan Prisoner Reentry Advisory Council

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.

Recovering Attorney's Fees Under the Individuals With Disabilities Education Act, West's Education Law Reporter, 180 Ed. Law Rep. 1 (2003).

With Dennis P. Riordan and Mary Stearns, *Abortion Rights and the 1990 Court Reform Initiative*, CACJ (California Attorneys for Criminal Justice) Forum at 11 (Sept./Oct. 1989).

With Harry Levin, *An Accommodating Witness*, 8 Language & Communication 195 (1988).

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.

Open Letter from United States Department of Justice Alumni on Protecting Free and Fair Elections (Oct. 1, 2020). Copy supplied.

Letter from United States Department of Justice Alumni to United States Department of Justice Inspector General Michael Horowitz (June 10, 2020). Copy supplied.

Open Letter from United States Department of Justice Alumni Statement on Flynn Case (May 11, 2020). Copy supplied.

Letter from Lawyers and Law Professors to United States Attorney General Jeff

Sessions (Feb. 23, 2017). Copy supplied.

ACLU of Washington Letters

Included below are a number of letters sent by the ACLU of Washington during my time as President of the Board of Directors. Given my role, my name is on the organization's letterhead. However, I did not draft, review, or edit these letters before they were issued.

Letter from ACLU-WA Legislative Director Eric Gonzalez Alfaro to Speaker of the Washington House of Representatives Laurie Jinkins (Apr. 12, 2021). Copy supplied.

Letter from ACLU-WA Staff Attorney Breanne Schuster and ACLU Women's Rights Project Senior Staff Attorney Sandra Park to City of Seattle Councilmembers (Mar. 26, 2021). Copy supplied.

Letter from ACLU-WA Legislative Director Eric Gonzalez Alfaro to Speaker of the Washington House of Representatives Laurie Jinkins and Democratic Caucus (Mar. 24, 2021). Copy supplied.

Letter from ACLU-WA Staff Attorney Breanne Schuster and Equal Justice Works Fellow Julia Mizutani to City of Everett City Council Members (Mar. 17, 2021). Copy supplied.

Letter from ACLU-WA Executive Director Michele Storms to Washington State Department of Corrections Secretary Stephen Sinclair and Airway Heights Corrections Center Superintendent James Key (Mar. 12, 2021). Copy supplied.

Letter from ACLU-WA Executive Director Michele Storms to Walla Walla City Council (Jan. 25, 2021). Copy supplied.

Letter from ACLU-WA Executive Director Michele Storms and ACLU-WA Technology and Liberty Project Manager Jennifer Lee to Chief Justice Steven C. González, et al. (Jan. 19, 2021). Copy supplied.

Letter from ACLU-WA Technology and Liberty Project Manager Jennifer Lee to Seattle Mayor Jenny Durkan, et al. (Dec. 2, 2020). Copy supplied.

Letter from ACLU-WA Technology and Liberty Project Manager Jennifer Lee, to Seattle Information Technology (Nov. 6, 2020). Copy supplied.

Letter from ACLU-WA Executive Director Michele Storms to Supporters (Nov. 2020). Copy supplied.

Letter from ACLU-WA Executive Director Michele Storms Washington House of Representative Roger Goodman (June 19, 2020). Copy supplied.

Letter from ACLU-WA Executive Director Michele Storms to Governor Jay Inslee and Washington State Department of Health Secretary John Wiesman (May 15, 2020). Copy supplied.

Letter from ACLU-WA Executive Director Michele Storms to Governor Jay Inslee (May 15, 2020). Copy supplied.

Letter from ACLU-WA Executive Director Michele Storms to Governor Jay Inslee (May 4, 2020). Copy supplied.

Letter from ACLU-WA Executive Director Michele Storms to Governor Jay Inslee (Apr. 30, 2020). Copy supplied.

Letter from ACLU-WA Legislative Director Eric Gonzalez Alfaro and ACLU-WA Political Director Alison Holcomb to House Innovation, Technology & Economic Development Committee of the Washington State Legislature (Feb. 20, 2020). Copy supplied.

Letter from ACLU of Washington, et al. to Washington State House of Representatives Speaker Laurie Jinkins and Minority Leader J.T. Wilcox (Feb. 14, 2020). Copy supplied.

Letter from ACLU of Washington, et al. to Washington State House of Representatives House Innovation, Technology & Economic Development Committee Chair Zack Hudgins and Ranking Minority Member Norma Smith (Feb. 4, 2020). Copy supplied.

Letter from ACLU of Washington and Campaign for Smart Justice Policy Director Mark Cooke to Kennewick Mayor Don Britain and Kennewick City Council Members (Nov. 4, 2019). Copy supplied.

Letter from ACLU-WA Staff Attorney Breanne Schuster to City of Yakima City Council Members (Oct. 22, 2019). Copy supplied.

Letter from ACLU of Washington and Campaign for Smart Justice Policy Director Mark Cooke to Kittitas County Sheriff Gene Dana, et al. (Oct. 18, 2019). Copy supplied.

Letter from ACLU-WA Executive Director Michele Storms, et al. to Seattle City Councilmember Lorena Gonzalez, et al. (Sept. 18, 2019). Copy supplied.

Letter from ACLU-WA Legal Director Emily Chiang to Washington

Supreme Court Chief Justice Mary Fairhurst (June 25, 2019). Copy supplied.

Letter from ACLU-WA Legal Director Emily Chiang to Seattle City Council (June 25, 2019). Copy supplied.

Letter from ACLU-WA Executive Director Michele Storms to Jenny A. Durkan, et al. (June 21, 2019). Copy supplied.

Letter from ACLU-WA Senior Trial Attorney Nancy Talner to Washington State Association of Municipal Attorneys First Vice President Sara Watkins (Apr. 17, 2019). Copy supplied.

Letter from Technology and Liberty Project Director Shankar Narayan and ACLU-WA Technology and Liberty Project Advocate Jennifer Lee to Seattle IT (Mar. 20, 2019). Copy supplied.

Letter from ACLU-WA Police Practices & Immigration Counsel Enoka Herat and ACLU-WA Immigrant Rights Project Staff Attorney Cody Wofsky to Washington State House of Representatives House Appropriations Committee Chair Timm Ormsby and Appropriations Committee Members (Feb. 27, 2019). 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.

November 11, 2020: Award Presenter, ACLU of Washington 100 Centennial Celebration, ACLU of Washington, Seattle. Washington. Video available at https://www.youtube.com/watch?v=g_5shTAJAtA (at approximately 1:24:00).

November 2020 (date unknown): Guest speaker, Civil Procedure Class of Professor Suja Thomas, University of Illinois School of Law, Champaign, Illinois. Professor Thomas pre-recorded a Q&A session where she asked me about litigating class actions that she played to her class in November 2020. I have no notes, transcript, or recording. The address for Professor Thomas is University of Illinois College of Law, 504 East Pennsylvania Avenue, Champaign, Illinois 61820.

October 9, 2020: Presenter, Columbia Legal Services Case Planning Training,

Civil Case Theory, Columbia Legal Services, Seattle, Washington. Presentation supplied.

September 11, 2020: Welcoming Remarks, ACLU of Washington Flights and Rights: National Security and Surveillance, ACLU of Washington, Seattle, Washington. Video available at https://www.youtube.com/watch?v=OJyywvRTZ30 (at approximately 1:30).

June 26, 2018: Speaker, Day of Action: #StandWithMuslims in Seattle, ACLU of Washington, CAIR-Washington State, Muslim Association of Puget Sound American Muslim Empowerment Network (MAPS AMEN), OneAmerica, and Truman Project - Pacific Northwest Chapter, Seattle, Washington. Video available at https://www.facebook.com/138666709493478/videos/2225520977474697/?__so__=channel_tab&__rv__=all_videos_card (at approximately 8:14).

June 20, 2018: Panelist, Navigating Your Path to Partnership, Asian Bar Association of Washington, Seattle, Washington. I discussed becoming a law firm partner. I have no notes, transcript, or recording. There is no address for the Asian Bar Association of Washington, but the current president is John Fetters, and his office address is Stokes Lawrence, 1420 Fifth Avenue, Suite 3000, Seattle, Washington 98101-2393.

October 13 – 15, 2017: Faculty and Lecturer, National Institute for Trial Advocacy Deposition Advocacy Program: Defending Depositions, National Institute for Trial Advocacy Seattle, Washington. Presentation supplied.

May 8, 2017: Presenter, ACLU Law & Liberty Series, Litigating Against Trump's Muslim Ban, ACLU of Washington, Seattle, Washington. Video available at https://www.youtube.com/watch?v=BiigHt9Nk-4 (at approximately 10:40).

April 21, 2017: Keynote Speaker, Seattle Journal for Social Justice Annual Banquet, Seattle University, Seattle, Washington. Notes supplied.

March 16, 2017: Speaker, Embrace Our Neighbors: Pray In & Speak Out Against Islamophobia, Greater Seattle Neighborhood Action Coalition and the Muslim Association of the Puget Sound Seattle, Washington. Notes supplied.

October 14 – 15, 2010: Presenter, How to Prepare for the Big Event: Trial (The Last 90 Days), Opening and Closing Arguments, Women Antitrust Plaintiffs' Attorneys Conference, Minneapolis, Minnesota. Presentation supplied.

March 2004 (date unknown): Panelist, MedStart Child Advocacy Week Conference, Michigan. To the best of my recollection, I spoke about health care access for impoverished children. I have no notes, transcript, or recording. MedStart is an interdisciplinary child advocacy organization composed of

students from the University of Michigan schools of medicine and nursing. MedStart does not have a physical address.

November 14, 2003: Presenter, Civil and Criminal Strategies for Protecting Clients Accused of Food Stamp Fraud, National Legal Aid and Defender Association Annual Conference, Seattle, Washington. Notes supplied.

November 14, 2003: Presenter, Holistic Advocacy for Youth: Addressing the Basic Needs of Children Through Civil, Criminal and Community Collaborations, National Legal Aid and Defender Association Annual Conference, Seattle, Washington. Notes supplied.

November 14, 2003: Panelist, Navigating the Crossroads of Change: Where Do We Go From Here, National Legal Aid and Defender Association Annual Conference, Seattle, Washington. I discussed challenges facing legal services programs and ideas for partnerships to expand justice for low-income people. I have no notes, transcript, or recording. The address for the National Legal Aid and Defender Association is 1901 Pennsylvania Avenue, Northwest, Suite 500, Washington, District of Columbia 20006.

2002 (date unknown): Presenter, Michigan Children's Law Section's Annual Training, Michigan Children's Law Section. I gave a presentation about obtaining attorney's fees under the Individuals with Disabilities in Education Act. I have no notes, transcript, or recording. There is no physical address for the Michigan Children's Law Section. The current chair is Lynn M. Perry, and her office address is Kent County 17th Circuit Court Family Division, 180 Ottawa Ave, Northwest, Suite 4200, Grand Rapids, Michigan 49503-2703.

I also participated as faculty in the following training programs. However, I did not give any individual presentations or speeches (and, therefore, have no notes) except for the Defending Depositions lecture at the October 2017 National Institute for Trial Advocacy training, which is described above. I was a trainer/faculty and was primarily doing demonstrations and giving critiques/feedback in breakout sessions where the participants were practicing various litigation skills during exercises:

August 1 – 3, 2018: Faculty, Deposition Skills: Seattle, National Institute for Trial Advocacy Seattle, Washington.

October 13 – 15, 2017: Faculty and Lecturer, National Institute for Trial Advocacy Deposition Advocacy Program, National Institute for Trial Advocacy Seattle, Washington.

June 12 – 16, 2005: Faculty, Trial Advocacy College, National Legal Aid and Defender Association, Philadelphia, Pennsylvania.

July 22 – 23, 2003: Faculty, Trial Advocacy Training for Legal Aid Attorneys, National Legal Aid and Defender Association, Los Angeles, California.

October 27 – 29, 2003: Lead Trainer, Negotiation Skills Training, Committee on Regional Training, Ann Arbor, Michigan

December 3 – 6, 2002: Trainer, Basic Lawyering Skills Training, Committee on Regional Training, Ann Arbor, Michigan.

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 made an exhaustive search in an effort to find all interviews responsive to this question. I have located the events listed below, but it is possible that there are a few I was unable to locate.

Jacki Huntington, *Trump's 'Muslim Ban' lives on. But for how long?*, Dateline (Special Broadcasting Service Australia), Oct. 28, 2020. Copy supplied.

Press Release, ACLU of Washington, After ACLU-WA Lawsuit, Government Agrees to Prioritize Processing of Refugees Stymied by Travel Ban (Feb. 10, 2020). Copy supplied (reprinted in multiple outlets).

Press Release, ACLU of Washington, Michele Storms Named Executive Director of the ACLU of Washington (Mar. 5, 2019). Copy supplied (reprinted in multiple outlets).

Keller Rohrback Attorneys Discuss the Challenges and Rewards of Pro Bono Work (Oct. 22, 2018). Copy supplied.

Jim Brunner, *Gov. Jay Inslee, immigration-rights advocates blast Supreme Court travel ban ruling as 'abhorrent'*, Seattle Times, June 26, 2018. Copy supplied.

Joseph Doe Reunites with His Wife and Children (Jan. 19, 2018). Copy supplied.

Martha Bellisle, *Judge's partial lifting of President Trump travel ban gives refugees hope*, The Salt Lake Trib., Dec. 24, 2017. Copy supplied (reprinted in multiple outlets).

Press Release, ACLU of Washington, Federal Court Grants Injunction in Suit to Stop Trump Administration from Separating Refugees from Their Families (Dec. 23, 2017). Copy supplied.

Martha Bellisle, *Judge considers lifting ban on entry of refugees, families*, Seattle

Times, Dec. 21, 2017. Copy supplied.

Press Release, ACLU of Washington, ACLU Seeks Injunction to Stop Trump's Muslim Ban from Separating Refugees from Their Families (Dec. 21, 2017). Copy supplied.

Press Release, ACLU of Washington, ACLU Asks for Injunction to Stop Trump's Muslim Ban from Separating Refugees from Their Families (Nov. 6, 2017). Copy supplied (reprinted in multiple outlets).

Press Release, ACLU of Washington, Five Individuals, Council on American-Islamic Relations Join ACLU of Washington Suit Challenging Trump's Still Unconstitutional Travel Ban (Mar. 15, 2017). Copy supplied (reprinted in multiple outlets).

Museum of History & Industry, *Community Conversation: Immigrant Life in Uncertain Times*, YouTube (Feb. 27, 2017), available at https://www.youtube.com/watch?t=18m4s&v=nTC850WTQzs&feature=youtu.be (at approximately 18 minutes) (also on the Seattle Channel at http://www.seattlechannel.org/misc-video?videoid=x71128).

Josh Gerstein, *Trump travel ban lawsuits pile up*, Politico, Feb. 9, 2017. Copy supplied.

Bob Geballe, *Finding Her Voice*, Wash. Super Lawyers Magazine at 28 (2016). Copy supplied.

Keller Rohrback L.L.P., *Keller Rohrback L.L.P. Files Lawsuit against Kraft Heinz Foods Co. and Investigates Wal-Mart Stores, Inc. on Behalf of Consumers*, Business Wire, Apr. 25, 2016. Copy supplied.

Travis Quezon, *Judicial election's far reaching implications for API voters*, Northwest Asian Weekly, July 27, 2012. Copy supplied.

Elizabeth Shaw, *Colorful hairstyle prompts changes to student manual*, The Flushing Observer, June 20, 2004. Copy supplied.

Naseem Stecker, *Of Interest: Partnering to Provide Pro Bono Legal Aid: MI-LAPP Matches High-Impact Cases and Low-Income Clients with Lawyers from Large Firms*, 81 MI Bar J. 38, June 2002. Copy Supplied.

Bloomberg News, *Wal-Mart settles bias suit*, L.A. Times, July 11, 2001. Copy supplied.

Peter Shinkle, *State Police agree to settle bias suit*, The Advocate, Aug. 30, 1996. 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 any 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 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).

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

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

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

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

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

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

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held any judicial office.

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations**:

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

I have not held any public 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 have not served as a law clerk to a judge.

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

I have not 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;

1991 – 1995
Public Defender Service for the District of Columbia
633 Indiana Avenue Northwest
Washington, District of Columbia 20004
Staff Attorney

1995 – 1999
United States Department of Justice
Civil Rights Division
Employment Litigation Section
P.O. Box 65968
Washington, District of Columbia 20035
Trial Attorney (1995 – 1997)
Senior Trial Attorney (1997 – 1999)

1999 – 2001
United States Equal Employment Opportunity Commission
Chicago District Office
500 West Madison Street, Suite 2800
Chicago, Illinois 60661
Senior Trial Attorney

2001 – 2004
Michigan Poverty Law Program
611 Church Street, Suite 4E
Ann Arbor, Michigan 48104
Litigation Coordinator

2020
Seattle University School of Law
901 12th Avenue
Seattle, Washington 98122
Adjunct Professor

2004 – present
Keller Rohrback LLP.
1201 Third Avenue, Suite 3200
Seattle, Washington 98101
Associate (2004 – 2007)
Partner (2008 – 2019)
Of Counsel (2020 – present)

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.

While I was with the Department of Justice, I volunteered for the Interagency Project on Shared Neutrals, which created an interagency mediation program for federal agencies staffed by federal employee volunteers. The only matter that I mediated was through this Project in approximately 1997 and involved an employment dispute involving the United States State Department.

b. Describe:

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

I began my legal career in 1991 as a trial attorney with the Public Defender Service of the District of Columbia ("PDS"). I represented indigent defendants charged with crimes in the District of Columbia Superior Court. During my first year, I worked in juvenile court representing young people charged with crimes including drug possession, robbery, and homicide. I then progressed to handling adult misdemeanors. Prior to progressing to felony cases, I completed a rotation in the appellate division. While there, I briefed and argued two or three cases before the District of Columbia Court of Appeals. After that, I moved into the Felony 2 section of the office.

In 1995, I joined the United States Department of Justice as a trial attorney in the Employment Litigation Section of the Civil Rights Division. There, I investigated and litigated individual and pattern or practice cases pursuant to Title VII of the Civil Rights Act of 1964 against public

employers in federal courts nationwide. I worked with employers to develop anti-discrimination policies, as well as complaint and investigation procedures. I served on the Civil Rights Division Alternative Dispute Resolution Working Group. I also represented the United States Department of Labor in a case brought against it by Volvo GM Heavy Truck Corporation related to an administrative complaint alleging sex discrimination by Volvo at its Dublin, Virginia plant.

In 1999, I joined the Chicago District Office of the United States Equal Employment Opportunity Commission ("EEOC"). At the EEOC, I litigated individual and pattern or practice cases brought against private employers under federal civil rights employment statutes such as Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. I also conducted outreach to business and community groups.

In 2001, I joined the Michigan Poverty Law Program ("MPLP"), a joint project between the University of Michigan Law School and Legal Services of South Central Michigan, as Litigation Coordinator. MPLP provides support services statewide for local legal aid programs and other poverty law advocates. I forged strategic partnerships with legal services offices, advocacy groups, and prosecutors around Michigan to develop systemic responses to harms associated with poverty, and I promoted creative alternatives to litigation whenever possible. I worked on a variety of issues including education, welfare fraud, and prisoner reentry strategies. Finally, I planned and taught in litigation skills training programs for legal services lawyers through the Committee on Regional Training (CORT), a multi-state consortium which provided litigation skills trainings to legal aid attorneys in Michigan, Ohio, and West Virginia, as well as nationwide through the National Legal Aid and Defender Association.

In 2004, I joined the law firm of Keller Rohrback L.L.P. in Seattle, Washington. I have primarily litigated class action cases, including multidistrict litigation. My cases have covered a wide variety of areas including antitrust, consumer protection, employee retirement plan protection, environmental claims, fiduciary duty breaches by financial services companies, labor and employment, and qui tam. I have written and litigated countless motions (motions to dismiss, discovery motions, motions for summary judgment, motions in limine, expert-related motions, etc.), conducted and/or led teams through hundreds of depositions, been involved in very large-scale electronic document discovery, prepared numerous cases up to the eve of trial (when they settled), and participated in settlement and mediation sessions.

ii. your typical clients and the areas at each period of your legal career, if

any, in which you have specialized.

From 1991 to 1995, at the Public Defender Service for the District of Columbia, and from 2001 to 2004 at the Michigan Poverty Law Program, my clients were exclusively indigent individuals.

From 1995 to 1999, at the Department of Justice, and from 1999 to 2001, at the Equal Employment Opportunity Commission, my client was the federal government. The claimants were almost always individual employees.

From 2004 to the present at Keller Rohrback, my clients have been predominantly individuals. In one case, I defended a local community bank. I also worked on cases where the clients were various federal home loan banks or other governmental entities.

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.

My practice has been almost exclusively in the federal courts since 1995. I have appeared in court occasionally as many motions are decided without a hearing. Since 1995, I have had very few state court cases. However, when I was a public defender from 1991 through 1995, my practice was exclusively in the District of Columbia Superior Court. As a public defender, I appeared in court daily.

i. Indicate the percentage of your practice in:
   1. federal courts: 87%
   2. state courts of record: 13%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 87%
   2. criminal proceedings: 13%

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 do not recall the number of cases I tried to verdict, but they would all have been tried during my tenure with the Public Defender Service for the District of Columbia ("PDS"). I would estimate I had between eight and ten trials at PDS, and I appeared in court almost daily and had numerous motions arguments as well

as evidentiary hearings, a number of which resulted in dismissals right before trial began. Because the caseloads at PDS were more controlled than at most other defender services, I was able to: draft and argue motions as needed for each case; prepare openings, direct examinations, cross-examinations, witnesses, and trial exhibits for cases that were nearing trial; gather mitigating information for clients and present it in a way that conveyed the complexities of each client's situation to prosecutors when negotiating plea deals or to judges at sentencing; and consult with my clients throughout the process. All of my trials were as sole counsel. At the time I left PDS I had prepared a number of cases (as both sole counsel and associate counsel on some first degree felony cases) that were on the verge of jury trials. I have been to the eve of trial numerous times in my civil cases (with motions in limine, voir dire, and jury instructions submitted), but all of the cases settled shortly before the trials were to begin. I was co-chief counsel on all of those matters except for one when I first started at Keller Rohrback where I was associate counsel.

i. What percentage of these trials were:
   1. jury: 0%
   2. non-jury: 100%

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 was part of the drafting team in *Ameriprise Fin., Inc. v. Gallus*, 559 U.S. 1046 (2010) (Brief for the Respondents at 2009 WL 3776251).

I assisted with the drafting of the amicus brief for John C. Bogle in *Jones v. Harris Associates L.P.*, 559 U.S. 335 (2010) (Brief for John C. Bogle as Amicus Curiae in Support of Petitioners at 2009 WL 1703210), but my name was not listed on the brief.

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.

I have worked on many cases over the years and have attempted to list a representative sample of the most significant cases I have litigated. Given the size and scope of my cases, there were often multiple co-counsel and opposing counsel with large teams involved. I have listed the main co-counsel and opposing counsel with whom I worked for each case.

1. *In re M.C.*, Case No. 1992 DEL 1254 (Super. Ct. D.C.)

As a public defender, I represented a 12 or 13-year-old child, who had no prior criminal record and was charged with Assault with Intent to Kill and related weapons charges. The incident involved my client and his good friend. According to the friend, my client shot him in the face at close range for no apparent reason. To the best of my memory, my theory of the case (borne out by all the evidence) was that the friend was playing with the gun and my client was trying to get the gun away from him when it went off, with the bullet ricocheting off the ground into the friend's face. I believed the friend accused my client of shooting him to avoid getting in trouble himself for having the gun. According to a witness who did not know the boys and who the boys stumbled upon while seeking help, my client had taken off his shirt to give to his friend to try to stop the bleeding and stayed with the friend while they sought help, not wanting to leave his side. Critically, the bullet lodged in the friend's nose/eye area which, according to the expert I retained, was completely inconsistent with a direct hit to the face. The most likely explanation for the bullet lodging in the area was that it first hit another hard object, significantly reducing its velocity, before hitting the friend. At trial, I also had to subpoena the friend's brother as an adverse witness and developed testimony that the friend had a history of playing with guns. Based upon the evidence I presented at trial, which included expert testimony, my client was acquitted of all charges. I was the sole counsel in this case.

Presiding Judge: Hon. William Jackson

Dates of representation: 1992 – 1993

Opposing Counsel

Honorable Darlene Soltys
Formerly Assistant Corporation Counsel for the District of Columbia
Associate Judge
Superior Court of the District of Columbia
H. Carl Moultrie Courthouse
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Washington, DC 20001
(202) 879-2080

2. *In re D.P.*, Case No. 1992 DEL 1751 (Super. Ct. D.C.)

As a public defender, I represented a teenaged boy with no prior criminal record who was charged with Assault with Intent to Kill while Armed and Robbery. After the perpetrator demanded the victim empty his pockets (and the victim complied), the robber shot him in the face with a shotgun from a close distance. The incident was called in as a homicide, but the victim survived. The police report made the case seem airtight. The police claimed to have an eyewitness to the robbery. They alleged that the witness saw my client the next day sitting on a wall in the park and called the police to report him. They claimed that the witness burst into tears when driven by to identify him, asking why he would shoot when the victim had already given up his money. The limited discovery rules in effect at the time did not require the state to share with defense counsel the identity of the eyewitness. I asked my investigators to knock on every door to any residence with a window facing the park where the crime occurred, including a large apartment building. My investigators found the eyewitness on one of the top floors of the apartment building: an approximately 80-year-old woman who had witnessed the crime but said she couldn't see very well since it was dark. She called the police the next day when she saw my client. However directly contradicting the police report, she told us that when asked to identify the shooter, she ultimately concluded that my client could not be the shooter because he was too tall, and the police seemed angry with her for not positively identifying my client. I had to have the eyewitness brought to court for the suppression hearing by U.S. Marshals because she refused to appear. At the suppression hearing, I also developed evidence that the police likely used a different photo array with the victim than the one that was presented to the court. The evidence I developed and presented at the identification suppression hearing – which involved questioning the victim, an eyewitness, and police officers – strongly suggested that my client was not the perpetrator. The judge denied the motion to suppress, but then the prosecutor moved to dismiss the charges, and the court granted the prosecutor's motion. I was the sole counsel in this case.

Presiding Judge: Hon. Noel Kramer

Dates of Representation: 1992

Opposing Counsel

I believe opposing counsel was Tracy Burnett with the Office of Corporation Counsel. I am not positive I have her last name correct, and I could not find her listing in the D.C. Bar Directory.

3. *U.S. v. Sheriff of Assumption Parish Louisiana*, Case No. CIV.A. 94-3656 (E.D. La.)

This case involved allegations that the Sheriff of Assumption Parish had failed or refused to hire women in the position of road deputy or its equivalent, in violation of Title VII of the Civil Rights Act. At the time of the lawsuit, the Sheriff had never hired a woman as a deputy. I joined the case when it was going into discovery and litigated it with a colleague from the Department of Justice. I was either first or second chair taking and

defending depositions, drafted briefings, and prepared the case for trial. The case settled on the eve of trial.

Presiding Judge: Hon. Marcel Livaudais

Dates of representation: 1995 – 1996

Co-counsel

Brenda Berlin
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Ombudsperson
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Kingscote Gardens
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Opposing Counsel

John Weeks (deceased)
T. Allen Usry
Usry & Weeks
1615 Poydras Street, Suite 1250
New Orleans, LA 70112
(504) 592-4600

4. *United States v. New York City Bd. of Educ.*, Case No. 96–CV–0374, 85 F. Supp. 2d 130 (E.D.N.Y. 2000), *vacated sub nom. Brennan v. New York City Bd. of Educ.*, 260 F.3d 123 (2d Cir. 2001)

This lawsuit alleged that the New York City Board of Education had engaged in a pattern or practice of discriminatory conduct in violation of Title VII of the Civil Rights Act with respect to the recruitment and hiring of Blacks, Hispanics, Asians, and women for the positions of School Custodian and School Custodian Engineer. These positions were well-paid and sought after, but were held by an overwhelmingly white and male workforce. In particular, we pursued: (1) a disparate impact claim on behalf of Blacks and Hispanics which challenged the administration and use of certain written, competitive civil service examinations for the positions of Custodian and Custodian Engineer; and (2) a disparate impact claim on behalf of Blacks, Hispanics, women, and Asians, which challenged the Board's recruitment practices for the positions of Custodian and Custodian Engineer. After extensive discovery, including expert discovery, the case settled. After I left the Department of Justice, several white male custodians challenged four paragraphs of the agreement that provided permanent employment and retroactive competitive seniority to the claimants and the parties reached a new settlement agreement.

Presiding Judges: Hon. Frederic Block and Hon. Robert Levy (Magistrate)

Dates of Representation: 1998 – 1999

Co-counsel

Aaron Schuham
Formerly with the U.S. Department of Justice
Associate General Counsel for the Civil Rights Division
U.S. Department of Health & Human Services
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Honorable Luis Lavin
Formerly with the U.S. Department of Justice
Associate Justice
California Court of Appeal, Second Appellate District, Division Three
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Opposing Counsel

Drake Colley
Formerly Senior Counsel
Retired from New York City Law Department

Norma Cote
Formerly Senior Counsel
New York City Law Department

5. *EEOC v. Wal-Mart Stores, Inc.* Case No. 1:99-cv-07261 (N.D. Ill.)

I was the lead EEOC attorney in this case alleging that Walmart discriminated against a customer service associate because of her age in violation of the Age Discrimination in Employment Act, and retaliated against her when she complained of the discrimination. This case was filed in 1999 and settled in 2001 after discovery. I methodically developed a very strong case through document discovery, witness interviews, and depositions, during which I obtained damaging testimony and admissions by Wal-Mart decisionmakers. At the time, Walmart was known for aggressively litigating all their cases and never settling. Given the evidence I developed, however, they settled this case.

While Wal-Mart did not admit violating the law, the company did publicly concede it did not handle the situation properly.

Presiding Judge: Hon. Joan Lefkow

Dates of representation: 1999 – 2001

Co-counsel

Jean Kamp
Formerly with the EEOC
204 North Harvey
Oak Park, IL 603022
(708) 848-5636

June Wallace Carson
Formerly with the EEOC

Opposing Counsel

Gregory S. Muzingo (deceased)
Former Senior Assistant General Counsel for Wal-Mart

Pamela Dunn Connolly
Retired from Wal-Mart
Formerly Corporate Counsel
P.O. Box 9560
Longboat Key, FL 34228

6. *Cason-Merenda v. Detroit Med. Ctr.*, Case No. 06-15601, 2014 WL 905828 (E.D. Mich. Mar. 7, 2014); 862 F. Supp. 2d 603 (E.D. Mich. 2012)

This class action lawsuit, brought against eight major hospitals in Detroit, alleged that the hospitals had conspired to keep their nurses' wages at artificially low levels. We alleged that the hospitals agreed to, and did regularly, exchange detailed and non-public information about the compensation that was paid to or was going to be paid to registered nurse employees in support of an agreement to suppress nurse compensation. All eight defendants eventually settled, with the last remaining defendant (Detroit Medical Center, which became a part of Vanguard Health Systems, Inc. (VHS) during the course of the litigation) settling on the eve of trial. I led the teams of attorneys from five firms tasked with taking approximately seventy depositions across all the defendants and third parties. I was also one of the four attorneys who was slated to present the case at trial. Ultimately, we recovered almost $90 million for the affected nurses.

Presiding Judge: Hon. Chief Judge Gerald Rosen, retired

Dates of representation: 2007 – 2016

Co-counsel

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7. Investment Company Act Breach of Fiduciary Duty Cases:

Kenny v. Pacific Investment Management Company LLC et al, Case No. 2:2014cv01987 RSM, 2016 WL 4268934 (W.D. Wash. Aug. 15, 2016); 2016 WL 6836886 (W.D. Wash. Nov. 21, 2016).

Gallus v. Ameriprise Financial, Inc., Case No. 0:04-cv-04498, 497 F. Supp. 2d (D. Minn. 2007), *rev'd* 561 F.3d 816 (8th Cir. 2009), *cert. granted, judgment vacated*, 559 U.S. 1046 (2010), *and on remand*, 675 F.3d 1173 (8th Cir. 2012); 561 F.3d 816 (8th Cir. 2009), *vacated on other grounds*, 559 U.S. 1046 (2010).

I have litigated a number of cases alleging a breach of fiduciary duty by an investment advisor in violation of the Investment Company Act of 1940. I was on the core team litigating the two cases listed above, which challenged whether the advisors of the funds charged excessive fees, thereby violating their fiduciary duties to the shareholders of the funds. I was either first or second chair taking and defending numerous depositions (including expert depositions), drafted and responded to discovery requests, drafted and/or edited briefings (including summary judgment briefing in both cases as well as both Eighth Circuit appeals and the writ of certiorari briefing to the Supreme Court in *Gallus*), and argued discovery motions in the district court. I also second chaired the Eight Circuit argument. There are a number of reported decisions resulting from these cases on issues ranging from statutes of limitations to discovery to summary judgment,

cited above. The summary judgment decision in *Gallus* was appealed to the Eighth Circuit as well as the United States Supreme Court. The case ultimately was remanded to the Eighth Circuit for consideration in light of a sister case that the Court decided. We were preparing for trial in the *Kenny* case when it settled.

Presiding Judges: Hon. Ricardo Martinez for *Kenny*, and Hon. Donovan Frank for *Gallus*.

Dates of representation: 2007 – 2019

Co-counsel (in both *Gallus* and *Kenny*)

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8. *Doe v. Trump*, Case No. C17-0178 JLR, 288 F. Supp. 3d 1045 (W.D. Wash. 2017)

As a cooperating attorney for the ACLU of Washington, I represented non-immigrants and refugees in a challenge to the Trump administration's travel ban. I was the lead attorney on the case. I argued for and obtained a nationwide injunction enjoining the Trump Administration from enforcing a policy that would indefinitely prevent children and spouses from any country from being allowed to join refugees already admitted to the United States. After conducting discovery, the case settled with the government agreeing to expedite the processing of over 300 refugees affected by the ban and to count any refugees admitted under the agreement under the refugee cap in effect at the time of the ban.

Presiding Judge: Hon. James Robart

Dates of representation: 2017 – 2020

Co-Counsel

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Co-Counsel from Consolidated Case:

Jewish Family Services v. Trump, Case No. C17-1707JLR (W.D. Wash.)
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Opposing Counsel

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Joshua Kolsky
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9. *In re Simmons*, Bar Applicant, Case No. 201, 671-5, 190 Wash. 2d 374 (Sup. Ct. Wash. 2018)

Ms. Simmons, a local civil rights leader and 2017 graduate of Seattle University School of Law, had been denied the opportunity to take the bar examination because of her criminal record. Along with two of my Keller Rohrback colleagues, I represented the ACLU of Washington and 102 other organizations and individuals, arguing that the record presented to the State of Washington's review committee showed that Ms. Simmons demonstrated complete rehabilitation through many years of hard work, community service, civil rights leadership, and an exceptional law school record. We also argued that important public interests, including the reputation of the bar and advancing public confidence in the legal profession, are served by allowing rehabilitated persons with criminal histories to pursue law licenses. The Supreme Court of Washington unanimously found that Ms. Simmons had "the requisite moral character and fitness to practice law in the State of Washington."

Presiding Judges: Hon. Justices of the Supreme Court of Washington

Dates of representation: 2017 – 2018

Co-Counsel

Prachi Dave (formerly with the ACLU of Washington)
Public Defender Association
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Laura Gerber
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10. *Renteria v. Stemilt AG Services, LLC*, Case No. 18-2-00471-8 (Super. Ct. of Wash. Chelan County), Case No. 2:20-cv-00392-SMJ (E.D. Wash.)

As co-counsel with Columbia Legal Services, on behalf of two members of the putative settlement class, I moved to intervene and requested denial of final approval of a proposed class action settlement agreement. The case alleged a number of wage and hour violations on behalf of more than 10,000 agricultural workers in Washington against Stemilt, one of the largest agricultural employers in the United States. The proposed settlement was for $200,000. We learned of the settlement, which could have had an effect on federal claims we were bringing on behalf of H-2A farmworkers, shortly before the final approval hearing. We filed an objection to the settlement, followed by a motion to intervene. We requested and reviewed all the settlement briefing and requested limited discovery, which the settling parties did not provide. We raised concerns with several of the provisions of the proposed settlement and additional information the Court should examine to determine whether the proposed settlement was adequate based upon Columbia Legal Service's expertise in farmworker cases. The court granted intervention and denied final approval of the settlement. Out of an abundance of caution, Keller Rohrback withdrew from the case and had another law firm take its place to avoid any allegations of potential conflicts of interest since we represented the intervenors as named plaintiffs in a separate case against Stemilt in federal court. Preliminary approval was granted on April 27, 2021, for a new settlement reached by intervenors with Stemilt which increased the recovery for plaintiffs to a $3 million, non-reversionary common fund.

Presiding Judge: Hon. Lesley Allan

Dates of Representation: 2019 – 2020

Co-counsel

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Opposing Counsel

Robert Siderius
Jeffers, Danielson, Sonn & Aylward, P.S.
2600 Chester Kimm Road
Wenatchee, WA 98801
(509) 662-3685

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 have had the privilege of litigating both criminal and civil cases. While I focused on employment litigation when I was at the Department of Justice and the Equal Employment Opportunity Commission, joining Keller Rohrback L.L.P. provided me with experience in a wide range of issues. For example, my first assignment when I arrived at

Keller Rohrback was to lead the drafting of the statement of undisputed facts in support of the plaintiffs' motion for partial summary judgment against Merrill Lynch in the *Worldcom* case (*In re WorldCom, Inc. ERISA Litig.*, No. 02 Civ. 4816 DLC (S.D.N.Y.)). The issue was whether Merrill Lynch was the directed trustee of Worldcom's 401(k) plan and, if so, whether it had a duty under the Employee Retirement Income Security Act of 1974 ("ERISA") to investigate whether the continued investment of the plan assets in company stock was imprudent. I had no experience with ERISA, most of the discovery in the case had already taken place before I joined the team, and the case involved a voluminous amount of documents. I had roughly two months to learn ERISA, digest the evidence developed in depositions, and cull through the document discovery for the support we needed for the motion. We were preparing for trial when the court granted Merrill Lynch's motion for summary judgment and denied our motion as moot. *In re WorldCom, Inc. ERISA Litig.*, 354 F. Supp. 2d 423 (S.D.N.Y. 2005). Since that time, I have litigated cases involving claims ranging from antitrust to fiduciary breaches of duty to consumer, just to name a few.

As a partner at the law firm, I trained a number of associates to help develop their litigation skills and support their progress toward becoming partners. With a decreasing number of hearings held, and therefore, decreasing number of opportunities for younger attorneys to get experience, this sometimes meant stepping aside and giving the younger attorney the opportunity to argue before a judge. Training the next generation ensured not only that I knew the necessary law, facts, and tools that would be needed for whatever task was at hand, but also that I knew it well enough to help someone else carry the flag forward. Training others has thus always further honed my own skills.

Outside of my practice, I served on the Washington State Joint Asian Judicial Evaluation Committee ("JAJEC"). I served on JAJEC for over ten years, evaluating candidates for judicial positions on all levels of the Washington state courts as well as the United States District Court for the Eastern District of Washington. JAJEC, which was intended to streamline the judicial evaluation process for candidates, consists of members working together from the Asian Bar Association of Washington, the Korean American Bar Association, the South Asian Bar Association of Washington, Filipino Lawyers of Washington, Middle Eastern Legal Association of Washington, and the Vietnamese American Bar Association.

As the President of the Board of the ACLU of Washington, I led the board which sets and monitors the mission and broad priorities of the organization as well as reviews and approves the annual budget (and regularly monitors the budget throughout the year) to ensure the financial well-being of the organization. I also supported and oversaw the first new executive director the organization had hired in nearly 40 years. Finally, I recently helped lead the organization through strategic planning. The process provided us the space to reflect on the organization's history and its future, as well as to determine how best to use litigation, advocacy, and other strategies to protect the civil liberties of all Washingtonians.

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.

    In the Fall of 2020, I co-taught Comprehensive Pretrial Advocacy at Seattle University School of Law. Using a criminal and related civil case study, the course covered topics from the very beginning of a case through summary judgment (*e.g.*, initial case theory development, client interviews, drafting a complaint as well as an answer, discovery, and motions). We utilized both lectures and simulation exercises. 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.

    As a former partner at Keller Rohrback, I may receive some income in the future from cases I litigated pursuant to terms of the partnership agreement. Now that I am Of Counsel, the only cases for which I might receive some compensation will be cases on which I was not on the core team and was called in for help for a specific purpose. In the majority of these cases, my maximum recovery will be approximately $1,000 or less per case should they resolve favorably for plaintiffs at a future time. In addition, there are approximately six matters for which I could receive a maximum recovery between approximately $9,000 to $54,000 per case should they resolve favorably for plaintiffs.

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, with or without compensation, during my service with the court.

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

    See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

    If confirmed, potential conflicts of interest could be presented in matters being litigated before me by lawyers from Keller Rohrback L.L.P. or the American Civil Liberties Union. If any conflict were to arise, I would immediately recuse myself from the matter. I would consult with Ethics Counsel or an Ethics Officer if one is available to the court, as well as with colleagues on the bench with regard to an appropriate length of time for automatic recusal. I am not aware of any family member that has, or would have, a matter in the Western District of Washington.

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

    If faced with a potential conflict of interest, I would refer to 28 U.S.C. § 455 as well Canon 3 of The Code of Conduct for United States Judges as well as any other applicable canons, rules, statutes, and treatises. In addition, I would advise the parties before me of the potential conflict and seek their input. I would evaluate each situation on a case-by-case basis to determine the appropriate action, seek counsel where necessary, and recuse myself where necessary.

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 career has been spent advocating on behalf of the disadvantaged. Since I have gone into private practice, I met (and often significantly exceeded) the fifty-hour pro bono requirement of the Washington state bar every year. For example, I spent over 150 hours on pro bono work in 2020, 600 hours in 2019, and 500 hours in 2018. From 2018 to 2019, I litigated a case as a cooperating attorney for the ACLU of Washington and participated on the search committee for a new executive director for the organization.

    My pro bono activities have focused on three areas: mentoring, judicial selection, and direct services. I have mentored high school students who are aspiring lawyers through the Future of the Law Institute and attorneys through the mentoring programs run by the Asian Bar Association of Washington, Mother Attorneys Mentoring Association of Seattle, and the American Bar Association. I served on the Joint Asian Judicial

Evaluation Committee for over ten years. I provided direct services to young adults who were former foster children through the Lawyers Fostering Independence Program and have been a cooperating attorney for the American Civil Liberties Union of Washington as well as Columbia Legal Services (a non-profit that advocates for laws that advance social, economic, and racial equity for people living in poverty).

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.

Washington has a judicial selection commission. Senators Murray and Cantwell engaged a bipartisan committee to screen and interview candidates, and the committee provided the senators with a list of candidates they recommended for the position. On January 3, 2021, I submitted an application, and I interviewed with the committee on February 11, 2021.

I interviewed with the senior executive team for each of the senators on February 24, 2021, and February 26, 2021. Senator Murray interviewed me on March 8, 2021.

On March 9, 2021, I interviewed with attorneys from the White House Counsel's Office. Since March 12, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 29, 2021, my nomination was submitted to the Senate.

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

No.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Veronica Sophia Rossman
   Veronica Sophia Parkansky

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

   United States Circuit Judge for the Tenth 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.

   Office of the Federal Public Defender for the Districts of Colorado and Wyoming
   633 17th Street, Suite 1000
   Denver, Colorado 80202

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

   1972; Moscow, Russia

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.

   1994 – 1997, University of California, Hastings College of the Law; J.D., 1997

   1990 – 1993, Columbia University; B.A., 1993

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.

   2010 – present; 2002 – 2003
   Office of the Federal Public Defender for the Districts of Colorado and Wyoming
   633 Seventeenth Street, Suite 1000
   Denver, Colorado 80202

Senior Counsel (2017 – present)
Chief of Appeals (2015 – 2017)
Supervisory Assistant Federal Public Defender (2015 – present)
Assistant Federal Public Defender (2010 – 2015; 2002 – 2003)

2008 – 2010
University of Denver, Sturm College of Law
Ricketson Law Building
2255 East Evans Avenue
Denver, Colorado 80208
Visiting Assistant Professor (2009 – 2010)
Visiting Lawyering Process Professor (2008 – 2009)

2007 – 2008
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, California 94103
Staff Attorney

2004 – 2005
Mastbaum & Moffat
1629 Market Street, Suite 3W
Denver, Colorado 80202
Counsel

1998 – 2002, Summer 1995
Morrison & Foerster, LLP
Associate (1998 – 2002)
Summer Associate (Summer 1995)

Denver office (2001 – 2002)
4200 Republic Plaza
370 Seventeenth Street
Denver, Colorado 80202

Washington office (1998 – 2001)
2100 L Street, Northwest
Suite 900
Washington, District of Columbia 20037

Palo Alto office (Summer 1995)
755 Page Mill Road
Palo Alto, California 94304

Summer 2000
Boies, Schiller, & Flexner LLP

1401 New York Avenue, Northwest
Washington, District of Columbia 20005
Associate

1997 – 1998
The Honorable A. William Maupin
Supreme Court of Nevada
201 South Carson Street
Carson City, Nevada 89701
Law Clerk

1995 – 1996
University of California, Hastings College of the Law
200 McAllister Street
San Francisco, California 94102
Research Assistant to Keith Wingate, Professor of Law (Emeritus)

September 1993 – December 1993
Riverbed Media (now defunct)
Karlsruhe, Germany
Editor

June 1993 – August 1993
Industria
356 W 12th Street
New York City, New York 10014
Studio Assistant

Other affiliations (uncompensated)

2016 – 2018
UC Hastings Foundation Board of Trustees
200 McAllister Street
San Francisco, California 94102
Trustee

2013 – 2018
Faculty of Federal Advocates
3700 Quebec Street, #100-389
Denver, Colorado 80207
Board Member

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 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.

   Fred Turner Award, National Association of Federal Defenders (2015)

   The Hastings Constitutional Law Quarterly, Editor-in-Chief (1996 – 1997)

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

   Council of Appellate Lawyers

   Faculty of Federal Advocates, Board Member (2013 – 2018)

   Our Courts Committee, Executive Committee Member (2013 – 2014)

   Tenth Circuit Appellate Advocacy Conference, Planning Committee Member (2017)

   United States Court of Appeals for the Tenth Circuit, Criminal Pattern Jury Instruction Committee, Member (2014 – present)

10. **Bar and Court Admission**:

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

       California, 1998
       Colorado, 2002

       There have been no lapses in membership. I have been on inactive status in California since 2009, and was previously inactive from 2005 to 2006.

    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, 2012
       United States Court of Appeals for the Fourth Circuit, 2000

United States Court of Appeals for the Tenth Circuit, 2003
United States District Court for the District of Colorado, 2003

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.

Colorado Bar Association, Denver/Adams County Regional Mock Trial Tournament, Volunteer (2021)

Colorado Lawyers Committee, Hate Crimes Education Program, Volunteer (2001)

Ekar Farm, Volunteer (2020 – present)

Faculty of Federal Advocates (2013 – 2018)
Conference Planning Committee Member (2014 – 2018)
Newsletter Committee Member (2014 – 2017)
President-elect (2015)
Communications Committee Member (2013 – 2015)
Criminal Practice Committee Chair (2014 – 2015)

The Logan School for Creative Learning, Parent Association
Parent Education Committee Chair (2013 – 2015)
Secretary (2012 – 2013)
Treasurer (2011 – 2012)
Member (2008 – 2010)

Saklan Valley School, Parent Association
Member (2006 – 2008)
Parent Education Committee Chair (2007)

UC Hastings Foundation Board of Trustees (2016 – 2018)
Trustee

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 listed organizations currently discriminates or formerly discriminated based on race, sex, religion, or national original 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.

The Rocky Mountain Defense Blog, Resource: The COVID-19 Crisis in Federal Detention – Fact Sheet (Dec. 2, 2020). Copy supplied.

The Rocky Mountain Defense Blog, Resources: Some new COVID-19-related materials to help you advance the cause (Oct. 5, 2020). Copy supplied.

The Rocky Mountain Defense Blog, News You Can Use: Tenth Circuit Will Hear Argument Today In A Noteworthy Compassionate Release Appeal (Sept. 22, 2020). Copy supplied.

The Rocky Mountain Defense Blog, Practice Tip: Data-Driven Filings in the Time of COVID-19 (Apr. 20, 2020). Copy supplied.

The Rocky Mountain Defense Blog, News You Can Use: Recent developments in home confinement in the age of COVID-19 (Apr. 7, 2020). Copy supplied.

The Rocky Mountain Defense Blog, Resource: COVID-19 and Release Arguments (Mar. 30, 2020). Copy supplied.

The Rocky Mountain Defense Blog, Resource: The Basics of Community Corrections Litigation in the Time of COVID-19 (Mar. 27, 2020). Copy supplied.

The Rocky Mountain Defense Blog, Resource: Defending Clients in a Time of Coronavirus (Mar. 17, 2020). Copy supplied.

The Rocky Mountain Defense Blog, Tenth Circuit reaffirms that restitution must be based on the offense of conviction, not relevant conduct (Mar. 2, 2020). Copy supplied.

The Rocky Mountain Defense Blog, Tenth Circuit Reverses First Degree Murder Conviction (and reaffirms important principles of appellate law along the way) (Feb. 14, 2020). Copy supplied.

The Rocky Mountain Defense Blog, Changes to Local Rules of Practice for the District of Colorado, Effective December 1, 2019 (Jan. 10, 2020). Copy supplied.

The Rocky Mountain Defense Blog, News You Can Use: Tenth Circuit holds mandating medication on supervised release requires particularized findings and compelling circumstances (Nov. 25, 2019). Copy supplied.

The Rocky Mountain Defense Blog, News You Can Use: Tenth Circuit holds supervised release Standard Condition 12 is improper delegation of authority to probation (July 15, 2019). Copy supplied.

The Rocky Mountain Defense Blog, USSC Releases new report on Revocations Among Federal Offenders (Feb. 27, 2019). Copy supplied.

The Rocky Mountain Defense Blog, SCOTUS grants cert in *Haymond* – why that might matter to your clients facing revocation of supervised release in the Tenth Circuit (Nov. 19, 2018). Copy supplied.

The Rocky Mountain Defense Blog, News You Can Use: 2018 Amendment to the Sentencing Guidelines, Effective 11/1/2018 (Nov. 13, 2018). Copy supplied.

The Rocky Mountain Defense Blog, Resource: OIG Report on BOP's Treatment of Female Inmates (Nov. 1, 2018). Copy supplied.

The Rocky Mountain Defense Blog, Resource: PEW Releases Study on the Changing State of Recidivism, (Aug. 9, 2018). Copy supplied.

The Rocky Mountain Defense Blog, News You Can Use: NACDL Releases "Trial Penalty Report" (July 21, 2018). Copy supplied.

Faculty of Federal Advocates Newsletter, "Magistrate Judge Nina Wang Discusses Practice Insights" (Oct. 2015). Copy supplied.

The American Lawyer, Letter to the Editor (Apr. 2003). Copy supplied.

In addition to the published material listed above, I am aware of the following newsletters that were published by the Faculty of Federal Advocates when I served as a Board Member. Given my role, my name appears on the masthead, but I did not draft these letters. I may have edited or reviewed drafts of the newsletters published between 2014 and 2017, while I was on the Newsletter Committee.

Faculty of Federal Advocates Newsletter (Oct. 2017). Copy supplied.

Faculty of Federal Advocates Newsletter (Mar. 2017). Copy supplied.

Faculty of Federal Advocates Newsletter (Nov. 2016). Copy supplied.

Faculty of Federal Advocates Newsletter (May 2016). Copy supplied.

Faculty of Federal Advocates Newsletter (Feb. 2015). Copy supplied.

Faculty of Federal Advocates Newsletter (July 2013). 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.

In 2019, I served on a subcommittee of the Defender Services Performance Measurement Working Group tasked with drafting a set of federal appellate practice standards to guide appointed counsel in litigating non-capital federal criminal appeals from convictions, sentences, and supervised-release revocations. The subcommittee produced a document entitled "Standards for Federal Appellate Practice" which was adopted and approved by the Defender Services Performance Measurement Working Group in March 2019, and by the Defender Services Advisory Group in April 2019. 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.

The following list reflects my best effort to identify the public speaking events in

which I have participated, based on a review of my records and publicly-available information.

April 30, 2020: Speaker, How to Pursue Compassionate Release in the COVID-19 Era, District of Colorado Criminal Justice Act Panel Training, Denver, Colorado. Presentation supplied.

October 10, 2019: Panelist, Being a Public Defender, American Constitution Society, University of Denver, Sturm College of Law, Student Chapter. I participated in a panel discussion about career paths in federal public defense. I have no notes, transcript, or recording. The address for the University of Denver, Sturm College of Law is 2255 East Evans Avenue, Denver, Colorado 80208.

April 23, 2019: Moderator, Preparing and Presenting a Winning Oral Argument: Advice from Expert Advocates, Faculty of Federal Advocates, Denver, Colorado. I moderated a panel discussion among appellate lawyers about persuasive oral advocacy. I have no notes, transcript, or recording. The address for the Faculty of Federal Advocates is 3700 Quebec Street, #100-389 Denver, Colorado 80207.

April 12, 2019: Speaker, The Fast and The Furious: The Challenges of the Speedy Trial Act, District of Colorado Criminal Justice Act Panel Spring Training, Denver, Colorado. Presentation supplied.

September 29, 2017: Speaker, Writing A Better Opening Brief, Tenth Circuit Criminal Justice Act Appellate Advocacy Conference, Denver, Colorado. Presentation supplied.

September 15, 2017: Speaker, The Third Annual Faculty of Federal Advocates Forum, A Dialogue on Emotional Intelligence, Mindfulness, Professionalism, and Life in the Law, Denver, Colorado. I gave closing remarks to synthesize the topics discussed and to thank the other conference participants and attendees. I have no notes, transcript, or recording. The address for the Faculty of Federal Advocates is 3700 Quebec Street, #100-389, Denver, Colorado 80207.

July 21, 2017: Moderator, View from the Criminal Bench: A Panel Discussion with United States District Judges Philip A. Brimmer and Christine M. Arguello, Faculty of Federal Advocates, Denver, Colorado. Presentation supplied.

October 2, 2015: Moderator, The Second Annual Faculty of Federal Advocates Forum, Life and Law—The Dialogue Continues, Denver, Colorado. Outline and notes supplied.

September 20, 2014: Moderator, Preserving Your Record for Appeal, Faculty of Federal Advocates, Denver, Colorado. Outline supplied.

April 23, 2009: Moderator, Moving Forward for Equal Justice Conference at

University of Denver Sturm College of Law, Colorado Access to Justice Commission. I moderated a panel discussion among legal academics in a breakout session called "Points of Access in the Civil Litigation Process." I have no notes, transcript, or recording. The addresses of the sponsoring organizations are: University of Denver, Sturm College of Law, 2255 East Evans Avenue, Denver, Colorado 80208, and the Colorado Bar Association, 1290 Broadway, Suite 1700, Denver, Colorado, 80203.

November 8, 2000: Speaker, Divestiture Packages that Satisfy Competition Authorities and Create Host Country Support, Global Business Network Oil & Gas Conferences, London, England. Presentation and notes 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.

Hastings College of the Law Alumni Association, "UC Hastings (Fall 2012)" (2012), Hastings Alumni Publications 135. Copy supplied.

Hastings College of the Law Alumni Association, "UC Hastings (Spring 2009)" (2009), Hastings Alumni Publications 128. Copy supplied.

Deborah Mendez, *Judge orders Denver man to face murder charge in South Dakota*, The Associated Press (Apr. 4, 2003). Copy supplied.

Lori O'Keefe, *States Must Comply with Medicaid Law: AAP*, 19 AAP News 41 (2001). 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 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).

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

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

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

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

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

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

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held judicial office.

a. whether your recusal was requested by a motion or other suggestion by a litigant

or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations**:

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

None.

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;

From 1997 to 1998, I served as a judicial law clerk to the Honorable Chief Justice A. William Maupin of the Nevada Supreme Court.

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

I have never been a solo practitioner.

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 – 2000
Morrison & Foerster, LLP
2100 L Street, Northwest
Suite 900
Washington, District of Columbia 20037
Associate

2000
Boies, Schiller, & Flexner LLP
1401 New York Avenue, Northwest
Washington, District of Columbia 20005
Associate

2001 – 2002
Morrison & Foerster, LLP
4200 Republic Plaza
370 Seventeenth Street
Denver, Colorado 80202
Associate

2002 – 2003
Office of the Federal Public Defender for the Districts of Colorado and Wyoming
633 Seventeenth Street, Suite 1000
Denver, Colorado 80202
Assistant Federal Public Defender

2004 – 2005
Mastbaum & Moffat
1629 Market Street, Suite 3W
Denver, Colorado 80202
Counsel

2007 – 2008
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, California 94103
Staff Attorney

2008 – 2010
University of Denver, Sturm College of Law
Ricketson Law Building
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2010 – present
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Assistant Federal Public Defender (2010 – 2015)
Chief of Appeals (2015 – 2017)
Senior Counsel (2017 – present)

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

I have never served as a mediator or arbitrator 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.

In 1998, after completing my clerkship on the Nevada Supreme Court, I joined Morrison & Foerster, LLP as a litigation associate in the Washington, D.C. office. There, I focused on complex civil litigation, including appellate cases and matters involving antitrust law and intellectual property law. My work primarily consisted of legal research and writing, drafting pleadings and briefs, and reviewing documents in merger investigations conducted by the U.S. Department of Justice and the Federal Trade Commission. I also engaged in pro bono work, including briefing and arguing one appeal in the United States Court of Appeals for the Fourth Circuit.

During the summer of 2000, I briefly worked at Boies, Schiller, Flexner LLP as a litigation associate but returned to Morrison & Foerster after a few months.

In 2001, I joined Morrison & Foerster's Denver office as a litigation associate. There, I continued to do appellate, antitrust, intellectual property, and pro bono work. Also, as part of my antitrust practice, I assisted clients with developing antitrust compliance programs. The majority of my practice was focused on two patent infringement proceedings (before the International Trade Commission and the United States District Court for the Northern District of Georgia). In those cases, I

conducted legal research and writing, worked with expert witnesses, drafted discovery, took and defended depositions, and wrote dispositive motions and post-hearing briefs.

In 2002, I joined the Office of the Federal Public Defender for the Districts of Colorado and Wyoming (FPD) as an Assistant Federal Public Defender in the Trial Division. I represented indigent defendants charged with federal crimes in the District of Colorado and focused solely on federal criminal defense. My caseload at that time consisted primarily of misdemeanors, petty offenses, and supervised release revocation hearings.

In 2004, after taking parental leave, I worked as a lawyer at Mastbaum & Moffat, a small civil litigation firm. My practice focused on business litigation involving employment law and intellectual property. I served as the primary legal research and writer on most matters during my tenure. I also was second chair (with lead counsel Mr. David Mastbaum) in a seven-day federal jury trial in the District of Colorado, representing the plaintiff in an employment contract dispute.

In 2007, after taking another parental leave, I joined the United States Court of Appeals for the Ninth Circuit as a Staff Attorney in the Civil Research Unit. I reviewed civil cases on appeal, drafted proposed dispositions, and presented findings and recommendations to three-judge oral screening panels.

In 2008, I joined the full-time faculty of the University of Denver, Sturm College of Law as a Visiting Assistant Professor. I taught Lawyering Process (a class in legal research, writing, and appellate advocacy) in the 2008 to 2009 academic year, and Civil Procedure and Conflict of Laws in the 2009 to 2010 academic year. While I was teaching, I also served as a volunteer lawyer with the ACLU of Colorado.

In 2010, I returned to the FPD as an Assistant Federal Public Defender in the Appellate Division. The Appellate Division serves the Tenth Circuit Court of Appeals by taking appointments in criminal appeals originating out of judicial districts in Colorado, Kansas, New Mexico, Wyoming, Utah, and Oklahoma. From 2010 to 2015, my practice consisted of representing indigent defendants in appellate matters before the Tenth Circuit. I also served on the Steering Group for the inaugural Federal Defender Work Measurement Study.

In 2015, I was promoted to Chief of Appeals, a supervisory position. I continued to handle direct criminal appeals in the Tenth Circuit, but my new role also required that I maintain managerial responsibilities for all aspects of work in the Appellate Division. In 2017, I was promoted to Senior Counsel, also a supervisory position. As Senior Counsel, I continue

to represent clients on appeal to the Tenth Circuit, but I also manage the FPD's Motions Unit. The Motions Unit is a team of appellate specialists who assist the Trial Division with complex legal research and writing, issue preservation, and strategic planning during earlier stages of federal criminal litigation. The main change in my practice over the last few years is that, as Senior Counsel, I now am involved, mostly behind the scenes, with many more cases at the pretrial and trial stage of federal criminal litigation.

Throughout my eleven-year tenure at the FPD, in addition to numerous district court representations, I have personally handled and supervised over 100 criminal appellate matters arising out of every judicial district in the Tenth Circuit and involving a wide range of substantive and procedural federal criminal law.

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

At Morrison & Foerster, my typical clients were large companies involved in civil disputes pending in federal and state courts and before administrative agencies. During this time, I specialized in appellate practice, antitrust litigation and counseling, and intellectual property litigation.

At Mastbaum & Moffat, my typical clients were small companies and individuals involved in civil disputes in federal court or seeking assistance with smaller-scale intellectual property counseling matters, such as trademark clearance searches.

At the FPD, my clients are all individuals charged with federal crimes and eligible for the appointment of counsel under the Criminal Justice Act, 18 U.S.C. § 3006A. I specialize in federal criminal law and federal appellate procedure and practice.

My pro bono representations—undertaken while at Morrison & Foerster and at the University of Denver, Sturm College of Law—have typically involved plaintiff-side 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.

Except for my work as a law clerk, staff attorney, and law professor, 95% of my practice has been in litigation. As an associate at Morrison & Foerster, I was part of the firm's litigation group. I appeared in court on my own only occasionally, but I often appeared as the junior member of a trial team. When I joined the

FPD's Trial Division in 2002, I appeared in federal district court frequently. At Mastbaum & Moffat, I made no regular court appearances other than litigating a week-long jury trial in federal district court. Since returning to the FPD's Appellate Division in 2010, my practice has focused almost entirely on appellate litigation in the Tenth Circuit and complex pretrial litigation in the Districts of Colorado and Wyoming. I appear in court occasionally to present oral argument on appeals and motions.

i. Indicate the percentage of your practice in:
   1. federal courts: 95%
   2. state courts of record: __%
   3. other courts: __%
   4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 25%
   2. criminal proceedings: 75%

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 one case to jury verdict in federal district court where I served as associate counsel. I have tried one case to final decision before an administrative body where I served as associate counsel.

i. What percentage of these trials were:
   1. jury: 50%
   2. non-jury: 50%

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 appeared as counsel in the following Supreme Court cases:

Dodson, et. al. v. United States, 140 S. Ct. 664 (2019) (joint petition for a writ of certiorari) (cert. denied). Copy supplied.

Welch v. United States, 136 S. Ct. 1257 (2016) (amicus brief of the Federal Public and Community Defenders and the National Association of Federal Defenders in support of petitioner, 2016 WL 721992)

Bacon v. United States, 139 S. Ct. 1282 (2019) (cert. denied). Copy supplied.

Antone v. United States, 568 U.S. 927 (2012) (petition for a writ of certiorari) (cert. denied). Copy supplied.

Robles v. United States, 565 U.S. 1218 (2012) (petition for a writ of certiorari) (cert. denied). Copy supplied.

Castellanos-Barba v. United States, 565 U.S. 1263 (2012) (petition for a writ of certiorari) (cert. denied). Copy supplied.

Gonzaga University v. Doe, 536 U.S. 273 (2002) (brief for respondent, 2002 WL 485131)

Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc., 527 U.S. 308 (1999) (brief for respondents, 1999 WL 73811)

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. *In the Matter of Certain Set Top Boxes and Components Thereof*, Inv. No. 337-TA-454, United States International Trade Commission (Paul J. Luckern, Administrative Law Judge)

    I was the junior associate on Morrison & Foerster's litigation team in one of the largest patent infringement cases in the history of the International Trade Commission (ITC). The ITC is a federal agency with the authority to adjudicate cases involving companies who import allegedly infringing products. We represented EchoStar Communications Corporation and SCI Systems, Inc. ("EchoStar") in an investigation under Section 337 of the Tarrif Act of 1930 (19 U.S.C. § 1337). The ITC may conduct a Section 337 investigation on its own initiative or through filings made by affected companies and individuals. Here, complainants Gemstar-TV Guide International, Inc. and StarSight Telecast, Inc. accused Echostar, among other respondents, of allegedly infringing Gemstar's patents relating to cable television set-top boxes. Section 337 investigations

are conducted on an expedited schedule mandated by statute. The litigation commenced in March 2001, and the case proceeded to a two-week trial in December 2001. The ITC ruled in favor of EchoStar, finding no violation of Section 337. My role involved conducting legal research and writing, taking and defending depositions, working closely with expert witnesses, assisting at trial, writing sections of post-trial briefs, and drafting proposed findings of fact and conclusions of law. I was part of a small team of lawyers working specifically on the patent misuse defense, which involves the interplay between patent and antitrust laws. I also represented EchoStar in related cases involving similar parties and claims before the United States District Court for the Northern District of Georgia, Civil Action No. MDL-1274-WBH.

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2. *King v. PA Consulting Group*, Case No. 02-cv-01874 (D. Colo.) (Babcock, J.)

When I was an attorney at the law firm of Mastbaum & Moffat, I represented Mr. King in the District of Colorado in litigation against his former employer, PA Consulting Group (PA), over non-competition restrictions in his employment contract. Mr. King was an economist with extensive experience in the energy consulting energy and enjoyed significant name recognition. Mr. King claimed that PA had breached his employment agreement and the implied covenant of good faith and fair dealing by trading on his name after he terminated his employment with PA. Mr. King also alleged PA violated the Lanham Act by deceptively using his name and that PA's improper use of his name constituted unfair competition and an invasion of privacy. PA counterclaimed that Mr. King had breached his employment contract, and his duty of loyalty, by disclosing confidential information to his new employer. I reviewed discovery and prepared for trial. I also conducted legal research and writing on pretrial motions, including a motion to certify questions of law to the Colorado Supreme Court about the availability of commercial damages for the tort of invasion of privacy by appropriation of name. I also co-wrote our trial brief and served as second-chair counsel representing Mr. King at all stages of a seven-day jury trial in federal district court. The jury found for Mr. King on his invasion of privacy claim and awarded him damages. The jury found for PA on its

breach of loyalty counterclaim and awarded it damages. The jury rejected the parties' other claims.

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3. *United States v. Loya-Rodriguez*, 672 F.3d 849 (10th Cir. 2012) (Murphy, Hartz, Tymkovich, Circuit Judges)

I represented Mr. Loya in an appeal to the Tenth Circuit challenging his conviction and sentence for the offense of illegal reentry after deportation subsequent to an aggravated felony conviction. The main issue on appeal was the erroneous denial of Mr. Loya's Sixth Amendment right of self-representation at two critical stages of his federal criminal prosecution: trial and sentencing. I argued that Mr. Loya's requests to represent himself were sufficiently clear to trigger the district court's obligation to conduct a comprehensive formal inquiry to ensure that the defendant's waiver of the right to counsel is knowingly and intelligently made, as required by *Faretta v. California*, 422 U.S. 806 (1975). The Tenth Circuit affirmed Mr. Loya's conviction, holding he had failed to make a clear and unequivocal request to represent himself at trial, but remanded to the district court for resentencing because he did make such a request to represent himself at sentencing. I wrote the briefs and presented oral argument to the Tenth Circuit in this appeal.

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4. *United States v. Powers*, 578 F. App'x 763 (10th Cir. Sep. 29, 2014) (Holmes, Holloway, and Murphy, Circuit Judges)

I represented Mr. Powers on appeal to the Tenth Circuit after he was convicted of wire fraud offenses following a lengthy jury trial in the District of New Mexico and sentenced to 56-months' imprisonment. The case arose out of residential real estate transactions conducted immediately before the 2008 financial crisis. Mr. Powers had no adult criminal history and had been a successful realtor and mortgage broker. The government alleged Mr. Powers obtained mortgage financing for buyers based on false representations and omissions in stated-income loan applications, which did not require borrowers to provide proof of their income. Mr. Powers obtained loans for the buyers in an amount greater than the actual sale prices of the properties and gave the excess funds back to the buyers. The buyers knew about the scheme, but each received immunity from prosecution in exchange for cooperating with the government and testifying against Mr. Powers at trial.

On appeal, I challenged Mr. Powers's conviction based on erroneously admitted trial testimony and evidence under Federal Rules of Evidence 701 and 803(6). The Tenth Circuit disagreed with my arguments and affirmed Mr. Powers's conviction. I also challenged Mr. Powers's sentence, arguing that the district court incorrectly applied the gross-receipts enhancement of the United States Sentencing Guidelines. This enhancement provides that if a "defendant derived more than $1,000,000 in gross receipts from one or more financial institutions as a result of the offense," he is subject to a two-level increase to his base offense level. USSG § 2B1.1(b)(14)(A). The commentary to the gross receipts enhancement further provides: "the defendant shall be considered to have derived more than $1,000,000 in gross receipts if the gross receipts to the defendant individually, rather than to all participants, exceeded $1,000,000." *Id.* at cmt., n. 13 (A). I argued the enhancement did not apply because Mr. Powers did not individually derive $1 million in gross receipts from the offense; instead, he transferred almost all of the cash back funds to the buyers, who were "participants" in the offense.

The Tenth Circuit vacated Mr. Powers's sentence and remanded for resentencing. In a case of first impression, the court of appeals clarified the meaning of "participants" in this context. I wrote the briefs and presented oral argument to the Tenth Circuit in this appeal.

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5. *United States v. Evans*, 744 F.3d 1192 (10th Cir. 2014) (Kelly, Gorsuch, Holmes, Circuit Judges)

I represented Mr. Evans in an appeal to the Tenth Circuit challenging his 14-year sentence of imprisonment, imposed in the District of Colorado, after he pleaded guilty to one count of conspiracy to commit mail and wire fraud. Mr. Evans was a real estate developer with no criminal history who ran several legitimate, limited-investment partnerships designed to finance the purchase, renovation, and resale of apartment complexes. Investors purchased partnership interests and were advised that the investment was risky. After operating the investments for two years without fraud, Mr. Evans faced a shortfall and started commingling partnership funds and preparing false quarterly reports. He was removed as general partner and a court-appointed receiver took over. Years later, in the midst of the 2008 financial crisis, the properties fell into foreclosure and the investors lost their money.

The main issue on appeal involved the district court's erroneous methodology for calculating loss under Section 2B1.1 of the United States Sentencing Guidelines, a sentencing enhancement which increases the base offense level for fraud according to the amount of reasonably foreseeable pecuniary harm that results from the offense. I argued that the district court's loss-calculation formula was erroneous, because the court mistakenly attributed the loss of the entire investment (over $12 million) to Mr. Evans without proof of causation, a legal requirement under USSG § 2B1.1. The Tenth Circuit reversed and remanded, vacating Mr. Evans's sentence and requiring the district court to use a loss-calculation methodology that properly accounted for the multiple, intervening causes of loss in the case. I wrote the briefs and presented oral argument to the Tenth Circuit in this appeal.

When the district court applied the same incorrect loss methodology on resentencing, I served as co-counsel in Mr. Evans's second appeal to the Tenth Circuit, where the appellate court again concluded the district court erred in recalculating loss, ordered the court to resentence Mr. Evans without applying the contested loss enhancement, and reassigned the remand proceedings to a different judge. *See United States v. Evans*, 677 F. App'x 469 (10th Cir. 2017). I represented Mr. Evans at his second resentencing hearing on remand in the trial court; by that point, Mr. Evans had served several years in prison. The district court ultimately calculated zero loss under § 2B1.1, which lowered the advisory Guideline calculation. Mr. Evans's prison term was reduced from 14 years to time served.

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6. *United States v. Hull*, 893 F.3d 1221 (10th Cir. 2018) (Tymkovich, Murphy, McHugh, Circuit Judges)

I represented Mr. Hull in an appeal to the Tenth Circuit challenging a standard condition of the three-year term of supervised release imposed as part of his criminal sentence. A defendant on supervised release is subject to various conditions which restrict his freedom and expose him to further punishment should he violate them. The challenged condition required people on supervised release to notify third parties about the "risks" they pose, at the discretion of their probation officer. The challenged condition did not make clear the sort of "risk" that must be disclosed or set guidelines to direct the probation officer's discretion in determining whether, when, and how the defendant posed a "risk." On appeal, I argued that the district court erred by imposing the risk-notification condition because it is impermissibly vague, unlawfully delegates judicial authority to the probation officer, and constitutes an unlawful occupational restriction. The Tenth Circuit affirmed, upholding the condition because, in Mr. Hull's case, the district court had provided clear oral instructions to the probation officer about how the condition could be interpreted and applied. I wrote the briefs and submitted the case to the Tenth Circuit for decision without oral argument.

Hull proved significant in developing this area of the law. One year later, in *United States v. Cabral*, 926 F.3d 687 (10th Cir. 2019), a case where I served as co-counsel, the Tenth Circuit struck down this same standard risk-notification condition as an impermissible delegation of power to the probation officer, when the district court refused to limit its scope. Ultimately, *Hull* and *Cabral* compelled the District of Colorado to change the language of this standard supervised release.

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7. *United States v. Lux*, 18-cr-00490-RM (D. Colo.) (Moore, J.)

In the summer of 2019, I represented Mr. Lux in the District of Colorado on a motion to set aside the district court's order forfeiting his unsecured appearance bond. Federal Rule of Criminal Procedure 46(f) mandates bail forfeiture if a defendant violates a condition of pretrial release, but the rule also permits courts to set the forfeiture order aside "if it appears that justice does not require" it. The forfeiture order required Mr. Lux to pay $10,000 – the full amount of his unsecured appearance bond – for absconding from a halfway house while he was on pretrial release. When Mr. Lux absconded, he had already pleaded guilty to a non-violent fraud crime and was awaiting sentencing. He was at large for a month, when state police apprehended him. He never missed a court appearance, and his federal criminal case resolved in just 8 months. I argued that the district court should exercise its discretion under Rule 46(f) to set aside the forfeiture order because the face amount of the bond appeared to have been arbitrarily selected; Mr. Lux was suffering from substance abuse problems and PTSD when he absconded; and Mr. Lux's breach caused no meaningful prejudice to the government or the court. I further argued that, under the circumstances, enforcing the forfeiture order would be impermissibly punitive. This case concerned a fairly routine matter but presented a significant issue. I emphasized how criminal justice debt creates additional barriers for individuals seeking to successfully reenter society after serving a sentence of imprisonment. The district court granted my request, in part, and ordered that Mr. Lux forfeit only $5,000 of his bond. I wrote the motion and presented oral argument at a hearing in front of the district court.

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8. *United States v. Burkes*, Case No. 15-CR-00148 (D. Wyo.) (Freudenthal, J.)

In 2016, Mr. Burkes, a 63-year-old African American man, was convicted and sentenced to 140-months' imprisonment for his role in a non-violent drug distribution crime. In October 2020, I represented Mr. Burkes in the District of Wyoming in a proceeding under 18 U.S.C § 3582(c)(1)(A), which is commonly known as the "compassionate release" statute. Federal courts may not modify a term of imprisonment once it has been imposed, but one such exception to that rule is contained in § 3582(c)(1). Until Congress passed The First Step Act of 2018, the compassionate release statute only authorized the Director of the Bureau of Prisons (BOP) to move for a reduction in a defendant's sentence. But the First Step Act modified § 3582(c)(1) to allow an eligible defendant, like Mr. Burkes, to directly file a motion for compassionate release with the district court. By the time I was appointed to represent Mr. Burkes in the fall of 2020, he had served five years in prison and had recently contracted COVID-19 (his facility had one of the worst coronavirus outbreaks in the entire BOP system). Mr. Burkes is a medically vulnerable inmate because he suffers from diabetes, hypertension, and chronic kidney disease. In a motion for compassionate release, I argued the district court should replace Mr. Burkes's remaining custodial prison term with home detention on strict conditions, because, should he remain incarcerated during the pandemic, his underlying medical conditions placed him at increased risk of suffering severe illness or death. The district court denied the motion, and Mr. Burkes remains incarcerated. Mr. Burkes was one of many indigent inmates represented by my office in compassionate release proceedings during the COVID-19 pandemic.

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9. *United States v. Bacon*, 950 F.3d 1286 (10th Cir. 2020) (Briscoe, McHugh, and Moritz, Circuit Judges)

I represented Mr. Bacon in an appeal to the Tenth Circuit challenging the district court's ruling to maintain a sealed document, entitled "Plea Supplement," on the docket of his federal criminal case over his objection. Mr. Bacon feared that the presence of a sealed document on the docket would suggest he was a cooperator (when he wasn't) and expose him to harm in prison, where court documents are often used by inmates to identify cooperators. Because his plea supplement was filed under seal, Mr. Bacon could not use the information in it to reveal the truth about his case: he had not cooperated with the government. The District of Utah, where Mr. Bacon was convicted and sentenced, had adopted a blanket rule requiring the filing of a sealed plea supplement in every criminal case resolved by guilty plea, whether or not the defendant was a cooperator. I argued on appeal that, while this blanket approach to sealing plea supplements may have been intended to protect cooperator information, in Mr. Bacon's case, it obscured the truth

about a non-cooperating defendant over his objection. The Tenth Circuit reversed, agreeing with my argument that the district court erred by failing to consider the common law right of access to court documents and by failing to require the government to demonstrate a case-specific, significant interest to justify the sealed pleading. The decision in *Bacon* compelled a change in the Local Rules of Practice in the District of Utah, eliminating the requirement to file a sealed plea supplement in every criminal case in which there is a plea agreement. I wrote the briefs and presented oral argument to the Tenth Circuit in this appeal.

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10. *United States v. Dear*, Case No. 19-CR-00506 (D Colo.) (United States District Judge Robert E. Blackburn; United States Magistrate Judge Kristen L. Mix).

In December 2019, the government charged Mr. Dear in the United States District Court for the District of Colorado with multiple counts of first-degree murder. I have represented Mr. Dear since the federal indictment was filed. I am the lead research and writing attorney on the case. The primary issue I have been litigating is whether Mr. Dear, who has repeatedly been found incompetent to proceed on nearly identical capital-eligible charges now pending in state court in Colorado, is competent to stand trial in federal court, under the standards in 18 U.S.C. § 4241(b) and *Dusky v. United States*, 362 U.S. 402, 402 (1960). This case was originally a capital prosecution, but in November 2020, the government filed a notice of its intent not to seek the death penalty. This case is active, and the competency proceedings are pending.

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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.)

Within my office, the most significant legal activity I pursue, other than active litigation, is supervision and case management. When I served as Chief of Appeals, I developed and implemented a protocol for assigning and tracking appellate matters within the office that is still used today. I participated in the hiring of Appellate Division legal staff and conducted orientation for new Appellate AFPDs. I organized and participated in moot courts to prepare Appellate Division AFPDs for oral argument in the Tenth Circuit and also reviewed and edited many of our appellate filings. During this time, I managed the office's legal internship program for law students. As Senior Counsel, I manage and supervise the work of the FPD's Motions Unit, which has primary responsibility for legal research and writing in our most complex cases pending in the Districts of Colorado and Wyoming. I participate in the hiring of Motions Unit legal staff, conduct orientation for new Motions Unit AFPDs, and oversee project assignments from the Trial Division to the

Motions Unit. I provide significant research and writing support on a wide variety of legal issues to the lawyers in the Trial Division and continue to participate in moot courts for Tenth Circuit arguments. I also advise the Federal Defender on issues that may affect office-wide operations. For example, during the summer of 2020, I researched best practices for resuming in-person federal criminal jury trials during the pandemic

I also coordinate retroactive relief and resentencing projects in the Districts of Colorado and Wyoming. For example, I led a two-district effort to identify indigent defendants eligible for federal habeas relief under *Johnson v. United States*, 135 S. Ct. 2251 (2015), which held that the residual clause in the definition of "violent felony" in the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(ii), is unconstitutionally vague, and *Welch v. United States*, 136 S. Ct. 1257 (2016), which held that *Johnson* announced a new substantive rule of constitutional law that applies retroactively to cases on collateral review. Most recently, I have been overseeing the compassionate release litigation undertaken by our office under Section 603(b) of the First Step Act of 2018. I helped create a protocol to handle the intake process for these cases, so my office could best track, evaluate, and respond promptly to each defendant's inquiry. Together with a small team of lawyers and staff, I screen all *pro se* filings in the District of Colorado, pursuant to a standing order of appointment, to determine whether a defendant is eligible to petition the district court for compassionate release and, where appropriate, to file a motion for compassionate release.

Outside of my office, I am a member of the Tenth Circuit's Criminal Pattern Jury Instruction Committee. My work for the Committee involves reviewing and updating the Tenth Circuit's criminal pattern jury instructions, which are used by every judicial district in the Tenth Circuit. As a Committee member, I conduct legal research, prepare memoranda on questions of law, and draft new instructions, or propose revisions to existing instructions based on changes in the law, for the Committee's review, discussion, and approval. I also participate in Committee meetings at least once a year.

I also played a significant role on the Steering Group for the inaugural Federal Defender Work Measurement Study. "Work Measurement" is the process by which the Administrative Office of the United States Courts (AO) allocates funding to various agencies under its jurisdiction. I worked closely with the Defender Services Office, the Defender Services Advisory Group, and the Policy and Strategic Initiatives Office (PSIO) at the AO to help determine an initial staffing formula for the Federal Defender Organizations nationally. I helped prepare the Federal Defender organization nationally for the study and served as the liaison between the AO and the Federal Defender organization throughout the process. During the study, I assisted with collecting data from every Federal Defender office in the United States and helped develop and manage internal quality control protocols to ensure the integrity of the data collected. At the end of the study, I participated in statistical and qualitative data analysis to identify the resources required to perform the defense function. The collaboration between PSIO and the entire Federal Defender community ultimately produced the inaugural Defender Work Measurement funding formula adopted by the Judicial Conference of the United States in September 2015.

I participate in the Federal Defender's mission to provide training and support to the Criminal Justice Act Panel. I occasionally teach CLEs as part of our panel training programs and routinely work one-on-one with panel attorneys. Since 2018, I have focused on editing and contributing to *The Rocky Mountain Defense Blog*. The blog provides updates about Tenth Circuit law from a criminal defense practitioner's perspective and primarily serves the CJA Panel.

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

    From 2008 through 2010, I taught full time at the University of Denver, Sturm College of Law.

    In Fall 2008 and Spring 2009, I taught two sections of Lawyering Process, a required, year-long course for first-year law students on the lawyering skills necessary for effective and ethical advocacy. In the Fall semester, Lawyering Process I focused on how to conduct legal research and how to give client advice on discrete legal questions through written analysis. In the Spring semester, Lawyering Process II focused on persuasive legal writing and oral advocacy, with a mock oral argument at the Tenth Circuit as the capstone project. Syllabus supplied.

    In Fall 2009 and Spring 2010, I taught Civil Procedure, a required, year-long course for first-year law students. The course focused on how constitutional, statutory, and judicial rules frame the determination of court controversies. Syllabus supplied.

    Also in Fall 2009 and Spring 2010, I taught Conflict of Laws, an upper-division course focused on the analysis of legal problems arising in cases when at least one of the operative facts cuts across state or national boundaries. Topics covered included problems of interstate jurisdiction over parties and subject matter; the application of principles of full faith and credit and comity; and the comparison of various theories of law choice. 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.

    None.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your

service with the court? If so, explain.

None.

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).

    My Financial Disclosure Report is being filed with the Administrative Office of U.S. Courts and I 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 strictly follow the Code of Conduct for United States Judges, the Colorado Rules of Professional Responsibility, and all other applicable rules and ethical canons governing recusal.

        I would recuse myself from cases involving or affecting the law firm of Lewis Roca, where my husband is a lawyer. I also would recuse myself from cases involving any defendant I personally represented or who was represented by the Office of the Federal Public Defender for the Districts of Colorado and Wyoming while I worked at that office.

    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 in 28 U.S.C. § 455, the Code of Conduct for United States Judges, the Published Advisory Opinions issued by the Committee on Codes of Conduct, and any relevant judicial decisions and opinions that address what constitutes a conflict or the appearance of a conflict. I also would consult with other judges, the Tenth Circuit Clerk's Office, and the Tenth Circuit Executive's Office.

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 work as an Assistant Federal Public Defender has focused entirely on serving the disadvantaged. I represent individuals charged with federal crimes who cannot afford to retain counsel and other necessary defense services and who are eligible for the appointment of counsel under the Criminal Justice Act, 18 U.S.C. § 3006A. I otherwise may not engage in the practice of law.

When I served on the Board of Directors of the Faculty of Federal Advocates, I helped support the work of the Civil Pro Bono Panel in the United States District Court for the District of Colorado. The Civil Pro Bono Panel program consists of volunteer attorneys willing to accept appointments to represent *pro se* litigants of limited means in civil cases. The Faculty of Federal Advocates supports the Civil Pro Bono Program by maintaining reimbursement funding for costs incurred by panel counsel and providing advocacy training and seminars on substantive and procedural topics relevant to the work of panel lawyers.

While I was a visiting faculty member at the University of Denver, Sturm College of Law, I served as pro bono counsel for the ACLU of Colorado in a civil rights case involving mistaken-identity arrests. The lawsuit was filed in the United States District Court for the District of Colorado on behalf of a group of plaintiffs, all of whom were innocent, but who were mistakenly arrested on warrants issued for other people. *Fourhorn v. City and County of Denver,* Civil Action No. 08-cv-01693-MSK-KLM.

When I was a litigation associate at Morrison & Foerster, the firm encouraged associates and partners to seek out and participate in pro bono endeavors. I actively participated in a variety of pro bono matters, primarily involving advocacy for individuals in civil rights cases.

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 February 2021, shortly after the Honorable United States Circuit Judge Carlos

F. Lucero announced that he would be taking senior status, Federal Public Defender Virginia L. Grady submitted my name for consideration to Senator Michael Bennet's State Director. On February 17, 2021, I met with the state directors for Senator Bennet and Senator John Hickenlooper. On March 8, 2021, I interviewed with Senators Bennet and Hickenlooper. On March 12, 2021, I interviewed with attorneys from the White House Counsel's Office. Since then, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 10, 2021, I interviewed with President Biden and White House Counsel Dana Remus. On May 12, 2021, my nomination was submitted to the Senate.

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

No.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge David Estudillo
Nominee to be United States District Judge for the Western District of Washington

1. **During your campaign for re-election, you talked about "Eastern Washington values." I think those are good values to have. But you are nominated to serve in the Western District of Washington. Do you believe the Western part of Washington State shares the same values as Eastern Washington?**

   Response: Yes, I believe the entire State of Washington shares the same values. By way of background, I attended both undergraduate and law school at the University of Washington in Seattle, Washington. I also lived and practiced law in Seattle from 2002 to 2012. When I moved to the Eastern side of the state, I continued to maintain a law office in Western Washington and continued to practice law in Western Washington, until I became a state court judge in 2015.

2. **Do you believe property damage caused during rioting should be prosecuted to the fullest extent of the law?**

   Response: I believe decisions pertaining to the filing of criminal charges against a person fall within the authority of the executive branch of government. As a sitting state court judge, and as a judicial nominee, it would be inappropriate for me to express opinions about when and under what circumstances a state or federal prosecutor should file and prosecute criminal charges.

3. **I want to talk about your decade of immigration law work. I saw you didn't provide specifics about any of your cases due to privacy concerns for your clients, but I think the Committee needs to know more about such a significant section of your legal career.**

   a. **Can you talk generally about the different types of cases and work you did in the immigration context?**

      Response: I am unable to provide specific detail about any former immigration client because immigration records are not public records, and absent authority from a specific client to discuss their immigration history, I am not authorized to discuss any former client's immigration history.

      I represented clients in removal proceedings before the Seattle and Tacoma Immigration Courts. My scope of representation was to investigate and fully understand a client's immigration history, to research and understand the legal basis for the initiation of removal proceedings, to research and understand potential legal avenues to obtain relief from removal, to advise my clients of their legal options and the potential obstacles to obtaining relief, and to advance appropriate forms of relief within the bounds of the law before the Immigration

Court as authorized by my clients. I also represented clients on appeal to the Board of Immigration Appeals. On behalf of different clients, I advanced claims for asylum, withholding of removal, Convention Against Torture Act, cancellation of removal for lawful permanent residents and for non-lawful permanent residents, temporary protected status, U-Visa, and adjustment of status based on an approved immigrant visa petition. I prepared all filings for the Immigration Court, appeared at pre-trial proceedings (Master Calendar Hearings), and represented clients during the administrative trials (Individual Merits Hearings) before an Immigration Court judge.

I also represented clients before United States Citizen and Immigration Services. I prepared and filed petitions for naturalization, temporary protected status, U-visa, family-based immigrant visa petitions, adjustment of status based on an approved immigrant visa petition, immigrant visa waivers for unlawful presence, and employment authorization. I prepared and filed all forms and interacted with United States Citizen and Immigration Services on behalf of my clients, and attended all immigration interviews with my clients.

I also represented clients in consular processing matters based on approved immigrant visa petitions and waivers for unlawful presence. I would prepare and file all forms necessary for consular processing and for the consular interview. I would communicate with the Department of State National Visa Center as well as individual consular embassies to ensure all necessary documents and information was provided to secure an approved immigrant visa on behalf of my clients.

b. When it comes to defending immigrants in removal proceedings, some times that is because they are charged with crimes, is that correct?

Response: Yes. Under the Immigration and Nationality Act, certain criminal conduct can form the basis for the initiation of removal proceedings.

c. Did you defend any clients in removal proceedings charged with violent crimes or crimes of moral turpitude? Which crimes?

Response: Some of the clients I represented were placed in removal proceedings because the Government asserted that he or she had been convicted of a crime involving a crime of violence or a crime involving moral turpitude. Those cases depended, in large part, on whether the elements of the specific crime the person was convicted of met the specific definition of a crime of violence or a crime involving moral turpitude as defined in the Immigration and Nationality Act.

4. Under the Supreme Court's First Amendment jurisprudence, can someone shout "fire" in a crowded theater?

Response: In *Brandenburg v. Ohio*, 395 U.S. 444 (1969), the Supreme Court identified "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." 395 U.S. at 447. Accordingly, the State potentially may prohibit a person from yelling fire in a crowded theater if such speech "is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."

5. Do you believe in a "living constitution?"

Response: I believe the Constitution is an enduring document that is meant to apply to our government and society over time. Because I am a state court judge, and a judicial nominee, I must, and will, follow all Supreme Court precedent interpreting and applying the Constitution.

6. What is the legal basis for a nationwide injunction? What would you consider as a district judge when deciding whether to grant one?

Response: Issuance of a preliminary injunction is governed by Federal Rules of Civil Procedure, Rule 65. "A preliminary injunction is a matter of equitable discretion and is an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018) (internal quotation marks omitted). "Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents." *Id.* at 582 (internal quotation marks omitted). "Although 'there is no bar against ... nationwide relief in federal district court or circuit court,' such broad relief must be '*necessary* to give prevailing parties the relief to which they are entitled.'" *Id.* "[N]ationwide injunctive relief may be inappropriate where a regulatory challenge involves important or difficult questions of law, which might benefit from development in different factual contexts and in multiple decisions by the various courts of appeals." *Id.* at 583 (internal quotation marks omitted). If presented with a request for a nationwide injunction, I would carefully review the facts presented, carefully review the legal arguments advanced by each litigant, and carefully research and review any Supreme Court or Ninth Circuit precedent on the issuance of injunctions and the underlying subject matter before me.

7. What level of scrutiny applies to a Second Amendment challenge in the Western District of Washington?

Response: In evaluating firearm regulations, the Ninth Circuit requires courts to first ask "if the challenged law affects conduct that is protected by the Second Amendment" based on the "historical understanding of the scope of the right." *Young v. Hawaii*, 992 F.3d 765, 783 (9th Cir. 2021) (internal quotation marks omitted). Protections afforded by the Second Amendment are not implicated if there is evidence that the subjects of the

regulations "have been the subject of longstanding, accepted regulation" or if the regulation "falls within the 'presumptively lawful regulatory measures' that *Heller* identified." *Id.* "If the challenged restriction burdens conduct protected by the Second Amendment", a court "move[s] to the second step of the analysis and determine[s] the appropriate level of scrutiny." *Id.* at 784. If the regulation is one that "implicates the core of the Second Amendment right and severely burdens that right" it receives strict scrutiny. *Id.* If rights under the Second Amendment "are affected in some lesser way," intermediate scrutiny is applied. *Id.*

8. Does climate change exist?

Response: As a sitting state court judge, and a judicial nominee, any opinion I may have on this issue is irrelevant as I am obligated to follow all Supreme Court and Ninth Circuit precedent on this issue.

9. Does smoking cause cancer?

Response: As a sitting state court judge, and a judicial nominee, any opinion I may have on this issue is irrelevant as I am obligated to follow all Supreme Court and Ninth Circuit precedent on this issue.

10. Does human life begin at conception?

Response: As a sitting state trial court judge, and a judicial nominee, any opinion I may have on this issue is irrelevant as I am obligated to follow all Supreme Court and Ninth Circuit precedent on this issue.

11. Please explain, with detail, the process by which you became a district-court nominee.

Response: On January 4, 2021, I submitted my application to the bipartisan Judicial Merit Selection Committee created by Senators Maria Cantwell and Patty Murray in response to their call for applications for the position of United States District Court Judge for the Western District of Washington. On February 11, 2021, I interviewed with the 10-member Judicial Merit Selection Committee. On February 24, 2021, I interviewed with staff from Senator Cantwell's office and separately interviewed with staff from Senator Murray's office. On March 8, 2021, I interviewed with Senator Murray by telephone. After this interview, Senator Murray's Senior Counsel informed me my name was being submitted to the White House for further consideration. On March 9, 2021, I interviewed with attorneys from the White House Counsel's Office. Officials from the Office of Legal Policy at the Department of Justice initiated the vetting process on March 11, 2021. On April 29, 2021, my nomination was submitted to the Senate.

12. 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 the conversations.

Response: No.

13. 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 the conversations.

Response: No.

14. Please explain with particularity the process by which you answered these questions.

Response: On June 16, 2021, the Office of Legal Policy at the Department of Justice forwarded these questions to me. I reviewed each question independently, conducted research as necessary, and drafted answers. I then shared my responses with the Office of Legal Policy and was provided feedback that I considered before submitting my final responses to the Committee.

15. Do these answers reflect your true and personal views?

Response: Yes.

Nomination of David G. Estudillo
to be United States District Judge for the Western District of Washington Questions for the Record
Submitted June 16, 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. **Was *D.C. v. Heller*, 554 U.S. 570 (2008) rightly decided?**

   Response: *Heller* is binding Supreme Court precedent. In general, as a sitting state court judge, and as a judicial nominee, because I am bound by Supreme Court precedent, any views I may have about whether any precedent is correctly decided are irrelevant to my ability and obligation to apply it.

4. **Is the Second Amendment right to keep and bear arms an individual right belonging to individual persons, or a collective right that only belongs to a group such as a militia?**

   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 the right the Second Amendment guarantees is a fundamental right that applies to the states as well as the federal government. 561 U.S. 742 (2010).

5. **Please describe what you believe to be the Supreme Court's holding in *Greer v. United States*, 593 U.S. _____ (2021).**

   Response: The Supreme Court identified the issue and holding as follows: "The question for this Court is whether Greer and Gary are entitled to plain-error relief for their unpreserved *Rehaif* claims. We conclude they are not." *Greer v. United States*, No. 19-8709, No. 20-444, 2021 WL 2405146, *3 (S. Ct. Jun. 14, 2021). "In *Rehaif v. United States*, 588 U.S. ——, 139 S. Ct. 2191, 204 L.Ed.2d 594 (2019), this Court clarified the *mens rea* requirement for firearms-possession offenses, including the felon-in-possession

offense. In felon-in-possession cases after *Rehaif*, the Government must prove not only that the defendant knew he possessed a firearm, but also that *he knew he was a felon* when he possessed the firearm." *Id.* at *2.

6. **Please describe what you believe to be the Supreme Court's holding in *Terry v. United States*, 593 U.S. _____ (2021).**

   Response: The Supreme Court stated, "we hold that § 2(a) of the Fair Sentencing Act modified the statutory penalties only for subparagraph (A) and (B) crack offenses—that is, the offenses that triggered mandatory-minimum penalties." *Terry v. United States*, No. 20-5904, 2021 WL 2405145, *5 (S. Ct. Jun. 14, 2021).

7. **Please describe what you believe to be the Supreme Court's holding in *Jones v. Mississippi*, 593 U.S. _____ (2021).**

   Response: This case involved a defendant who committed a homicide when he was under the age of 18 and was subsequently sentenced to life without parole. The defendant argued that "a sentencer who imposes a life-without-parole must *also* make a separate factual finding that the defendant is permanently incorrigible, or at least provide an on-the-record sentencing explanation with an implicit finding that the defendant is permanently incorrigible." *Jones v. Mississippi*, 141 S. Ct. 1307, 1311 (2021). "In light of [the] explicit language in the Court's prior decisions, we must reject Jones's argument." *Id.*

8. **Please describe what you believe to be the Supreme Court's holding in *Tandon v. Newsom*, 593 U.S. _____ (2021).**

   Response: In analyzing California's COVID restrictions as they pertained to religious activities, the Supreme Court identified four key principles: (1) "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise"; (2) "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue"; (3) "the government has the burden to establish that the challenged law satisfies strict scrutiny"; and (4) "litigants otherwise entitled to emergency injunctive relief remain entitled to such relief where the applicants 'remain under a constant threat' that government officials will use their power to reinstate the challenged restrictions." *Tandon v. Newsom*, 141 S. Ct. 1294, 1296-1297 (2021) (citation omitted). Applying these principles, the Supreme Court held the plaintiffs were likely to succeed on their free exercise claim regarding California's COVID restrictions on private gatherings and were entitled to an injunction pending appeal. *Id.* at 1297.

9. **Please describe what you believe to be the Supreme Court's holding in *Sanchez v. Mayorkas*, 593 U.S. _____ (2021).**

Response: The Supreme Court stated its holding as follows: "We granted certiorari…to resolve…whether a [Temporary Protected Status] recipient who entered the country unlawfully can still become [a Legal Permanent Resident]. … The [Temporary Protected Status] program gives foreign nationals nonimmigrant status, but it does not admit them. So the conferral of [Temporary Protected Status] does not make an unlawful entrant (like Sanchez) eligible under § 1255 [of the Immigration and Nationality Act] for adjustment to [Legal Permanent Resident] status." *Sanchez v. Mayorkas*, No. 20-315, 2021 WL 2301964, *3 (S. Ct. Jun. 7, 2021) (citation omitted).

10. **What is your view of arbitration as a litigation alternative in civil cases?**

Response: I believe arbitration can be useful, in certain situations, in facilitating the resolution of disputes.

11. **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 June 16, 2021, the Office of Legal Policy at the Department of Justice forwarded these questions to me. I reviewed each question independently, conducted research as necessary, and drafted answers. I then shared my responses with the Office of Legal Policy and was provided feedback that I considered before submitting my final responses to the Committee.

12. **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 individual wrote or drafted my answers. As stated in response to Question No. 11, I shared my responses with the Office of Legal Policy and was provided feedback that I considered before submitting my final responses to the Committee.

SENATOR TED CRUZ U.S. Senate Committee on the Judiciary

Questions for the Record for David Estudillo, Nominee for the United States District Court for the Western District of Washington

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 sitting state court judge, my judicial philosophy is very basic. I seek to maintain a strong work ethic, understand the facts before me, understand the legal arguments, research and understand any applicable law, and then apply the law to the facts; and in every aspect of my work, be open-minded and inclusive of diverse experiences and perspectives. I have not developed any other formal judicial philosophy. Because my function as a state court judge is vastly different than that of any Supreme Court Justice, I am not able to draw comparisons with the philosophies of Supreme Court Justices.

2. **Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

   Response: As a state court judge, I have not formed an opinion as to whether the meaning of the Constitution changes over time. This is because in applying any constitutional provision that has come before me, I have been bound by Supreme Court precedent and the methodology it uses to interpret the Constitution. I am not in a position to criticize any Supreme Court methodology or to offer personal opinions about how the Supreme Court should interpret the Constitution over time. I am obligated to follow the applicable method of constitutional interpretation the Supreme Court mandates.

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: As a sitting state court judge, and as a judicial nominee, it would be inappropriate for me to opine on the size or composition of our Supreme Court. My obligation is to follow Supreme Court precedent regardless of its size or composition.

4. **Do you personally own any firearms? If so, please list them.**

   Response: Yes. My wife and I own a Remington Nylon .22 LR and a Winchester Model 100 .308, which previously belonged to my wife's father.

5. **Have you ever personally owned any firearms?**

Response: Yes. Please see my response to Question No. 4.

6. **Have you ever used a firearm? If so, when and under what circumstances?**

Response: Yes. I have gone to a shooting range with friends.

7. **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. 561 U.S. 742 (2010).

8. **Is the criminal justice system systemically racist?**

Response: In my mind, systemic racism refers to disparate treatment of certain groups as compared to other groups that are similarly situated. I believe the United States Sentencing Commission has published reports identifying disparities in sentencing between black male offenders and similarly situated white male offenders. *See*, *e.g.*, U.S. Sentencing Commission, *Demographic Differences in Sentencing: An Update to the 2012 Booker Report* (Nov. 17, 2017). If confirmed as a federal district judge, I would ensure that every defendant I sentence is sentenced fairly and based only on the factors in 18 U.S.C. § 3553.

9. **In 2016, you described your philosophy as: "Faith, Family, Hard Work, Education and Community are values that guide me in my personal and professional life. I faithfully follow the Constitution, apply the law in a fair and impartial manner, and protect the individual rights of all persons…Maintaining the integrity of the judicial system is top priority." You also had this to say, regarding attempts to cast your election in purely racial and identity politics terms: "The fact that I am Latino, the fact that my parents were from Mexico, the fact that I might look a little different than some people, that is not the defining characteristic of whether I am qualified to be a judge…[and] was not the defining qualification that was used to determine whether or not I am eligible to be a Superior Court judge."**

   a. **Do you agree that an individual's racial identity has nothing to do with whether he or she will be a good judge?**

      Response: Yes.

b. **Would you consider it appropriate to treat one nominee as different, or more important, in virtue of his or her race or ethnicity? Please explain.**

Response: I agree it is not appropriate for me to treat any nominee as different, or more important, because of his or her race or ethnicity.

Senator Josh Hawley
Questions for the Record

David G. Estudillo
Nominee, U.S. District Court for the Western District of Washington

1. **Under Supreme Court and U.S. Court of Appeals for the Ninth Circuit precedent, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?**

   Response: To succeed on an execution protocol claim under the Eighth Amendment, a prisoner must establish "a substantial risk of serious harm", which is an "objectively intolerable risk of harm that prevents prison officials from pleading that they were subjectively blameless for purposes of the Eighth Amendment." *Glossip v. Gross*, 576 U.S. 863, 877 (2015) (quoting *Baze v. Rees*, 553 U.S. 35 (2008), internal quotation marks omitted). In addition, a prisoner must identify an alternative method of execution that is "feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of pain." *Id.* (quoting *Baze*, 553 U.S. at 52). The Ninth Circuit standard is in accordance with the Supreme Court. *See, e.g.*, *Lopez v. Brewer*, 680 F.3d 1068 (9th Cir. 2012) and *Towery v. Brewer*, 672 F.3d 950 (9th Cir. 2012).

2. **Under the Supreme Court's holding in *Glossip v. Gross*, is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?**

   Response: In *Glossip v. Gross*, the Supreme Court stated a requirement of all Eighth Amendment execution protocol challenges is the establishment of a "known and available alternative method of execution that entails a lesser risk of pain[.]" 576 U.S. 863, 867 (2015). Explaining further, it stated that a prisoner must identify an alternative method of execution that is "feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of severe pain." *Glossip v. Gross*, 576 U.S. 863, 877 (2015) (quoting *Baze v. Rees*, 553 U.S. 35, 52 (2008)).

3. **Has the Supreme Court or the U.S. Court of Appeals for the Ninth Circuit ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?**

   Response: The Supreme Court has held there is no constitutional right to DNA analysis for habeas corpus petitioners. *See, e.g.*, *District Attorney's Office for Third Judicial Dist. v. Osborne*, 129 S. Ct. 2308, 2322 (2019) ("[The defendant] asks that we recognize a freestanding right to DNA evidence untethered from the liberty interests he hopes to vindicate with it. We reject the invitation and conclude, in the

circumstances of this case, that there is no such substantive due process right."). Ninth Circuit precedent is in accordance with the Supreme Court. *See, e.g.*, *Morrison v. Peterson*, 809 F.3d 1059, 1065 (9th Cir. 2015) ("*Osborne* rejected the extension of substantive due process to [DNA testing.]").

4. **Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?**

   Response: No.

5.

   a. **Under Supreme Court and U.S. Court of Appeals for the Ninth Circuit precedent, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.**

      Response: Applying the Religious Land Use and Institutionalized Persons Act, the Supreme Court found a substantial burden on the free exercise of religion where a person was faced with a choice between "engag[ing] in conduct that seriously violates [his] religious beliefs[]" and suffering "serious disciplinary action." *Holt v. Hobbs*, 574 U.S. 352, 361 (2015). Most recently, the Supreme Court identified that the burden of "the choice of curtailing [religious exercise] or approving relationships inconsistent with a [party's religious] beliefs" was "constitutionally [in]permissible." *Fulton v. City of Philadelphia*, No. 19-123, 2021 WL 2459253, *5 (S. Ct. Jun. 17, 2021). *See also Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) ("[G]overnment regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise.").

   b. **Under Supreme Court and U.S. Court of Appeals for the Ninth Circuit precedent, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.**

      Response: Under the First Amendment, the government may "not base laws or regulations on hostility to a religion or religious viewpoint." *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n*, 138 S. Ct. 1719, 1731 (2018). Most recently, the Supreme court stated, "[g]overnment fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or

restricts practices because of their religious nature." *Fulton v. City of Philadelphia*, No. 19-123, 2021 WL 2459253, *5 (S. Ct. Jun. 17, 2021). "[E]ven 'subtle bars from neutrality'" are prohibited. *Masterpiece Cakeshop*, 138 S. Ct. at 1731 (quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993)). This means the government is "obliged under the Free Exercise Clause to proceed in a manner neutral toward and tolerant of [a person's] religious beliefs." *Masterpiece Cakeshop*, 138 S. Ct. at 1731. "Factors relevant to the assessment of governmental neutrality include 'the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body.'" *Id.* (quoting *Church of the Lukumi Babalu*, 508 U.S. at 540 (1993)).

c. What is the standard in the U.S. Court of Appeals for the Ninth Circuit for evaluating whether a person's religious belief is held sincerely?

Response: "[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Fulton v. City of Philadelphia*, No. 19-123, 2021 WL 2459253, *4 (S. Ct. Jun. 17, 2021). However, the Supreme Court has treated the sincerity of a person's religious beliefs as a question of fact for the trier of fact to determine. *United States v. Ballard*, 322 U.S. 78 (1944). In *Ballard*, the defendants sought to dismiss criminal charges based on the Free Exercise Clause. The trial judge ruled, "'[t]he jury will be called upon to pass on the question of whether or not the defendants honestly and in good faith believed the [religious] representations which are set forth in the indictment.'" 322 U.S. at 84. The trial judge, however, "withheld from the jury all questions concerning the truth or falsity of the religious beliefs or doctrines of respondents." *Id.* at 88. The Supreme Court concluded the trial judge's rulings were proper. *Id. See also Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 718 (2014) ("[T]he scope of [the Religious Land Use and Institutionalized Persons Act] shows that Congress was confident of the ability of the federal courts to weed out insincere [religious] claims.").

6. What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller?*

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).

7. Please state whether you agree or disagree with the following statement and explain why: "Absent binding precedent, judges should interpret statutes based on the meaning of the statutory text, which is that which an ordinary speaker of English

would have understood the words to mean, in their context, at the time they were enacted."

Response: As a state court judge, I have had to interpret statutory text. In such instances, I first look to the text of the statute itself to attempt to determine its plain meaning. I also look to the structure of the statute to assist in determining the meaning and compare any similar or related language used throughout the statute to ensure meaning is given to each word of the statute without rendering other provisions meaningless or superfluous. This approach is in line with Ninth Circuit precedent. *See*, *e.g.*, *Boise Cascade Corp. v. U.S. E.P.A.*, 942 F.2d 1427, 1432 (9th Cir. 1991) (Courts must "interpret statutes as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous."). If confirmed, this is the approach I would apply when engaging in statutory interpretation.

Questions for the Record for David G. Estudillo
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
David Estudillo, W.D. Washington

1. **How would you describe your judicial philosophy?**

Response: As a sitting state court judge, my judicial philosophy is very basic. I seek to maintain a strong work ethic, understand the facts before me, understand the legal arguments, research and understand any applicable law, and then apply the law to the facts; and in every aspect of my work, be open-minded and inclusive of diverse experiences and perspectives. I have not developed any other formal judicial philosophy.

2. **What sources would you consult when deciding a case that turned on the interpretation of a federal statute?**

Response: As a state court judge, I have had to interpret statutory text. In such instances, I first look to the text of the statute itself to attempt to determine its plain meaning. I also look to the structure of the statute as a whole to assist in determining the meaning, and compare any similar or related language used throughout the statute to ensure meaning is given to each word of the statute without rendering other provisions meaningless or superfluous. This approach is in line with Ninth Circuit precedent. *See*, *e.g.*, *Boise Cascade Corp. v. U.S. E.P.A.*, 942 F.2d 1427, 1432 (9th Cir. 1991) (Courts must "interpret statutes as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous."). I have also looked to language used in related statutes to possibly obtain a better understanding of the particular text at issue. I may also look to precedent that might have applied the ambiguous text in a context related to the context before me, or that may assist in identifying additional tools of interpretation to apply. Also, as permitted by precedent, I have looked at the legislative history for possible indicia of the meaning of ambiguous text but have not relied exclusively on legislative history to determine the meaning of ambiguous text. If confirmed, I would use this same approach.

3. **What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?**

Response: If confirmed as a federal district judge, I would not expect to regularly confront many constitutional questions on which there was not already Supreme Court or Ninth Circuit precedent. So in general, I would research and review Supreme Court and Ninth Circuit precedent involving the relevant provision and then apply that precedent to the specific facts of the matter before me.

4. **What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?**

Response. Certain Supreme Court precedent, such as *Heller*, relied on the original public meaning of a particular provision of the Constitution. In general, I would follow Supreme Court and Ninth Circuit precedent whether it is based on original

public meaning or not. When interpreting the Constitution, I would research and faithfully apply all Supreme Court and Ninth Circuit precedent to the specific facts presented.

5. **What are the constitutional requirements for standing?**

Response: To establish constitutional standing, a plaintiff must prove: (1) an injury-in-fact, (2) causation, and (3) redressability. Regarding an injury-in-fact, a plaintiff must establish "an invasion of a legally protected interest which is (a) concrete and particularized...and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 112 S.Ct. 2130, 2136 (1992) (internal quotation marks 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: Prudential standing is a doctrine not derived from Article III and has "not [been] exhaustively defined." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126 (2014). There are at least three broad principles within prudential standing: "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.* (internal quotation marks omitted). If confirmed, I would apply precedent regarding Article III standing and any applicable "prudential" principle(s).

7. **How would you define the doctrine of administrative exhaustion?**

Response: The doctrine of administrative exhaustion provides "that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *McKart v. United States*, 395 U.S. 185, 193 (1969) (internal quotation marks omitted).

8. **Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?**

Response: Congress has implied powers based on the Necessary and Proper Clause of the Constitution. *M'Culloch v. Maryland*, 17 U.S. 316, 411-412 (1819) ("To [Congress's] enumeration of powers is added, that of making '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 thereof.'").

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 confronted with this type of issue, I would carefully review the specific facts presented in the matter and carefully review the legal arguments offered by each litigant. I also would carefully research and review Supreme Court and Ninth Circuit

precedent that may apply. After obtaining an understanding of the facts, the legal issues presented, and any applicable precedent, I would faithfully apply that precedent to the specific facts of the lawsuit.

10. **Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?**

Response: The Supreme Court has concluded there are some rights that are not expressly enumerated in the Constitution. *See*, *e.g.*, *Griswald v. Connecticut*, 381 U.S. 479 (1965). If confirmed, I would follow and apply Supreme Court and Ninth Circuit precedent.

11. **What rights are protected under substantive due process?**

Response: The Supreme Court has held that substantive due process protects fundamental rights. "We have 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'… and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed'[.]" *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997) (citations omitted). If confirmed, I would follow and apply Supreme Court and Ninth Circuit precedent on substantive due process issues.

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 sitting state court judge, and as a judicial nominee, I am required to follow Supreme Court and Ninth Circuit precedent on the scope of substantive due process protections. Any personal views I may have are not relevant to the application of precedent.

13. **What are the limits on Congress's power under the Commerce Clause?**

Response: There are three broad categories of activity that Congress may regulate under the powers of the Commerce Clause: "Congress may regulate the use of the channels of interstate commerce. … Congress is empowered to regulate and protect instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. … Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce[.]" *United States v. Morrison*, 529 U.S. 598, 609 (2000) (internal quotation marks and citations omitted); *see also United States v. Lopez*, 514 U.S. 549 (1995).

14. **What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?**

Response: Race, national origin, religion and alienage have been identified as

groups falling within a suspect class, and laws affecting these groups must survive strict scrutiny review. *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 of powers play in the Constitution's structure?**

Response: The role of checks and balances and separation of powers are key components of our Constitution's structure. Each branch of government is given limited powers to act so as not to concentrate power in one branch of government. As a result, each branch has some authority to act as a check on the actions sought or taken by the other branches of government. This structural design is vital to protecting the constitutional rights and liberties guaranteed to the people of our nation.

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: If confronted with this type of issue, I would carefully review the specific facts presented in the matter and carefully review the legal arguments offered by each litigant. I also would carefully research and review Supreme Court and Ninth Circuit precedent that may apply. After obtaining an understanding of the facts, the legal issues presented, and any applicable precedent, I would faithfully apply that precedent to the specific facts of the lawsuit.

17. **What role should empathy play in a judge's consideration of a case?**

Response: Empathy should play no role in making decisions. A judge must be objective and impartial in reviewing cases and in applying applicable precedent. A judge, however, should be mindful that litigants and the public are more willing to accept decisions where a judge is able to express a full understanding of the factual and legal arguments presented to the court.

18. **What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?**

Response: Neither outcome is acceptable. If confirmed, I would be required to faithfully apply the law to avoid such outcomes.

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 have not undertaken any research or analysis to identify the number of times the Supreme Court has invalidated federal statutes or the reasons therefor. If confirmed, I will faithfully follow Supreme Court and Ninth Circuit precedent in

determining the constitutionality of a federal statute.

20. **How would you explain the difference between judicial review and judicial supremacy?**

Response: Judicial review refers to the authority of the judiciary to review and determine whether actions of the other branches of government are constitutional. Judicial supremacy refers to the idea that the Supreme Court is the ultimate arbiter in interpreting the Constitution and that its decisions are binding on the other branches absent a constitutional amendment or subsequent Supreme Court decision superseding a prior decision.

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: Every elected official is required to follow the Constitution. There are no exceptions.

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: Respect and confidence in the judiciary and the decisions made therein are maintained only if judges remain impartial without interjecting personal views in the decision-making process. Confidence in the judgment of the judiciary is vital to an orderly society.

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 state court judge, I have had to interpret statutory text. In such instances, I first look to the text of the statute itself to attempt to determine its plain meaning. I also look to the structure of the statute to assist in determining the meaning and compare any similar or related language used throughout the statute to ensure meaning is given to each word of the statute without rendering other provisions meaningless or superfluous. This approach is in line with Ninth Circuit precedent. *See*, *e.g.*, *Boise Cascade Corp. v. U.S. E.P.A.*, 942 F.2d 1427, 1432 (9th Cir. 1991) (Courts must "interpret statutes as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous."). In

addition, in reviewing the text, a court is required to "exhaust all traditional tools of construction" prior to waving the "ambiguity flag". *Medina Tovar v. Zuchowski*, 982 F.3d 631, 634 (9th Cir. 2020) (quoting *Kisor v. Wilkie*, 139 S. Ct. 2400, 2415 (2019)). This means, a court is to determine "[t]he plainness or ambiguity of [the] statutory language…by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *United States v. Boyd*, 991 F.3d 1077, 1080 (9th Cir. 2021) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). "Ambiguity is a creature not of definitional possibilities but of statutory context." *United States v. Nishiie*, 996 F.3d 1013, 1021 (9th Cir. 2021) (quoting *Brown v. Gardner*, 513 U.S. 115, 118 (1994)). If confirmed, I would follow all Supreme Court and Ninth Circuit precedent regarding statutory interpretation.

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 extendthe precedent to cover new cases, or limit its application where appropriate and reasonably possible?**

Response: A lower court judge is required to follow and apply the applicable Supreme Court and circuit court precedent regardless of any views as to the constitutional validity of such precedent. If prior Supreme Court and circuit court precedent does not appear to speak directly to the issue at hand, I would carefully review the specific facts presented in the matter and carefully review the legal arguments offered by each litigant. I also would carefully research and review all Supreme Court and Ninth Circuit precedent that might provide possible guidance as to the issue presented.

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.

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. Factors to be considered in imposing a sentence are identified in 18 U.S.C. § 3553. One factor to consider is "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." *Id.* at (a)(6). A person's race, gender, nationality, sexual orientation or gender identity are not identified in 18 U.S.C. § 3553. If confirmed, I would consider and apply all the factors identified in 18 U.S.C. § 3553.

Joint Circuit and District Prep Session Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
June 9, 2021

For Judge David Estudillo:

1. **Please list some examples from your time as a judge of when your rulings conflicted with your personal policy preferences or personal sense of justice.**

   Response: As a state court judge for the past six years, I have set aside any personal view I may have to ensure that I reached the correct legal results based on the law and the facts. I can say that I have had to make difficult decisions in areas such as sentencing and termination of parental rights where I have felt a sense of burden, but even in those cases, the fact that I must make difficult decisions does not prevent me from reaching the correct legal result.

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, demonstrations, or other events at which you or other participants have willfully damaged public or private property?**

   Response: No.

3. **How would you describe your judicial philosophy?**

   Response: As a sitting state court judge, my judicial philosophy is very basic. I seek to maintain a strong work ethic, understand the facts before me, understand the legal arguments, research and understand any applicable law or precedent, and then apply the law to the facts; and in every aspect of my work, be open-minded and inclusive of diverse experiences and perspectives. I have not developed any other formal judicial philosophy as my role as a state court judge has been to follow legal precedent.

4. **Would you describe yourself as an originalist?**

   Response: As a sitting state court judge, my role has been to identify and follow applicable state and federal Supreme Court precedent. The constitutional areas that have come before me have involved developed areas of constitutional interpretation. I,

therefore, do not have a basis to say whether I consider myself an originalist or anything else when it comes to constitutional analysis.

5. Would you describe yourself as a textualist?

Response: As a sitting state court judge, my role has been to identify and follow applicable state and federal Supreme Court precedent. As a sitting state court judge, I am bound to interpret statutes and, in those cases, I have started with the text of the statute. I would do the same if confirmed as a federal district judge.

6. Do you believe the Constitution is a "living" document? Why or why not?

Response: I believe the Constitution is an enduring document that is meant to apply to our government and society over time. Because I am a state court judge, and a judicial nominee, I must, and will, follow all Supreme Court precedent interpreting and applying the Constitution.

7. Please name the Supreme Court Justice or Justices appointed since January 20, 1953 whose jurisprudence you admire the most and explain why.

Response: I have not studied in any meaningful way the jurisprudence of individual judges appointed after January 20, 1953, other than reading decisions that may be applicable to issues presented before me. In general, I can say I admire both Justice Antonin Scalia and Justice Ruth Bader Ginsburg because I saw both figures as being larger than life. In addition, despite their differences of opinions on certain issues, they always portrayed a sense of collegiality that I believe we all should aspire to.

8. Was Marbury v. Madison correctly decided?

Response: As a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am bound to apply Supreme Court precedent regardless of any views I may hold. However, because I am aware prior judicial nominees have offered an opinion on this decision and its holding is unlikely to ever be challenged, I feel comfortable in stating that I believe *Marbury v. Madison* was correctly decided.

9. Was Lochner v. New York correctly decided?

Response: As I noted above, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

10. Was Brown v. Board of Education correctly decided?

Response: As a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am bound to apply Supreme Court precedent regardless of any views I may hold. However, because I am aware prior judicial nominees have offered an opinion on this decision and its holding is unlikely to ever be challenged, I feel comfortable in stating that I believe *Brown v. Board of Education* was correctly decided.

11. Was Bolling v. Sharpe correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

12. Was Cooper v. Aaron correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

13. Was Mapp v. Ohio correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

14. Was Gideon v. Wainwright correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

15. Was Griswold v. Connecticut correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

16. Was South Carolina v. Katzenbach correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any

Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

17. Was Miranda v. Arizona correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

18. Was Loving v. Virginia correctly decided?

Response: As a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am bound to apply Supreme Court precedent regardless of any views I may hold. However, because I am aware prior judicial nominees have offered an opinion on this decision and its holding is unlikely to ever be challenged, I feel comfortable in stating that I believe *Loving v. Virginia* was correctly decided.

19. Was Katz v. United States correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

20. Was Roe v. Wade correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

21. Was Romer v. Evans correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

22. Was United States v. Virginia correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

23. Was Bush v. Gore correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

24. Was District of Columbia v. Heller correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

25. Was Crawford v. Marion County Election Bord correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

26. Was Boumediene v. Bush correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

27. Was Citizens United v. Federal Election Commission correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

28. Was Shelby County v. Holder correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

29. Was United States v. Windsor correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

30. Was Obergefell v. Hodges correctly decided?

Response: As previously noted, as a sitting state court judge, and as a judicial nominee, it is generally inappropriate for me to offer comments about the legitimacy of any Supreme Court decision or precedent because I am obligated to apply binding Supreme Court precedent regardless of any views I may hold.

31. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?

Response: I have been nominated for the position of a district judge not a circuit judge. If confirmed, issues regarding the reaffirmation of circuit precedent by the circuit will not be reviewed by me.

32. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for an appellate court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?

Response: I have been nominated for the position of a district judge not a circuit judge. If confirmed, issues regarding the reaffirmation of circuit precedent by the circuit will not be reviewed by me.

33. 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? If so, how so?

Response: No. Factors to be considered in imposing a sentence are identified in 18 U.S.C. § 3553. One factor to consider is "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." *Id.* at (a)(6). If confirmed, I would consider and apply the factors identified in 18 U.S.C. § 3553.

Questions for the Record for
Senator Thom Tillis for
Questions for Mr. David Estudillo

1. **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: I understand it to mean instances where a judge's decision is based, in whole or in part, on the judge's personal views or opinions. Judicial activism is not appropriate.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: In my opinion, impartiality is an expectation and a requirement.

4. **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 is required to faithfully interpret and apply the law regardless of the outcome. When this duty is performed, there is no issue to be reconciled.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No.

7. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

   Response: I will faithfully follow and apply all Supreme Court and Ninth Circuit precedent on matters involving Second Amendment rights.

8. **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 confronted with this type of lawsuit, I would carefully review the specific facts presented in the matter and carefully review the legal arguments offered by each litigant. I also would carefully research and review Supreme Court and Ninth Circuit precedent regarding Second Amendment rights and any precedent involving emergency or health-related governmental restrictions on individual liberties. After obtaining an understanding of the facts, the legal issues presented, and any applicable precedent, I would faithfully apply that precedent to the specific facts of the lawsuit.

9. 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 has stated that "[q]ualified 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)). This means "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." *Harlow v. Fitzgerald*, 102 S. Ct. 2727, 2738 (1982). As a sitting state court judge, I have not presided over a matter involving qualified immunity. If confirmed and presented with a matter involving qualified immunity, I would carefully review the specific facts presented in the matter and carefully review the legal arguments offered by each litigant. I also would carefully research and review Supreme Court and Ninth Circuit precedent. After obtaining an understanding of the facts, the legal issues presented, and any applicable precedent, I would faithfully apply that precedent to the specific facts of the matter before me.

10. 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: As a current state court judge, and a judicial nominee, it would be inappropriate for me to offer an opinion about whether law enforcement officers are afforded sufficient protections under the doctrine of qualified immunity. This is a policy question that is more appropriate for legislative bodies to address.

11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: Please see my response to Question No. 10.

12. 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?

Response: In my almost six years of being a state court judge, and my 16 years of private practice, I have not had the opportunity to review patent eligibility matters. I, therefore, cannot offer any opinion regarding current patent eligibility jurisprudence. I could reassure you that if a case involving questions of patent eligibility came before me, I would carefully review all relevant Supreme Court precedent, including *Alice Corp. Pty. Ltd. v. CLS Bank Intern.*, 573 U.S. 208 (2014), and carefully analyze the facts of the case applying that precedent to the best of my ability.

13. 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: Please see my response to Question No. 12.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Lauren J. King
Nominee to be United States District Judge for the Western District of Washington

1. **You are very experienced in matters of Indian Law, which is an important part of a federal docket out West.**

   a. **What experience do you have litigating constitutional issues?**

      RESPONSE: On behalf of the plaintiffs in *Muscogee (Creek) Nation et al. v. Poarch Band of Creek Indians*, No. 2:12-cv-1079-MHT-CSC (M.D. Ala.), I filed a Second Amended Complaint asserting a cause of action under the Free Exercise clause of the First Amendment in connection with defendants' exhumation (or granting permits for exhumation) of over 55 Muscogee (Creek) ancestors in order to build a casino over a site that is sacred to the Muscogee (Creek) Nation. On March 15, 2021, the district court issued an order finding that although the plaintiffs established a basis to sue the tribal defendants under the *Ex Parte Young* doctrine, a narrow and limited exception applied to that doctrine that preserved the sovereign immunity of the tribal defendants. Due to the immunity of the tribal defendants and the court's finding that those defendants were indispensable to the case, the court dismissed the case without addressing the First Amendment claim. The case is now on appeal in the Eleventh Circuit.

   b. **If you were to face a constitutional issue as a judge, what is the general procedure you would follow for determining what the law required?**

      RESPONSE: If the constitutional provision at issue had previously been interpreted by the Supreme Court or Ninth Circuit, I would follow that precedent. If no precedent existed, I would first analyze the text of the provision. I generally would look to evidence of the original meaning of any constitutional provision at issue. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) ("the examination of a variety of legal and other sources to determine *the public understanding* of a legal text in the period after its enactment or ratification . . . . is a critical tool of constitutional interpretation") (emphasis in original). If other federal or state courts had interpreted the constitutional provision, I would look to those courts' decisions as persuasive, though not binding, authority. I would apply relevant canons of construction as needed, looking to Supreme Court and Ninth Circuit precedent for guidance.

2. **One of the federal courts' 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: If confirmed, I would follow Supreme Court and Ninth Circuit precedent regarding determination of ambiguity. "'[T]he plainness or ambiguity of statutory language is determined [not only] by reference to the language itself, [but as well by] the specific context in which that language is used, and the broader context of the statute as a whole.'" *Yates v. United States*, 574 U.S. 528, 537 (2015) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997)). To be ambiguous, "[a] statute must be 'susceptible to more than one reasonable interpretation.'" *Guido v. Mount Lemmon Fire Dist.*, 859 F.3d 1168, 1173 (9th Cir. 2017) (quoting *Alaska Wilderness League v. E.P.A.*, 727 F.3d 934, 938 (9th Cir. 2013)); *see also Kisor v. Wilkie*, 139 S. Ct. 2400, 2411 (2019) (interpreting ambiguous regulations "involves a choice between (or among) more than one reasonable reading"). I would use traditional tools of statutory construction, including textual analysis, analysis of statutory context, and canons of construction, to determine whether the statute at issue is "susceptible to more than one reasonable interpretation" and is therefore ambiguous. Please also see my responses to Question 4.

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: If confirmed, I would apply Supreme Court and Ninth Circuit precedent regarding determining whether statutory text and regulatory text are ambiguous. *See, e.g.*, *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019); *Yates v. United States*, 574 U.S. 528 (2015); *Guido v. Mount Lemmon Fire Dist.*, 859 F.3d 1168 (9th Cir. 2017). Please also see my responses to Question 4.

c. When interpreting ambiguous text, what tools would you use to resolve the ambiguity?

RESPONSE: If confirmed, my general approach to resolving textual ambiguity in the event that there were no binding precedent on the meaning of the text would be to first examine statutory context, including the rest of the provision at issue, the act as a whole, and similar provisions elsewhere in the law. If courts other than the Supreme Court and Ninth Circuit had addressed the meaning of the text, I would also look to those courts' decisions as persuasive, though not binding, authority. I would also apply relevant canons of construction, looking to Supreme Court and Ninth Circuit precedent for guidance. *See, e.g.*, *Barnhart v. Thomas*, 540 U.S. 20 (2003) (applying grammatical "rule of the last antecedent"); *Duncan v. Walker*, 533 U.S. 167 (2001) (applying the rule against surplusage). If those tools of interpretation did not resolve the ambiguity, I would consult legislative history, as the Supreme Court permits. *See, e.g.*, *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 426 (2006).

d. When interpreting ambiguous text, how would you handle two competing and contradictory canons of statutory interpretation?

RESPONSE: I would first attempt to resolve the ambiguity by examining the text and statutory context. If that did not resolve the ambiguity, I would apply the relevant canons of statutory interpretation. If two relevant canons were in conflict with one another, I would look to Supreme Court and Ninth Circuit precedent for guidance on resolving the conflict. *See, e.g.*, *Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994) (noting "apparent tension" between two canons and resolving the conflict). If the issue were one that other federal or state courts had addressed, I also would look to those courts' decisions as persuasive, though not binding, authority. If necessary, I would consult the legislative history of the statute, as the Supreme Court permits, to resolve the ambiguity.

3. You gave what appears to be a CLE presentation at a Tribal Water Law Conference in 2018, which said there were differences between the law of treaties and the reality of treaties. One potential difference you highlighted was between the "ethnocentric plain meaning" of a treaty and the treaty as understood through the lens of tribal legal canons.

a. When federal courts seek to understand a treaty between the United States and a tribal nation, what role do you believe tribal laws and canons should play?

RESPONSE: If confirmed, I would follow Supreme Court and Ninth Circuit precedent regarding interpretation of Indian treaties. The "Indian canons" are legal canons that have been established and reaffirmed by the Supreme Court. Supreme Court precedent requires that Indian treaties "'be interpreted in light of the parties' intentions, with any ambiguities resolved in favor of the Indians.'" *Herrera v. Wyoming*, 139 S. Ct. 1686, 1699 (2019) (quoting *Minnesota v. Mille Lacs Band of Chippewa Indians,* 526 U.S. 172, 206 (1999)). "[T]he words of a treaty must be construed 'in the sense in which they would naturally be understood by the Indians.'" *Id.* (quoting *Washington v. Wash. State Commercial Passenger Fishing Vessel Association*, 443 U.S. 658, 676 (1979)). In the above-referenced CLE presentation, I contrasted Supreme Court law regarding treaty rights with the arguments that are sometimes made in litigation that depart from Supreme Court law. The bullet titled "ethnocentric 'plain meaning' arguments" referred to arguments made in litigation that departed from the plain meaning of a treaty term in 1855 and that were based on a taxonomic distinction that did not exist in the tribes' languages or in common English usage at treaty time. *See Makah Indian Tribe v. Quileute Indian Tribe*, Br. in Opp., 2018 WL 3740577, at *23 (U.S. 2018) (describing this theory of the "plain meaning" as "anything but plain, landing somewhere between the two meanings provided by contemporary dictionaries" and "nowhere to be found in the vast trial record"). To the extent the phrase "tribal laws and canons" in this Question refers to a tribe's own laws and canons and not the above-described Indian canons, under Supreme Court

precedent, a tribe's own laws and canons from the time of a treaty may be relevant in interpreting the treaty to the extent such laws and canons reflect the contemporaneous understanding of one or more of the parties to the treaty.

b. As a federal judge, how would you analyze a case in which there was a discrepancy between the way that United States law would interpret a treaty and the way that another sovereign nation's law would interpret the treaty?

RESPONSE: If confirmed, I would follow Supreme Court and Ninth Circuit precedent regarding interpretation of treaties.

4. Federal courts usually examine the law de novo because each court is usually obligated to correctly interpret the law to the best of its own ability. But in some cases, federal courts defer to how others interpret the law. A number of Supreme Court decisions outline this deference.

a. What is *Skidmore* deference? Please summarize the Ninth Circuit's *Skidmore* jurisprudence.

RESPONSE: *Skidmore* deference takes its name from the Supreme Court's 1944 opinion in *Skidmore v. Swift & Company*, 323 U.S. 134 (1944). As the Supreme Court explained in *United States v. Mead Corp.*, under *Skidmore* deference, where the *Chevron* doctrine does not apply, "an agency's interpretation may merit some deference whatever its form, given the 'specialized experience and broader investigations and information' available to the agency . . . and given the value of uniformity in its administrative and judicial understandings of what a national law requires." 533 U.S. 218, 234–235 (2001) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 139–140 (1944)). *Skidmore* deference similarly applies where an agency's interpretation of its own regulation is not eligible for *Auer* deference. *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 159 (2012). 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.'" *Id.* (quoting *Mead Corp.*, 533 U.S. at 228) (additional citation and quotation marks omitted). The Ninth Circuit's current *Skidmore* jurisprudence is consistent with the Supreme Court's articulation of the doctrine. *See, e.g.*, *Scalia v. Dep't of Transportation & Pub. Facilities*, 985 F.3d 742, 748 (9th Cir. 2021).

b. What is *Chevron* deference? Please summarize the Ninth Circuit's *Chevron* jurisprudence.

RESPONSE: *Chevron* deference takes its name from the Supreme Court's opinion in *Chevron U.S.A., Incorporated v. Natural Resources Defense Council,*

Incorporated, in which the Court stated 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. 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. First, a court must evaluate "whether Congress has directly spoken to the precise question at issue," and "[i]f the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Chevron*, 467 U.S. at 842–43. If Congress has not "directly addressed the precise question at issue," and "if the statute is silent or ambiguous with respect to the specific issue, the [second] question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id.* at 843. If the agency's construction of the ambiguous statute is reasonable, then the court will defer to the agency's construction. *Id.* at 845. The Ninth Circuit's current *Chevron* jurisprudence is consistent with the Supreme Court's articulation of the doctrine. *See, e.g.*, *Route v. Garland*, 996 F.3d 968, 978–82 (9th Cir. 2021) (applying *Chevron* deference to a Board of Immigration Appeals decision).

c. What is *Auer* deference? Please summarize the Ninth Circuit's *Auer* jurisprudence.

RESPONSE: *Auer* deference takes its name from the Supreme Court's opinion in *Auer v. Robbins*, 519 U.S. 452 (1997). *Auer* followed an earlier Supreme Court decision holding that an agency's interpretation of its own ambiguous regulation is generally "of controlling weight unless it is plainly erroneous or inconsistent with the regulation." *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414 (1945). In examining *Auer*, the Supreme Court has stated that courts "must make an independent inquiry into whether the character and context of the agency interpretation entitles [the interpretation] to controlling weight" because "not every reasonable agency reading of a genuinely ambiguous rule" receives deference. *Kisor v. Wilkie*, 139 S. Ct. 2400, 2416 (2019). *Auer* deference will be warranted where (1) the regulation is genuinely ambiguous after the reviewing court "exhaust[s] all the 'traditional tools' of construction" and considers the regulation's "text, structure, history, and purpose," *id.* at 2415 (quoting *Chevron*, 467 U.S. at 843 n.9); (2) the agency's interpretation of the regulation is reasonable, *id.* at 2416; (3) the interpretation is the agency's "authoritative" or "official position," *id.*; (4) the agency's interpretation "in some way implicate[s] its substantive expertise," *id.* at 2417; and (5) the interpretation reflects the agency's "fair and considered judgment," *id.* The Ninth Circuit's current *Auer*

jurisprudence is consistent with the Supreme Court's articulation of the doctrine. *See, e.g.*, *Goffney v. Becerra*, 995 F.3d 737, 744–46 (9th Cir. 2021).

d. Is there an analytical difference between *Auer* deference and *Seminole Rock* deference? If so, please explain the difference.

RESPONSE: It appears that the Supreme Court has treated *Seminole Rock* deference as interchangeable with *Auer* deference: "Before the doctrine was called *Auer* deference, it was called *Seminole Rock* deference—for the 1945 decision in which we declared that when 'the meaning of [a regulation] is in doubt,' the agency's interpretation 'becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation.'" *Kisor v. Wilkie*, 139 S. Ct. 2400, 2411 (2019) (quoting *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414 (1945)). The Supreme Court "has applied *Auer* or *Seminole Rock* in dozens of cases, and lower courts have done so thousands of times." *Id.* at 2422. The Ninth Circuit has relied on those two cases interchangeably as well. *See Siskiyou Reg'l Educ. Project v. U.S. Forest Serv.*, 565 F.3d 545, 555 (9th Cir. 2009) ("[*Seminole* Rock] provides the basis for . . . *Auer*'s articulation of the proper degree of deference to an ambiguous regulation"); *Goffney v. Becerra*, 995 F.3d 737, 744 (9th Cir. 2021) ("Although *Seminole Rock* represents one of the Supreme Court's earliest expositions of that principle, the doctrine has come to be associated with the Court's more recent decision in *Auer v. Robbins*"). Whatever analytical differences exist between *Seminole Rock* and *Auer*, *Kisor v. Wilkie* is the current controlling authority concerning deference to an agency's interpretations of its own regulations.

5. What is the standard of review in the Ninth Circuit in immigration cases?

RESPONSE: As the Ninth Circuit stated in *Virdiana v. Holder*:

> The proper standard of review in immigration proceedings depends on the nature of the decision under review. Factual determinations are reviewed for substantial evidence. Under this deferential standard, the [Immigration Judge]'s determination must be upheld unless the petitioner can show that a reasonable fact finder would have been compelled to reach a different conclusion. Questions of law are reviewed de novo.

646 F.3d 1230, 1233 (9th Cir. 2011) (internal citations omitted); *see also Manzo-Fontes v. INS*, 53 F.3d 280, 282 (9th Cir. 1995) (discussing standards); *see also* 8 U.S.C. § 1252(b)(4) and Ninth Circuit Standards of Review Outline.

6. What is the legal basis for a nationwide injunction? What factors would you consider in issuing one?

RESPONSE: Federal Rule of Civil Procedure 65 governs injunctions. The Ninth Circuit has stated that, "[a]lthough 'there is no bar against . . . nationwide relief in federal district court or circuit court,' such broad relief must be '*necessary* to give prevailing parties the relief to which they are entitled.'" *California v. Azar*, 911 F.3d 558, 582–83 (9th Cir. 2018) (quoting *Bresgal v. Brock*, 843 F.2d 1163, 1170–71 (9th Cir. 1987)) (emphasis in *Bresgal* removed in part by *Azar*). The Ninth Circuit also stated that "'nationwide injunctive relief may be inappropriate where a regulatory challenge involves important or difficult questions of law, which might benefit from development in different factual contexts and in multiple decisions by the various courts of appeals.'" *Id.* at 583 (quoting *L.A. Haven Hospice, Inc. v. Sebelius*, 638 F.3d 644, 664 (9th Cir. 2011)).

7. **In *McGowan v. Maryland*, 366 U.S. 420, 442 (1961), the Supreme Court wrote that "the 'Establishment' Clause does not ban federal or state regulation of conduct whose reason or effect merely happens to coincide or harmonize with the tenets of some or all religions." Do you agree that secular actions with some religious overlap can be constitutional?**

RESPONSE: Yes. The Supreme Court has reaffirmed the above-quoted principle in subsequent cases. *See, e.g.*, *Hernandez v. Comm'r*, 490 U.S. 680, 712 (1989); *Marsh v. Chambers*, 463 U.S. 783, 792 (1983); *Bob Jones Univ. v. United States*, 461 U.S. 574, 604 n.30 (1983). If confirmed, I would be bound by the Supreme Court's interpretation of the First Amendment and I would follow this binding precedent.

8. **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: The Supreme Court recently reaffirmed that "[t]he First Amendment 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.'" *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2055 (2020) (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 116 (1952)). In *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, the Supreme Court held that the "ministerial exception," grounded in the First Amendment, "precludes application of [employment discrimination laws] to claims concerning the employment relationship between a religious institution and its ministers." 565 U.S. 171, 188 (2012). The Court further held that "it is impermissible for the government to contradict a church's determination of who can act as its ministers"; "[b]y imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments." *Id.* at 185, 188. "According the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions." *Id.* at 188–89. If

confirmed, I would be bound by Supreme Court and Ninth Circuit decisions regarding church autonomy.

9. **After many years of relative quiet, Second Amendment jurisprudence developed into a substantially larger body of law during the past decade. I would appreciate understanding your thoughts on several related questions.**

   a. **According to the Supreme Court, what are the permissible limits on an individual's right to keep and bear arms?**

      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). The Court stated that, "[l]ike most rights, the right secured by the Second Amendment is not unlimited"; the right is not "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 626. The Court instructed that its opinion should not "be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626–27. Furthermore, the "sorts of weapons protected" under the Second Amendment include those "'in common use at the time.'" *Id.* at 627 (quoting *United States v. Miller*, 307 U.S. 174, 179 (1939)). If confirmed, I would be bound by Supreme Court precedent regarding the Second Amendment, and I would follow that precedent.

   b. **Do the Supreme Court's precedents leave room for other constitutionally permissible limits—on an individual's right to keep and bear arms—that the Supreme Court has not already specified?**

      RESPONSE: In *District of Columbia v. Heller*, the Supreme Court stated that it identified "presumptively lawful regulatory measures only as examples" and that its list "does not purport to be exhaustive." 554 U.S. 570, 627 n.26 (2008).

   c. **Is the Second Amendment individual right to "keep" arms at all different from the right to "bear" arms?**

      RESPONSE: In *District of Columbia v. Heller*, the Supreme Court stated that "the most natural reading of 'keep Arms' in the Second Amendment is to 'have weapons.'" 554 U.S. 570, 582 (2008). "Bear arms" "refers to carrying [arms] for a particular purpose—confrontation." *Id.* at 584. "Putting all of these textual elements together," the Court found that they "guarantee the individual right to possess and carry weapons in case of confrontation." *Id.* at 592.

10. You gave a joint presentation for the Oregon State Bar's Indian Law Section in November 2020, where you discussed the Supreme Court's landmark decision in *McGirt v. Oklahoma*. Near the end of your presentation, you had a slide captioned "Possibility of Reversal," which included a picture of Justice Barrett being sworn in by Justice Thomas.

a. What was the purpose of including the slide captioned "Possibility of Reversal" in your presentation?

RESPONSE: The "Possibility of Reversal" slide was suggested by a co-panelist as part of his portion of the joint presentation. I recall that the joint presentation reached its allotted time before all slides could be discussed, including the "Possibility of Reversal" slide. While I suspect that my co-panelist was referring to the fact that Justice Ginsburg, who was part of the 5-4 majority opinion in *McGirt*, had recently passed away and Justice Barrett had been confirmed as her replacement, I am not certain.

b. What effect, if any, do you believe Justice Barrett's confirmation will have on the future of *McGirt v. Oklahoma* and similar decisions regarding treaty law?

RESPONSE: All judges, including Supreme Court Justices, must faithfully apply the law, including law regarding Indian treaties. As a pending nominee, it would be inappropriate for me to speculate regarding what effect, if any, Justice Barrett's confirmation will have on the future of *McGirt v. Oklahoma*, similar decisions regarding treaty law, or any other Supreme Court precedent.

11. Please explain, with detail, the process by which you became a district-court nominee.

RESPONSE: On December 10, 2020, Senators Murray and Cantwell published an "Announcement of Judicial Appointments to the United States District Court for the Western District of Washington." The Announcement stated that the Senators had engaged a bipartisan committee to screen and interview candidates, and directed individuals who were interested in being considered for appointment to any of the five vacant positions on the federal bench in the Western District of Washington to submit an application to the committee by January 4, 2021. On January 4, 2021, I submitted an application to the committee. On February 11, 2021, I interviewed with the committee. On February 16, 2021, I received a notification from the committee chairs that I had been recommended to Washington State's Senators for their consideration. I interviewed with Senator Murray's staff on February 23, 2021, and spoke with Senator Murray on March 8, 2021. I interviewed with Senator Cantwell's staff on February 26, 2021. On March 8, 2021, Senator Murray's staff informed me that the Senators had recommended my name along with six others for the vacancies. On March 8, 2021, I was contacted by attorneys from the White House Counsel's Office to schedule an interview. On March 9, 2021, I interviewed with attorneys from the White House Counsel's Office. Since then, I have

been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 12, 2021, the President announced his intent to nominate me.

12. 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 the conversations.

RESPONSE: No.

13. 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 the conversations.

RESPONSE: I have not spoken with Russ Feingold. After I submitted my application to the bipartisan committee, I had a conversation with an individual located in Washington State who stated that he was working with the American Constitution Society. During the conversation, this individual provided general information about how the judicial nominations process works in response to my questions regarding the process.

14. Please explain with particularity the process by which you answered these questions.

RESPONSE: I received these questions from the Office of Legal Policy on June 16, 2021. I prepared draft answers by reviewing the questions, conducting research as needed, and reviewing my own writings as needed. After I returned my draft answers, I received feedback from the Office of Legal Policy. I considered this feedback before finalizing and submitting my answers on June 21, 2021.

15. Do the answers in this document reflect your true and personal views?

RESPONSE: Yes.

Nomination of Lauren J. King
to be United States District Judge for the Western District of Washington Questions for the Record
Submitted June 16, 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. **Was *D.C. v. Heller*, 554 U.S. 570 (2008) rightly decided?**

   RESPONSE: As a pending judicial nominee, it would not be appropriate for me to opine on whether Supreme Court precedent was rightly decided, with limited exceptions. *District of Columbia v. Heller* is binding Supreme Court precedent and I would faithfully apply it if confirmed, as I would apply all binding Supreme Court and Ninth Circuit precedent.

4. **Is the Second Amendment right to keep and bear arms an individual right belonging to individual persons, or a collective right that only belongs to a group such as a militia?**

   RESPONSE: In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment protects an individual right to keep and bear arms unconnected to service in a militia, for traditionally lawful purposes such as self-defense within the home. 554 U.S. 570 (2008).

5. **Please describe what you believe to be the Supreme Court's holding in *Greer v. United States*, 593 U.S. _____ (2021).**

   RESPONSE: In *Greer v. United States*, the Supreme Court held that "[i]n felon-in-possession cases, a *Rehaif* error is not a basis for plain-error relief unless the defendant first makes a sufficient argument or representation on appeal that he would have presented evidence at trial that he did not in fact know he was a felon." No. 19-8709, 2021 WL 2405146, at *7 (U.S. June 14, 2021).[1] When confronted with such an argument or representation, an appellate court "must determine whether the defendant

[1] In *Rehaif v. United States*, 139 S. Ct. 2191 (2019), the Court "clarified the *mens rea* requirement for firearms-possession offenses, including the felon-in-possession offense"; after *Rehaif*, "the Government must prove not only that the defendant knew he possessed a firearm, but also that *he knew he was a felon* when he possessed the firearm" in felon-in-possession cases. *Greer*, 2021 WL 2405146, at *2 (emphasis in original).

has carried the burden of showing a 'reasonable probability' that the outcome of the district court proceeding would have been different." *Id.*

6. **Please describe what you believe to be the Supreme Court's holding in *Terry v. United States*, 593 U.S. _____ (2021).**

RESPONSE: In *Terry v. United States*, the Supreme Court held that Section 2(a) of the Fair Sentencing Act modified the statutory penalties only for offenses that triggered mandatory-minimum penalties, and that the First Step Act's authorization of reduction in sentences for such "covered offenses" therefore did not apply to an offender whose prior crack offense did not trigger mandatory-minimum penalties. No. 20-5904, 2021 WL 2405145, at *2, *4–5 (U.S. June 14, 2021).

7. **Please describe what you believe to be the Supreme Court's holding in *Jones v. Mississippi*, 593 U.S. _____ (2021).**

RESPONSE: In *Jones v. Mississippi*, the Supreme Court held that "a separate factual finding of permanent incorrigibility is not required before a sentencer imposes a life-without-parole sentence on a murderer under 18," and "an on-the-record sentencing explanation with an implicit finding of permanent incorrigibility" is likewise not required. 141 S. Ct. 1307, 1318–19, 1231 (2021).

8. **Please describe what you believe to be the Supreme Court's holding in *Tandon v. Newsom*, 593 U.S. _____ (2021).**

RESPONSE: In *Tandon v. Newsom*, the Supreme Court held that religious adherents were entitled to an injunction pending appeal because they met the standards for a preliminary injunction in their claim that California's COVID-19 regulations violated the Free Exercise Clause. 141 S. Ct. 1294, 1296–97 (2021). Specifically, California's regulations were not neutral and generally applicable because they treated some comparable secular activities more favorably than at-home religious exercise, thus triggering strict scrutiny. *Id.* at 1297. California failed to satisfy strict scrutiny because it failed to show that "public health would be imperiled" by employing less restrictive measures. *Id.*

9. **Please describe what you believe to be the Supreme Court's holding in *Sanchez v. Mayorkas*, 593 U.S. _____ (2021).**

RESPONSE: In *Sanchez v. Mayorkas*, the Supreme Court held that the United States' grant of Temporary Protected Status to an individual who entered the United States unlawfully does not render the individual eligible to become a lawful permanent resident under 8 U.S.C. § 1255. No. 20-315, 2021 WL 2301964, at *2, *5 (U.S. June 7, 2021).

10. **What is your view of arbitration as a litigation alternative in civil cases?**

RESPONSE: Some litigants choose arbitration as a litigation alternative in civil cases. As a pending judicial nominee, it would be inappropriate for me to opine on the merits or demerits of arbitration as a litigation alternative. If confirmed, I would faithfully apply relevant law, including the Federal Arbitration Act, to the record before me.

11. **Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.**

RESPONSE: I received these questions from the Office of Legal Policy on June 16, 2021. I prepared draft answers by reviewing the questions, conducting research as needed, and reviewing my own writings as needed. After I returned my draft answers, I received feedback from the Office of Legal Policy. I considered this feedback before finalizing and submitting my answers on June 21, 2021.

12. **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 Lauren Jennifer King, Nominee for the United States District Court for the Western District of Washington

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 to respect the role of judges in our tripartite system of government, to adjudicate all cases impartially and with absolute fidelity to the law, and to treat all litigants with respect and dignity. As a tribal court judge, my practice has been to carefully review the filings and arguments of the parties, to research relevant law, and to faithfully apply the law to the record before me. If confirmed, I would follow

all Supreme Court precedent regardless of which Justice authored the opinion for the Court, and my decisions would therefore not reflect the approach of any particular Justice.

2. Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?

RESPONSE: I do not believe that the meaning of the Constitution changes over time absent changes through the Article V amendment process. I believe that the text of the Constitution expresses core principles that remain constant over time. The Supreme Court has stated that evidence of "*the public understanding* of a legal text in the period after its enactment or ratification . . . . is a critical tool of constitutional interpretation." *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (emphasis in original). However, lower court judges must follow Supreme Court precedent regardless of the interpretive approach of a given precedent.

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: As a pending judicial nominee, it would be inappropriate for me to evaluate proposals to increase or decrease the number of Justices on the Supreme Court. If confirmed, I would be bound by Supreme Court precedent regardless of the number of Justices.

4. Do you personally own any firearms? If so, please list them.

RESPONSE: I do not own any firearms.

5. Have you ever personally owned any firearms?

RESPONSE: I have never owned any firearms.

6. Have you ever used a firearm? If so, when and under what circumstances?

RESPONSE: I have never used a firearm.

7. 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 Second Amendment right to keep and bear arms is a fundamental right that applies to the states as well the federal government. 561 U.S. 742, 750, 778 (2010).

8. Is the criminal justice system systemically racist?

RESPONSE: I am aware that there are studies on various aspects of the criminal justice system, including studies regarding racial disparities in sentencing, but I am not in a position to evaluate the criminal justice system as a whole. If confirmed, it would be my duty to impartially apply the law to matters that come before me, and I would evaluate claims of racial discrimination on a case-by-case basis consistent with Supreme Court and Ninth Circuit precedent and other applicable law.

9. **In October 2018, you gave a presentation at a Tribal Water Law Conference, for which there is little surviving documentation, about "Development Litigation Claims: *Winans*-Based Fishery Claims." In that presentation, you contrasted what you called the "law" on treaties with the "reality" of treaties. You said the "law" included things like "tribes reserve all rights not expressly granted to the United States" and "a treaty must be construed as the signatory tribes would have understood it, with any ambiguities resolved in their favor." By contrast, you said, the "reality" was shaped by "[t]he abrogation parade" and "[e]thnocentric 'plain meaning.'" Please explain the following:**

   a. **What does "ethnocentric plain meaning" mean?**

      RESPONSE: In the above-referenced CLE presentation, I contrasted Supreme Court law regarding treaty rights with arguments that are sometimes made in litigation that depart from Supreme Court law. Supreme Court precedent requires that Indian treaties "'be interpreted in light of the parties' intentions, with any ambiguities resolved in favor of the Indians.'" *Herrera v. Wyoming*, 139 S. Ct. 1686, 1699 (2019) (quoting *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 206 (1999)). "[T]he words of a treaty must be construed 'in the sense in which they would naturally be understood by the Indians.'" *Id.* (quoting *Washington v. Wash. State Commercial Passenger Fishing Vessel Association*, 443 U.S. 658, 676 (1979)). The bullet in my presentation titled "ethnocentric 'plain meaning' arguments" referred to "plain meaning" arguments made by the opposing party in *Makah Indian Tribe v. Quileute Indian Tribe*, Case No. 17-1592 (U.S. 2018) that departed from the plain meaning of a treaty term in 1855 and that were based on a taxonomic distinction that did not exist in the tribes' languages or in common English usage at treaty time. In that case, I argued on behalf of the Quileute Tribe that the opposing tribe's theory regarding the meaning of the treaty term in 1855 was "anything but plain, landing somewhere between the two meanings provided by contemporary dictionaries," and was "nowhere to be found in the vast trial record." *Makah Indian Tribe v. Quileute Indian Tribe*, Br. in Opp., 2018 WL 3740577, at *23 (U.S. 2018). I argued that the appropriate meaning of the term was "in accordance with the 'popular understanding' at treaty time" and with the "'practical construction adopted by the parties'" at treaty time. *Id.* at *20 (quoting *Mille Lacs*, 526 U.S. at 196).

   b. **What does ethnocentric mean?**

      RESPONSE: In matters relating to tribal rights under applicable law, the federal government has defined "ethnocentrism" as "viewing the world and the people in it

only from the point of view of one's own culture, and being unable to sympathize with the feelings, attitudes, and beliefs of someone who is a member of a different culture." *See, e.g.*, U.S. Dep't of the Interior, National Park Service, *National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties* at 4 (1998).

c. **What is plain meaning?**

RESPONSE: *Black's Law Dictionary* defines "plain meaning" as "[t]he meaning attributed to a document (usu[ally] by a court) by giving the words their ordinary sense, without referring to extrinsic indications of the author's intent."

d. **How does the plain meaning of text embody "ethnocentricity"?**

RESPONSE: As my response to Question 9(a) explains, the word "ethnocentric" in my CLE presentation referred to certain litigation arguments regarding the meaning of a treaty term that departed from the term's plain meaning.

10. **When you chaired the Washington State Bar Association's Indian Law Section in 2016, the state bar proposed a measure that would either prohibit religious practice at any Washington Bar event or allow limited religious practice under newer, stricter rules. You worked with the Indian Law Section to draft a letter opposing the measure, explaining that it would "effectively preclude[] full study and appreciation of Indian Law"—and that learning about other peoples' cultures fosters "the understanding and tolerance intended by our First Amendment protections." This letter concluded by suggesting that, rather than an outright ban on religious activities, the state bar should permit short blessings or ceremonies that are relevant to a practice area.**

a. **When you advocated for this, did you intend for the exception allowing short blessings or ceremonies to apply to all people, of all religious faiths? Please explain.**

RESPONSE: Yes. The letter broadly stated that "The Executive Committee of the Washington State Bar Association's ('WSBA') Indian Law Section ('ILS') strongly urges the WSBA Board of Governors not to prohibit religious practices at CLEs by WSBA Sections." The letter did not limit its proposed exception to a particular group or religion, and instead encouraged the WSBA to "permit short blessings or ceremonies relevant to the practice area."

Senator Josh Hawley
Questions for the Record

Lauren J. King
Nominee, U.S. District Court for the Western District of Washington

1. **Under Supreme Court and U.S. Court of Appeals for the Ninth Circuit precedent, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?**

   RESPONSE: Prisoners "cannot successfully challenge a method of execution unless they establish that the method presents a risk that is '*sure or very likely* to cause serious illness and needless suffering,' and give rise to 'sufficiently *imminent* dangers.'" *Glossip v. Gross*, 576 U.S. 863, 877 (2015) (quoting *Baze v. Rees,* 553 U.S. 35, 50 (2008)) (additional citation and internal quotation marks omitted). "To prevail on such a claim, 'there must be a substantial risk of serious harm, an objectively intolerable risk of harm that prevents prison officials from pleading that they were subjectively blameless for purposes of the Eighth Amendment.'" *Id.* (quoting *Baze*, 553 U.S. at 50) (additional citation and internal quotation marks omitted). Prisoners "'cannot successfully challenge a State's method of execution merely by showing a slightly or marginally safer alternative.'" *Id.* (quoting *Baze*, 553 U.S. at 51). Instead, "prisoners must identify an alternative that is 'feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of severe pain.'" *Id.* (quoting *Baze*, 553 U.S. at 52).

2. **Under the Supreme Court's holding in *Glossip v. Gross*, is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?**

   RESPONSE: Yes. "[A] requirement of all Eighth Amendment method-of-execution claims" is that the petitioner "identify a known and available alternative method of execution that entails a lesser risk of pain." *Glossip*, 576 U.S. at 867 (2015).

3. **Has the Supreme Court or the U.S. Court of Appeals for the Ninth Circuit ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?**

   RESPONSE: I am not aware of any case in which the Supreme Court or Ninth Circuit recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime. In *District Attorney's Office for the Third Judicial District v. Osborne*, the Supreme Court "reject[ed] the invitation" of a petitioner to "recognize a freestanding right to DNA evidence untethered from the liberty interests he hope[d] to vindicate with it," and

concluded that, "in the circumstances of this case, that there is no such substantive due process right." 557 U.S. 52, 72 (2009). The Court noted that "[t]here is no long history of such a right, and '[t]he mere novelty of such a claim is reason enough to doubt that "substantive due process" sustains it.'" *Id.* (quoting *Reno v. Flores*, 507 U.S. 292, 303 (1993)). "[T]he Court's decision in *Osborne* severely limits the federal action a state prisoner may bring for DNA testing," rejecting "the extension of substantive due process to this area" and leaving "slim room for the prisoner to show that the governing state law denies him procedural due process." *Skinner v. Switzer*, 562 U.S. 521, 525 (2011) (citing *Osborne*, 557 U.S. at 71, 72).

4. **Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?**

   RESPONSE: No.

5.

   a. **Under Supreme Court and U.S. Court of Appeals for the Ninth Circuit precedent, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.**

      RESPONSE: The Supreme Court has held that "the Free Exercise Clause of the First Amendment does not prohibit governments from burdening religious practices through generally applicable laws." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 424 (2006) (citing *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 878–882 (1990)). A law that is both neutral and generally applicable (see my response to Question 5(b) below) need only be rationally related to a legitimate governmental interest to survive a constitutional challenge under the Free Exercise Clause. *See Smith*, 494 U.S. 872; *Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1084 (9th Cir. 2015). If the state action were subject to the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* ("RLUIPA"), the Act would provide the legal standard. RLUIPA generally forbids state governments from imposing a substantial burden on religious exercise, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest. *Id.* A state government action substantially burdens the free exercise of religion when "individuals are forced to choose between following the tenets of their religion and receiving a governmental benefit (*Sherbert* [*v. Verner*, 374 U.S. 398 (1963)]) or coerced to act contrary to their religious beliefs by the threat of civil or criminal sanctions ([*Wisconsin v.] Yoder*[, 406 U.S. 205 (1972)])." *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058, 1069–

70 (9th Cir. 2008). The Supreme Court has interpreted the Free Exercise Clause in a number of cases. *See, e.g.*, *Fulton v. City of Philadelphia, Pennsylvania*, No. 19-123, 2021 WL 2459253 (U.S. June 17, 2021); *Espinoza v. Montana Dep't of Revenue*, 140 S. Ct. 2246 (2020); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017). *See also Holt v. Hobbs*, 574 U.S. 352 (2015) (holding that the Arkansas Department of Correction's grooming policy violated RLUIPA in preventing an inmate from growing a half–inch beard in accordance with his religious beliefs). If confirmed, I would be bound by the Supreme Court and Ninth Circuit and would faithfully follow precedent.

b. Under Supreme Court and U.S. Court of Appeals for the Ninth Circuit precedent, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.

RESPONSE: State laws that discriminate against a religious group or religious belief are evaluated under the strict scrutiny standard. "At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993). "Although a law targeting religious beliefs as such is never permissible," if the "object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral," and it is "invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest." *Id.* at 533. "Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Fulton v. City of Philadelphia, Pennsylvania*, No. 19-123, 2021 WL 2459253, at *4 (U.S. June 17, 2021). Furthermore, "[a] law is not generally applicable if it 'invite[s]' the government to consider the particular reasons for a person's conduct by providing 'a mechanism for individualized exemptions.'" *Id.* (quoting *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 884 (1990)) (internal quotation marks and citation omitted). "A law also lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Id.* at *5. If the state action were subject to the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* ("RLUIPA"), the Act would provide the legal standard, as described in my response to Question 5(a). The Supreme Court has adjudicated numerous cases involving a claim that a state governmental action discriminated against a religious group or religious belief. *See, e.g.*, *Fulton v. City of Philadelphia, Pennsylvania*, No. 19-123, 2021 WL 2459253 (U.S. June 17, 2021); *Espinoza v. Montana Dep't of Revenue*, 140 S. Ct. 2246 (2020); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012

(2017); *Holt v. Hobbs*, 574 U.S. 352 (2015); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). If confirmed, I would be bound by the Supreme Court and Ninth Circuit and would faithfully follow precedent.

c. What is the standard in the U.S. Court of Appeals for the Ninth Circuit for evaluating whether a person's religious belief is held sincerely?

RESPONSE: The Ninth Circuit follows Supreme Court guidance for evaluating whether a person's religious belief is held sincerely. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014). "'[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.'" *Fulton v. City of Philadelphia, Pennsylvania*, No. 19-123, 2021 WL 2459253, at *4 (U.S. June 17, 2021) (quoting *Thomas v. Review Bd. of Ind. Employment Security Div.*, 450 U.S. 707, 714 (1981)). The Ninth Circuit "recognize[s] that the protections of the free exercise clause do not 'turn upon a judicial perception of the particular belief or practice in question. . . . Courts are not arbiters of scriptural interpretation.'" *Scott v. Rosenberg*, 702 F.2d 1263, 1274 (9th Cir. 1983) (quoting *Thomas,* 450 U.S. at 714, 716). In cases involving free-exercise claims by prisoners, the Ninth Circuit employs a "sincerity test." *See Shakur v. Schriro*, 514 F.3d 878, 884–85 (9th Cir. 2008). Under the sincerity test, a prisoner's religious concern implicates the free exercise clause if it is (1) "sincerely held" and (2) "rooted in religious belief," rather than in secular philosophical concerns. *Malik v. Brown,* 16 F.3d 330, 333 (9th Cir. 1994) (quotations omitted); *see also Penwell v. Holtgeerts*, 386 F. App'x 665, 667 (9th Cir. 2010).

6. What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller?*

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). The "sorts of weapons protected" under the Second Amendment include those "'in common use at the time.'" *Id.* at 627 (quoting *United States v. Miller*, 307 U.S. 174, 179 (1939)). The Court further held that the District of Columbia's ban on handgun possession in the home "violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense." *Id.* at 635. If confirmed, I would be bound by Supreme Court precedent regarding the Second Amendment, and I would follow that precedent.

7. Please state whether you agree or disagree with the following statement and explain why: "Absent binding precedent, judges should interpret statutes based on the meaning of the statutory text, which is that which an ordinary speaker of English would have understood the words to mean, in their context, at the time they were enacted."

RESPONSE: The above statement is consistent with the Supreme Court's statement that "our job is to interpret the words [of a statute] consistent with their 'ordinary meaning . . . at the time Congress enacted the statute.'" *Wisconsin Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2070 (2018) (quoting *Perrin v. United States,* 444 U.S. 37, 42 (1979)). If confirmed, I would be bound by Supreme Court and Ninth Circuit precedent, and I would follow that precedent.

Questions for the Record for Lauren J. King
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
Lauren J. King, W.D. Washington

1. How would you describe your judicial philosophy?

RESPONSE: My judicial philosophy is to respect the role of judges in our tripartite system of government, to adjudicate all cases impartially and with absolute fidelity to the law, and to treat all litigants with respect and dignity. As a tribal court judge, my practice has been to carefully review the filings and arguments of the parties, to research relevant law, and to faithfully apply the law to the record before me. I describe my approach to interpreting statutes and constitutional provisions in my responses to Questions 2, 3, 4, and 23.

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 Ninth Circuit, I would follow that precedent. If no precedent existed, I would first analyze the text of the statute. If the text were ambiguous, I would examine statutory context, including the rest of the provision at issue, the act as a whole, or similar provisions elsewhere in the law. If necessary, I would examine decisions of the Supreme Court and the Ninth Circuit interpreting similar provisions or discussing similar issues. If other federal or state courts had interpreted the statute, I also would look to those courts' decisions as persuasive, though not binding, authority. I would apply relevant canons of construction as needed, looking to Supreme Court and Ninth Circuit precedent for guidance. Finally, if necessary, I would consult legislative history, as the Supreme Court permits.

3. What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?

RESPONSE: If the constitutional provision at issue had previously been interpreted by the Supreme Court or Ninth Circuit, I would follow that precedent. If no precedent existed, I would first analyze the text of the provision. I generally would look to evidence of the original meaning of any constitutional provision at issue. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) ("the examination of a variety of legal and other sources to determine *the public understanding* of a legal text in the period after its enactment or ratification . . . . is a critical tool of constitutional interpretation") (emphasis in original). If other federal or state courts had interpreted the constitutional provision, I would look to those courts' decisions as persuasive, though not binding, authority. I would apply relevant canons of

construction as needed, looking to Supreme Court and Ninth Circuit precedent for guidance.

4. What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?

RESPONSE: The Supreme Court has stated that "the examination of a variety of legal and other sources to determine *the public understanding* of a legal text in the period after its enactment or ratification . . . . is a critical tool of constitutional interpretation." *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (emphasis in original). However, if confirmed as a lower court judge, I would be bound by both the precedents of the Supreme Court and its method of analysis regardless of whether a given precedent is regarded as "originalist" in approach or not.

5. What are the constitutional requirements for standing?

RESPONSE: The "irreducible constitutional minimum of standing" requires that (1) "the plaintiff must have suffered an injury in fact"; (2) "there must be a causal connection between the injury and the conduct complained of"; and (3) "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) (citations and internal quotation marks 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: The Supreme Court has stated that, although some elements of the doctrine of standing "express merely prudential considerations that are part of judicial self-government," the "core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 559–60 (1992). In *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, the Supreme Court explained that the "'prudential' branch of standing" is

> "not exhaustively defined" but encompass[es] . . . 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."

572 U.S. 118, 126 (2014) (quoting *Elk Grove Unified School Dist. v. Newdow,* 542 U.S. 1, 12 (2004)) (additional citation and internal quotation marks omitted). The

Court clarified that although "the modern 'zone of interests' formulation originated . . . as a limitation on the cause of action for judicial review conferred by the [APA]," the Court has since made clear "that it applies to all statutorily created causes of action." *Id.* at 129.

7. How would you define the doctrine of administrative exhaustion?

RESPONSE: "'The doctrine of exhaustion of administrative remedies is well established in the jurisprudence of administrative law,'" and provides "'that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted.'" *Woodford v. Ngo*, 548 U.S. 81, 88–89 (2006) (quoting *McKart v. United States*, 395 U.S. 185, 193 (1969)) (additional citation and internal quotation marks omitted).

8. Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?

RESPONSE: Congress's powers are enumerated in Article I, Section 8 of the Constitution. The Necessary and Proper Clause grants Congress the power to "make all Laws which shall be necessary and proper for carrying into Execution the [enumerated] Powers" and "all other Powers vested by th[e] Constitution in the Government of the United States, or in any Department or Officer thereof." Art. I, § 8, cl. 18. In the seminal case *McCulloch v. Maryland,* Chief Justice Marshall wrote: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." 4 Wheat. 316, 421 (1819). The Supreme Court has stated that "[t]he scope of the Necessary and Proper Clause is broad"; it "allows Congress to 'adopt any means, appearing to it most eligible and appropriate, which are adapted to the end to be accomplished and consistent with the letter and spirit of the Constitution.'" *United States v. Kebodeaux*, 570 U.S. 387, 394 (2013) (quoting *James Everard's Breweries v. Day,* 265 U.S. 545, 559 (1924)); *see also United States v. Morrison*, 529 U.S. 598, 607 (2000) ("[e]very law enacted by Congress must be based on one or more of its powers enumerated in the Constitution"). In *Kebodeaux*, the Supreme Court listed some of Congress's implied powers:

> The Constitution . . . makes few explicit references to federal criminal law, but the Necessary and Proper Clause nonetheless authorizes Congress, in the implementation of other explicit powers, to create federal crimes, to confine offenders to prison, to hire guards and other prison personnel, to provide prisoners with medical care and educational training, to ensure the safety of those who may come into contact with prisoners, to ensure the public's safety through

> systems of parole and supervised release, and, where a federal prisoner's mental condition so requires, to confine that prisoner civilly after the expiration of his or her term of imprisonment.

570 U.S. at 394–95. As the Supreme Court stated in *United States v. Lopez*, "'the 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.'" 514 U.S. 549, 566 (1995) (quoting *McCulloch v. Maryland*, 4 Wheat. 316, 405 (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: If confirmed, I would follow the approaches of the Supreme Court and Ninth Circuit in evaluating the constitutionality of a law enacted without reference to a specific enumerated power. The Supreme Court has stated that "the 'question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise.'" *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012) (quoting *Woods v. Cloyd W. Miller Co.*, 333 U.S. 138, 144 (1948)). A court must be able to discern a Constitutional basis for Congress's exercise of power, but that does not mean that a "law must be struck down because Congress used the wrong labels." *Id.* at 569–70. The Supreme Court "ha[s] never required Congress to make particularized findings in order to legislate . . . absent a special concern such as the protection of free speech." *Gonzales v. Raich*, 545 U.S. 1, 21 (2005).

10. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?

RESPONSE: The Ninth Amendment states that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The Supreme Court has determined that the Constitution protects certain rights that are not expressly enumerated in the Constitution. The Supreme Court has recognized unenumerated rights primarily through the due process clauses of the Fifth and Fourteenth Amendments, holding that due process protects "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition" and are "careful[ly] descri[bed]." *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) (citations and internal quotation marks omitted). The Supreme Court has also recognized unenumerated rights stemming from the Ninth Amendment and the Privileges and Immunities Clause of Article IV, section 2. *See, e.g.*, *Roe v. Wade*, 410 U.S. 113, 153 (1973) (holding that the right of privacy, "whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action . . . or . . . in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision

whether or not to terminate her pregnancy"); *Saenz v. Roe*, 526 U.S. 489, 501 (1999) ("by virtue of a person's state citizenship, a citizen of one State who travels in other States . . . is entitled to enjoy the 'Privileges and Immunities of Citizens in the several States' that he visits"). Among the unenumerated rights that the Supreme Court has recognized are a right to privacy that includes the right to marital privacy and to use contraception (*Griswold v. Connecticut*, 381 U.S. 479 (1965); *Eisenstadt v. Baird*, 405 U.S. 438 (1972)), the right to refuse unwanted medical treatment (*Cruzan by Cruzan v. Dir., Missouri Dep't of Health*, 497 U.S. 261 (1990)), the right to terminate a pregnancy in certain circumstances (*Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992)), the right to procreate and direct children's upbringing (*Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923)), the right to bodily integrity (*Rochin v. California*, 342 U.S. 165 (1952)), and the right to marry (*Obergefell v. Hodges*, 576 U.S. 644 (2015); *Loving v. Virginia*, 388 U.S. 1 (1967)).

11. What rights are protected under substantive due process?

RESPONSE: The Supreme Court has held that due process protects "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition" and are "careful[ly] descri[bed]." *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) (citations and internal quotation marks omitted). My response to Question 10 lists some of these rights.

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: The Supreme Court has held that due process protects "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition" and are "careful[ly] descri[bed]." *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) (citations and internal quotation marks omitted). In *Ferguson v. Skrupa*, the Court stated that "[t]he doctrine that prevailed in *Lochner [v. New York*, 198 U.S. 45 (1905)], *Coppage [v. Kansas*, 236 U.S. 1 (1915)], *Adkins [v. Children's Hospital*, 261 U.S. 525 (1923)], *[Jay] Burns [Baking Co. v. Bryan*, 264 U.S. 504 (1924)], and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded." 372 U.S. 726, 730 (1963). The Supreme Court has held that the federal 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.*, *Hodel v. Indiana*, 452 U.S. 314, 331 (1981).

13. What are the limits on Congress's power under the Commerce Clause?

RESPONSE: The Supreme Court has held that Congress may regulate three categories of activity under its commerce power: (1) "the use of the channels of interstate commerce"; (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities"; and (3) "those activities having a substantial relation to interstate commerce, . . . *i.e.*, those activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558–59 (1995). The Court has further held that activities in the third category—those that "substantially affect" commerce—"may be regulated so long as they substantially affect interstate commerce in the aggregate, even if their individual impact on interstate commerce is minimal." *Taylor v. United States*, 136 S. Ct. 2074, 2079 (2016) (citing *Wickard v. Filburn*, 317 U.S. 111, 125 (1942)). "While this final category is broad, 'thus far in our Nation's history [Supreme Court] cases have upheld Commerce Clause regulation of intrastate activity only where that activity is economic in nature.'" *Id.* at 2079–80 (quoting *United States v. Morrison*, 529 U.S. 598, 613 (2000)). In cases where the Supreme Court invalidated certain legislation as exceeding Congress's commerce power, the Court emphasized the non-economic nature of the regulated activity. *See, e.g.*, *Morrison*, 529 U.S. at 617–18; *Lopez*, 514 U.S. at 567.

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 described classes possessing "the traditional indicia of suspectness" as those that have been "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." *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973); *see also City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1995) (suspect classifications are those that are "seldom relevant to the achievement of any legitimate state interest"). The Court has held that suspect classes include race, religion, and alienage. *See 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 of powers play in the Constitution's structure?

RESPONSE: As the Supreme Court stated in *Free Enterprise Fund v. Public Company Accounting Oversight Board*:

> The Framers created a structure in which "[a] dependence on the people" would be the "primary controul on the government." The Federalist No. 51, at 349 (J. Madison). That dependence is

> maintained, not just by "parchment barriers," *id.*, No. 48, at 333 (same), but by letting "[a]mbition . . . counteract ambition," giving each branch "the necessary constitutional means, and personal motives, to resist encroachments of the others," *id.*, No. 51, at 349 . . . . And while a government of "opposite and rival interests" may sometimes inhibit the smooth functioning of administration, The Federalist No. 51, at 349, "[t]he Framers recognized that, in the long term, structural protections against abuse of power were critical to preserving liberty." *Bowsher [v. Synar*, 478 U.S. 714,] 730[(1986)].

561 U.S. 477, 501 (2010). "Article III is 'an inseparable element of the constitutional system of checks and balances' that 'both defines the power and protects the independence of the Judicial Branch.'" *Stern v. Marshall*, 564 U.S. 462, 482 (2011) (quoting *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 58 (1982) (plurality opinion)). "Article III imposes some basic limitations" that serve "two related purposes": (1) protecting each branch from incursion by the others and (2) protecting the individual. *Id.* at 483.

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: If confirmed, I would analyze a case in which it was alleged that one branch assumed an authority not granted it by the text of the Constitution consistent with Supreme Court and Ninth Circuit precedent analyzing allegations of unauthorized exercises of authority. *See, e.g.*, *Bank Markazi v. Peterson*, 136 S. Ct. 1310 (2016); *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477 (2010); *United States v. Morrison*, 529 U.S. 598 (2000); *Clinton v. City of New York*, 524 U.S. 417 (1998); *United States v. Lopez*, 514 U.S. 549 (1995); *I.N.S. v. Chadha*, 462 U.S. 919 (1983).

17. What role should empathy play in a judge's consideration of a case?

RESPONSE: Judges must "administer justice without respect to persons." 28 U.S.C. § 453. Judges must decide cases impartially and in a manner consistent with the law and facts. Of course, empathy is an important human characteristic, and Canon 3 of the Code of Conduct for United States Judges provides that "[a] judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity."

18. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

RESPONSE: These actions are both improper under the law. I note that statutes generally enjoy a presumption of constitutionality, *see United States v. Morrison*, 529 U.S. 598, 607 (2000), and the Supreme Court recently reaffirmed that courts should "construe [ambiguous] statutes 'to avoid not only the conclusion that [they are] unconstitutional, but also grave doubts upon that score,'" *United States v. Palomar-Santiago*, 141 S. Ct. 1615, 1622 (2021) (quoting *United States v. Jin Fuey Moy*, 241 U.S. 394, 401 (1916)). If confirmed, I would abide by my duty to follow precedent and faithfully apply the law.

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. If confirmed, I would follow binding Supreme Court and Ninth Circuit precedent regardless of the frequency with which the higher courts reached certain conclusions. As a pending judicial nominee, it would be inappropriate for me to opine on the merits of aggressive exercise of judicial review or judicial passivity.

20. How would you explain the difference between judicial review and judicial supremacy?

RESPONSE: Judicial review refers to the power of courts to review the actions of the other branches of government. *See Marbury v. Madison*, 1 Cranch 137 (1803). Judicial supremacy has been defined differently by scholars. *See, e.g.*, Larry D. Kramer, *The Supreme Court 2000 Term Foreword: We the Court*, 115 Harv. L. Rev. 4, 92 (2001) (defining judicial supremacy as "the idea that the Supreme Court has the last word when it comes to constitutional interpretation (subject only to formal amendment)"); Jeremy Waldron, *The Core of the Case Against Judicial Review*, 115 Yale L.J. 1346, 1406 (2006) (defining judicial supremacy as "a situation in which (1) the courts settle important issues for the whole political system, (2) those settlements are treated as absolutely binding on all other actors in the political system, and (3) the courts do not defer to the positions taken on these matters in other branches (not even to the extent to which they defer to their own past decisions under a limited principle of stare decisis)").

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: Elected officials have an obligation to follow the Constitution and respect duly rendered judicial decisions. If I were confirmed and confronted with a case regarding an elected official's compliance with the Constitution or judicial decisions, I would faithfully apply precedent and other relevant law to the record before me.

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: In Federalist 78, Hamilton said that the "courts must declare the sense of the law," while "force" is the prerogative of the executive branch and "will" is the prerogative of the legislative. "[I]f [courts] should be disposed to exercise will instead of judgment, the consequence would be equally the substitution of their pleasure to that of the legislative body." Hamilton emphasized that the independence of the judiciary was essential for it to be an effective check on the other two branches of government. He also emphasized that "the liberty of the people can never be endangered" by a judiciary that "remains truly distinct" from the other branches. It is important for judges to keep the judiciary's limited authority in mind in accordance with the Supreme Court's interpretation of Article III as confining courts to the consideration of "cases" or "controversies" and to "say[ing] what the law is." *See Marbury v. Madison*, 1 Cranch 137, 177 (1803).

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 Ninth Circuit, I would follow that precedent. If no precedent existed, I would analyze the text of the statute. If the text were clear and unambiguous, I would generally not look further than the text. Statutory text should generally be construed in accordance with its meaning at the time Congress enacted the statute. *See Wisconsin Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2070 (2018) ("our job is to interpret the words consistent with their 'ordinary meaning . . . at the time Congress enacted the statute'") (quoting *Perrin v. United States*, 444 U.S. 37, 42 (1979)).

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 is obligated to faithfully apply Supreme Court and circuit precedent that governs the resolution of the issue at hand. If precedent did not govern the issue at hand, I would apply the methodology described in my responses to Questions 2, 3, 4, and 23, along with relevant canons and rules, including those listed in my response to Question 18.

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. Federal courts are courts of limited jurisdiction and have no authority to adjudicate cases over which they have no jurisdiction.

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: Generally, none. The factors to be considered in sentencing are set forth in 18 U.S.C. §3553(a). Race, gender, nationality, sexual orientation, and gender identity are not listed in 18 U.S.C. §3553(a). In addition, the Sentencing Commission has issued guidelines providing, among other things, that race, sex, national origin, creed, religion, and socioeconomic status "are not relevant in the determination of a sentence." United States Sentencing Commission, Guidelines Manual § 5H1.10 (Nov. 1992); *see also* 18 U.S.C. § 3553(a)(5) (directing judges to consider pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. § 994(a)(2)).

27. Ms. King, you gave a presentation in 2018 that described arguments based on the plain meaning of a treaty's text as "ethnocentric." In your testimony, you said you "didn't recall making that argument." For the record, could you explain the connection between "plain meaning" arguments and "ethnocentri[sm]?"

RESPONSE: I have reviewed my 2018 presentation since providing my testimony to refresh my recollection regarding that portion of the presentation. In that CLE presentation, I contrasted Supreme Court law regarding treaty rights with the

arguments that are sometimes made in litigation that depart from Supreme Court law. Supreme Court precedent requires that Indian treaties "'be interpreted in light of the parties' intentions, with any ambiguities resolved in favor of the Indians.'" *Herrera v. Wyoming*, 139 S. Ct. 1686, 1699 (2019) (quoting *Minnesota v. Mille Lacs Band of Chippewa Indians,* 526 U.S. 172, 206 (1999)). "[T]he words of a treaty must be construed 'in the sense in which they would naturally be understood by the Indians.'" *Id.* (quoting *Washington v. Wash. State Commercial Passenger Fishing Vessel Association*, 443 U.S. 658, 676 (1979)). The bullet in my presentation titled "ethnocentric 'plain meaning' arguments" referred to "plain meaning" arguments made by the opposing party in *Makah Indian Tribe v. Quileute Indian Tribe*, Case No. 17-1592 (U.S. 2018) that departed from the plain meaning of a treaty term in 1855 and that were based on a taxonomic distinction that did not exist in the tribes' languages or in common English usage at treaty time. In that case, I argued on behalf of the Quileute Tribe that the opposing tribe's theory regarding the meaning of the treaty term in 1855 was "anything but plain, landing somewhere between the two meanings provided by contemporary dictionaries," and was "nowhere to be found in the vast trial record." *Makah Indian Tribe v. Quileute Indian Tribe*, Br. in Opp., 2018 WL 3740577, at *23 (U.S. 2018). I argued that the appropriate meaning of the term was "in accordance with the 'popular understanding' at treaty time" and with the "'practical construction adopted by the parties'" at treaty time. *Id.* at *20 (quoting *Mille Lacs,* 526 U.S. at 196).

28. You also suggested, in the same presentation, that Indian legal canons might also have bearing on how treaties between the United States and tribal nations should be read. Do you believe it is acceptable to use non-U.S. legal doctrines in U.S. courts to interpret U.S. law?

RESPONSE: The "Indian canons" are United States legal doctrines that have been established and reaffirmed by the Supreme Court, so I would like to clarify that I was not arguing in favor of non-U.S. legal doctrines being used in U.S. courts to interpret U.S. law. As the Supreme Court explained in *Oneida Cty., N.Y. v. Oneida Indian Nation of New York State*:

> The canons of construction applicable in Indian law are rooted in the unique trust relationship between the United States and the Indians. Thus, it is well established that treaties should be construed liberally in favor of the Indians, *Choctaw Nation v. United States,* 318 U.S. 423, 431–432, 63 S.Ct. 672, 677–678, 87 L.Ed. 877 (1943); *Choate v. Trapp,* 224 U.S. 665, 675, 32 S.Ct. 565, 569, 56 L.Ed. 941 (1912), with ambiguous provisions interpreted to their benefit, *McClanahan v. Arizona State Tax Comm'n,* 411 U.S. 164, 174, 93 S.Ct. 1257, 1263, 36 L.Ed.2d 129 (1973); *Carpenter v. Shaw,* 280 U.S. 363, 367, 50 S.Ct. 121, 122, 74 L.Ed. 478 (1930); *Winters v. United States,*

> 207 U.S. 564, 576–577, 28 S.Ct. 207, 211–212, 52 L.Ed. 340 (1908). "Absent explicit statutory language," *Washington v. Washington State Commercial Passenger Fishing Vessel Assn.*, 443 U.S. 658, 690, 99 S.Ct. 3055, 3077, 61 L.Ed.2d 823 (1979), this Court accordingly has refused to find that Congress has abrogated Indian treaty rights. *Menominee Tribe v. United States,* 391 U.S. 404, 88 S.Ct. 1705, 20 L.Ed.2d 697 (1968). See generally F. Cohen, Handbook of Federal Indian Law 221–225 (1982 ed.)[.]

470 U.S. 226, 247 (1985) (noting that "[t]he Court has applied similar canons of construction in nontreaty matters"); *see also Confederated Tribes of Chehalis Indian Rsrv. v. State of Wash.*, 96 F.3d 334, 340 (9th Cir. 1996) (under heading "Indian Canons of Construction," stating that "[c]ourts have uniformly held that treaties, statutes and executive orders must be liberally construed in favor of establishing Indian rights," and that "[a]ny ambiguities in construction must be resolved in favor of the Indians").

29. If confirmed, will you commit to interpreting treaties based solely on binding Supreme Court and Ninth Circuit legal precedent?

RESPONSE: If confirmed, I would follow Supreme Court and Ninth Circuit precedent regarding interpretation of treaties, just as I would for all other legal topics.

30. Ms. King, in 2017, you joined a letter to then-Attorney General Jeff Sessions criticizing some of President Trump's comments regarding federal judges. The letter expressed concern that some of those comments "spread misunderstanding about the role of judges in a constitutional democracy, with potentially grave consequences." Do you believe it was appropriate for the current Majority Leader, Sen. Schumer, to threaten Justices Kavanaugh and Gorsuch on the steps of the Supreme Court by saying: "you have unleashed the whirlwind and you will pay the price. You won't know what hit you if you go forward with these awful decisions?"

RESPONSE: As the 2017 letter states, "judges are ethically constrained from responding directly to such conduct." As a pending judicial nominee, it would be inappropriate for me to opine on Senator Schumer's conduct.

a. Relatedly, do you believe it was appropriate for Senate Democrats to write, in an amicus brief, that "the Supreme Court is not well . . . and the people know it. Perhaps the Court can heal itself before the public demands that it be "'restructured'"—which, of course, is a euphemism for courtpacking—do you think that was appropriate?

RESPONSE: Please see my response to the first part of Question 30. If confirmed, I would be bound by Supreme Court precedent regardless of the number of Justices.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
June 9, 2021

For Commissioner Lauren King:

1. **Please list some examples from your time as a judge of when your rulings conflicted with your personal policy preferences or personal sense of justice.**

   RESPONSE: Consistent with my oath as a tribal court judge, my personal policy preferences and personal sense of justice have played no role in my decision-making. I issued my decisions based solely upon the law and the record before me. As a pending judicial nominee and a sitting tribal court judge, I must act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, and for that reason it would be inappropriate for me to list examples of decisions that conflicted with my personal preferences.

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, demonstrations, or other events at which you or other participants have willfully damaged public or private property?**

   RESPONSE: No.

3. **How would you describe your judicial philosophy?**

   RESPONSE: My judicial philosophy is to respect the role of judges in our tripartite system of government, to adjudicate all cases impartially and with absolute fidelity to the law, and to treat all litigants with respect and dignity. As a tribal court judge, my practice has been to carefully review the filings and arguments of the parties, to research relevant law, and to faithfully apply the law to the record before me.

4. **Would you describe yourself as an originalist?**

   RESPONSE: Because commentators' descriptions of the various judicial philosophies are not consistent, I would not use a particular label to describe my philosophy. I believe that the text of a law should generally be construed in accordance with its meaning at the time of enactment. The Supreme Court has stated that "the examination of a variety of legal

and other sources to determine *the public understanding* of a legal text in the period after its enactment or ratification. . . . is a critical tool of constitutional interpretation." *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008); *see also Wisconsin Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2070 (2018) ("our job is to interpret the words consistent with their 'ordinary meaning ... at the time Congress enacted the statute'") (quoting *Perrin v. United States,* 444 U.S. 37, 42 (1979)). However, if confirmed as a lower court judge, I would be bound by both the precedents of the Supreme Court and its method of analysis regardless of whether a given precedent is regarded as "originalist" in approach or not.

5. Would you describe yourself as a textualist?

RESPONSE: Because commentators' descriptions of the various judicial philosophies are not consistent, I would not use a particular label to describe my philosophy. I believe that the text of a law should generally be construed in accordance with its meaning at the time of enactment. The Supreme Court has stated that "the examination of a variety of legal and other sources to determine *the public understanding* of a legal text in the period after its enactment or ratification. . . . is a critical tool of constitutional interpretation." *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008); *see also Wisconsin Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2070 (2018) ("our job is to interpret the words consistent with their 'ordinary meaning ... at the time Congress enacted the statute'") (quoting *Perrin v. United States,* 444 U.S. 37, 42 (1979)). However, if confirmed as a lower court judge, I would be bound by both the precedents of the Supreme Court and its method of analysis regardless of whether a given precedent is regarded as "textualist" in approach or not.

6. Do you believe the Constitution is a "living" document? Why or why not?

RESPONSE: I do not believe that the Constitution is "living" in the sense that it changes over time, but rather that the Constitution expresses core principles that remain constant over time. As Chief Justice Marshall wrote in *McCulloch v. Maryland*, the Constitution was intended "to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." 4 Wheat. 316, 415 (1819).

7. Please name the Supreme Court Justice or Justices appointed since January 20, 1953 whose jurisprudence you admire the most and explain why.

RESPONSE: I admire all Supreme Court Justices for different reasons that would not be possible to rank. If confirmed, I would apply all Supreme Court precedent regardless of which Justice authored the opinion for the Court or which Justices joined in the majority opinion.

8. Was Marbury v. Madison correctly decided?

RESPONSE: As a pending judicial nominee, it would generally not be appropriate for me to opine on whether Supreme Court precedent was rightly decided, because if confirmed I would be bound to apply binding Supreme Court precedent regardless of any personal beliefs I had about the decision. However, as numerous prior judicial nominees have done,

I would make an exception to the practice of not opining on the correctness of Supreme Court decisions to acknowledge that *Marbury v. Madison*, *Brown v. Board of Education*, and *Loving v. Virginia* were correctly decided. If confirmed, I would faithfully apply all Supreme Court and Ninth Circuit precedent.

9. Was Lochner v. New York correctly decided?

RESPONSE: Please see my response to Question 8.

10. Was Brown v. Board of Education correctly decided?

RESPONSE: Please see my response to Question 8.

11. Was Bolling v. Sharpe correctly decided?

RESPONSE: Please see my response to Question 8.

12. Was Cooper v. Aaron correctly decided?

RESPONSE: Please see my response to Question 8.

13. Was Mapp v. Ohio correctly decided?

RESPONSE: Please see my response to Question 8.

14. Was Gideon v. Wainwright correctly decided?

RESPONSE: Please see my response to Question 8.

15. Was Griswold v. Connecticut correctly decided?

RESPONSE: Please see my response to Question 8.

16. Was South Carolina v. Katzenbach correctly decided?

RESPONSE: Please see my response to Question 8.

17. Was Miranda v. Arizona correctly decided?

RESPONSE: Please see my response to Question 8.

18. Was Loving v. Virginia correctly decided?

RESPONSE: Please see my response to Question 8.

19. Was Katz v. United States correctly decided?

RESPONSE: Please see my response to Question 8.

20. Was Roe v. Wade correctly decided?

RESPONSE: Please see my response to Question 8.

21. Was Romer v. Evans correctly decided?

RESPONSE: Please see my response to Question 8.

22. Was United States v. Virginia correctly decided?

RESPONSE: Please see my response to Question 8.

23. Was Bush v. Gore correctly decided?

RESPONSE: Please see my response to Question 8.

24. Was District of Columbia v. Heller correctly decided?

RESPONSE: Please see my response to Question 8.

25. Was Crawford v. Marion County Election Bord correctly decided?

RESPONSE: Please see my response to Question 8.

26. Was Boumediene v. Bush correctly decided?

RESPONSE: Please see my response to Question 8.

27. Was Citizens United v. Federal Election Commission correctly decided?

RESPONSE: Please see my response to Question 8.

28. Was Shelby County v. Holder correctly decided?

RESPONSE: Please see my response to Question 8.

29. Was United States v. Windsor correctly decided?

RESPONSE: Please see my response to Question 8.

30. Was Obergefell v. Hodges correctly decided?

RESPONSE: Please see my response to Question 8.

31. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?

RESPONSE: Generally, a Ninth Circuit panel "'will not overrule the decision of a prior panel of our court absent an en banc proceeding, or a demonstrable change in the underlying law.'" *United States v. Walker*, 953 F.3d 577, 579–80 (9th Cir. 2020) (quoting *Kohler v. Presidio Int'l, Inc.*, 782 F.3d 1064, 1070 (9th Cir. 2015)). Federal Rule of Appellate Procedure 35 provides that an en banc hearing or rehearing is not favored and ordinarily will not be ordered unless it is "necessary to secure and maintain uniformity of the court's decisions," as when a panel decision conflicts with Supreme Court precedent, or the case involves "one or more questions of exceptional importance." With respect to whether "a demonstrable change in the underlying law" has occurred, the Ninth Circuit has stated that "circuit precedent, authoritative at the time that it issued, can be effectively overruled by subsequent Supreme Court decisions that 'are closely on point,' even though those decisions do not expressly overrule the prior circuit precedent." *Miller v. Gammie*, 335 F.3d 889, 899 (9th Cir. 2003) (quoting *Galbraith v. County of Santa Clara*, 307 F.3d 1119, 1123 (9th Cir. 2002)). A Ninth Circuit panel "'may overrule prior circuit authority without taking the case en banc when an intervening Supreme Court decision undermines an existing precedent of the Ninth Circuit, and both cases are closely on point.'" *Id.* (quoting *Galbraith*, 307 F.3d at 1123) (additional citation and internal quotation marks omitted). The issues decided by the Supreme Court "need not be identical in order to be controlling"; "[r]ather, the relevant court of last resort must have undercut the theory or reasoning underlying the prior circuit precedent in such a way that the cases are clearly irreconcilable." *Id.* at 900. If the Ninth Circuit "can apply [its] precedent consistently with that of the higher authority, [it] must do so." *FTC v. Consumer Def., LLC*, 926 F.3d 1208, 1213 (9th Cir. 2019).

32. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for an appellate 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 31.

33. 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? If so, how so?

RESPONSE: No. Judges must apply the sentencing guidelines to each defendant individually in accordance with the factors laid out in 18 U.S.C. § 3553(a). Among these factors is "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." The Sentencing Commission has cautioned that unwarranted sentencing disparities based on race foster disrespect for, and lack of confidence in, the criminal justice system. *See Kimbrough v. United States*, 552 U.S. 85, 98 (2007).

Questions for the Record for
Senator Thom Tillis for
Questions for Ms. Lauren Jennifer King

1. **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: *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, usu[ally] with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." Judicial activism, so defined, is not appropriate.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   RESPONSE: It is an expectation. Numerous statutes and the Code of Conduct for United States Judges require judges to adjudicate their cases impartially. *See, e.g.*, 28 U.S.C. §§ 144, 453, 455; Code of Conduct for United States Judges, Canon 3.

4. **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: Faithfully interpreting the law is desirable because it promotes consistency and predictability in the justice system. A judge is to administer justice "without respect to persons," 28 U.S.C. § 453, including those persons' potential perceptions of the desirability or undesirability of the outcome.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   RESPONSE: No.

7. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

   RESPONSE: If confirmed, I will faithfully apply the Constitution and Supreme Court and Ninth Circuit precedent regarding the Second Amendment, including but not limited to

District of Columbia v. Heller, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

8. 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 evaluate any lawsuit regarding handgun regulations or COVID-19 restrictions consistent with Supreme Court and Ninth Circuit precedent. I would evaluate such a lawsuit by carefully reviewing the parties' filings and arguments, analyzing the text of the relevant policy or law, researching relevant precedent and other applicable law, and applying the law to the record before me. The hypotheticals in this Question involve facts similar to those in ongoing litigation. *See, e.g.*, *New York State Rifle & Pistol Ass'n v. Corlett*, No. 20-843, 2021 WL 1602643, at *1 (U.S. Apr. 26, 2021) (granting certiorari on the question of "[w]hether the State's denial of petitioners' applications for concealed-carry licenses for self-defense violated the Second Amendment"); *Desrosiers v. Baker*, No. 20-1569, Petition for Certiorari (U.S. May 10, 2021) (constitutional challenge to COVID-19 regulations). Canon 3 of the Code of Conduct for United States Judges cautions against commenting on the merits of pending matters.

9. 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: If confirmed, I would consider Supreme Court and Ninth Circuit precedent and other applicable law on qualified immunity. I would faithfully apply that law to the record before me to determine whether to grant qualified immunity to law enforcement personnel and departments. In *Harlow v. Fitzgerald*, the Supreme Court established an objective reasonableness test for qualified immunity based on whether the official violated clearly established federal law. 457 U.S. 800 (1982). The doctrine of qualified immunity protects government officials "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." *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982); *see also City of Escondido, Cal. v. Emmons*, 139 S. Ct. 500, 503 (2019). "The protection of qualified immunity applies regardless of whether the government official's error is a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (citation and internal quotation marks omitted). An official who violated clearly established federal law of which a reasonable person would have known will not be protected by qualified immunity. *See, e.g.*, *C.B. v. City of Sonora*, 769 F.3d 1005, 1029–31 (9th Cir. 2014).

10. 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: Whether qualified immunity jurisprudence provides sufficient protection for law enforcement officers is a policy matter best left to legislative bodies to consider. If confirmed, I would faithfully apply Supreme Court and Ninth Circuit precedent and other applicable law on qualified immunity.

11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

RESPONSE: The proper scope of qualified immunity protections for law enforcement is a policy matter best left to legislative bodies to consider. If confirmed, I would faithfully apply Supreme Court and Ninth Circuit precedent and other applicable law on qualified immunity.

12. 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?

RESPONSE: I am aware of ongoing commentary regarding the current state of Section 101 jurisprudence. *See, e.g.*, *Yu v. Apple Inc.*, No. 2020-1760, 2021 WL 2385520, at *7 (Fed. Cir. June 11, 2021) (Newman, J., dissenting); *Am. Axle & Mfg., Inc. v. Neapco Holdings LLC*, Case No. 20-891, *Amici Curiae* Brief of United States Senator Thom Tillis, Honorable Paul R. Michel, and Honorable David J. Kappos in Support of Petition for Certiorari (U.S. March 12, 2021). If confirmed, I would be bound to do my best to follow all Supreme Court precedent regardless of whether the precedent was clear or "muddled." I would faithfully apply Supreme Court and Ninth Circuit precedent and other applicable law regarding patent eligibility.

13. 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: The Supreme Court has set forth a two-step framework for "distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." *Alice Corp. Pty. v. CLS Bank Int'l*, 573 U.S. 208, 217 (2014) (citing *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 132 S. Ct. 1289 (2012)). A court must first "determine whether the claims at issue are directed to one of those patent-ineligible concepts." *Id.* If the court determines that the claims are directed to a patent-ineligible concept, the court must then ask, "'What else is there in the claims before us?'" and accordingly "consider the elements of each claim both individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application." *Id.* (quoting *Mayo Collaborative Services*, 132 S. Ct. at 1297, 1298). The Court described the latter step of the framework as "a search for an 'inventive concept'—*i.e.*, an element or combination of elements that is 'sufficient to ensure that the patent in practice amounts to significantly more

than a patent upon the [ineligible concept] itself.'" *Id.* at 217–18 (quoting *Mayo Collaborative Services*, 132 S. Ct. at 1294). If confirmed, I would faithfully apply Supreme Court and Ninth Circuit precedent and other applicable law regarding patent ineligibility. I would also strive for clarity and consistency in my decisions.

Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Eunice Lee
Nominee to be United States Circuit Judge for the Second Circuit
June 16, 2021

1. **Over the course of your legal career, you have worked on a number of matters that presented challenging questions of law, often with little or no relevant state or federal precedent. Among other difficult legal issues, you have addressed vagueness arguments around the Armed Career Criminal Act's residual clause and the definition of a "dwelling" for purposes of a New York burglary statute.**

   a. **How do you approach challenging or novel questions of law that arise in the course of a criminal representation?**

      Response: When I am confronted with a novel question of law in the context of my role as an advocate, I begin by familiarizing myself with the general background on the legal topic through my review of the most relevant case law and the underlying statute or other legal provision at issue, as well as treatises and other academic sources. In the context of an appeal, because there is a discrete legal claim that was raised below and that is at issue on appeal, I review the specific arguments raised and the case law cited by the parties and relied upon by the judge in the lower court. After this refining of what the issue is for the appeal, I research the relevant case law and binding precedent, and to the extent that precedent is limited, I consider the case law relating to analogous issues. Through this process, I have effectively briefed issues with which I initially had little familiarity.

   b. **As a judge, what approach will you take to addressing challenging or novel questions of law?**

      Response: As a Circuit Judge, should I be confirmed, I will take a similar approach to gaining mastery over novel issues on appeal that I employ as an advocate. Appellate judges are presented with a limited factual record and a discrete legal claim to determine on appeal. I would approach a case by first carefully reviewing the facts in the record and the arguments presented by the parties, as well as the underlying statute or other legal provision at issue. I would review the case law cited by the parties, in addition to any other relevant Supreme Court and Second Circuit precedent. To the extent that I needed additional general background on the specific legal topic, I would review treatises and other academic sources, and perhaps consider case law in an analogous context. Following careful and open-minded consideration of all this information, I would apply the law to the specific facts of the case.

2. Virtually all judicial nominees bring with them to the bench expertise in certain areas of the law. And all of these nominees, once confirmed, must consider and rule on a host of legal issues they have not personally confronted beforehand.

What steps would you take to familiarize yourself with legal issues that you have not previously encountered in your legal career?

Response: Should I be confirmed as a Circuit Judge, I will endeavor to immerse myself in those areas of the law with which I am less familiar, and I also would look forward to discussing with my Second Circuit colleagues what they found to be most helpful in getting up to speed on areas of the law with which they may have been less familiar when they first joined the bench. More importantly, when I am presented with a specific legal issue on appeal, I will employ the approach outlined above to ensure that I am fully knowledgeable about the applicable law. As an advocate with over two decades of experience working on criminal appeals, I have frequently had to learn novel areas of law and generally have followed the process I outline in my answer to Question 1.a.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Eunice Lee
Nominee to be United States Circuit Judge for the Second Circuit Court of Appeals

1. **You spoke with a number of my colleagues about a CLE presentation you gave about "cop talk." I understand the answer you gave about crafting the most persuasive argument for your client. I hope you have reviewed your notes since the hearing because I do have one more question I hope you could clarify for me. In your notes, under the heading of avoiding cop talk, you gave this as one of the reasons to do so: "Using institutional police language legitimizes the behavior of the police."**

    a. **Did you mean that it legitimizes the particular behavior of the police in a given case, or the behavior of the police generally?**

    Response: The CLE presentation was on drafting a persuasive statement of facts and arguments as an appellate criminal defense practitioner. The idea that "using institutional police language legitimizes" police behavior referred to the particular behavior of the police in a given case. As an appellate advocate, because it may be necessary in the course of effectively representing one's client to challenge the behavior of the police in a particular case, it is less effective to use language that may bolster the prosecution's theory of the case.

    b. **What is "institutional police language?"**

    Response: "Institutional police language" refers to the type of language often used by police officers when testifying at trial. The CLE materials give the following example of such language: "They apprehended an alleged perpetrator." Instead of using institutional police language, the materials recommend that defense advocates state: "They arrested someone."

    c. **As a judge, would you avoid using "institutional police language" in your opinions? Would you sign on to an opinion by a colleague that uses it?**

    Response: Avoidance of using "institutional police language" is a practice tip for effective representation by criminal defense advocates. As an appellate judge, should I be confirmed, my role would not be to advocate for a position, but rather to rule impartially on the issue before me. Thus, I would not draft my opinions as an advocate or try to avoid, or discouraging others from using, any particular type of language.

2. **Do you believe property damage caused during rioting should be prosecuted to the fullest extent of the law?**

    Response: Policy decisions about the appropriate manner in which to charge and prosecute offenses, as well as appropriate criminal penalties for such offenses, are for the legislative

and executive branches, as well as other policy makers. As a judge, should I be confirmed, any personal views that I might have on a question of public policy will have no bearing on my decision-making.

3. How many appeals have you argued?

Response: As either lead counsel, co-counsel, or supervisor, I have represented approximately 390 clients in state and federal court on appeal or in post-conviction proceedings. Of those cases, I personally argued approximately 80 of those cases in court.

4. Of the appeals you have argued, how many have you won?

Response: Of the 80 cases that I have personally argued, I achieved relief of some kind on appeal, including reversal, conviction modification, or sentence reduction, in approximately 18 of them.

5. Under the Supreme Court's First Amendment jurisprudence, can someone shout "fire" in a crowded theater?

Response: The Supreme Court has not explicitly ruled on this issue, but it noted in dicta in *Schenck v. United States*, 249 U.S. 47, 52 (1919), 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."

6. Do you agree with Judge Ketanji Brown Jackson's 2013 remarks when she said she did not believe in a "living constitution"?

Response: Because I am not familiar with these remarks or the context in which they were given, I am unable to give an opinion on these comments.

7. During your hearing you wouldn't explain your approach to constitutional interpretation beyond whatever is commanded by precedent. How would you interpret a constitutional issue in a case of first impression?

Response: In the overwhelming majority of cases that would come before me in the role of a Circuit Judge, should I be confirmed, there would be relevant Supreme Court or Second Circuit precedent as to the appropriate method of constitutional interpretation. 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. While the Supreme Court has frequently interpreted the Constitution by examining original public meaning, it also has applied other methods, such as considering the original intent of the Framers. *See, e.g., Crawford v. Washington*, 541 U.S. 36, 53–57 (2004) (interpreting the Confrontation Clause). If there were a matter before me that presented a constitutional issue of first impression, I would begin my analysis with an examination of the constitutional text at

issue. To the extent that there was ambiguity as to the text's meaning, I would look for guidance to Supreme Court and Second Circuit precedent interpreting analogous provisions, as well as any instructive but non-binding precedent from other Circuits.

8. In a case of first impression should the Constitution be interpreted according to how it was understood by the public at the time of enactment? If not, how do you think it should be interpreted?

Response: See answer to Question 7.

9. What role should empathy play in interpreting the law?

Empathy has no role in interpreting the law.

10. Should judicial decisions take into consideration principles of social "equity"?

Response: No.

11. Are legal doctrine and practice best understood as an objective and defensible scheme of human association? Or are they better understood as of instrumental use for political ends?

Response: The question of the role of legal doctrine and practice in society is a complex one that is not subject to easy categorization. My personal views, if any, as to the role of legal doctrine in society would have no bearing on my judicial decision-making, should I be confirmed.

12. How do you define formalism?

Response: I understand formalism to be "[a]n approach to law, and esp. to constitutional and statutory interpretation, holding that (1) where an authoritative text governs, meaning is to be derived from its words, (2) the meaning so derived can be applied to particular facts, (3) some situations are governed by that meaning, and some are not, and (4) the standards for deciding what constitutes following the rules is objectively ascertainable." "Formalism" Definition, Black's Law Dictionary (11th ed. 2019), available at Westlaw.

13. Do you consider yourself a formalist?

Response: I do not have any overarching theory of interpretation, and thus I would not label myself a formalist. If confirmed, I would apply the law in accordance with Supreme Court and Second Circuit precedent, regardless of the label that might be applied to describe those precedents.

14. Can the Supreme Court mandate formalism on lower courts?

Response: Lower courts are required to apply the precedent of the Supreme Court, including the interpretative method applied by the Supreme Court to a particular issue.

15. Can an appeals court mandate formalism on trial courts?

Response: Trial courts are required to apply the precedent of the Supreme Court, including the interpretative method applied by the Supreme Court to a particular issue. In the absence of Supreme Court precedent, trial courts are required to apply the precedent of the Circuit.

16. Is the complexity of precedent and its multiplicity a feature or a bug of the law?

Response: I believe that the complexity of precedent is both a feature and a bug of the law.

17. How do you define legal realism?

Response: I understand legal realism to be the "theory that law is based not on formal rules or principles but instead on judicial decisions deriving from social interests and public policy as conceived by individual judges." "Legal Realism" Definition, Black's Law Dictionary (11th ed. 2019), available at Westlaw.

18. Do you consider yourself a legal realist?

Response: I do not have any overarching theory of interpretation, and thus I would not label myself a legal realist. If confirmed, I would apply the law in accordance with Supreme Court and Second Circuit precedent, regardless of the label that might be applied to describe those precedents.

19. Do you agree that all lawyers are, at some level, legal realists?

Response: If confirmed, my personal views, if any, about the prevalence of legal realisms would have no bearing on my decision-making.

20. As I mentioned at your hearing, the Second Circuit is in many ways a commercial court. Are you familiar with the Law and Economics movement?

Response: As a lawyer who has been practicing in the area of criminal law, and especially criminal appellate law, representing nearly 400 clients and arguing 80 appeals over the last 23 years, I have limited familiarity with the Law and Economics movement, beyond a general awareness that it involves the application of economic theory to analysis of the law.

21. What value, if any, do you see in Law and Economics?

Response: I have no opinion as to this. See answer to Question 20.

22. Is the practice of judicial review defensible absent the existence of neutral legal principles?

Response: As the Supreme Court recognized in *Marbury v. Madison*, 5 U.S. 137, 177 (1803), the courts possess the power of judicial review, or the right "to say what the law is." This holding is a seminal and binding precedent of the Supreme Court.

23. In *People v. Roche*, you represented a man charged with murdering his common-law wife by stabbing her 12 to 14 times in the face, back, and chest. You argued that "the brutal nature of the stabbing constituted evidence that [the defendant] acted under the influence of a mental infirmity."

a. Why did you make that argument?

Response: As an advocate assigned to provide my client the zealous representation guaranteed to him by the Sixth Amendment, I pursued the strongest argument on his behalf that I could within the bounds of the law. The argument raised on appeal was that, under New York law pertaining to the defense of extremely emotional disturbance, all of the facts in the case, including the excessive number of wounds inflicted, supported instructing the jury as to this defense, which would reduce the offense from second-degree murder to first-degree manslaughter.

b. Had the court you were arguing before ever held that a jury may infer the presence of an extreme emotional disturbance based solely on proof that the crime was especially violent or brutal?

Response: Under New York law, for the jury to be instructed on the defense of extreme emotional disturbance, there must be proof of more than just an offense that is particularly violent or brutal. The defense requires proof of a subjective element, that defendant acted under an extreme emotional disturbance, and an objective element, that there was a reasonable explanation or excuse for the emotional disturbance. *See People v. Smith*, 1 N.Y.3d 610, 612 (2004). The argument that I made was based on both components. When I argued the case before the intermediate New York appellate court, the court agreed with me that the jury should have been given the instruction, and the court reversed the conviction and granted my client a new trial. *See People v. Roche*, 286 A.D.2d 290 (2001), *rev'd*, 98 N.Y.2d 70 (2002). On subsequent appeal by the prosecution, the New York Court of Appeals reversed the intermediate court and reinstated the conviction.

24. What is the purpose of criminal sentencing under the law?

Response: There are several purposes of sentencing that have been generally recognized, including deterrence, incapacitation, rehabilitation, retribution, and restitution. As a Circuit Judge, should I be confirmed, my assessment of any issues relating to sentencing will based on the relevant statute and the Sentencing Guidelines, as well as binding Supreme Court and Second Circuit precedent. Any personal views that I may have about the purpose of sentencing will have no bearing on my decision-making.

25. What is the purpose of criminal sentencing from a moral perspective?

Response: See answer to Question 24.

26. What, if anything, do you think is the relationship between morality and the law when it comes to punishing criminals?

Response: See answer to Question 24.

27. What is the relationship between morality and the law generally?

Response: See answer to Question 24.

28. What is your understanding of the original meaning of the Cruel and Unusual Punishment Clause?

The Supreme Court has held that "[t]o determine whether a punishment is cruel and unusual, courts must look beyond historical conceptions to 'the evolving standards of decency that mark the progress of a maturing society.'" *Graham v. Fla.*, 560 U.S. 48, 58 (2010), *as modified* (July 6, 2010) (quoting *Estelle v. Gamble*, 429 U.S. 97, 102 (1976)) (internal quotations omitted). More recently, in *Bucklew v. Precythe*, 139 S. Ct. 1112 (2019), the Supreme Court discussed the meaning of the phrase "cruel and unusual" at the time of the Eighth Amendment's adoption. If confirmed as a Circuit Judge, I would faithfully follow binding Supreme Court and Second Circuit precedent interpreting the Eighth Amendment.

29. Much of your career has been in state court. How would you describe the differences between the New York State Court of Appeals and the U.S. Court of Appeals for the Second Circuit in terms of the limits of their respective authority?

Response: The New York State Court of Appeals is the court of the highest authority in the State of New York, and it largely has discretion to determine which cases it will hear. As New York's highest court, it has the authority to make the final determination as to the

meaning of any state law or constitutional provision. The U.S. Court of Appeals for the Second Circuit is an intermediate federal appellate court with a primarily mandatory docket. The Second Circuit is bound by all rulings of the U.S. Supreme Court.

30. Do you think law firms should allow paying clients to influence which pro bono clients they take?

Response: This is a decision to be made by the individual law firm.

31. Do you think law-firm clients should use their financial position to influence which pro bono clients their attorneys take?

Response: This is a decision to be made by the individual clients.

32. 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: This is a decision to be made by the individual law firm.

33. As a matter of legal ethics do you agree with the proposition that some civil clients don't deserve representation on account of their identity?

Response: I am not aware of any ethical standard pertaining to this.

34. 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: The Supreme Court has recognized the fundamental First Amendment right of religious liberty in many contexts. In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), the Supreme Court held that under the "ministerial exception" to laws pertaining to employment discrimination, religious institutions have the right "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). Thus, the Supreme Court held that the First Amendment barred two teachers' employment discrimination claims against the religious schools by whom they were employed. If I am confirmed, I will follow all Supreme Court and Second Circuit precedent.

35. What level of scrutiny applies to a Second Amendment challenge in the Second Circuit?

Response: The level of scrutiny applicable to a challenge under the Second Amendment depends upon the facts and circumstances of each case. In *Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 93 (2d Cir. 2012), the Second Circuit held that "heightened scrutiny is triggered only by those restrictions that (like the complete prohibition on handguns struck down in *Heller*) operate as a substantial burden on the ability of law-abiding citizens to possess and use a firearm for self-defense (or for other lawful purposes)." The Second Circuit further concluded that "[we] do not believe . . . that heightened scrutiny must always be akin to strict scrutiny when a law burdens the Second Amendment. *Heller* explains that the 'core' protection of the Second Amendment is the 'right of law-abiding, responsible citizens to use arms in defense of hearth and home.' *Heller,* 554 U.S. at 634–35, 128 S.Ct. 2783. Although we have no occasion to decide what level of scrutiny should apply to laws that burden the 'core' Second Amendment protection identified in *Heller,* we believe that applying less than strict scrutiny when the regulation does not burden the 'core' protection of self-defense in the home makes eminent sense in this context and is in line with the approach taken by our sister circuits." *Kachalsky*, 701 F.3d at 93.

36. Have you ever brought a Second Amendment defense on behalf of a client charged with a gun crime?

Response: I have never raised a defense to a criminal charge based on the Second Amendment.

37. One of the federal courts' 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: The interpretation of a statute or a regulation "begin[s] with the text." *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163, 1169 (2021). "If the plain meaning of a statute is susceptible to two or more reasonable meanings, i.e., if it is ambiguous, then a court may resort to the canons of statutory construction." *Nat. Res. Def. Council, Inc. v. Muszynski*, 268 F.3d 91, 98 (2d Cir. 2001).

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: The standard for determining ambiguity is similar in both contexts. A statute is ambiguous when it is "susceptible to two or more reasonable meanings." *Nat. Res. Def. Council, Inc.*, 268 F.3d at 98. Similarly, the Supreme Court has recognized that interpreting ambiguous regulations "involves a choice between (or among) more than one reasonable reading." *Kisor v. Wilkie*, 139 S. Ct. 2400, 2411

(2019). I will follow Supreme Court and Second Circuit precedent in determining if text is ambiguous.

c. When interpreting ambiguous text, what tools would you use to resolve the ambiguity?

Response: If confronted with ambiguous text, I would look to controlling precedent from the Supreme Court and the Second Circuit for guidance on the appropriate tools of interpretation that should apply to the statute or regulation at issue. If there is no controlling precedent, I would consider the plain meaning of the text in its structural context, as well as any appropriate canons of construction. If necessary, I would consider persuasive, but not binding, authority from other Circuits. If appropriate under Supreme Court and Second Circuit precedent, I would consider legislative history.

d. When interpreting ambiguous text, how would you handle two competing and contradictory canons of statutory interpretation?

Response: To resolve any potential conflict between different canons of interpretation, I would consult any relevant Supreme Court and Second Circuit precedent. Absent guidance from such precedent, I would closely examine the plain language of the provision at issue and the language and structure of the statute as a whole. If permitted by controlling precedent, I might consult the legislative history to determine legislative intent, which is the focus of the canons of interpretation.

38. Is climate change real?

Response: I am generally aware that a substantial majority of scientific studies indicate that climate change exists. If confirmed as a Circuit Judge, should an issue relating to this come before me, I would decide the matter based solely on a careful review of the specific record in the case and the applicable law of the Supreme Court and the Second Circuit.

39. Do people have implicit racial bias?

Response: I understand the term "implicit bias" to describe the universal phenomenon of when we have attitudes towards people or associate stereotypes with them without our conscious awareness. If confirmed as a Circuit Judge, I will strive to make decisions based solely on the applicable law and the specific facts of the case before me.

40. Does human life begin at conception?

Response: The question of whether life begins at conception is a complicated one that is frequently debated and litigated. In *Roe v. Wade*, 410 U.S. 113, 159 (1973), the Supreme Court concluded that it "need not resolve the difficult question of when life begins." To the extent that this question asks for my personal views, under Canon 3 of the Code of Conduct, it would be inappropriate for me, as a pending judicial nominee, to offer them.

41. In your hearing you told Sen. Lee that your views on Clarence Thomas when you were 20 years old did not reflect your current views. What are your current views on Clarence Thomas?

Response: I respect the United States Supreme Court and all the Justices who serve on it. As a pending judicial nominee to a court that is under the authority of the Supreme Court, it would be inappropriate under Canon 3 of the Code of Conduct for me to provide personal views regarding a sitting Supreme Court Justice.

42. 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: In making hiring decisions, I will seek to hire law clerks from a diverse array of backgrounds, and I will evaluate candidates based on the totality of their applications. Membership in any particular organization is neither disqualifying nor required.

43. The Blackstone Legal Fellowship "prepares Christian law students for careers marked by integrity, excellence, and leadership." Blackstone "is a program of Alliance Defending Freedom. ADF is the world's largest legal organization committed to protecting religious freedom, free speech, and the sanctity of life." Would you hire a Blackstone Fellow to serve in your chambers as a law clerk?

Response: See answer to Question 42.

44. Please explain, with detail, the process by which you became a circuit-court nominee.

Response: In late January 2021, I became aware of a judgeship opening on the Second Circuit. I spoke with a member of Senator Charles E. Schumer's Judicial Screening Committee about the application process, and then submitted a written application to the committee on February 10, 2021. I spoke by telephone with a member of Senator Schumer's staff on March 1, 2021. On March 3, 2021, I submitted a Judicial Position Interest Questionnaire to Senator Kirsten Gillibrand. On March 9, 2021, I spoke by telephone with a member of Senator Schumer's Screening Committee. On March 13, 2021, I interviewed with Senator Schumer. On March 19, 2021, I spoke by telephone with a member of Senator Gillibrand's staff. On March 22, 2021, I interviewed with attorneys from the White House Counsel's Office. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 11, 2021, I interviewed with President Biden and White House Counsel Dana Remus. On May 12, 2021, the President announced his intent to nominate me.

45. You mentioned in your SJQ that you met with President Biden before being nominated. What was the nature of that meeting?

Response: I spoke with President Biden via a Zoom call. We discussed my professional background and my interest in being a judge.

46. 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 the conversations.

Response: I had conversations with Chris Kang while I was in the process of submitting my application to Senator Schumer's Judicial Screening Committee. Having never applied for a judgeship previously, I had no familiarity with the nature of the screening process. I spoke with Mr. Kang about how the screening committee operates and the application process generally. I have had no conversations with any other individuals who are, to my knowledge, affiliated with Demand Justice.

a. To your knowledge, has anyone had such conversations on your behalf?

Response: No.

47. 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 the conversations.

Response: No.

a. To your knowledge, has anyone had such conversations on your behalf?

Response: No.

48. Please explain with particularity the process by which you answered these questions.

Response: On June 16, 2021, the Office of Legal Policy at the Department of Justice forwarded these questions to me. I reviewed all the questions, conducted legal research as necessary, reviewed my prior cases and writings, and then drafted answers to the questions. I shared my draft responses with the Office of Legal Policy, which provided feedback to me. I considered this feedback before submitting my final answers to the Committee.

49. Do these answers reflect your true and personal views?

Response: Yes.

Senator Blackburn
Questions for the Record to Eunice C. Lee
Nominee to be United States Circuit Judge for the Second Circuit

1. **During the hearing, I asked you a question about your remarks during a 2013 New York State Association of Criminal Defense Lawyers CLE program. You said that the attendees should strive to "avoid cop-talk" because it "legitimizes the behavior of the police", among other things. In response to my question, you had articulated that you needed to explore the context in which you said this to explain what you meant. Could you please elaborate on what you meant by "legitimizes the behavior of the police"?**

   Response: The CLE presentation was on drafting a persuasive statement of facts and arguments as an appellate criminal defense practitioner. The idea that "using institutional police language legitimizes" police behavior referred to the particular behavior of the police in a given case. As an appellate advocate, it may be necessary in the course of effectively representing one's client to challenge the behavior of the police during an incident or the version of events to which they testified at trial. As the materials note, using "institutional police language suggests that everything that happened in your case was normal and routine." The CLE materials suggest that if an advocate simply echoes the language that the police used, it tends to bolster or legitimize the police testimony and the prosecution's theory of the case.

Nomination of Eunice C. Lee
to be United States Circuit Judge for the Second Circuit Questions
for the Record
Submitted June 16, 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. **Was *D.C. v. Heller*, 554 U.S. 570 (2008) rightly decided?**

   Response: *Heller* is binding precedent, and if I am confirmed, I will adhere to it and all Supreme Court precedent. In general, it is inappropriate under the Code of Conduct for U.S. Judges, which applies to judicial nominees, for judges to comment on the merits of Supreme Court decisions.

4. **Is the Second Amendment right to keep and bear arms an individual right belonging to individual persons, or a collective right that only belongs to a group such as a militia?**

   Response: The Supreme Court held in *District of Columbia v. Heller*, 561 U.S. 742 (2010), that the Second Amendment protects an individual's right to possess a firearm.

5. **Please describe what you believe to be the Supreme Court's holding in *Greer v. United States*, 593 U.S. _____ (2021).**

   Response: In *Greer v. United States*, the Supreme Court examined two cases in which the defendants, one in guilty plea case and one in a trial case, moved to vacate their felon-in-possession convictions based on the government's failure to establish the required knowledge element of the offense. Because neither defendant raised the issue in the lower court, the "plain-error" standard applied. Under the plain-error standard, a defendant must show (i) that there was an error, (ii) that the error was plain, and (iii) that the error affects "substantial rights," i.e., that there is "a reasonable probability that, but for the error, the outcome of the proceeding would have been different." In the plea case, the Supreme Court held that for a defendant to establish that the error had an effect on

substantial rights, the defendant must argue, on appeal, that he would have presented evidence in the district court that he did not in fact know he was a felon when he possessed the firearm. In the trial case, the Court held that in assessing the substantial-rights prong, an appellate court can examine evidence from the entire record, including information in the presentence report.

6. **Please describe what you believe to be the Supreme Court's holding in *Terry v. United States*, 593 U.S. _____ (2021).**

   Response: In *Terry v. United States*, the defendant had moved for a sentence reduction under the Fair Sentencing Act of 2010, which modified the sentencing penalties for certain drug offenses that triggered mandatory minimums. The First Step Act of 2018 made the statutory penalties of the Fair Sentencing Act retroactive for certain offenses committed before August 3, 2010. The Supreme Court held that because the Fair Sentencing Act did not expressly amend § 841(b)(1)(C), the offense of which the defendant had been convicted, his offense was not a "covered offense" under the First Step Act, and therefore he was not eligible for relief.

7. **Please describe what you believe to be the Supreme Court's holding in *Jones v. Mississippi*, 593 U.S. _____ (2021).**

   Response: In *Jones v. Mississippi*, the Supreme Court held that a court need not find that a juvenile is permanently incorrigible before imposing a sentence of life without the possibility of parole, so long as the sentence resulted from a discretionary sentencing procedure.

8. **Please describe what you believe to be the Supreme Court's holding in *Tandon v. Newsom*, 593 U.S. _____ (2021).**

   Response: In reversing the denial of an emergency injunction pending appeal, the Supreme Court held in *Tandon v. Newsom* that the COVID-19 gathering restrictions at issue were not neutral and generally applicable because they treated secular activity more favorably than religious exercise. As such, the restrictions triggered strict scrutiny under the Free Exercise Clause, and the government failed to establish that the law satisfied that standard.

9. **Please describe what you believe to be the Supreme Court's holding in *Sanchez v. Mayorkas*, 593 U.S. _____ (2021).**

   Response: In *Sanchez v. Mayorkas*, the petitioners had entered the United States unlawfully but subsequently applied for and received Temporary Protected Status (TPS), and then later applied for an adjustment of status to lawful permanent resident. The Supreme Court held that because the conferral of TPS under 8 U.S.C. § 1254a does not

constitute an "admission" into the United States under 8 U.S.C. § 1255, the recipients of such status are not eligible to become lawful permanent residents.

10. **What is your view of arbitration as a litigation alternative in civil cases?**

Response: My two decades of practice have been focused on appellate litigation, and I have no personal opinion on the merits of arbitration as a litigation alternative in civil cases.

11. **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 June 16, 2021, the Office of Legal Policy at the Department of Justice forwarded these questions to me. I reviewed all the questions, conducted legal research as necessary, reviewed my prior cases and writings, and then drafted answers to the questions. I shared my draft responses with the Office of Legal Policy, which provided feedback to me. I considered this feedback before submitting my final answers to the Committee.

12. **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 Eunice Cheryl Lee, Nominee for the United States Court of Appeals for the Second 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. Is it appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns? Please explain.

Response: The executive branch has a duty under Article II, Section 3, of the Constitution to ensure that the laws are "faithfully executed." In terms of whether a refusal to enforce a

particular law is appropriate, it would depend on the circumstances of the case and the issue raised. If confirmed as a judge, should I be presented with such a claim, I would apply the relevant Supreme Court and Second Circuit precedent.

2. 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: I am aware that President Biden has created the Presidential Commission on the Supreme Court of the United States for this purpose, but I have no opinion as to the propriety of an increase or decrease in the size of the Supreme Court. If confirmed as a judge on the Second Circuit, I will be bound by the Supreme Court's precedents, regardless of its size.

3. Do you personally own any firearms? If so, please list them.

Response: No.

4. Have you ever personally owned any firearms?

Response: No.

5. Have you ever used a firearm? If so, when and under what circumstances?

Response: No.

6. Is the ability to own a firearm a personal civil right?

Response: 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. In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Supreme Court held that this right to possess a firearm is fundamental.

7. 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 individual right to own a firearm is fundamental. *McDonald v. City of Chicago*, 561 U.S. 742 (2010). Neither *McDonald* nor *Heller* address the issue of whether this right receives less protection than other individual rights that are specifically enumerated in the Constitution. Should I be confirmed, I will adhere to Supreme Court and Second Circuit precedent regarding this issue.

8. Does the right to own a firearm receive less protection than the right to vote under the Constitution?

Response: The Supreme Court has held that the individual right to own a firearm is fundamental. *McDonald v. City of Chicago*, 561 U.S. 742 (2010). Neither *McDonald* nor *Heller* address the issue of whether this right receives less protection than the right to vote. Should I be confirmed, I will adhere to Supreme Court and Second Circuit precedent regarding this issue.

9. Is the Religious Freedom Restoration Act a civil rights law?

Response: Yes. Congress has recognized the Religious Freedom Restoration Act as a civil rights law by including it among the statutes for which attorney fees are available, pursuant to the Civil Rights Attorney's Fee Award Act. *See* 42 U.S.C. § 1988.

10. Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be a religious organization like Little Sisters of the Poor or small businesses operated by observant owners?

Response: The Supreme Court has affirmed that the Free Exercise rights of religious organizations may limit the government's power to impose constraints on such organizations. *See, e.g., Fulton v. City of Philadelphia*, No. 19-123, __ S. Ct. __, 2021 WL 2459253, (June 17, 2021) (holding that refusal of Philadelphia to contract with Catholic organization for the provision of foster care services unless the organization agreed to certify same-sex couples as foster parents violates the Free Exercise Clause of the First Amendment); *Tandon v. Newsom*, 141 S. Ct. 1294 (2021) (per curiam) (addressing COVID gathering restrictions); *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020) (addressing the ministerial exception for religious employers).

11. Do Americans have the right to their religious beliefs outside the walls of their houses of worship and homes?

Response: Yes.

12. President Biden has promised to nominate judges "who look like America." What do you understand this to mean?

Response: I have no direct knowledge of what President Biden means by this, but my interpretation is that he is seeking to appoint judges from a wide array of demographic, personal, and professional backgrounds that are reflective of the diversity in this country.

13. Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?

Response: The executive branch has the authority to make political appointments, but it is bound by the Constitution and all relevant statutes. If confirmed, I would adhere to binding Supreme Court and Second Circuit precedent in determining any issues before me relating to political appointments.

14. Is there systemic racism in public policy across America?

Response: The question of whether there is systemic racism is one that currently is being debated among various state and federal policy makers, who are in a position to consider empirical evidence and make policy decisions. If I am confirmed as a judge, my role would be to consider any discrete claims of discrimination that are brought before me, not to weigh in on policy issues. In ruling upon any matters before me, I will adhere to Supreme Court and Second Circuit precedent.

15. Is the criminal justice system systemically racist?

Response: I am generally aware of studies indicating that there have been past disparities created by federal sentencing law, specifically with regard to drug offenses for possession of powder versus crack cocaine, which Congress has acted to correct. To the extent that there currently are debates about other potential disparities in the criminal justice system, those questions are for policymakers to consider. If I am confirmed as a judge, my role would be to consider any discrete claims of discrimination that are brought before me, not to weigh in on policy issues. In ruling upon any matters before me, I will adhere to Supreme Court and Second Circuit precedent.

16. If you are to join the Circuit court, 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;**

Response: I am not aware of what the HR and training policies are for the Second Circuit, and I do not know if I will be involved with them, should I be confirmed. Any training programs should not violate the Constitution or applicable statutes.

b. **An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;**

Response: Response: I am not aware of what the HR and training policies are for the Second Circuit, and I do not know if I will be involved with them, should I be confirmed. Any training programs should not violate the Constitution or applicable statutes.

c. **An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or**

Response: I am not aware of what the HR and training policies are for the Second Circuit, and I do not know if I will be involved with them, should I be confirmed. Any training programs should not violate the Constitution or applicable statutes.

d. **Meritocracy or related values such as work ethic are racist or sexist.**

Response: I am not aware of what the HR and training policies are for the Second Circuit, and I do not know if I will be involved with them, should I be confirmed. Any training programs should not violate the Constitution or applicable statutes.

17. **Will you commit that the Circuit court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?**

Response: I am not aware of what the HR and training policies are for the Second Circuit, and I do not know if I will be involved with them, should I be confirmed. Any training programs should not violate the Constitution or applicable statutes.

18. **Is racial profiling categorically banned by the Constitution?**

Response: The question of whether "racial profiling" is prohibited by the Constitution would be dependent both on how that term is defined and on the specific facts and law at issue in a particular case. If confirmed as a judge, I would adhere to all binding Supreme Court and Second Circuit precedent in determining any issue related to this.

19. **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: This is a determination for the individual witness to make.

20. **Is it racist for a person to call police out of concern over the threatening or unlawful conduct of a person of color?**

Response: Should I be confirmed as a judge, my role will be to assess the specific legal claims before me, not to determine whether an individual is "racist." If a claim of racial discrimination were before me, I would apply Supreme Court and Second Circuit precedent in making any decision.

21. **Does the President have the authority to abolish the death penalty?**

Response: Congress has passed laws authorizing a federal death penalty, and the Supreme Court has held that the death penalty is constitutional under certain circumstances. The President does not have the authority to unilaterally change the laws enacted by Congress.

a. **Does the implementation of a criminal punishment prescribed by law depend entirely on the President's discretion?**

Response: Congress is empowered to enact legislation, and the President is tasked with implementing the law. Without more information about the statute at issue and the nature of the hypothetical act of discretion in the above question, I cannot answer this question.

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: The President cannot unilaterally change the laws enacted by Congress, including provisions of punishment, but the President does have the power to grant pardons, commutations, and reprieves. U.S. Const. art. II, § 2. As a pending judicial nominee, it would be inappropriate for me to otherwise opine on the potential propriety of a hypothetical use of presidential power.

22. Do you believe that unlawfully setting a building on fire, amidst general rioting, is a violent act?

Response: Federal criminal statutes, as well as the U.S. Sentencing Guidelines, specifically delineate which offenses are deemed "violent" under the law. Should I be confirmed as a judge, I will apply the law in accordance with these statutes and the relevant Supreme Court and Second Circuit precedent.

23. 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: Because I am not familiar with these specific statements and the context in which they were made, I cannot comment on them. If I was confirmed and an appeal came before me where the underlying conduct involved an attack on government property, I would apply the law in accordance with relevant federal statutes and relevant Supreme Court and Second Circuit precedent.

24. Do you agree that free speech is an essential and irreplaceable American value?
Response: Yes. The right of free speech under the First Amendment is fundamental.

a. **What are the present threats to free speech in America?**

Response: The determination of whether a particular action or inaction constitutes a present threat to free speech is a policy question. Should I be confirmed as a judge, my role would be to evaluate the specific legal claims that came before me under Supreme Court and Second Circuit precedent.

b. **What role do the courts have in addressing threats to free speech?**

Response: Courts do not have a role in addressing threats to free speech beyond engaging in an impartial analysis of specific legal claims when they are properly before the courts, in accordance with relevant Supreme Court and Circuit precedent.

c. **Does the First Amendment protect speech that some may consider offensive?**

Response: Yes. *See Matal v. Tam*, 137 S.Ct. 1744, 1763 (2017) ("the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers") (internal quotation marks and citations omitted).

i. **If so, what are the limits to that protection?**

Response: There are a number of exceptions that the Supreme Court has recognized to the protection of offensive speech. *See, e.g., United States v. Stevens*, 559 U.S. 460, 468 (2010) (noting that obscenity, defamation, fraud, incitement, and speech integral to criminal conduct are not protected speech).

d. **What is "hate speech"?**

Response: To my knowledge, the Supreme Court has not specifically defined a category of "hate speech."

i. **Is "hate speech," as you have just defined it, protected by the First Amendment?**

Response: Offensive speech generally is protected by the First Amendment, but not all categories of offensive speech, including what might be deemed "hate speech," are protected by the First Amendment. *See Stevens*, 559 U.S. at 468.

ii. **If so, what are the limits to that protection?**

Response: The First Amendment does not protect obscenity, defamation, fraud, incitement, and speech integral to criminal conduct. *See Stevens*, 559 U.S. at 468. The First Amendment also does not protect threatening speech. *See, e.g., Virginia v. Black*, 538 U.S. 343 (2003)

25. Do public educational institutions have the legal obligation to protect the speech rights of students and employees?

Response: Yes. In *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969), the Supreme Court held 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."

26. Do private educational institutions have the legal obligation to protect the speech rights of students and employees?

Response: Because the First Amendment protects against the regulation of speech by governmental actors, it does not serve to constrain the actions of a private educational institution with regard to restrictions on speech.

27. Are educational institutions that receive federal funding permitted to discriminate on the basis of speech?

Response: To my knowledge, there is no federal statute barring educational institutions that receive federal funding from discriminating on the basis of speech.

28. What do you understand to be the scope of Section 230 protection?

Response: My understanding of Section 230 is that it provides limited federal immunity to providers and users of interactive computer services from being held liable for information provided by a third party.

a. **Does Section 230 immunize content publishers only?**

Response: The question of when and whether a defendant should be considered a publisher for purposes of Section 230 immunity is being litigated in the courts. As a pending judicial nominee, it would be inappropriate for me to opine on this legal question.

b. **If an internet platform curates content, and specifically selects what a user sees and does not see, is the platform engaged in publishing?**

Response: This issue has not been resolved in the courts. As a pending judicial nominee, it would be inappropriate for me to opine on this legal question.

c. **Do you believe that corporations like Facebook, Twitter, and Google should have a special immunity from liability when publishing material that is unavailable to traditional publishers like the *New York Times*? Please explain why.**

Response: This issue has not been resolved in the courts. As a pending judicial nominee, it would be inappropriate for me to opine on this legal question.

29. Does it promote violence against, or directly attack, a person on the basis of gender identity to say there are only two genders?

Response: This question raises an issue of public debate and policy. Should I be confirmed as a judge, my personal views, if any, on this policy question will have no bearing on my decision-making, which will be based on application of Supreme Court and Second Circuit precedent.

30. Does it promote violence against, or directly attack, a person on the basis of religious affiliation to say there are more than two genders?

Response: This question raises an issue of public debate and policy. Should I be confirmed as a judge, my personal views, if any, on this policy question will have no bearing on my decision-making, which will be based on application of Supreme Court and Second Circuit precedent.

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: The burden of proof at a criminal trial is more substantial, requiring proof "beyond a reasonable doubt."

32. Are students accused of sexual misconduct entitled to due process?

Response: The Supreme Court has recognized that students at public schools have a constitutional right to due process when faced with suspension or expulsion. *See Goss v. Lopez*, 419 U.S. 565, 574 (1975).

33. Given the information in the public domain, do you believe that Brett Kavanaugh sexually assaulted Christine Blasey Ford?

Response: I respect the United States Supreme Court and the Justices who serve on it. As a pending judicial nominee to a court that is subject to the authority of the Supreme Court, it would be inappropriate under Canon 3 of the Code of Conduct for me to provide personal views regarding a sitting Supreme Court Justice.

34. 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. As an advocate, my role has been to follow the interpretation of the courts as to specific issues and to urge the most favorable outcome for my client within the boundaries of these precedents. Should I be confirmed as a judge, my approach to legal analysis will be similarly guided by precedent, rather than an overarching theory of judicial interpretation. For this reason, my approach is not analogous to that of any of the justices referenced in the question. As a Circuit Judge, I would apply the method of analysis directed by the precedent of the Supreme Court and the Second Circuit, which will provide guidance in the substantial majority of cases. I would carefully review the factual record in the case and the specific arguments of the parties, and then diligently research the law that applies. Following careful and open-minded consideration of the issues, I would decide the case based solely on the relevant precedent and the facts before me.

35. Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?

Response: If I am confirmed as a judge, my interpretation of the Constitution's meaning and application will be based on the precedent of the Supreme Court and the Second Circuit.

36. While an undergraduate at The Ohio State University, you wrote a letter to the school newspaper regarding the nomination and confirmation of Clarence Thomas. You wrote, "After watching Clarence Thomas in the Senate hearings, I find that I like him even less than I did before, but it is not necessarily because
I believe the charges against him. I'm upset about the way Thomas, a black conservative, chose to defend himself." You wrote also: "I might stop short of calling Thomas a hypocrite, but I am reminded of that saying about how there are no atheists when in foxholes. Perhaps you can also say that there are no black 'conservatives' when in the political hot seat."

a. **Do you stand by these comments?**

Response: As I indicated during my hearing testimony before the Committee, this letter to the editor, which I wrote 30 years ago as a college student, does not reflect my current beliefs.

b. **How would you have had Justice Thomas defend himself against the false and malicious accusations made against him?**

Response: I respect the United States Supreme Court and the Justices who serve on it. As a pending judicial nominee to a court that is subject to the authority of the Supreme Court, it would be inappropriate under Canon 3 of the Code of Conduct for me to provide personal views regarding a sitting Supreme Court Justice.

37. **During the 12-month period ending March 31, 2020, the Second Circuit had 3,036 civil appeals commenced, and only 619 criminal appeals. That means that approximately 83% of new appeals in that year were criminal. You have spent your entire career in criminal defense.**

a. **Have you ever handled a civil appeal?**

Response: No.

b. **Have you ever been the lead attorney on a civil case? Please provide additional details as relevant.**

Response: No.

Senator Josh Hawley
Questions for the Record

Eunice C. Lee
Nominee, U.S. Court of Appeals for the Second Circuit

1. **In *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), the Supreme Court set out the precedent of judicial deference that federal courts must afford to administrative actions.**

   a. **Please explain your understanding of the Supreme Court's holding in *Chevron.***

   Response: In *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984), the Supreme Court held 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. 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." *Id.* 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.

   b. **Please describe how you would determine whether a statute enacted by Congress is ambiguous.**

   Response: The Supreme Court held in *Chevron* that courts should determine whether the relevant statute is clear by using the "traditional tools of statutory construction." 467 U.S. at 843 n.9. *See also Nat. Res. Def. Council, Inc. v. Muszynski*, 268 F.3d 91, 98 (2d Cir. 2001) ("If the plain meaning of a statute is susceptible to two or more reasonable meanings, i.e., if it is ambiguous, then a court may resort to the canons of statutory construction.").

   c. **In your view, is it relevant to the *Chevron* analysis whether the agency that took the regulatory action in question recognized that the statute is ambiguous?**

Response: Rather than relying upon any personal views about whether an agency's recognition that a statute is ambiguous should be relevant, I will adhere to Supreme Court and Second Circuit precedent in analyzing these claims.

2. **Under Supreme Court and U.S. Court of Appeals for the Second Circuit precedent, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?**

Response: To prevail on a claim that a method-of-execution violates the prohibition against cruel and unusual punishment, a petitioner must show that the challenged method creates a substantial risk of severe pain when compared to known and available alternatives that present a significantly reduced risk of severe pain. *Glossip v. Gross*, 576 U.S. 863, 877-78 (2015); *see also Baze v. Rees*, 553 U.S. 35, 51-52 (2008).

3. **Under the Supreme Court's holding in *Glossip v. Gross*, is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?**

Response: Yes.

4. **Have the Supreme Court or the U.S. Court of Appeals for the Second Circuit ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?**

Response: Neither the Supreme Court nor the Second Circuit has recognized a constitutional right to DNA analysis for habeas corpus petitioners alleging innocence. *See, e.g., Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 72 (2009) (finding no substantive due process right to DNA evidence).

5. **Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?**

Response: No.

6.

a. Under Supreme Court and U.S. Court of Appeals for the Second precedent, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.

Response: The Supreme Court has affirmed that the Free Exercise rights of religious organizations may limit the government's power to impose constraints on such organizations. *See, e.g., Fulton v. City of Philadelphia*, __ S. Ct. __, 2021 WL 2459253 (June 17, 2021) (holding that refusal of Philadelphia to contract with Catholic organization for the provision of foster care services unless the organization agreed to certify same-sex couples as foster parents violates the Free Exercise Clause of the First Amendment); *Tandon v. Newsom*, 141 S. Ct. 1294 (2021) (per curiam) (addressing COVID gathering restrictions); *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020) (addressing the ministerial exception for religious employers). A law is not neutral and "lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, 2021 WL 2459253, at *5. *See also Agudath Israel of Am. v. Cuomo*, 983 F.3d 620, 632 (2d Cir. 2020) (applying strict scrutiny to capacity limits on houses of worship because the restrictions lacked general applicability). Neither is a law generally applicable if it "invite[s] the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Fulton*, 2021 WL 2459253, at *5 (internal quotations omitted). A law that burdens the free exercise of religion in this manner is subject to strict scrutiny. *Id.* at *4.

b. Under Supreme Court and U.S. Court of Appeals for the Second Circuit precedent, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.

Response: See answer to Question 6.a.

c. What is the standard in the U.S. Court of Appeals for the Second Circuit for evaluating whether a person's religious belief is held sincerely?

Response: In the Second Circuit, a religious belief is "sincerely held" when the plaintiff subjectively, sincerely holds a particular belief that is religious in nature. "We refused to evaluate the objective reasonableness of the prisoner's belief, holding that our scrutiny extends only to whether a claimant sincerely holds a particular belief and whether the belief is religious in nature. In

upholding the plaintiff's claim, we made clear that to apply an objective test in such cases would require courts to resolve questions that are beyond their competence[.]" *Ford v. McGinnis*, 352 F.3d 582, 590 (2d Cir. 2003) (internal quotations and citations omitted).

7. What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller?*

Response: 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, unconnected with service in a militia, and to use that firearm for traditionally lawful purposes, such as self-defense within the home.

8. Please state whether you agree or disagree with the following statement and explain why: "Absent binding precedent, judges should interpret statutes based on the meaning of the statutory text, which is that which an ordinary speaker of English would have understood the words to mean, in their context, at the time they were enacted."

Response: I agree with the part of this statement that says statutes should be interpreted based on the plain meaning of the statutory text. If confirmed as a judge and confronted with the need to determine the meaning of ambiguous text, I would apply the method of interpretation dictated by relevant precedent, as well as the canons of statutory construction, as appropriate. *See, e.g., Catskill Mountains Chapter of Trout Unlimited, Inc. v. Env't Prot. Agency*, 846 F.3d 492, 512 (2d Cir. 2017) (employing the traditional tools of statutory construction to ambiguous text, including "examin[ing] the statutory text, structure, and purpose as reflected in its legislative history").

Questions for the Record for Eunice C. Lee
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.

Senate Judiciary Committee - Questions for the Record from Senator John Kennedy
June 9, 2021

Hearing entitled: "Nominations"

Questions for Eunice Lee, Nominee for the U.S. Court of Appeals for the Second Circuit

1. **I want you to provide further clarity regarding your judicial philosophy in the wake of your June 9, 2021, nomination hearing. Do you personally believe, generally and at the most fundamental level, that the provisions of the United States Constitution should be interpreted according to their respective meanings at the time of adoption?**

   Response: Because I have not previously served as a judge, I have not had occasion to develop a personal judicial philosophy. For the past 23 years, my work as an advocate has been based on applying controlling precedent to the specific facts of the case. I do not have an overarching view as to how the provisions of the Constitution should be interpreted, but instead apply the holdings of binding case law. The Supreme Court has at times held that constitutional provisions should be interpreted in accordance with their original public meaning. *See District of Columbia v. Heller*, 554 U.S. 570 (2008) (applying original meaning analysis to the Second Amendment). But the Supreme Court has also applied other methods of constitutional interpretation. For example, in *Crawford v. Washington*, 541 U.S. 36, 50 (2004), the Court analyzed the Confrontation Clause of the Sixth Amendment in the context of the Framers' original intent:

   > First, the principal evil at which the Confrontation Clause was directed was the civil-law mode of criminal procedure, and particularly its use of *ex parte* examinations as evidence against the accused. It was these practices that the Crown deployed in notorious treason cases like Raleigh's; that the Marian statutes invited; that English law's assertion of a right to confrontation was meant to prohibit; and that the founding-era rhetoric decried. *The Sixth Amendment must be interpreted with this focus in mind.*

   Id. (emphasis added). In addition, in the context of the Eighth Amendment, the Supreme Court has held that "[t]o determine whether a punishment is cruel and unusual, courts must look beyond historical conceptions to 'the evolving standards of decency that mark the progress of a maturing society.'" *Graham v. Fla.*, 560 U.S. 48, 58 (2010), *as modified* (July 6, 2010) (quoting *Estelle v. Gamble*, 429 U.S. 97, 102 (1976)) (internal quotations omitted). If confirmed as a Circuit Judge, I would be bound by Supreme Court and Second Circuit precedent, regardless of whether those precedents were based on original public meaning or some other method of interpretation.

2. **If you do not subscribe to Original Meaning as your core judicial philosophy, then what is your approach to constitutional interpretation?**

Response: Should I be confirmed as a Circuit Judge, I will interpret the Constitution in accordance with the method of interpretation indicated by the precedent of the Supreme Court and the Second Circuit as to the specific constitutional provision at issue. In the unlikely event of an issue of first impression regarding a constitutional provision, I would employ the method of interpretation consistent with the most analogous Supreme Court precedent.

Senator Mike Lee
Questions for the Record
Eunice C. Lee, Second Circuit Court of Appeals

1. How would you describe your judicial philosophy?

Response: I do not have a judicial philosophy per se. As an advocate for the past 23 years, my role has been to follow the interpretation of the courts as to specific issues and to urge the most favorable outcome for my client within the boundaries of those precedents. Should I be confirmed as a judge, my approach to legal analysis will be similarly guided by precedent, rather than an overarching theory of judicial interpretation. As a Circuit Judge, I would apply the method of analysis directed by the precedent of the Supreme Court and the Second Circuit, which will provide guidance in a substantial majority of cases. I would carefully review the factual record in the case and the specific arguments of the parties, and then diligently research the law that applies. Following careful and open-minded consideration of the issues, I would decide the case based solely on the relevant precedent and the facts before me.

2. What sources would you consult when deciding a case that turned on the interpretation of a federal statute?

Response: Interpretation of a statute always "begin[s] with the text." *Facebook Inc. v. Duguid*, 141 S. Ct. 1163, 1169 (2021). The text of a statute should be interpreted in accordance with its plain meaning, using traditional tools of statutory construction. If there is Supreme Court or Second Circuit precedent interpreting the statute, that interpretation would be authoritative and binding. In the absence of binding precedent or clarity in the plain meaning of the text, I would consider the other canons of construction. I also would look to Supreme Court and Second Circuit precedent interpreting any related or analogous statutory provisions. I also would consider persuasive, but not binding, authority from other circuits. If appropriate and necessary, I would also consider legislative history.

3. What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?

Response: I would interpret any constitutional provision in accordance with the method of interpretation applied by the precedent of the Supreme Court and the Second Circuit as to the specific constitutional provision at issue. In the rare circumstance of an issue of first impression regarding a constitutional provision, I would employ the method of interpretation consistent with the most analogous Supreme Court precedent.

4. What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?

Response: In interpreting the Constitution, I would be guided by the precedents of the Supreme Court and the Second Circuit as to the appropriate method of interpretation. Analysis of the original meaning of a constitutional provision is an interpretative method that the Supreme Court has often applied in analyzing constitutional text. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008).

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 and Article III jurisdiction in the federal courts? If so, which jurisdictional requirements are prudential, and which are mandatory?

Response: The jurisdiction of the federal courts under Article III of the Constitution is explicit and defined. The Constitution vests "[t]he judicial Power" in the courts, U.S. Const. art. III, § 2, and this jurisdiction requires an actual case or controversy. The Supreme Court has developed various doctrines that relate to the exercise of a federal court's jurisdiction. While some of these doctrines are mandatory, the Supreme Court has recognized an ability to exercise jurisdiction, or not, based on "prudential" concerns that are not grounded in the text of Article III.

Standing, for example, relates to whether a plaintiff has made out a "case or controversy" within the meaning of Article III and is thus entitled to have the federal

court adjudicate it. The determination of standing is a mandatory consideration that must be assessed at the outset of a case, and if there is no standing, the court lacks jurisdiction to hear the case. However, the Supreme Court has recognized other limitations on standing that are not grounded in the text, noting that "[t]his inquiry involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Thus, the Supreme Court has recognized what are essentially "prudential" limits on when courts should find the requirement of standing to be met. *See Allen v. Wright*, 468 U.S. 737, 751 (1984) (noting that prudential limitations on standing include "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 interest protected by the law invoked").

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). "Just as a court cannot apply its independent policy judgment to recognize a cause of action that Congress has denied, it cannot limit a cause of action that Congress has created merely because 'prudence' dictates." *Id.* at 128 (internal citations omitted).

7. How would you define the doctrine of administrative exhaustion?

Response: Administrative exhaustion refers to the requirement that a party challenging an agency's decision first pursue all available agency remedies before seeking judicial review. *See Woodford v. Ngo*, 548 U.S. 81, 88–89 (2006) ("The doctrine [of administrative exhaustion] provides that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted.") (internal quotations omitted).

8. Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?

Response: Article I, section 8 of the Constitution gives Congress power to make "all Laws which shall be necessary and proper for carrying into Execution" other federal powers granted in the Constitution. Known as the "Necessary and Proper Clause," this provision of the Constitution has at times been interpreted by the Supreme Court as recognizing that there are implied powers of Congress. *See, e.g., McCulloch v. Maryland*, 17 U.S. 316 (1819) (holding that Congress has the implied power to incorporate a bank).

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 called upon to evaluate the constitutionality of a law that Congress passed without reference to a specific enumerated power, I would look to any binding Supreme Court or Second Circuit precedent that addressed the issue. If no binding precedent existed, I likely would apply the method that the Supreme Court has previously used to evaluate such laws in cases like *United States v. Lopez*, 514 U.S. 549 (1995), which looked to the Constitution's text and the Court's prior precedent regarding the Commerce Clause to determine guiding principles.

10. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?

Response: The Supreme Court has held that the due process clauses of the Fifth and Fourteenth Amendments protect certain unenumerated "fundamental rights and liberties which are, objectively, 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). The Court has noted, *id.* at 720, that these substantive due process rights include: the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); to marital privacy and to use contraception, *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Eisenstadt v. Baird*, 405 U.S. 438 (1972); to bodily integrity, *Rochin v. California*, 342 U.S. 165 (1952), and to terminate a pregnancy before viability, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

11. What rights are protected under substantive due process?

Response: Please see answer 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: Should I be confirmed as a judge, any personal beliefs that I might have about substantive due process will have no bearing on my decision-making. I will adhere to binding Supreme Court precedent. The Supreme Court has recognized a substantive due process right to abortion in the pre-viability stage, which may be regulated only so long as any restriction does not impose an "undue burden." *Planned Parenthood v. Casey*, 505 U.S. 833, 878 (1992) (plurality). The Supreme Court has

not afforded the same level of protection to the economic rights at issue in *Lochner*. *See West Coast Hotel Co. v. Parrish*, 57 S. Ct. 578 (1937).

13. What are the limits on Congress's power under the Commerce Clause?

Response: The Supreme Court held in *United States v. Lopez*, 514 U.S. 549, 558-59 (1995), that Congress may regulate three categories of activity under its Commerce Clause power. Congress may regulate the channels of interstate commerce, the instrumentalities of interstate commerce, and any activity that substantially affects interstate commerce. *Id.*

14. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?

Response: To date, the Supreme Court has identified classifications based on race, alienage, national origin, and religion as inherently suspect and requiring the application of 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: The structure of the Constitution emphasizes the Framers' intention to develop a government of three co-equal branches, each subject to checks and balances. The careful division of the government into separate legislative, executive, and judicial branches, delineated in separate Articles and given powers both exclusive and complementary, reflects this desire to constrain any branch from exceeding its power. Separation of powers is critical in our Constitution's structure:

> In establishing the system of divided power in the Constitution, the Framers considered it essential that "the judiciary remain[ ] truly distinct from both the legislature and the executive." The Federalist No. 78, p. 466 (C. Rossiter ed. 1961) (A. Hamilton). As Hamilton put it, quoting Montesquieu, " 'there is no liberty if the power of judging be not separated from the legislative and executive powers.' " *Ibid.* (quoting 1 Montesquieu, Spirit of Laws 181).

Stern v. Marshall, 564 U.S. 462, 483 (2011).

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: If I was presented with a case in which it was claimed that one branch of government exceeded its constitutional authority, I would analyze the issue in

accordance with the binding precedent of the Supreme Court and the Second Circuit. For example, if the case involved an act of Congress, I might need to examine the Supreme Court body of case law that has analyzed claims of unauthorized use of power under the Commerce Clause. *See, e.g., United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995).

17. What role should empathy play in a judge's consideration of a case?

Response: A judge's decision-making should be based on an impartial analysis of the relevant facts and law, and personal views should have no bearing.

18. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: A judge should strive to avoid both of these undesirable outcomes.

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 have not closely studied the historical trends or changes in the Supreme Court's patterns of invalidating federal statutes, and thus I do not have a basis for opining on this topic.

20. How would you explain the difference between judicial review and judicial supremacy?

Response: Judicial review refers to the power of the judiciary "to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). There is some debate as to how this is distinct from judicial supremacy, which refers to the idea that the Supreme Court should be viewed as the authoritative interpreter of the Constitution, whose decisions are binding on the legislative and executive branch, absent constitutional amendment or overruling by subsequent decision.

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: Individuals in the various branches of government should strive to fulfill their respective constitutional obligations. Elected officials are obligated to follow both the Constitution and duly rendered judicial decisions. As a pending judicial nominee, whose role would be to issue decisions in accordance with the Constitution, it is not appropriate for me to opine on the issue of how and whether elected officials should respect duly rendered 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.**

Response: Hamilton's assertion in Federalist 78 serves as a reminder of the judiciary's limited role, which is to determine what the law is, not to legislate or enforce the law. It reinforces the dictates of Article III of the Constitution, which constrains courts to consideration of only actual cases or controversies before them. Federalist 78 is a reminder that courts do not exercise unlimited power.

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: Interpretation of a statute always "begin[s] with the text." *Facebook Inc. v. Duguid*, 141 S. Ct. 1163, 1169 (2021). The text of a statute should be interpreted in accordance with its plain meaning, which does not change over time based on social norms or linguistic conventions. If there is ambiguity in the plain meaning of the statute, I would look to guidance from the Supreme Court and the Second Circuit as to meaning of the text or the appropriate method for interpreting it, which would be binding. In the absence of such guidance, I would employ the canons of statutory construction. I would also consider Supreme Court or Second Circuit precedent analyzing an analogous statute, as well as persuasive but non-binding precedent from other circuits.

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: As a circuit judge, I would be bound by all Supreme Court and Second Circuit precedent, regardless of any personal beliefs about the legitimacy or basis of the decision's underpinning. I would be required to follow that precedent in any case for which it is controlling. If a precedent is not controlling, then I would determine whether or not it should be extended to the new circumstances, given the nature of its underpinnings.

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.

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: 18 U.S.C. § 3553(a) describes the factors that a judge should consider when imposing a sentence. A defendant's group identity can be considered only to the extent it relates to one of the sentencing factors set forth 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 advantaged group to correct systemic sentencing disparities?

Response: No.

28. Have you spoken with anyone affiliated with Demand Justice or the Leadership Conference on Civil Rights regarding your nomination either before or after it was announced?

Response: I had conversations with Chris Kang while I was in the process of submitting my application to Senator Schumer's Judicial Screening Committee. Having never applied for a judgeship previously, I had no familiarity with the nature of the screening process. I spoke with Mr. Kang about how the screening committee operates and the application process generally. I have had no conversations with any other individuals who are, to my knowledge, affiliated with either Demand Justice or the Leadership Conference on Civil Rights.

29. Given your vast experience as an appellate public defender, should you be confirmed to this position, you will no doubt hear criminal appeals in which an

alternative—and perhaps more efficacious—appeal could have been made. Under what circumstances may a Circuit Court panel, *sua sponte*, propose alternative, non-argued grounds for overturning a sentence other than those briefed and argued before the panel?

Response: In rare circumstances, appellate courts may "notice[], and order[] correction of, plain errors not raised by defendants." *Greenlaw v. United States*, 554 U.S. 237, 247 (2008); *see also Silber v. United States*, 370 U.S. 717, 718 (1962) (per curiam) ("In exceptional circumstances, especially in criminal cases, appellate courts, in the public interest, may, of their own motion, notice errors to which no exception has been taken, if the errors are obvious, or if they otherwise seriously affect the fairness, integrity, or public reputation of judicial proceedings.") (internal quotations and citations omitted). As indicated by this authority, appellate courts should exercise their ability to address errors not raised by the parties on appeal only when it is "plain error" that seriously calls into question the fairness and integrity of the proceedings.

30. **You have been nominated to the United States Court of Appeals of the Second Circuit. I have no doubt that throughout your many years of experience as an appellate federal defender you have become an expert in appealing criminal cases—particularly in New York courts. I am less convinced that you have the qualifications to sit on the Second Circuit which hears not just criminal appeals but civil appeals as well. What assurances can you give this Committee that you have the requisite experience and qualifications for this position?**

Response: Like most individuals appointed to the bench, I do not have familiarity with all the topics that may come before me as a judge. Should I be confirmed as a Circuit Judge, I will endeavor to immerse myself in those areas of the law with which I am less familiar, and I also would look forward to discussing with my Second Circuit colleagues what they found to be most helpful in getting up to speed on areas of the law with which they may have been less familiar when they first joined the bench. To the extent that I am confronted with civil law issues with which I am less familiar, I will take a similar approach to gaining mastery over novel issues on appeal that I have successfully employed in my 23 years as an appellate advocate. Appellate judges are presented with a limited factual record and a discrete legal claim to evaluate on appeal. I would approach a case by first carefully reviewing the facts in the record and the arguments presented by the parties, as well as the underlying statute or other legal provision at issue. I would review the case law cited by the parties and relied upon by the judge in the lower court, as well as conduct independent research as to any other relevant Supreme Court and Second Circuit precedent. To the extent that I needed additional general background on the specific legal topic, I would review treatises and other academic sources, and perhaps consider case law in an analogous context. Following careful consideration of all this information, I would apply the law to the specific facts of the case.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
June 9, 2021

For Ms. Eunice Lee:

1. **Why did you choose to work for the Office of the Appellate Defender and Federal Defenders of New York?**

   Response: I have always known that I wanted to use my law degree to serve the public, and I recognized early in law school the need for attorneys willing to uphold the constitutional right to counsel by defending those who are accused or convicted of crimes but cannot afford an attorney. This desire to serve, along with a strong interest in appellate litigation, was what motivated my decision to work at the Office of the Appellate Defender and the Appeals Bureau of the Federal Defenders of New York.

2. **Were you ever concerned that your work for the Office of the Appellate Defender and Federal Defenders of New York would result in more violent criminals—including gun criminals and sex criminals—being put back on the streets?**

   Response: It has been my ethical and constitutional duty to zealously advocate for my clients, regardless of personal views or beliefs about the client, the offense, or public opinion. The legitimacy of the justice system requires that all the participants fulfill their respective roles, and I have served many years in the critical role of protecting the constitutional right of due process for those who cannot afford an attorney.

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, demonstrations, or other events at which you or other participants have willfully damaged public or private property?**

   Response: No.

3. **How would you describe your judicial philosophy?**

   Response: I do not have a judicial philosophy per se. As an advocate for the past 23 years, my role has been to follow the interpretation of the courts as to specific issues and to urge the most favorable outcome for my client within the boundaries of those precedents. Should I be confirmed as a judge, my approach to legal analysis will be similarly guided by precedent, rather than an overarching theory of judicial interpretation. As a Circuit Judge, I would apply the method of analysis directed by the precedent of the Supreme Court and the Second Circuit, which will provide guidance in a substantial majority of cases. I would carefully review the factual record in the case and the specific arguments of the parties, and then

diligently research the law that applies. Following careful and open-minded consideration of the issues, I would decide the case based solely on the relevant precedent and the facts before me.

4. Would you describe yourself as an originalist?

Response: I do not have an overarching theory of judicial interpretation, and thus I would not embrace or reject any particular label. (See answer to Question 3.) If confirmed, I would interpret the law in accordance with Supreme Court and Second Circuit precedent, whether or not those precedents were categorized as "originalist."

5. Would you describe yourself as a textualist?

Response: I do not have an overarching theory of judicial interpretation, and thus I would not embrace or reject any particular label. (See answer to Question 3.) If confirmed, I would interpret the law in accordance with Supreme Court and Second Circuit precedent, whether or not those precedents were categorized as "textualist." I would also note that in general the interpretation of a statute always "begin[s] with the text." *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163, 1169 (2021).

6. Do you believe the Constitution is a "living" document? Why or why not?

Response: What is meant by the characterization of the Constitution as a "living" document is not unambiguous. I believe that the Constitution is an enduring document with a fixed nature.

7. Please name the Supreme Court Justice or Justices appointed since January 20, 1953 whose jurisprudence you admire the most and explain why.

Response: Because I do not have an overarching judicial philosophy, there is no one specific Justice whose jurisprudence I most admire or whose philosophy I would emulate. Instead, the judicial traits that I most admire in any jurist are fidelity to the law and awareness of its power, respect for the parties, clarity in decision-writing, and collegiality.

8. Was Marbury v. Madison correctly decided?
9. Was Lochner v. New York correctly decided?
10. Was Brown v. Board of Education correctly decided?
11. Was Bolling v. Sharpe correctly decided?
12. Was Cooper v. Aaron correctly decided?
13. Was Mapp v. Ohio correctly decided?
14. Was Gideon v. Wainwright correctly decided?
15. Was Griswold v. Connecticut correctly decided?
16. Was South Carolina v. Katzenbach correctly decided?
17. Was Miranda v. Arizona correctly decided?
18. Was Loving v. Virginia correctly decided?
19. Was Katz v. United States correctly decided?
20. Was Roe v. Wade correctly decided?
21. Was Romer v. Evans correctly decided?
22. Was United States v. Virginia correctly decided?
23. Was Bush v. Gore correctly decided?
24. Was District of Columbia v. Heller correctly decided?

25. Was Crawford v. Marion County Election Bord correctly decided?
26. Was Boumediene v. Bush correctly decided?
27. Was Citizens United v. Federal Election Commission correctly decided?
28. Was Shelby County v. Holder correctly decided?
29. Was United States v. Windsor correctly decided?
30. Was Obergefell v. Hodges correctly decided?

Response to Questions 8-30: The above Supreme Court decisions are all binding precedent, and if I am confirmed, I would adhere to them. In general, it is inappropriate under the Code of Conduct for U.S. Judges, which applies to judicial nominees, for judges to comment on the merits of Supreme Court decisions. However, prior judicial nominees have made three 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.

Marbury warrants this special status because the principle of judicial review that the decision established—i.e., its holding that, under the 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.").

Brown v. the Board of Education 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.

Loving v. Virginia warrants this special status because it reaffirmed the rejection of the "notion that the mere 'equal application' of a statute containing racial classifications" comports with the Fourteenth Amendment, 388 U.S. 1, 8 (1967), and as such, it is a direct outgrowth of *Brown*.

Therefore, just as other judicial nominees have done, I can confirm that *Marbury*, *Brown*, and *Loving* were rightly decided without calling into question my duties under the Code of Conduct.

31. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?

Response: Any panel of the Second Circuit is "bound by the decisions of prior panels until such time as they are overruled either by an en banc panel of [the] Court or by the Supreme Court . . . and thus ordinarily [the court] cannot overturn an existing Circuit precedent." *United States v. Smith*, 949 F.3d 60, 65 (2d Cir. 2020) (internal quotations and citations omitted). Absent such factors, an appellate panel of the Second Circuit must reaffirm its prior precedent. 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).

32. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for an appellate court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?

Response: Please see answer to Question 31.

33. 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? If so, how so?

Response: No. The factors that may be considered by a court during sentencing are set forth in 18 U.S.C. § 3553(a), which does not authorize consideration of the need to treat similarly-situated defendants differently in order to correct systemic sentencing disparities.

Questions for the Record for
Senator Thom Tillis for
Questions for Ms. Eunice Cheryl Lee

1. **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: People have different definitions of judicial activism. My definition of judicial activism is when a judge makes a decision that goes beyond what is required by the specific issue presented in the case in order to effectuate the judge's personal views and opinions. Judicial activism is not appropriate.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: Impartiality is a requirement for a judge. This is confirmed by Canon 3 of the Code of Conduct for United States Judges, which states that "a judge should perform the duties of the office fairly, impartially, and diligently."

4. **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: Should I be confirmed as a Circuit Judge, I will not allow any personal views or opinions to influence my decision-making. Faithful interpretation of the law, without regard to the perceived desirability of the outcome, is a critical obligation of a judge.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No.

7. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

   Response: If I am confirmed as a Circuit Judge, I will faithfully follow all Supreme Court precedent pertaining to the Second Amendment, including the Supreme Court's decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010). In *Heller*, the Supreme Court held that the Constitution protects the right

of an individual to possess a lawful firearm, including a handgun, and to use that firearm for traditionally lawful purposes, such as self-defense within the home. In *McDonald*, the Supreme Court held that the Second Amendment right to possess and carry weapons is a fundamental right applicable to the states through the Fourteenth Amendment.

8. 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: Should I be confirmed, in evaluating any case that raises issues of constitutional rights and state emergency powers, I would apply all binding Supreme Court and Second Circuit precedent to the specific facts of the case before me. Given that cases related to COVID-19 restrictions are currently being litigated in the courts, *see, e.g., Tandon v. Newsom*, 141 S. Ct. 1294 (2021), it would be inappropriate for me, as a pending judicial nominee, to opine on this hypothetical.

9. 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 never served as a judge, and therefore I have not had occasion to either grant or consider the application of qualified immunity to law enforcement. Should I be confirmed as a Circuit Judge, I would apply all binding Supreme Court and Second Circuit precedent to the specific case at issue. *See, e.g., Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) ("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").

10. 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 question of the adequacy of qualified immunity to protect law enforcement is a policy matter that is the province of the legislative and executive branches. As a Circuit Judge, should I be confirmed, I will adhere to Supreme Court and Second Circuit precedent regarding the application of qualified immunity. Any personal views that I might have on this issue would be irrelevant to my decision-making.

11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: Please see answer to Question 10.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Tana Lin
Judicial Nominee to the U.S. District Court for the Western District of Washington

1. **Last week, an editorial board member of *The New York Times* editorial board appeared on MSNBC and stated that she saw "dozens of American flags" on Long Island pickup trucks, which she described as "just disturbing." Do you agree that flying the American flag is a way to honor the United States of America? Why or why not?**

   RESPONSE: I am not aware of this statement or the context in which it was made. In general, I believe that flying the American flag is one way in which a person may choose to express support for the United States of America.

2. **In the context of federal case law, what is super precedent? Which cases, if any, count as super precedent?**

   RESPONSE: The term "super precedent" is not a term used or defined by the Supreme Court. If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court.

3. **Is it legal for police to stop and frisk someone based on a reasonable suspicion of involvement in criminal activity?**

   RESPONSE: The Supreme Court has held that a police officer may briefly stop a person when the officer "observes unusual conduct which leads [the officer] reasonably to conclude in light of [the officer's] experience that criminal activity may be afoot." *Terry v. Ohio*, 392 U.S. 1, 30 (1968). Under those circumstances, the officer may "briefly stop" the suspicious person to make "reasonable inquiries'" aimed at confirming or dispelling the officer's suspicions. *Minnesota v. Dickerson*, 508 U.S. 366, 373, (1993). The officer may then conduct a frisk or search of the outer clothing of the person if the officer has reasonable grounds to believe that the person is armed and dangerous. *Terry*, 392 U.S. at 30. Each of the two elements, *i.e.* the stop and the frisk, must be analyzed separately with the reasonableness of each element independently determined. *United States v. Brown*, 996 F.3d 998, 1004 (9th Cir. 2021) (quoting *United States v. Thomas*, 863 F.2d 622, 628 (9th Cir. 1988)).

4. **During the course of your legal practice, have you ever taken a representation of violent-crime victims?**

   RESPONSE: I have never been asked to represent the victim of a violent crime. However, as a public defender, I interviewed a number of victims. I greatly appreciated

that they were willing to share their stories with me, and what they shared with me about their experiences has stayed with me. If confirmed as a judge, I will make sure that all parties before me feel and are genuinely heard.

5. **Should law firms undertake the pro bono prosecution of crimes?**

RESPONSE: I am aware that government entities at times hire outside counsel from private law firms to assist or undertake the prosecution of crimes. Such policy decisions are not within the purview of the judiciary.

6. **Do you agree with Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a "living constitution"?**

RESPONSE: I am not familiar with Judge Brown Jackson's statement. I believe the Constitution was drafted to be an enduring document that expressed core principles that would act as a consistent guide over time.

7. Is it possible for private parties—like law firms, retired prosecutors, or retired judges—to prosecute federal criminals in the absence of charges being actively pursued by federal authorities?

RESPONSE: To the best of my knowledge, no.

8. **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: I will consider as a law clerk all qualified applicants.

9. **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: I believe this is a decision that should be made by an individual law firm as long as it does not run afoul of any ethical rules.

10. **Should paying clients be able to influence which pro bono clients engage a law firm?**

RESPONSE: I believe this is a decision that should be made by an individual law firm as long as it does not run afoul of any ethical rules.

11. **As a matter of legal ethics do you agree with the proposition that some civil clients don't deserve representation on account of their identity?**

RESPONSE: No.

12. **Do you agree with the propositions that some clients don't deserve representation on account of their:**

    a. **Heinous crimes?**
    b. **Political beliefs?**
    c. **Religious beliefs?**

RESPONSE: No.

13. **Should judicial decisions take into consideration principles of social "equity"?**

RESPONSE: Judges are to resolve cases and controversies that come before them based solely on the facts of the specific case, the issues and claims raised by the parties, and the applicable law.

14. **Is climate change real?**

RESPONSE: If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law. In cases where expert testimony is submitted, I will apply the rules set forth in Article VII of the Federal Rules of Evidence as well as the standard set forth in *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993) and its progeny. Further, I will faithfully apply all binding Supreme Court and Ninth Circuit precedents. Therefore, my personal opinions regarding the issue of climate change will be of no moment.

15. **Is gun violence a public-health crisis?**

RESPONSE: Gun violence is an important issue facing our society and a crisis that local, state, and federal elected officials are currently discussing. If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law. Further, I will faithfully apply all binding Supreme Court and Ninth Circuit precedents. Therefore, my personal opinions regarding the issue of gun violence will be of no moment.

16. **Can someone change his or her biological sex?**

RESPONSE: If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter. I will (1) evaluate the facts of the

particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law. In cases where expert testimony is submitted, I will apply the rules set forth in Article VII of the Federal Rules of Evidence as well as the standard set forth in *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993) and its progeny. Further, I will faithfully apply all binding Supreme Court and Ninth Circuit precedents. Therefore, my personal opinions regarding whether one can change his or her biological sex will be of no moment.

17. **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: It is generally not appropriate for a judicial nominee to comment on the results or reasoning in Supreme Court or Ninth Circuit decisions. All Supreme Court and Ninth Circuit precedent will be binding upon me if I am confirmed as a district court judge. I am, however, aware that prior judicial nominees have made exceptions to the practice of declining comment on the merits of Supreme Court decisions to acknowledge that of the cases listed above, the principles underlying *Brown v. Board of Education* and *Loving v. Virginia* are so foundational that they are beyond dispute and unlikely to be revisited by the Supreme Court. With this caveat, I believe that I can state that I believe these two cases were correctly decided without violating my duties under the Judicial Canons. I reiterate with respect to all other cases mentioned, to the extent a case is binding Supreme Court or Ninth Circuit precedent, I would follow it regardless.

18. **Is threatening Supreme Court Justices right or wrong?**

RESPONSE: It is wrong to threaten anyone.

19. **How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?**

RESPONSE: Criticism of an opinion focuses on the analysis or reasoning provided in the opinion; personal attacks focus on the individual.

20. **Do you think the Supreme Court should be expanded**?

RESPONSE: As a pending judicial nominee, it would be inappropriate for me to comment on this question.

21. **During your hearing you repeatedly distinguished between the national ACLU—which is currently under fire for abandoning its historical commitment to free speech in order to cater to progressive policy causes—and the Washington ALCU—of which you were the board president through 2021. This is from the Washington ACLU's website:**

What is the difference between defunding the police and "the divestment/reinvestment approach to policing?

RESPONSE: As a board member of the ACLU of Washington, I am broadly familiar with the non-partisan work and mission of the organization to protect and advance freedom, equity, and justice for everyone in Washington. I was not, however, involved in the day to day work of the organization. I believe the term "defunding the police" means different things to different people. I understand the divestment/reinvestment approach to policing referenced on the ACLU of Washington website to encompass exploring solutions to reduce police violence (for example, banning chokeholds and emphasizing de-escalation training) and increase police accountability. I note that elected officials at all levels of government are in the midst of grappling with the issue of police reform and what policy changes might be appropriate. However, policy changes are the purview of elected officials and not the courts. If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by

the parties and (3) carefully research, analyze, and apply the applicable law. Further, I will faithfully apply all binding Supreme Court and Ninth Circuit precedents. Therefore, my personal opinions regarding this issue will be of no moment.

22. **Was it correct for people to oppose Judge Eric Miller's nomination to the Ninth Circuit because of the clients he represented?**

RESPONSE: I am not familiar with the issues surrounding Judge Miller's nomination. In general, I do not believe that a nominee should be opposed solely because of the clients he or she represented.

23. **A March 12, 2021, ACLU of Washington letter (including your name in the letterhead) requested that the "Washington State Department of Correction (DOC) modify current restrictions on Native American religious ceremony due to the harmful impact on incarcerated Native American individuals' religious freedom." Washington State is also home to multiple other well publicized cases involving religious liberty, such as the case involving Arlene's Flowers (flowers for same-sex weddings) and *Stormans v. Wiesman* (pharmacists dispensing emergency contraception).**

RESPONSE: The ACLU of Washington had a standard practice that pre-dated my tenure on the board to include the name of the board president on its letterhead. As with all of the ACLU letters I submitted with my questionnaire, I did not draft, review, or edit any of them, including the one mentioned in this question.

a. **Do you believe that every individual has a right to freedom of religion**?
RESPONSE: Yes.

b. **What position, if any, did the ACLU of Washington take in the religious freedom litigation involving Barronelle Stutzman (Arlene's Flowers) or Kevin Stormans?**

RESPONSE: As a board member of the ACLU of Washington, I am broadly familiar with the non-partisan work and mission of the organization to protect and advance freedom, equity, and justice for everyone in Washington. I was not, however, involved in the day to day work of the organization.

To the best of my knowledge, in 2013 (I joined the board in 2016), the ACLU of Washington filed a complaint on behalf of Plaintiffs Robert Ingersoll and Curt Freed, alleging that the refusal of Arlene's Flowers to sell flowers to the couple due to their sexual orientation violated the Washington Law Against Discrimination.

To the best of my knowledge, in 2007 (I joined the board in 2016), the ACLU of Washington — in coalition with several other organizations —intervened in the case of *Stormans, Inc. v. Selecky* on behalf of seven individuals: five women who claimed to have been affected by the conduct of pharmacists opposed to Plan B contraceptives and two HIV-positive individuals who expressed concerns about access to vital medicines they needed to survive.

c. **What considerations does the ACLU of Washington take in deciding whether or not to involve itself in a religious liberty matter?**

RESPONSE: As president of the board of directors for the ACLU WA, I led the board in generally overseeing the organization including, for example: setting and monitoring the mission and broad priorities of the organization; reviewing financial documents to ensure the financial health and stability of the organization; supporting and overseeing the first new executive director the organization had hired in nearly 40 years; and working with the board's governance committee to examine — and implement where appropriate — best practices for non-profit boards. However, as a board member, I was not involved in the day-to-day work of the organization, such as decisions involving the litigation, advocacy or legislative docket of the organization. Therefore, I do not know the details of every single litigation or advocacy position of the organization.

24. **How do you understand the difference, if any, between freedom of religion and freedom of worship?**

RESPONSE: I understand that there are discussions regarding whether there is a difference between these two phrases and believe that they can mean different things to different people. My understanding is that some people interpret the phrase "freedom of religion" to be a more expansive concept referring to broader ideas of religious faith, while the phrase "freedom of worship" is interpreted to be more confined to an individual's religious practices.

25. **Does religious freedom entail a right to externalize costs on to third parties?**

RESPONSE: As a pending judicial nominee, it would be inappropriate for me to comment on this issue that I understand is currently being litigated in the courts. If confirmed as a district court judge and were this issue to arise, I would start by looking to Supreme Court precedents such as *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020), and *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

26. **Do you agree with Thomas Jefferson that the First Amendment erects "a wall of separation between Church & State"?**

RESPONSE: I am aware that the phrase has been referenced in some Supreme Court jurisprudence. If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court and the Ninth Circuit.

27. **In a March 12, 2021, letter (including your name on the letterhead), the ACLU of Washington letter requested "Increase[d] Access to Native American Religious Activities at Airway Heights Corrections Center." You requested this increased activity level during the COVID-19 pandemic, recognizing that the services had to be "modified." Does a government have the power to restrict the ability of their citizens to freely practice their religion on the basis of a public health emergency?**

RESPONSE: As I explained in response to Question 23, I did not draft, review, or edit the letter mentioned in this question. However, if confirmed as a district court judge and an issue regarding the free exercise of religion during a public health emergency arises, I will start by looking to Supreme Court precedent such as *Tandon v. Newsom*, 141 S.Ct. 1294 (2021), and *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S.Ct. 63 (2020). I will be bound to faithfully apply all binding precedents of the Supreme Court and Ninth Circuit.

28. **If the Justice Department determines that the prosecution of an individual is meritless and dismisses the case, is it appropriate for a District Judge to question the Department's motivations and appoint an amicus to continue the prosecution? Please explain why or why not.**

RESPONSE: The impartiality and independence of the judiciary is foundational to our democracy. Further, the power of the judiciary to assess the legality of decisions made by the executive and legislative branches is a foundational finding that is beyond dispute. *See Marbury v. Madison*, 5 U.S. 137 (1803). I cannot respond to a hypothetical without a full factual context. If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law.

29. **Over the course of your career, how many times have you spoken at events sponsored or hosted by the following liberal, "dark money" groups?**

a. **American Constitution Society**
b. **Arabella Advisors**
c. **Demand Justice**
d. **Fix the Court**

e. **Open Society Foundation**

RESPONSE: I have never spoken at events sponsored or hosted by any of the organizations listed in this question.

30. **In June 2018, the University of Washington College Republicans obtained a settlement from the University of Washington in the amount of $122,500, representing the legal fees generated from the College Republicans' suit against the school.[1] The University of Washington had instituted a policy requiring the payment of a security fee in the amount of $17,000 for the Club's attempt to hold a rally on February 10, 2018 with conservative group Patriot Prayer.**

a. **Did the ACLU of Washington support the University of Washington College Republicans at all in this free-speech dispute?**

RESPONSE: As a board member of the ACLU of Washington, I am broadly familiar with the non-partisan work and mission of the organization to protect and advance freedom, equity, and justice for everyone in Washington. I was not, however, involved in the day to day work of the organization. To the best of my knowledge, the ACLU of Washington was not involved in the suit by the University of Washington College Republicans against the University of Washington regarding the payment of a security fee.

b. **If not, why not?**

RESPONSE For the reasons stated in response to Questions 23.c. and 30.a., I do not know the answer to this question.

31. **The ACLU Washington represented the Seattle Mideast Awareness Campaign (SeaMAC) in its suit alleging violations of its free speech rights when SeaMAC submitted an ad to run on public buses expressing anti-Israel sentiment.[2]**

a. **How many times has the ACLU of Washington represented "conservative" or even non-liberal speakers seeking to vindicate their rights under the First Amendment?**

RESPONSE: For the reasons stated in response to Questions 23.c. and 30.a., I do not know the answer to this question.

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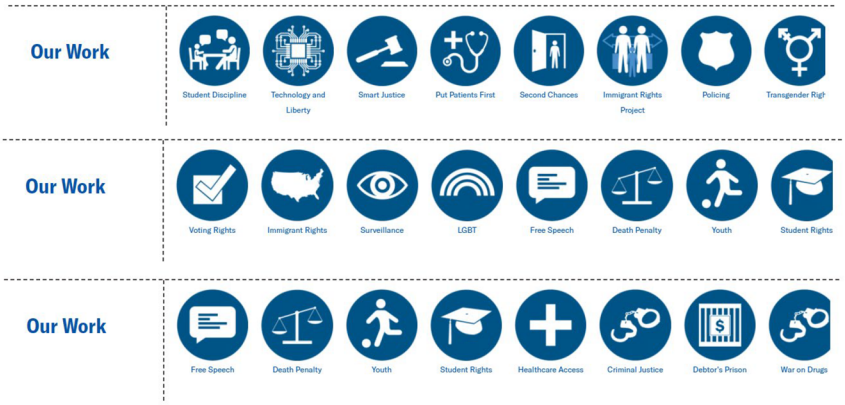
[1] Katherine Long, The Seattle Times, "UW to pay $122,500 in legal fees in settlement with College Republicans over free speech," June 18, 2018, available at: https://www.seattletimes.com/seattle-news/uw-to-pay-127000-in-legal-fees-in-settlement-with-college-republicans-over-free-speech/

[2] Kathleen Taylor, ACLU Washington, "Free Speech Means Protecting Controversial Speech," October 3, 2012, available at: https://www.aclu-wa.org/blog/free-speech-means-protecting-controversial-speech

b. **As an attorney have you ever personally defended the free speech rights of an individual or organization that you did not agree with politically?**

RESPONSE: I did not and do not specialize in free speech litigation. To the best of my recollection, I have never been asked to consider litigating a free speech case on behalf of any litigant over the course of my career.

32. During your hearing you repeatedly distinguished between the national ACLU—which is currently under fire for abandoning its historical commitment to free speech in order to cater to progressive policy causes—and the Washington ALCU—of which you were the board president through 2021. These images are from the ACLU of Washington website.



"Free Speech" is one of 20 different areas in which the ACLU of Washington works, including even the Dickensian field of "Debtor's Prison"

a. **During your time in the leadership of the ACLU of Washington, what percentage of the organization's work went to defending free speech?**

RESPONSE: For the reasons stated in response to Questions 23.c. and 30.a., I do not know the answer to this question.

b. **What policies, if any, did the ACLU of Washington adopt to balance protecting free speech against its potential "harm" to marginalized communities?**

RESPONSE: For the reasons stated in response to Questions 23.c. and 30.a., I do not know the answer to this question.

c. **Did you participate in any deliberations or decisions at the programmatic level to allocate or deallocate resources to free speech? If so what was the nature of those deliberations or decisions.**

RESPONSE: No. Please see my response to Questions 23.c. and 30.a.

33. **Do you agree that the First Amendment is more often a tool of the powerful than the oppressed?**

RESPONSE: I am not familiar with this statement or the context in which it has been made. If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court and Ninth Circuit, including precedents regarding the First Amendment.

34. **Was the ACLU right or wrong to defend the rights of Nazis to march in Skokie, Illinois?**

RESPONSE: The work of the ACLU resulted in the Supreme Court decision in *Nat'l Socialist Party of Am. v. Vill. of Skokie*, 432 U.S. 43 (1977). If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court and the Ninth Circuit. However, as a pending judicial nominee, it is inappropriate for me to comment on matters that could possibly come before the court, as First Amendment issues might. Further, if confirmed to be a district court judge, I will follow the same process for considering cases, regardless of the subject matter. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law. Therefore, any personal views that I might have regarding of the ACLU's decision to litigate the Skokie case would be of no moment.

35. **What is the legal basis for a nationwide injunction? What considerations would you consider as a district judge when deciding whether to grant one?**

RESPONSE: A plaintiff seeking a preliminary injunction must establish that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *See, e.g., Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 668 (9th Cir. 2021). When the government is a party, the equities and public interest factors merge. *Id.* (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009). With regard to the scope of an injunction, the relief provided should be "no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs before the court…Where relief can be structured on an individual basis, it must be narrowly tailored to remedy the specific harm shown, but there is no general requirement that an injunction affect only the parties in the suit." *E.*

Bay Sanctuary Covenant, 993 F.3d at 680. (internal quotations marks and citations omitted). If confirmed as a district court judge, I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) apply these precedents as well as any other relevant Supreme Court or Ninth Circuit rulings with regard to nationwide injunctions.

36. **What legal standard would you apply in evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?**

RESPONSE: If confirmed as a district court judge, I would start by looking to the Supreme Court decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010). Following these two decisions, the Ninth Circuit has established a two-step framework to review Second Amendment challenges. *Young v. Hawaii*, 992 F.3d 765 (9th Cir. 2021). The first step is to ask if the challenged law affects conduct that is protected by the Second Amendment. *Id.* at 783. If the challenged law burdens conduct protected by the Second Amendment, then the second step is to determine the appropriate level of scrutiny:

> If a regulation amounts to a destruction of the Second Amendment right, it is unconstitutional under any level of scrutiny; a law that implicates the core of the Second Amendment right and severely burdens that right receives strict scrutiny; and in other cases in which Second Amendment rights are affected in some lesser way, we apply intermediate scrutiny.

Id. at 784 (internal quotation marks omitted). If confirmed as a district court judge, I will be bound to faithfully apply these binding precedents.

37. **In your view, is a personal philosophical or religious objection to the death penalty on the part of the President a valid justification to abandon the defense of a death sentence on direct appeal?**

RESPONSE: As a general matter, under our system of government, Congress determines what conduct is unlawful and the applicable penalties for such conduct. For certain federal crimes, Congress has determined that the death penalty is an appropriate sentence, and the Supreme Court has held that the death penalty is constitutional. The President does not have the authority to unilaterally change the laws that Congress enacts or the penalties that Congress has prescribed for criminal offenses. However, the Constitution gives the President the authority to grant pardons, commutations, and reprieves. U.S. Const., Art. II, Sec. 2. With respect to the specific question posed, as a pending judicial nominee, it would be inappropriate for me to opine on a hypothetical without full factual context.

38. **In your view, is a personal philosophical or religious objection to the death penalty on the part of a District Judge a valid justification not to impose a death sentence?**

RESPONSE: If confirmed as a district court judge, I would follow federal law regarding the death penalty. With respect to the specific question posed, as a pending judicial nominee, it would be inappropriate for me to opine on a hypothetical without full factual context.

39. **Do state school-choice programs make private schools state actors for the purposes of the Americans with Disabilities Act?**

RESPONSE: If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law. As a pending judicial nominee, it is inappropriate for me to opine on this hypothetical without full context. If a case came before me that presented this question, I would want to carefully review the underlying facts in the record, the issues raised by the parties, and the applicable law before offering an opinion on this question.

40. **Does a law restrict abortion access if it requires doctors to provide medical care to children born alive following failed abortions?**

RESPONSE: If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law. As a pending judicial nominee, it is inappropriate for me to opine on this hypothetical without full context. If a case came before me that presented this question, I would want to carefully review the underlying facts in the record, the issues raised by the parties, and the applicable law before offering an opinion on this question. I am aware of the Born-Alive Infants Protection Act of 2002, as well as the Supreme Court's decision in *Planned Parenthood of SE Pennsylvania v. Casey*, 505 U.S. 833 (1992), and its progeny. If confirmed as a district court judge and an issue relating to this law arose, I would apply all applicable Supreme Court or Ninth Circuit precedent.

41. **On June 10, 2020, you signed a letter to Inspector General Horowitz criticizing the actions of then-Attorney General Bill Barr and President Trump for an event you described as a "photo op" in Lafayette Square on June 1, 2020 and demanding an immediate investigation into the events.[3] An Inspector General Report released on June 8, 2021, found the following:**

[3] SJQ 12(A) at *33 ("In particular, we are disturbed by Attorney General Barr's possible role in ordering law enforcement personnel to suppress a peaceful domestic protest in Lafayette Square on June 1, 2020, for the purpose of enabling President Trump to walk across the street from the White House and stage a photo op at St. John's Church, a politically motivated event in which Attorney General Barr participated.").

that the USPP had the authority and discretion to clear Lafayette Park and the surrounding areas on June 1. The evidence we obtained did not support a finding that the USPP cleared the park to allow the President to survey the damage and walk to St. John's Church. Instead, the evidence we reviewed showed that the USPP cleared the park to allow the contractor to safely install the antiscale fencing in response to destruction of property and injury to officers occurring on May 30 and 31. Further, the evidence showed that the USPP did not know about the President's potential movement until mid- to late afternoon on June 1—hours after it had begun developing its operational plan and the fencing contractor had arrived in the park.[4]

a. **Do you accept the results of the independent Inspector General investigation?**

RESPONSE: Yes.

b. **What commitments can you give me that you will not similarly jump to conclusions as a judge evaluating cases before you like you did when evaluating the clearing of Lafayette Square?**

RESPONSE: The letter to Inspector General Horowitz was signed by numerous former Department of Justice career alumni from both Democratic and Republican administrations. I signed the letter because I was deeply concerned with whether the principle of impartiality was being honored and because I believe strongly in the rule of law. I signed this letter in my personal capacity, and I was not a sitting judge when I signed it.

However, if confirmed as a district court judge, I will first and foremost remember that I will be in a completely different role: one that requires me to be impartial. I hope that my reputation as an advocate with both colleagues and opposing counsel is as a lawyer who has the highest ethics and integrity, advocates for her clients well within the bounds of the law, and is able to see the other side's perspective. Finally, I was grateful that the Standing Committee on the Federal Judiciary of the American Bar Association—which evaluates nominees for integrity, professional competence and judicial temperament—unanimously rated me "Well Qualified."

42. **In your career as a prosecutor, did you ever encounter a defendant who sought to withdraw his guilty plea?**

[4] Office of the Inspector General, Department of the Interior, "Review of U.S. Park Police Actions at Lafayette Park," June 8, 2021, available at: https://www.doioig.gov/reports/review-us-park-police-actions-lafayette-park

RESPONSE: I have never been a criminal prosecutor.

a. **In your career as a Staff Attorney for PDS, did you ever represent a client who sought to withdraw his guilty plea? Please provide an approximation of the number.**

RESPONSE: I left PDS over 25 years ago. To the best of my memory, I am not aware of any client I had while a Staff Attorney for PDS who sought to withdraw a guilty plea.

b. **In your career, did you ever personally encounter a situation where the judge refused to accept a motion to dismiss with prejudice, filed by the government? If yes, please explain the circumstances and provide the citation**.

RESPONSE: No.

43. **As a Staff Attorney for PDS, please provide an approximate number of clients that you represented who:**
    a. **Were charged with felon-in-possession cases?**
    b. **Were charged with child sex crimes?**
    c. **Were charged with firearms trafficking?**

RESPONSE: I left PDS over 25 years ago. I do not remember how many clients I represented who were charged with felon-in-possession cases. I do not remember for certain if I represented anyone charged with child sex crimes but, to the best of my memory, I do not believe I did. Similarly, to the best of my recollection, I do not believe I represented anyone charged with firearms trafficking.

44. **As a public defender did you ever offer a Second Amendment defense of a client charged with a gun crime?**

RESPONSE: No.

45. **In your SJQ you co-authored a piece titled "Abortion Rights and the 1990 Court Reform Initiative." In it, you acknowledge that "Californians need not be affected by a *Roe* reversal. The constitutional right to an abortion was established in this state not by the 1973 decision of the United States Supreme Court in *Roe*, but by the 1969 decision of the California Supreme Court in *People v. Belous* (1969) 71 CAL.2d 954." Do you still agree that it would not affect abortion access in California if the Supreme Court overturned *Roe v. Wade*?**

RESPONSE: I co-wrote the article referenced in this question during a summer clerkship after my first year of law school over 30 years ago. The article provided a history of abortion rights in California as of approximately 1990 and discussed the possible impact of an initiative that was going to be on the 1990 ballot. Since that time, I have not reviewed the state of the caselaw or legislation regarding abortion in California.

46. **Under the Religious Freedom Restoration Act the federal government cannot "substantially burden a person's exercise of religion."**

    a. **Who decides whether a burden exists on the exercise of religion, the government or the religious adherent?**

    RESPONSE: To establish a prima facie case under the Religious Freedom Restoration Act, a plaintiff must establish two elements: (1) the activities the plaintiff claims are burdened by the government action are an "exercise of religion;" and (2) the government action "substantially burden[s]" the plaintiff's exercise of religion. 42 U.S.C.A. § 2000bb-1(a)). *See also Navajo Nation v. U.S. Forest Serv*., 535 F.3d 1058, 1068 (9th Cir. 2008). Should a plaintiff establish these two elements, the burden of persuasion shifts to the government to prove that the challenged government action is in furtherance of a "compelling governmental interest" and is implemented by "the least restrictive means." *Id.* While a court (or jury) will ultimately decide if the burden of proof has been met, the Supreme Court has noted that courts should neither act as "arbiters of scriptural interpretation," *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div*., 450 U.S. 707, 716 (1981), nor "undertake to dissect religious beliefs." *Id*. at 715. Accordingly, the "narrow function of a reviewing court" is to determine whether a party's asserted religious beliefs are "an honest conviction." *Thomas*, 450 U.S. at 715.

    b. **How is a burden deemed to be "substantial[]" under current caselaw? Do you agree with this?**

    RESPONSE: If confirmed as a district court judge, I would start by looking to Supreme Court and Ninth Circuit precedents. "Under RFRA, a 'substantial burden' is imposed only when individuals are forced to choose between following the tenets of their religion and receiving a governmental benefit [ ]or coerced to act contrary to their religious beliefs by the threat of civil or criminal sanctions [ ]." *Navajo Nation v. U.S. Forest Serv*., 535 F.3d 1058, 1069–70 (9th Cir. 2008). In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), the Supreme Court held that the Affordable Care Act imposed a substantial burden on the plaintiffs' exercise of religion because it required "that they engage in conduct that seriously violates their religious beliefs," and if they did not comply, they would have faced

"substantial economic consequences" in the form of "substantial" penalty assessments. *Id.* at 720-721. All Supreme Court and Ninth Circuit precedent will be binding upon me should I be confirmed. As a pending judicial nominee, it is inappropriate to opine on a matter that could possibly come before the court.

47. **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: The Supreme Court has stated, "[w]e are [ ] 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 County*, 140 S. Ct. 1731, 1754 (2020). If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court.

48. **Does illegal immigration impose costs on border communities?**

RESPONSE: I have not studied the issue of the cost of immigration on border communities and any costs are best weighed by policymakers. If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter and including cases involving immigration. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law.

49. **When was the last time you visited the U.S.-Mexico border?**

RESPONSE: I believe I last visited the US-Mexico border when I was in middle school.

50. **When was the last time you visited the U.S.-Mexico border outside of a port of entry?**

RESPONSE: I have never visited the US-Mexico border outside of a port of entry.

51. **In a November 2020 ACLU of Washington letter, you wrote that:**

[t]he work of defending our rights and fighting for process started long before the current president was sworn in—and it won't end when he leaves office in January. You have our vow that we will continue fighting for your right and holding our leaders accountable, regardless of political party. The ACLU sued the Trump administration and his predecessor's administration countless times. Our approach to the Biden administration will be no different.

a. **How many letters has the ACLU of Washington (or have you) written on behalf of the thousands of unaccompanied minors flooding the border?**
i
RESPONSE: As I explained in response to Question 23, I did not draft, review, or edit the letter mentioned in this question. For the reasons stated in response to Questions 23.c. and 30.a., I do not know the answer to this question with regard to the ACLU of Washington. I have not written any letters on this subject.

b. **How many lawsuits against the Biden Administration has the ACLU of Washington (or have you) filed on behalf of the thousands of unaccompanied minors flooding the border?**

RESPONSE: For the reasons stated in response to Questions 23.c. and 30.a., I do not know the answer to this question with regard to the ACLU of Washington. I have not filed any lawsuits on this subject.

c. **How many meetings has the ALCU of Washington requested with the Biden Administration "Border Czar," Kamala Harris?**

RESPONSE: For the reasons stated in response to Questions 23.c. and 30.a., I do not know the answer to this question with regard to the ACLU of Washington.

52. **Do Blaine Amendments violate the Constitution?**

RESPONSE: Blaine Amendments involve the question of public funding for religious schools. As a pending judicial nominee, it would be inappropriate to opine on a matter that could possibly come before the court. If confirmed as a district court judge and were a Blaine Amendment issue to arise, I would start by looking to Supreme Court precedent such as *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020). I would be bound by the relevant Supreme Court and Ninth Circuit precedents on this issue.

53. **Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).**

RESPONSE: Washington has a judicial selection commission. Senators Murray and Cantwell engaged a bipartisan committee to screen and interview candidates, and the committee provided the senators with a list of candidates they recommended for the position. On January 3, 2021, I submitted an application, and I interviewed with the committee on February 11, 2021.

I interviewed with the senior executive team for Senator Murray on February 24, 2021 and Senator Cantwell on February 26, 2021. Senator Murray interviewed me on March 8, 2021.

On March 9, 2021, I interviewed with attorneys from the White House Counsel's Office. Since March 12, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 29, 2021, the President announced his intent to nominate me, and my nomination was submitted to the Senate.

54. **During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice? If so, what was the nature of those discussions?**

    a. **Did anyone do so on your behalf?**

    RESPONSE: I neither spoke with anyone associated with this organization or known subsidiaries nor had anyone do so on my behalf.

55. **During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society? If so, what was the nature of those discussions?**

    a. **Did anyone do so on your behalf?**

    RESPONSE: I neither spoke with anyone associated with this organization or known subsidiaries nor had anyone do so on my behalf.

56. **During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

    a. **Did anyone do so on your behalf?**

    RESPONSE: I neither spoke with anyone associated with this organization or known subsidiaries nor had anyone do so on my behalf.

57. **During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundation. If so, what was the nature of those discussions?**

    a. **Did anyone do so on your behalf?**

    RESPONSE: I neither spoke with anyone associated with this organization nor had anyone do so on my behalf.

58. **List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.**

RESPONSE: On March 9, 2021, I interviewed with attorneys from the nominations team for the White House Counsel's Office. Since that time, I have been in regular contact with the Office of Legal Policy at the Department of Justice and the White House regarding my nomination.

59. **Please explain, with particularity, the process whereby you answered these questions.**

RESPONSE: The process I used to answer these questions was as follows: I carefully read each question, drew from my experience where appropriate, conducted legal research where needed, and drafted answers to each question. I shared my draft answers with employees of the Office of Legal Policy at the Department of Justice and received their feedback. I then re-reviewed and finalized the response to each question based on my independent judgment.

Nomination of Tana Lin
to be United States District Judge for the Western District of Washington Questions for the Record
Submitted June 16, 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. **Was *D.C. v. Heller*, 554 U.S. 570 (2008) rightly decided?**

   RESPONSE: It is generally not appropriate for a judicial nominee to comment on the results or reasoning in Supreme Court decisions. All Supreme Court precedent will be binding upon me if I am confirmed as a district court judge.

4. **Is the Second Amendment right to keep and bear arms an individual right belonging to individual persons, or a collective right that only belongs to a group such as a militia?**

   RESPONSE: The Supreme 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 Supreme Court also has held that the Second Amendment right to keep and bear arms is a fundamental right that applies to the states as well the federal government. See *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010).

5. **Please describe what you believe to be the Supreme Court's holding in *Greer v. United States*, 593 U.S. _____ (2021).**

   RESPONSE: 18 U.S.C. § 922(g)(1) prohibits the possession of firearms by those who have been convicted of a crime punishable by more than one year in prison which is the basis for a federal "felon-in-possession" charge. In *Greer*, the Supreme Court established that in order for a defendant convicted of being a felon-in-possession to obtain a new trial or plea hearing under a plain error standard for unpreserved claims, the defendant must "make[ ] a sufficient argument or representation on appeal that he would have

presented evidence at trial that he did not in fact know he was a felon." *Greer v. U.S.*, No. 19-8709, 2021 WL 2405146, at *7 (U.S. June 14, 2021).

6. **Please describe what you believe to be the Supreme Court's holding in *Terry v. United States*, 593 U.S. _____ (2021).**

   RESPONSE: In 2010, Congress passed the Fair Sentencing Act, which reduced the disparity between crack and cocaine sentences and also eliminated the mandatory five-year sentence for crack. In 2018, Congress passed the First Step Act, which made sentencing reforms retroactive and, therefore, past offenders eligible for resentencing. In *Terry*, the Supreme Court held that an offender is eligible for a sentence reduction under the First Step Act only if he previously received a sentence for a "covered offense," which is "a violation of a Federal criminal statute, the statutory penalties for which were modified by" certain provisions in the Fair Sentencing Act. *Terry v. U.S.*, No. 20-5904, 2021 WL 2405145, at *4 (U.S. June 14, 2021) (internal quotation marks and citations omitted). As the penalty for the subsection under which Defendant had been convicted had not changed under the Fair Sentencing Act, the Supreme Court affirmed that the Defendant was not entitled to relief.

7. **Please describe what you believe to be the Supreme Court's holding in *Jones v. Mississippi*, 593 U.S. _____ (2021).**

   RESPONSE: The Supreme Court held that the Eighth Amendment does not require the sentencing judge to make a separate factual finding of permanent incorrigibility, *Jones v. Mississippi*, 141 S. Ct. 1307, 1318–19 (2021), or an explanation on the record with an implicit finding of permanent incorrigibility, *id.* at 1321, before imposing a life-without-parole sentence on an individual convicted of a murder committed before the age of eighteen.

8. **Please describe what you believe to be the Supreme Court's holding in *Tandon v. Newsom*, 593 U.S. _____ (2021).**

   RESPONSE: The Supreme Court held that the "myriad exceptions and accommodations" for secular versus comparable religious activities contained in the State of California's restrictions on private gatherings during the COVID-19 pandemic triggered the strict scrutiny standard of review. *Tandon v. Newsom*, 141 S. Ct. 1294, 1298 (2021). Further, the State should be required to explain why it could not safely permit at-home worshipers to gather in larger numbers while using the precautions used in secular activities. *Id.* at 1297.

9. **Please describe what you believe to be the Supreme Court's holding in *Sanchez v. Mayorkas*, 593 U.S. _____ (2021).**

RESPONSE: Pursuant to 8 U.S.C. § 1255, a "nonimmigrant" (or foreign national lawfully present in this country on a designated, temporary basis) can obtain an "[a]djustment of status" to become a Legal Permanent Resident. In *Sanchez*, the Supreme Court held that an individual who was not initially lawfully admitted to the United States is ineligible for a status adjustment to Legal Permanent Resident under Section 1225. *Sanchez v. Mayorkas*, No. 20-315, 2021 WL 2301964, at *5 (U.S. June 7, 2021). The petitioner received temporary protected status at some point after entering the United States but since he originally entered the country illegally, he cannot become a permanent resident.

10. **What is your view of arbitration as a litigation alternative in civil cases?**

RESPONSE: Arbitration can be an appropriate and useful alternative to litigation in civil cases.

11. **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 process I used to answer these questions was as follows: I carefully read each question, drew from my experience where appropriate, conducted legal research where needed, and drafted answers to each question. I shared my draft answers with employees of the Office of Legal Policy at the Department of Justice and received their feedback. I then re-reviewed and finalized the response to each question based on my independent judgment.

12. **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 Tana Lin, Nominee for the United States District Court for the Western District of Washington

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 would approach each case first and foremost with an open mind and also with humility as well as a recognition that the role of a judge is a limited one. If I were to be confirmed, my process as a district court judge would be to carefully look at the facts

of the specific case before me, impartially apply the applicable law, and limit my findings to those issues raised by the parties. I have not studied the judicial philosophies of justices on the Warren, Burger, Rehnquist or Roberts courts and am, therefore, without sufficient knowledge to be able to draw any analogy with what I have described as mine.

2. **Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

RESPONSE: I believe the Constitution was drafted to be an enduring document that expressed core principles that would act as a consistent guide over time. If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court and the Ninth Circuit. This includes a duty to apply all precedents that pertain to methods of constitutional interpretation.

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: As a pending judicial nominee, it would be inappropriate for me to comment on this question. If confirmed as a federal district court judge, I would be bound by precedents of the Supreme Court regardless of its size or composition.

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: I have never used a firearm. The only times I have handled a firearm are when one was evidence in a case while I was a public defender. On those occasions, I was either inspecting the firearm during an investigation or at trial prior to the entry of the firearm into evidence.

7. **Is the ability to own a firearm a personal civil right?**

RESPONSE: The Supreme 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 Supreme Court also has held that the Second Amendment right to keep and bear arms is a fundamental right that applies to the states as well the federal government. See

McDonald v. City of Chicago, 561 U.S. 742, 750 (2010). If confirmed as a district court judge, I will be bound to faithfully apply these binding precedents.

8. **Is the criminal justice system systemically racist?**

RESPONSE: I am aware of social science research that discusses the disparate impact that certain laws have on certain demographic groups as well as the 2017 United States Sentencing Commission Report that found continuing disparities in sentencing based upon demographic differences, even after controlling for a wide variety of sentencing factors. However, if I were to be confirmed as a district court judge, my job will be to consider the specific facts of the specific case before me and apply the applicable law.

9. **When you were active in suing the Trump Administration, you said that courts could consider the campaign statements and other statements from the President when assessing the legality of an executive order. Specifically, you said: "We have heard every word the President, his advisors, and administration have said. There are no take backs." Does this standard apply to President Biden? If not, please explain why.**

RESPONSE: I was lead counsel in only one lawsuit against the Trump administration: *Doe v Trump*, Case No. 2:17-cv-00178-JLR (W.D. Wash.). The case alleged that Executive Order 13769 (as well as the subsequent related executive orders and proclamation) violated the Constitution, the Immigration and Nationality Act, and the Administrative Procedure Act. One of the legal issues in that case was the fact that the President had proffered one rationale for the Executive Order — national security — but certain statements of his suggested that the rationale for the Executive Order was animus against people of a specific faith and national origin. Thus, the comments by the President were very much at issue in the case. Statements by President Biden and his advisors may likewise be relevant to assessing the legality of an executive order, though the relevance of any statements would depend on the specific facts of any case, the issues and claims raised by the parties, and the applicable law.

Senator Josh Hawley
Questions for the Record

Tana Lin
Nominee, U.S. District Court for the Western District of Washington

1. **Under Supreme Court and U.S. Court of Appeals for the Ninth Circuit precedent, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?**

   RESPONSE: In order for a petitioner to succeed on an Eighth Amendment method-of-execution claim, the petitioner must establish that: (1) the State's lethal injection protocol creates a demonstrated risk of severe pain;" and (2) "the risk is substantial when compared to the known and available alternatives." *Baze v. Rees*, 553 U.S. 35, 61 (2008). *See also Lopez v. Brewer*, 680 F.3d 1068, 1073 (9th Cir. 2012). The Supreme Court reaffirmed these requirements in *Glossip v. Gross*, 576 U.S. 863, 877-78 (2015) and also clarified that a petitioner must "identify a known and available alternative method of execution that entails a lesser risk of pain." *Id.* at 867.

2. **Under the Supreme Court's holding in *Glossip v. Gross*, is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?**

   RESPONSE: Yes. A petitioner must "identify a known and available alternative method of execution that entails a lesser risk of pain." *Glossip v. Gross*, 576 U.S. 863, 867 (2015).

3. **Has the Supreme Court or the U.S. Court of Appeals for the Ninth Circuit ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?**

   RESPONSE: No. To the contrary, the Supreme Court warned that the task of how to "harness DNA's power to prove innocence without unnecessarily overthrowing the established system of criminal justice" belongs to the legislature. *Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 62 (2009). The Court further held there was no substantive due process right to DNA evidence through a habeas petition. *Id* at 72.

4. **Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?**

   RESPONSE: No.

5.

a. Under Supreme Court and U.S. Court of Appeals for the Ninth Circuit precedent, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.

RESPONSE: Assuming the governmental action is by a state and is, in fact, neutral, the Supreme Court has held that "a law that burdens religious practice need not be justified by a compelling governmental interest if it is neutral and of general applicability." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 521 (1993). The Supreme Court has recently clarified that a law is not neutral and generally applicable if it "treat[s] *any* comparable secular activity more favorably than religious exercise *Tandon v. Newsom*, 141 S. Ct. 1294, 1296, (2021) (emphasis in original) "If a law is neutral and of general applicability, then the law need only survive rational basis review, even if it "'has the incidental effect of burdening a particular religious practice.'" *S. Bay United Pentecostal Church v. Newsom*, 985 F.3d 1128, 1140 (9th Cir. 2021) (quoting *Church of the Lukumi*, 508 U.S. at 531). However, the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc et seq., prohibits a state or local government from substantially burdening the religious exercise of institutionalized persons unless the government demonstrates that imposition of the burden furthers a compelling governmental interest and is the least restrictive means available to further that interest. *See, e.g., Cutter v. Wilkinson*, 544 U.S. 709, 712, (2005); *Fuqua v. Ryan*, 890 F.3d 838, 848 (9th Cir. 2018).

b. Under Supreme Court and U.S. Court of Appeals for the Ninth Circuit precedent, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.

RESPONSE: State governmental action that is not neutral or of general applicability and discriminates against a religious group or religious belief is subject to strict scrutiny. *See e.g., Fulton v. City of Philadelphia*, No. 19-123, 2021 WL 2459253 (U.S. June 17, 2021); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993); *S. Bay United Pentecostal Church v. Newsom*, 985 F.3d 1128, 1140 (9th Cir. 2021). A government policy can survive strict scrutiny only if it advances "interests of the highest order" and is narrowly tailored to achieve those interests. *Fulton*, 2021 WL 2459253, at *8 (citing *Church of the Lukumi*, 508 U.S. at 546).

c. What is the standard in the U.S. Court of Appeals for the Ninth Circuit for evaluating whether a person's religious belief is held sincerely?

RESPONSE: The Ninth Circuit is bound by Supreme Court precedent, and the Supreme Court has noted that courts should neither act as "arbiters of scriptural interpretation," *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 716

(1981), nor "undertake to dissect religious beliefs." *Id.* at 715. *See also Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014) (courts must not decide the plausibility of a religious claim); *Oklevueha Native Am. Church Of Hawaii, Inc. v. Lynch*, 828 F.3d 1012, 1016 (9th Cir. 2016) (same). Determining what is a religious belief or practice is "more often than not a difficult and delicate task, ... the resolution of [which] is not to turn upon a judicial perception of the particular belief or practice in question." *Thomas*, 450 U.S. at 714. *See also Shilling v. Crawford*, 377 F. App'x 702, 704 (9th Cir. 2010). Accordingly, the "narrow function of a reviewing court" is to determine whether a party's asserted religious beliefs are "an honest conviction." *Thomas*, 450 U.S. at 715.

6. What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller?*

RESPONSE: The Supreme Court held in *District of Columbia v. Heller* that the Second Amendment confers "an individual right to keep and bear arms." 554 U.S. 570, 595 (2008). This right is not limited to the carrying of arms in a militia. *Id.* at 586. Nor is the right an unlimited right. *Id.* at 595 and 626-27. Further, the Court also held that the Second Amendment protects the possession of an operable handgun in one's home for the purpose of immediate self-defense." *Id.* at 635.

7. Please state whether you agree or disagree with the following statement and explain why: "Absent binding precedent, judges should interpret statutes based on the meaning of the statutory text, which is that which an ordinary speaker of English would have understood the words to mean, in their context, at the time they were enacted."

RESPONSE: In the absence of any controlling precedent, if confirmed to be a judge, I would first look to the text of the statute. If the terms were clear and unambiguous, my inquiry would end, and I would apply the terms of the statute to the facts of the case. If the terms were ambiguous, I would follow the rules of statutory construction, including reviewing the broader statutory context and how terms were used. I would also review Supreme Court and Ninth Circuit precedent interpreting related or analogous statutory provisions. If necessary, I would consider the legislative history of the statute and also consult other federal or state court decisions as persuasive, but not binding, authority.

8. What criteria would you take into account in determining whether to grant a nationwide injunction?

RESPONSE: A plaintiff seeking a preliminary injunction must establish that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *See, e.g., Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 668 (9th Cir. 2021). When the government is a party, the equities and public interest factors merge. *Id.* (citing *Nken v.*

Holder, 556 U.S. 418, 435 (2009). With regard to the scope of an injunction, the relief provided should be "no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs before the court…Where relief can be structured on an individual basis, it must be narrowly tailored to remedy the specific harm shown, but there is no general requirement that an injunction affect only the parties in the suit." *E. Bay Sanctuary Covenant*, 993 F.3d at 680. (internal quotations marks and citations omitted). If confirmed as a district court judge, I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) apply these precedents as well as any other relevant Supreme Court or Ninth Circuit rulings with regard to nationwide injunctions.

Questions for the Record for Tana Lin
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
Tana Lin, W.D. Washington

1. **How would you describe your judicial philosophy?**

RESPONSE: I would approach each case first and foremost with an open mind and also with humility as well as a recognition that the role of a judge is a limited one. If I were to be confirmed, my process as a district court judge would be to carefully look at the facts of the specific case before me, impartially apply the applicable law, and limit my findings to those issues raised by the parties.

2. **What sources would you consult when deciding a case that turned on the interpretation of a federal statute?**

RESPONSE: If confirmed to be a judge and the Supreme Court or Ninth Circuit had previously interpreted the statute in question, then I would be bound to follow that precedent. In the absence of any controlling precedent, I would first look to the text of the statute. If the terms were clear and unambiguous, my inquiry would end, and I would apply the terms of the statute to the facts of the case. If the terms were ambiguous, I would follow the rules of statutory construction, including reviewing the broader statutory context and how terms were used. I would also review Supreme Court and Ninth Circuit precedent interpreting related or analogous statutory provisions. If necessary, I would consider the legislative history of the statute and 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 the interpretation of a constitutional provision?**

RESPONSE: If confirmed to be a judge and the Supreme Court or Ninth Circuit had previously interpreted the constitutional provision in question, then I would be bound to follow that precedent. In the event that I am presented with a constitutional issue of first impression, I would look at the text of the constitutional provision, examine Supreme Court and Ninth Circuit cases to determine the method of interpretation utilized for the particular provision, and do my best to interpret the provision in a manner consistent with the Supreme Court and Ninth Circuit methodology. If necessary, I would consider other federal or state court decisions as persuasive, but not binding, authority.

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 will be bound to faithfully apply all binding precedents of the Supreme Court and the Ninth Circuit. This includes a duty to apply all precedents that pertain to methods of constitutional interpretation.

5. **What are the constitutional requirements for standing?**

RESPONSE: The Supreme Court has held that to meet the Article III constitutional requirements for standing, plaintiffs must demonstrate that (1) they have suffered an "injury in fact" that is "concrete and particularized" and "actual or imminent, not 'conjectural' or 'hypothetical;'" (2) the injury is fairly traceable to the defendant's conduct; and (3) it is " 'likely,' as opposed to merely 'speculative,' that a favorable decision will redress the injury." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (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: Article III standing, as described in response to Question 5, makes up the "irreducible constitutional minimum of standing." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

"Prudential jurisdiction" or "prudential standing" is a non-constitutional doctrine that 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.'" *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126, (2014). This has also been referred to as "statutory standing," a term the Supreme Court preferred because it places the focus on the statute. *Id.* at 128 n.4. However, the Supreme Court warned that the term "statutory standing" is still "misleading" because "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." *Id.* (internal quotation and citation omitted).

7. **How would you define the doctrine of administrative exhaustion?**

RESPONSE: The doctrine of administrative exhaustion means that an individual challenging an agency decision must first pursue available remedies through the agency's process before seeking judicial review. *See e.g. Myers v. Bethlehem Shipbuilding Corp*. 303 U.S. 41 (1938).

8. **Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?**

RESPONSE: Yes. As noted by the Supreme Court, "the constitution, after enumerating certain specific powers, expressly gives to congress the 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.' *McCulloch v. State*, 17 U.S. 316, 353 (1819). An example of an implied power of Congress is the power to establish a national bank. *Id.*

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 Supreme Court and Ninth Circuit precedent. If there was no case on point, then I would look to the methodology employed by the Supreme Court and the Ninth Circuit in similar cases and apply those principles to guide my decision. For example, if the issue involved the Commerce Clause, I would start by looking to *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000), in which the Supreme Court looked to the text of the Constitution as well as prior precedent regarding the Commerce Clause.

10. **Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?**

RESPONSE: Yes. The Supreme Court has held that the Constitution protects certain rights that are not expressly enumerated in the Constitution. A few examples of these rights are the right to privacy, *see Griswold v. Connecticut*, 381 U.S. 479 (1965); the right to marry, *see Loving v. Virginia*, 388 U.S. 1 (1967); the right to direct the education of one's children, *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); and the right to travel. *See Saenz v. Roe*, 526 U.S. 489 (1999).

11. **What rights are protected under substantive due process?**

RESPONSE: The Supreme Court has held that a right is fundamental for purposes of the substantive due process clause—even when not explicitly expressed in the text of the Constitution—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." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). Examples of such rights are listed in 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: If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law. Further, I will faithfully apply all binding Supreme Court and Ninth Circuit precedents. Therefore, my personal opinions regarding the issue of substantive due process will be of no moment.

13. **What are the limits on Congress's power under the Commerce Clause?**

RESPONSE: The Supreme Court has identified three broad categories of activity that Congress may regulate under its commerce power: (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).

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 held that suspect classifications are those that are "so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy" and should be subjected to strict scrutiny under the Equal Protection Clause. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1995). Examples of suspect classifications are those based upon race, alienage, national origin, gender, and religion. *Id.*; *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 of powers play in the Constitution's structure?**

RESPONSE: The separation of powers created by our Constitution is a bedrock of our democracy. In order to ensure that power is not concentrated into any single branch of government and to promote liberty by having the three branches act independently of one another, the Constitution divided power between the various branches of government: the legislative branch is responsible for enacting laws, the executive branch is responsible for implementing and administering the public policy enacted by the legislative branch, and the judicial branch is responsible for interpreting and applying the law.

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 would use the same procedure enumerated in response to Question 9.

17. **What role should empathy play in a judge's consideration of a case?**

RESPONSE: As required by the judicial oath of office, the role of a district court judge is to adjudicate each case impartially and objectively 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: Judges should neither invalidate laws that are constitutional nor uphold laws that are unconstitutional.

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: This issue did not arise during my thirty years of practice, so I have not had the occasion to reflect on it since I was a law student. If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court.

20. **How would you explain the difference between judicial review and judicial supremacy?**

RESPONSE: I am not familiar with the term "judicial supremacy." Based upon my research, it appears that the term "judicial review" in the context of "judicial supremacy" discussions refers to the principle that the authority to interpret the Constitution resides in each branch of government. Judicial supremacy appears to refer to the principle that the Supreme Court's interpretation of the Constitution is authoritative over the other two branches of government.

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: Elected officials take an oath to uphold the Constitution, and their independent judgment as to what the Constitution requires should inform their decisions in passing, enforcing, or executing the laws. However, elected officials should abide controlling interpretations of laws by the Supreme Court.

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 features that Hamilton cited as rendering the courts "least dangerous" are part of what makes judicial independence possible. The function of the courts is limited to entering impartial judgment regarding the rights and responsibilities of the parties in those cases and not reaching beyond to solve broader social problems.

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 confirmed to be a judge and the Supreme Court or Ninth Circuit statute had previously interpreted the statute in question, then I would be bound to follow that precedent. In the absence of any controlling precedent, I would first look to the text of the statute. If the terms were clear and unambiguous, my inquiry would end, and I would apply the terms of the statute to the facts of the case. If the terms were ambiguous, I would follow the rules of statutory construction, including reviewing the broader statutory context and how terms were used. I would also review Supreme Court and Ninth Circuit precedent interpreting related or analogous statutory provisions. If necessary, I would consider the legislative history of the statute and also consult other federal or state court decisions as persuasive, but not 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 district court judge is bound to apply controlling precedent of the Supreme Court and the circuit in which the judge sits regardless of whether the judge agrees with the decision or rationale provided. Whether a precedent should be extended is a case-specific determination, dependent upon the facts of the particular case, the specific issues raised by the parties, and how analogous or "on all fours" the case is with the precedent.

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. Federal courts are courts of limited jurisdiction. If the jurisdictional requirements are not met, then a court has no authority over the case.

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: Section 5H1.10 of the Sentencing Guidelines Manual states that race, sex, national origin, creed, religion, and socio-economic status "are not relevant in the determination of a sentence." The factors to be considered when sentencing an individual are set forth in Section 3553(a) of Title 18 of the United States Code. If confirmed as a district judge, I would consider all of the factors identified in the statute, consult the Sentencing Guidelines Manual, and consider the submissions of the parties.

27. **In May 2020, you signed a statement by a group called DOJ Alumni condemning the Department of Justice's decision to dismiss charges against General Michael Flynn and urging District Court Judge Sullivan to "closely examine the Department's stated rationale for dismissing the charges . . . and to deny the motion and proceed with sentencing if appropriate."**

a **Do you believe it is the proper role of an Article III judge to determine whether a criminal prosecution should proceed after the Department of Justice has asked a court to dismiss the case?**

RESPONSE: Judges take an oath to be impartial, and Judicial Canon 1 of the Code of Conduct for United States Judges requires them to uphold the independence and integrity of the judiciary. Article III judges must impartially and independently evaluate the facts of each specific case before them in light of the issues and claims raised by the parties and apply the applicable law.

28. **In her dissent in In re: Michael T. Flynn, Judge Neomi Rao stated "by allowing the district court to scrutinize 'the reasoning and motives' of the Department of Justice, the majority ducks our obligation to correct judicial usurpations of executive power and leaves Flynn to twist in the wind while the district court pursues a prosecution without a prosecutor." Would you agree that Judge Sullivan's attempts to keep the prosecution of General Flynn alive even though the Justice Department had dismissed charges constitutes a "judicial usurpation of executive power?"**

RESPONSE: As a pending judicial nominee, it would be inappropriate for me to comment on my personal opinion regarding the actions and/or opinions of other judges. Judges take an oath to be impartial, and Judicial Canon 1 of the Code of Conduct for United States Judges requires them to uphold the independence and integrity of the judiciary. Article III judges must impartially and independently evaluate the facts of each specific case before them in light of the issues and claims raised by the parties and apply the applicable law.

29. **At a Seattle Journal for Social Justice Annual Banquet on April 21, 2017, you stated "[i]n the last three short months of this administration, I feel like we've already gone back at least a few decades as far as progress on social justice issues. We have a lot of work to do." Could you explain what you meant by this statement?**

RESPONSE: I am a person of color who has faced prejudice, including physical and verbal bullying based solely upon my immutable physical characteristics. I feared that certain rhetoric of the previous administration categorically demonized certain ethnic groups in ways that could cause fear and potentially contribute to violence against those groups, as demonstrated by the rise in violence against Muslims at the time I gave the speech.

30. **Do you believe that it would be proper for an Article III judge to use her position to advance social justice issues?**

RESPONSE: The job of an Article III judge is to do justice in each individual case that comes before her by resolving each case based solely on the facts of the specific case, the issues and claims raised by the parties, and the applicable law. However, judges should keep in mind that they also function as role models and also have a duty to ensure that each person that comes through the courthouse doors is treated with dignity, heard, and has equal access to the services provided by the court.

31. **Can you point to any evidence from your legal career that will assure future litigants that you can set-aside your personal views and act as an impartial jurist?**

RESPONSE: In my nearly 30 years of practice, I have served as an advocate in many different contexts – *e.g.*, for individuals, the federal government, and various organizations. If confirmed as a district court judge, I will first and foremost remember that I will be in a completely different role: one that requires me to be impartial. I hope that my reputation as an advocate with both colleagues and opposing counsel is as a lawyer who has the highest ethics and integrity, advocates for her clients well within the bounds of the law, and is able to see the other side's perspective. Finally, I was grateful that the Standing Committee on the Federal Judiciary of the American Bar Association—which evaluates nominees for integrity, professional competence and judicial temperament—unanimously rated me "Well Qualified."

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
June 9, 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, demonstrations, or other events at which you or other participants have willfully damaged public or private property?**

   RESPONSE: No.

3. **How would you describe your judicial philosophy?**

   RESPONSE**:** I would approach each case first and foremost with an open mind and also with humility as well as a recognition that the role of a judge is a limited one. If I were to be confirmed, my process as a district court judge would be to carefully look at the facts of the specific case before me, impartially apply the applicable law, and limit my findings to those issues raised by the parties.

4. **Would you describe yourself as an originalist?**

   RESPONSE: I do not ascribe to a particular label because if confirmed as a district court judge, I would be bound to faithfully apply all binding precedents of the Supreme Court and Ninth Circuit regardless of whether those precedents are fairly described as "originalist" or not.

5. **Would you describe yourself as a textualist?**

   RESPONSE: Please see my response to Question 4.

6. **Do you believe the Constitution is a "living" document? Why or why not?**

   RESPONSE: I believe the Constitution was drafted to be an enduring document that expressed core principles that would act as a consistent guide over time. If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court and the Ninth Circuit. This includes a duty to apply all precedents that pertain to methods of constitutional interpretation.

7. **Please name the Supreme Court Justice or Justices appointed since January 20, 1953 whose jurisprudence you admire the most and explain why.**

RESPONSE: I have not studied the judicial philosophies or specific jurisprudence of Supreme Court Justices appointed since 1953 and am, therefore, without sufficient knowledge to be able to state which one(s) I admire "the most.".

8. **Was Marbury v. Madison correctly decided?**
9. **Was Lochner v. New York correctly decided?**
10. **Was Brown v. Board of Education correctly decided?**
11. **Was Bolling v. Sharpe correctly decided?**
12. **Was Cooper v. Aaron correctly decided?**
13. **Was Mapp v. Ohio correctly decided?**
14. **Was Gideon v. Wainwright correctly decided?**
15. **Was Griswold v. Connecticut correctly decided?**
16. **Was South Carolina v. Katzenbach correctly decided?**
17. **Was Miranda v. Arizona correctly decided?**
18. **Was Loving v. Virginia correctly decided?**
19. **Was Katz v. United States correctly decided**
20. **Was Roe v. Wade correctly decided?**
21. **Was Romer v. Evans correctly decided?**
22. **Was United States v. Virginia correctly decided?**
23. **Was Bush v. Gore correctly decided?**
24. **Was District of Columbia v. Heller correctly decided?**
25. **Was Crawford v. Marion County Election Bord correctly decided?**
26. **Was Boumediene v. Bush correctly decided?**
27. **Was Citizens United v. Federal Election Commission correctly decided?**
28. **Was Shelby County v. Holder correctly decided?**
29. **Was United States v. Windsor correctly decided?**
30. **Was Obergefell v. Hodges correctly decided?**

RESPONSE TO QUESTIONS 8-30**:** It is generally not appropriate for a judicial nominee to comment on the results or reasoning in Supreme Court decisions. All Supreme Court precedent will be binding upon me if I am confirmed as a district court judge. I am, however, aware that prior judicial nominees have made exceptions to the practice of declining comment on the merits of Supreme Court decisions to acknowledge that the principles underlying the following three cases are so foundational that they are beyond dispute and unlikely to be revisited by the Supreme Court: *Marbury v. Madison*, *Brown v. Board of Education*, and *Loving v. Virginia*. With this caveat, I believe that I can state that I believe these three cases were correctly decided without violating my duties under the Judicial Canons. I reiterate with respect to all other cases mentioned, to the extent a case is binding Supreme Court precedent, I would follow it regardless.

31. **In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate 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 appellate court to reaffirm its own precedent is not something upon which I would rule as a district court judge if I were to be confirmed. If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court and Ninth Circuit.

32. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for an appellate 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 31.

33. 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? If so, how so?

RESPONSE**:** No. A judge is to resolve the particular case or controversy in front of her. With regard to sentencing, the factors to be considered are set forth in 18 U.S.C. §3553(a). One of these factors is, "[t]he 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). Further, section 5H1.10 of the Sentencing Guidelines Manual statesthat race, sex, national origin, creed, religion, and socio-economic status "are not relevant in the determination of a sentence." If confirmed as a district judge, I would consider all of the factors identified in the statute, consult the Sentencing Guidelines Manual, and consider the submissions of the parties.

Questions for the Record for
Senator Thom Tillis for
Questions for Ms. Tana Lin

1. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   RESPONSE: Yes. The Code of Conduct for United States Judges requires judges to be independent, impartial, and to uphold the integrity of the judiciary. Accordingly, 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 in two situations: (1) when a judge resolves cases consistent with his or her personal views or (2) when a judge reaches beyond the issues raised by the parties in issuing his or her decision. Pursuant to 28 U.S.C. § 453, judges take an oath to be impartial, and Judicial Canon 1 of the Code of Conduct for United States Judges require them to uphold the independence and integrity of the judiciary. Therefore, judges must resolve only the cases and controversies before them and must do so in a manner that is consistent with the law, regardless of the judge's own personal views of the matter. As I have defined judicial activism, it is not appropriate.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   RESPONSE: Pursuant to 28 U.S.C. § 453, judges take an oath to be impartial, and the Code of Conduct for United States Judges requires judges to be independent, impartial, and to uphold the integrity of the judiciary.

4. **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 by the applicable law as applied to the facts of the specific case before her and the issues raised by the parties.

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 may be contrary to a judge's own personal view of the matter. However, the impartial, equitable, and consistent application of the law to everyone is critical for maintaining public confidence in the judicial system. Further, a judge takes an oath to be impartial and uphold the integrity of the judiciary, which includes setting aside any personal opinions and faithfully applying the law. Ultimately, if I am confirmed as a district court judge, I hope that I will have clearly explained the basis for each ruling I will make and everyone who appears before me will feel respected, listened to, and genuinely heard.

6. Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?

RESPONSE: No. The Code of Conduct for United States Judges requires judges to be independent, impartial, and to uphold the integrity of the judiciary. Accordingly, a judge's own politics or policy preferences should play no role in her interpretation and application of the law.

7. What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?

RESPONSE: If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court and the Ninth Circuit. This includes a duty to apply all precedents that pertain to the Second Amendment individual right to keep and bear arms.

8. 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 as a district court judge, I will follow the same process for considering cases, regardless of the subject matter. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law. With regard to the pandemic-related question, I would start by looking to *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), and *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68 (2020), for guidance.

9. 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: If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law. Under binding Supreme Court and Ninth Circuit precedents, law enforcement officers are entitled to qualified immunity unless (1) they violated a federal constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time." *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018). *See also e.g., Tobias v. Arteaga*, 996 F.3d 571, 579 (9th Cir. 2021).

10. 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: Whether sufficient protections is provided for law enforcement officers with respect to the issue of qualified immunity is a policy question within the purview of the legislative branch, not the judicial branch. Further, as a pending judicial nominee, it would be inappropriate for me to comment on my personal beliefs regarding the current state of qualified immunity jurisprudence. If confirmed as a district court judge, I will be bound to faithfully apply all binding precedents of the Supreme Court and the Ninth Circuit, including any precedent pertaining to qualified immunity.

11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

RESPONSE: The proper scope of qualified immunity is a policy question within the purview of the legislative branch, not the judicial branch.

12. 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?

RESPONSE: As a pending judicial nominee, it would be inappropriate for me to comment on my personal opinion regarding Supreme Court jurisprudence. I am aware that Senator Tillis has been working on the issue of reforming 35 U.S.C. § 101 regarding patent eligibility. However, I have not litigated any patent cases in my nearly thirty years of practice. If confirmed as a district court judge, I will follow the same process for considering cases, regardless of the subject matter and including cases involving immigration. I will (1) evaluate the facts of the particular case (2) consider the claims, issues, and arguments presented by the parties and (3) carefully research, analyze, and apply the applicable law. I also will be bound to faithfully apply all binding precedents of the Supreme Court.

13. 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: Please see my response to Question 12. If confirmed as a district court judge and were this issue to arise, I would start by looking to Supreme Court precedents such as *Alice Corp. Pty. v. CLS Bank Int'l,* 573 U.S. 208, 217 (2014), and *Mayo Collaborative Servs. v. Prometheus Lab'ys, Inc*., 566 U.S. 66, 79, 132 S. Ct. 1289, 1298, 182 L. Ed. 2d 321 (2012). The Supreme Court set out a two-step framework in *Mayo* for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts: (1) determine whether the claims at issue are directed to one of those patent-ineligible concepts; and (2) if so, then ask, "'[w]hat else is there in the claims before us?'" *Alice Corp. Pty*, 573 U.S. at 271 (quoting *Mayo Collaborative Servs.*, 566 U.S. at 78). To answer the question posed in step two, the Supreme Court "consider[ed] the elements of each claim both individually and 'as an

ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application." *Alice Corp. Pty*, 573 U.S. at 271 (quoting *Mayo Collaborative Servs.*, 566 U.S. at 78).

Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Veronica Rossman
Nominee to the Court of Appeals for the Tenth Circuit
June 16, 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?

Response: I have worked exclusively on civil matters for nearly half of my 20-year legal career.

First, I spent a year as a law clerk to Chief Justice William A. Maupin of the Nevada Supreme Court. In that role, I conducted research, wrote legal memoranda, and prepared draft opinions in many civil appellate cases. These civil appeals involved a wide range of civil subject areas, including family law, contracts, products liability, insurance defense, civil rights, and personal injury.

Second, I spent four years as a civil litigation associate at Morrison & Foerster LLP, where I worked only on civil matters. I practiced complex civil litigation, primarily in federal trial and appellate courts, including in the United States Supreme Court. I also practiced before the United States International Trade Commission and worked on matters before the Federal Trade Commission. While at the firm, I specialized in antitrust and intellectual property law, but I also worked on civil cases involving bankruptcy, securities, telecommunications, transportation, energy, employment, finance, and banking law. I prepared legal memoranda, took and defended depositions, participated in large-scale document review work, drafted motions, wrote appellate briefs, worked with expert witnesses, assisted at trial, and conducted oral arguments. I also took on civil pro bono matters involving civil rights and constitutional law.

Third, I spent a year as a lawyer at Mastbaum & Moffat, where I worked only on civil matters. I focused on employment law, contract disputes, and intellectual property law. I served as second-chair in a week-long employment law jury trial in federal district court.

Fourth, I spent a year as a Staff Attorney at the United States Court of Appeals for the Ninth Circuit, where I was assigned to the civil research unit and only worked on civil appeals. In that role, I reviewed appellate briefing involving various civil subject areas, including employment, civil rights, and immigration law. I also worked on a number of civil pro se appeals, which exposed me to the Prison Litigation Reform Act. In addition, I gained familiarity with federal abstention doctrines and procedures. I drafted legal memoranda and proposed orders and presented findings and recommendations to three-judge oral screening panels.

Fifth, I spent two years as a full-time faculty member at the University of Denver, Sturm College of Law, where I only taught civil doctrinal courses—namely, Civil Procedure and Conflict of Laws.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Veronica Sophia Rossman
Judicial Nominee to the United States Circuit Court of Appeals for the Tenth Circuit

1. How many appeals have you argued?

Response: I have personally handled and supervised over 100 criminal appellate matters arising out of every judicial district in the Tenth Circuit and involving a wide range of substantive and procedural federal criminal law. Most of these appellate case are submitted for decision on the briefs without oral argument. I have personally argued 8 appeals, and I have served as co-counsel/supervisory counsel at oral argument in more than a dozen additional appeals. I would additionally note that I have personally presented oral argument on motions in the district court and, since 2017, I have had supervisory responsibility for the Motions Unit, a team of appellate specialists who assist the Trial Division with complex legal research and writing, issue preservation, and strategic planning during earlier stages of federal criminal litigation.

2. Of the appeals you have argued, how many have you won?

Response: I have won 6 of the 8 appeals that I've personally argued.

3. Do you agree with Judge Ketanji Brown Jackson's 2013 remark when she said that she did not believe in a "living constitution"?

Response: I am not familiar with Judge Jackson's remark. I would respectfully reiterate what I said at my hearing, which was that "I believe the Constitution is an enduring document."

4. During your hearing you wouldn't explain your approach to constitutional interpretation beyond whatever is commanded by precedent. How would you interpret a constitutional issue in a case of first impression?

Response: I do not ascribe to any single school of interpretative methodology. If confirmed as a circuit judge, I would be bound by the precedents of the Supreme Court, without regard to any personal view about constitutional interpretation. I expect it will be the rare case where, as a circuit judge, I would be called upon to interpret a constitutional provision that has never been considered in a precedent of the Supreme Court. Should such a case of first impression come before the Tenth Circuit, I would start with the constitutional text and adhere to the modes of constitutional interpretation used by the Supreme Court. In recent years, the Supreme Court has interpreted various constitutional provisions according to the "original public meaning" of the Constitution's text at the time of the Founding. *See, e.g.*, *Ramos v. Louisiana*, 140 S. Ct. 1390, 1395 (2020); *District of Columbia v. Heller*, 554 U.S. 570, 576-600 (2008). The Supreme Court also has referred to the original intent of the Framers when interpreting the Constitution. *See,*

e.g., Crawford v. Washington, 541 U.S. 36, 53–54 (2004). If confirmed, I will faithfully follow Supreme Court precedent in every case, including in a case raising a constitutional issue of first impression, regardless of whether the particular precedent was grounded in any specific judicial philosophy or approach to constitutional interpretation.

While I do not ascribe to a specific judicial philosophy or approach to constitutional interpretation, I have carefully considered the judicial process I will bring with me to the appellate bench, if confirmed. In every case, I will treat all litigants respectfully and impartially; I will carefully consider the issue(s) presented and give due regard to the parties' legal arguments; I will carefully review the record on appeal; I will put aside any personal views; I will faithfully adhere to the rule of law; I will reach a decision, working collaboratively with my judicial colleagues, that adjudicates only the issue presented in the case; and I will strive to issue well-written opinions that make the reasoning underlying the outcome clear to the litigants and to the public.

5. In a case of first impression should the Constitution be interpreted according to how it was understood by the public at the time of enactment? If not, how do you think it should be interpreted?

Response: Please see my response to Question 4.

6. What role should empathy play in interpreting the law?

Response: Empathy should play no role in interpreting the law. A judge must be impartial and abide by the rule of law, without regard to any external influences or personal opinions.

7. Should judicial decisions take into consideration principles of social "equity"?

Response: Judicial decisions must be based on the law as applied to the facts presented in that particular case.

8. Are legal doctrine and practice best understood as an objective and defensible scheme of human association? Or are they better understood as being of instrumental use for political ends?

Response: Your question seems to refer to different schools of legal theory. Judges must abide by the rule of law, without regard to personal views or political ends.

9. How do you define formalism?

Response: There does not appear to be a single definition of formalism. My general understanding is that "formalism" means "An approach to law, and esp. to constitutional and statutory interpretation, holding that (1) where an authoritative text governs, meaning is to be derived from its words, (2) the meaning so derived can be applied to particular facts, (3) some situations are governed by that meaning, and some are not, and (4) the

standards for deciding what constitutes following the rules is objectively ascertainable." FORMALISM, Black's Law Dictionary (11th ed. 2019).

10. Do you consider yourself a formalist?

Response: I do not ascribe to any particular school of legal reasoning and analysis. If confirmed as a judge on the Tenth Circuit, I would be bound by Supreme Court and Tenth Circuit precedent, whether or not the precedent is considered "formalist."

11. Is the complexity of precedent and its multiplicity a feature or a bug of the law?

Response: Stare decisis is a foundational principle of judicial decision-making.

12. How do you define legal realism?

Response: There does not appear to be a single definition of legal realism. My general understanding is that "legal realism" means "[t]he theory that law is based not on formal rules or principles but instead on judicial decisions deriving from social interests and public policy as conceived by individual judges." LEGAL REALISM, Black's Law Dictionary (11th ed. 2019).

13. Do you consider yourself a legal realist?

Response: I do not ascribe to any particular school of legal reasoning and analysis. If confirmed as a judge on the Tenth Circuit, I would be bound by Supreme Court and Tenth Circuit precedent, whether or not the precedent is considered "legal realist."

14. Do you agree that all lawyers are, at some level, legal realists?

Response: Advocates may seek to advance their litigation position by making arguments based not only on categorical legal principles but also by asking the judge to consider the law's probable consequence in a particular case.

15. What is the purpose of criminal sentencing under the law?

Response: Congress has identified four general purposes of criminal sentencing: just punishment, deterrence, protection of the public, and rehabilitation. *See* 18 U.S.C. § 3553(a)(2).

16. What is the purpose of criminal sentencing from a moral perspective?

Response: The purpose of criminal sentencing from a moral perspective, in the abstract, is not a subject I would be concerned with when adjudicating individual cases and controversies as an appellate judge, if confirmed. Questions of sentencing policy are to be determined by Congress and state legislatures.

17. What, if anything, do you think is the relationship between morality and the law when it comes to punishing criminals?

Response: The well-settled principle of individualized sentencing, *see, e.g., Pepper v. United States*, 562 U.S. 476, 487-88 (2011), and the requirement of proportionality, embodied in the parsimony principle of 18 U.S.C. § 3553(a), are emblematic of the relationship between morality and the law when it comes to punishment.

18. What is the relationship between morality and the law generally?

Response: The theoretical relationship between morality and the law, as a general matter, is not a subject that would inform my adjudication of an appellate case, if I am confirmed. As an appellate judge, if confirmed, my role would be to consider the specific legal claims and facts presented in individual cases and controversies.

19. Is the practice of judicial review defensible absent the existence of neutral legal principles?

Response: Judicial review is established beyond question. *See Marbury v. Madison*, 1 Cranch 137, 2 L.Ed. 60 (1803).

20. Alexander Solzhenitsyn said in a letter to students, "There is nothing relative about justice, as there is nothing relative about conscience. Indeed, justice is conscience, not a personal conscience but the conscience of the whole of humanity." He went on to say, "And please do not tell me that 'everybody understands justice in his own way.' No!"[1]

a. How do you define justice?

Response: In the context of the judiciary, justice means that *all* litigants who come before the court receive equal treatment and a fair hearing, before an impartial judicial officer, who decides the case according to the faithful application of the rule of law, without regard to personal views, and renders a well-reasoned, written ruling that can be understood, and accepted, by the litigants, the public, and other judges.

b. Is justice relative?

Response: Justice might have different definitions depending on the context.

c. How do people figure out what justice is?

Response: Please see my response to Question 20a.

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[1] Alexander Solzhenitsyn, *Two From Solzhenitsyn*, Dissent (Nov.-Dec. 1970), *available at* https://www.dissentmagazine.org/article/two-from-solzhenitsyn-2.

21. What is your understanding of the original meaning of the Cruel and Unusual Punishment Clause?

Response: The Supreme Court has interpreted the Eighth Amendment according to "'evolving standards of decency.'" *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008) (internal citation omitted). More recently, in *Bucklew v. Precythe*, 139 S. Ct. 1112 (2019), the Supreme Court discussed the meaning of the phrase "cruel and unusual" at the time of the Eighth Amendment's adoption. If confirmed, I would faithfully follow binding Supreme Court and Tenth Circuit precedent in appeals raising Eighth Amendment issues.

22. Do you think law firms should allow paying clients to influence which pro bono clients they take?

Response: Law firms make individual decisions about these matters. I am not familiar with any applicable ethics rules that would govern in this context.

23. Do you think law-firm clients should use their financial position to influence which pro bono clients their attorneys take?

Response: Please see my answer to Question 22.

24. 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: Please see my answer to Question 22.

25. As a matter of legal ethics do you agree with the proposition that some civil clients don't deserve representation on account of their identity?

Response: The Supreme Court has not recognized a right to representation in civil cases in the same way that *Gideon v. Wainwright* established a fundamental right to counsel in criminal cases. A number of state legislatures have considered or enacted civil right-to-counsel legislation. The American Bar Association (ABA) maintains a research report detailing existing state authority to appoint counsel in various types of civil proceedings. S*ee* ABA, Civil Right to Counsel, *available at* https://www.americanbar.org/groups/legal_aid_indigent_defense/civil_right_to_counsel1/

26. You handled many defendants charged with unlawfully possessing firearms. Approximately how many cases did you handle that dealt with defendants charged with unlawful possession of a firearm, illegal firearm trafficking, or violence committed with a firearm?

Response: To the best of my knowledge, I have handled approximately 50 cases involving defendants charged with unlawfully possessing firearms.

27. During your years as a federal defender did you ever raise a Second Amendment defense on behalf of your clients?

Response: No.

28. In your SJQ, you noted that "appropriately limiting restitution is important because a large restitution order can follow a client for 20 years and make it difficult for them to get back on their feet and stay there." You concluded the blog post by stating that "[r]estitution can be very burdensome for our clients."

a. What is the burden borne by crime victims?

Response: The impact of crime on victims is different in every case. Victim impact statements allow crime victims to express in their own words what they have experienced. The victim impact statement can become part of the Presentence Investigation Report prepared by the U.S. Probation Office.

b. Do you believe that victims should receive restitution?

Response: Victims should receive restitution if they are entitled to it under applicable law. The Mandatory Restitution Act of 1996 (MVRA) established procedures for determining the amount of restitution to which a victim may be entitled. If confirmed, I would follow the MVRA, any other applicable restitution statutes, and Supreme Court and Tenth Circuit precedents governing restitution in any case where the issue arises.

c. If confirmed, are you able to divorce your prior advocacy and affirm large restitution amounts, even if the "large" order "follow[s] a client for 20 years" if the amount appropriately correlates with the crime?

Response: Yes.

29. In a blog post you once discussed the concept of the "trial penalty."

a. Do you believe that the "trial penalty" has "so thoroughly tipped the scales of justice against the accused that the danger of government overreach is ever-present."

Response: The quoted statement appears in a report prepared by the National Association of Criminal Defense Lawyers (NACDL). I am not a member of NACDL, nor did I have any role in writing their report. If confirmed, I would consider any issue concerning a defendant's trial rights under applicable law, including the Sixth Amendment, the Federal Rules of Criminal Procedure, federal statutes, and Supreme Court and Tenth Circuit precedent.

b. Do you believe that prosecutors retain "virtually unfettered prosecutorial charging discretion"?

Response: Please see my response to Question 29a.

30. How many of your clients have been fully exonerated and declared innocent of their crime(s)?

Response: I have personally only raised legal sufficiency claims on direct appeal. *See, e.g., Bousley v. United States*, 523 U.S. 614, 623-24 (1998) (distinguishing "actual innocence" claims from "legal sufficiency" claims).

a. As a total percentage how many of your clients do you believe were innocent?

Response: At the Office of the Federal Public Defender, I have been appointed to represent clients who qualify for the assistance of counsel under the Sixth Amendment and the Criminal Justice Act, 18 U.S.C. § 3006A. It is well-settled that the right to counsel is not conditioned upon actual innocence. "The constitutional rights of criminal defendants are granted to the innocent and the guilty alike." *Kimmelman v. Morrison*, 477 U.S. 365, 380 (1986). Disclosing information about my personal beliefs, if any, about a client would compromise my duties of loyalty and zealous advocacy required by the Sixth Amendment and would violate the Colorado Rules of Professional Responsibility.

b. Given the number cited above, how does it comport with your statement that "on a human level, for the defense attorney there is no more heartwrenching task than explaining to a client who very likely may be innocent that they must seriously consider pleading guilty or risk the utter devastation of the remainder of their life with incalculable impacts on family."

Response: Please see my response to Question 29a.

31. You led the charge advocating for the broad release of prisoners from jails, citing the dangers of the pandemic for prisoners. During one presentation where you delivered advice for defense counsel in seeking the release of their clients from jail due to the pandemic, you stated that "the coronavirus pandemic itself is an extraordinary and compelling reason justifying relief—especially if your client belongs to a high-risk group according to CDC guidelines." You applied this logic to several cases, including *United States v. Moon*, 2020 WL 2520371, No. 20-150, 1:20 CR 00061 (10th Cir. May 14, 2020). How should a court treat the defendant's medical condition in relation to his stash of multiple firearms and repeated threats to kill his children?

Response: Mr. Moon was not seeking compassionate release under 18 U.S.C. § 3582, which applies only to defendants seeking release from a custodial sentence. Mr. Moon's appeal arose in the context of pretrial release and involved the Bail Reform Act, 18 U.S.C

§ 3142, which governs release or detention of a defendant pending trial. Under that statute, "[t]he judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community," consider the following factors: (1) the nature and circumstances of the offense; (2) the weight of the evidence against the person; (3) the history and characteristics of the person, including his "physical and mental condition[,]; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. 18 U.S.C. § 3142(g)(1)-(4).

I did not argue that generalized concerns over COVID-19, without more, entitle every detainee to pretrial release under the Bail Reform Act. I argued that the pandemic changed the detention analysis under the Bail Reform Act, requiring courts to consider the significant health risks of incarcerating defendants with serious medical problems under conditions that did not permit compliance with widespread health directives. Consistent with my obligations of zealous and effective advocacy under the Sixth Amendment, I advanced appellate arguments for Mr. Moon under applicable law and based on the specific facts of his case. For example, I argued that the pandemic altered the danger to the safety of the community risk assessment which must now incorporate the public health risks of detention. I argued that, in assessing danger to the community under the Bail Reform Act, courts must weigh not just the risks that a defendant's release would impose on the community but also the converse—the health risks to prison staff, inmates, and the local community, when defendants with serious medical problems remain in custody under conditions that do not permit compliance with widespread health directives. I also argued that Mr. Moon should have been released to home detention under strict conditions that would assure the safety of the community, so he could immediately resume cancer treatment and practice the CDC-recommended social distancing measures.

The Tenth Circuit affirmed the detention order, and Mr. Moon remained in pretrial custody.

32. What is more important during the COVID-19 pandemic: ensuring the safety of the community by keeping violent, gun re-offenders incarcerated or releasing violent, gun re-offenders to the community?

Response: The safety of the community and the criminal history of the defendant are among the factors that would be relevant to a trial court's decision in cases involving pretrial release (18 U.S.C. § 3142), sentencing (18 U.S.C. § 3553(a)), and compassionate release (18 U.S.C. § 3582).

33. In your SJQ attachments, you advised defense counsel not to wait for the BOP to identify eligible clients for home confinement, recommending instead that defense counsel "figure out a release plan and bring eligibility to the attention of the case manager."

a. What guidance permits the release of violent, repeat gun reoffenders?

Response: In September 1995, the BOP issued Program Statement 7320.01, titled "Home Confinement," which states that "Public Safety Factors as defined in the Security Designation and Custody Classification Manual" should be considered before placing an inmate on home confinement. In April 2019, the BOP issued additional guidance about placing inmates on home confinement in response to The First Step Act of 2018. At the start of the COVID-19 pandemic in March 2020, the Attorney General, under the CARES Act, found that emergency conditions were materially affecting the functioning of BOP and expanded the cohort of inmates eligible to be considered for release to home confinement. An inmate's qualification for early release on home confinement under the CARES Act is an individualized determination by the BOP. The eligibility requirements for Home Confinement are set forth in the Attorney General's March 26 and April 3, 2020 Memoranda, available at https://www/justice.gov/coronavirus/DOJresponse

b. What guidance permits the release of sex offenders?

Response: Please see my response to Question 33a.

c. What guidance permits the release of rapists?

Response: Please see my response to Question 33a.

34. Do you believe that sex offenders who were convicted prior to July 27, 2006 (the enactment of the Sex Offender Registration and Notification Act) should not be included in the sex offender registry?

Response: In a joint petition for certiorari, I argued the Supreme Court should revisit its non-delegation doctrine precedent and hold that 34 U.S.C. § 20193(d) is an unconstitutional delegation of legislative authority to the Executive Branch. *See* Rossman SJQ at 17. The petition was denied. *See Dodson, et. al. v. United States*, 140 S.Ct. 664 (2019). If confirmed, I will follow all binding precedents of the Supreme Court and the Tenth Circuit, including *Gundy v. United States*, 139 S.Ct. 2116 (2019) and any other precedents addressing the Sex Offender Registration and Notification Act.

a. Do you believe that convicted sex offenders who are not on the sex offender registry pose a threat to the community?

Response: Please see my response to Question 34.

b. Does requiring a sex offender to register as a sex offender violate the defendant's constitutional rights? If yes, which ones and why?

Response: Please see my response to Question 34.

35. Does voluntary intoxication always negate the specific intent required for a crime? Why or why not?

Response: The Tenth Circuit recognizes voluntary intoxication as a defense to crimes requiring proof of specific intent. *See, e.g., United States v. Williams*, 403 F.3d 1188, 1194 (10th Cir. 2005); *see also United States v. Flynn,* 220 Fed. Appx. 836, 837 (10th Cir. 2007) (unpublished) (affirming district court's refusal to instruct the jury on involuntary intoxication where there was no evidence that intoxication impaired the defendant's mental capacity).

36. What specific percentage of incarceration should a defendant have served to be eligible for compassionate release?

Response: Eligibility for compassionate release does not turn on the specific percentage of incarceration served. Under 18 U.S.C. § 3582(c)(1)(A), as amended by the First Step Act of 2018, a defendant is eligible for compassionate release if he exhausted administrative remedies and shows that "extraordinary and compelling reasons" warrant a reduction. Assuming eligibility, a court has the discretion to order compassionate release under § 3582(c)(1), if the reduction is consistent with applicable policy statements of the United States Sentencing Commission and the sentencing factors in 18 U.S.C. § 3553(a). The length of the prison term already served is one factor in the multi-factor analysis.

37. Please explain how the charge of felon in possession of a firearm constitutes a "non-violent crime"?

Response: Section 922(g)(1) of Title 18 makes it unlawful for a person previously convicted of a felony to possess a firearm or ammunition. The Tenth Circuit has noted that the felon-in-possession offense "applies to persons with greatly diverse propensities and previously convicted of a wide range of conduct." *United States v. Ingle*, 454 F.3d 1082, 1086 (10th Cir. 2006). "Not all felons are potentially more violent than non-felons. Numerous felonies involve economic crimes or regulatory offenses which, while serious, do not entail a substantial risk of physical force. And ex-felons have the same motives as lawful possessors of firearms to possess a firearm—self-defense, hunting, gun collecting, and target practice." *Id.* (internal citations and alterations omitted) (holding "that a felon-in-possession offense under § 922(g)(1) is not inherently a crime of violence"). As an appellate judge, if confirmed, I will follow all binding Supreme Court and Tenth Circuit precedent, including in cases involving firearms offenses.

a. Does the presence of a firearm constitute a violent crime?

Response: See response to question 37.

38. Do you believe that there is a drug epidemic in this country?

Response: As an appellate judge, if confirmed, my role is to consider legal claims and facts in individual cases and controversies. My personal beliefs, if any, about this issue or any other policy matter would not bear on judicial decision-making. I am aware that, for example, the Centers for Disease Control and Prevention (CDC) and the U.S. Department of Health and Human Services (HHS) have described the number of opioid-involved overdose deaths in the United States since 1999 as an "epidemic." *See* CDC, Opioid Overdose, Understanding the Epidemic, *available at* https://www.cdc.gov/drugoverdose/epidemic/index.html and HHS, What is the U.S. Opioid Epidemic?, *available at* https://www.hhs.gov/opioids/about-the-epidemic/index.html

39. In *United States v. Grillo*, 2011 WL 2631787 (10th Cir. July 6, 2011), you requested a downward variance for your client, citing her advanced age, poor health and minimal criminal history for support. How much weight did you place on your client's charges, specifically that she pled guilty to distributing oxycodone, a highly addictive substance within 1,000 feet of a school and to children under the age of 18?

Response: The *Grillo* appeal challenged the length of the defendant's 78-month sentence on substantive reasonableness grounds. *See Gall v. United States*, 552 U.S. 38, 51 (2007) ("Assuming that the district court's sentencing decision is procedurally sound, the appellate court should then consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard."). Whether a sentence is substantively unreasonable depends upon "all of the circumstances of the case in light of the factors set forth in" 18 U.S.C. § 3553(a). *United States v. Sayad*, 589 F.3d 1110, 1116 (10th Cir. 2006).

40. In your SJQ, you noted that you are now involved "mostly behind the scenes with many more cases at the pretrial and trial stage of federal criminal litigation." In response to a question concerning recusal, you stated that you would "recuse [yourself] from any defendant [you] personally represented or who was represented by the Office of the Federal Public Defender for the Districts of Colorado and Wyoming while [you] worked at that office." Given that you appeared to be involved in the majority of cases arising from the Office of the Federal Public Defender, I would like your reassurance, that, if confirmed, you will recuse from all cases involving the Office of the Federal Public Defender, not just those clients who you personally represented.

Response: I will make all decisions about recusal in accordance with the Code of Conduct for United States Judges, the Colorado Rules of Professional Responsibility, and all other applicable canons governing recusal. As I stated in my SJQ, I will recuse from any case involving any individual who was represented by the Office of the Federal Public Defender for the Districts of Colorado and Wyoming while I worked at that office, even if I did not personally represent that person.

41. What legal standard would you apply in the Tenth Circuit when evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?

Response: The Tenth Circuit has applied "intermediate scrutiny" in this context, reasoning: "The Supreme Court did not specify in *Heller* precisely what level of scrutiny a reviewing court must apply to a challenged law. Instead, the Court indicated only that the rational basis test is not appropriate for assessing Second Amendment challenges to federal laws. Thus, we must apply some level of heightened scrutiny and, in doing so, must look to analogous cases for guidance on precisely what level to apply." *United States v. Reese*, 627 F.3d 792, 801 (10th Cir. 2010) (internal citations and quotation marks omitted); *see also Peterson v. Martinez*, 707 F.3d 1197, 1220 (10th Cir. 2013); *Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1126 (10th Cir. 2015) ("Intermediate scrutiny makes sense in the Second Amendment context.").

42. Do you agree that DOJ litigation positions, such as the failure to defend in court agency actions like the "Remain in Mexico" policy, have contributed to the perceived incentives that underlie this border crisis? If not, why not?

Response: As a judicial nominee, it would not be appropriate for me to opine on the litigation positions of the Department of Justice.

43. Under the Religious Freedom Restoration Act the federal government cannot "substantially burden a person's exercise of religion."

a. Who decides whether a burden exists on the exercise of religion, the government or the religious adherent?

Response: The Religious Freedom Restoration Act of 1993 (RFRA) prohibits the "Government [from] substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability" unless the Government "demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 682 (2014) (quoting 42 U.S.C. §§ 2000bb–1(a), (b)); *see also Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal,* 546 U.S. 418 (2006). When evaluating a person's RFRA claim, courts defer to parties' assertions about their sincerely held religious beliefs. *See Burwell*, 573 U.S. at 724.

b. How is a burden deemed to be "substantial[]" under current case law? Do you agree with this?

Response: RFRA does not define the term "substantial[] burden." The Supreme Court in *Burwell* reasoned that because "the contraceptive mandate forces [the plaintiffs] to pay an enormous sum of money…if they insist on providing insurance coverage in accordance with their religious beliefs, the mandate clearly imposes a substantial burden on those beliefs." *Burwell*, 573 U.S. at 726; *see id.* at 710 (holding that "a law that "operates so as to make the practice of ... religious beliefs more expensive" in the context of business activities imposes a burden on the exercise of religion"). My personal views of the legal standard, if any, are not relevant to my role as an appellate judge, if confirmed. I will faithfully follow all binding Supreme Court and Tenth Circuit precedent, including in any case involving RFRA.

44. 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: The free exercise of religion is a fundamental right under the First Amendment. In *Bostock v. Clayton County*, *Georgia,* the Supreme Court held that an employer violates Title VII, which makes it unlawful to discriminate against an individual "because of" the individual's sex, by firing an individual for being homosexual or being a transgender person. 140 S. Ct. 1731 (2020). In addressing "the employers fear that complying with Title VII's requirement in cases like ours may require some employers to violate their religious convictions," the Supreme Court stated: "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. But worries about how Title VII may intersect with religious liberties are nothing new; they even predate the statute's passage." *Bostock*, 140 S. Ct. at 1754. My personal views of the *Bostock* decision, if any, are not relevant to my role as an appellate judge, if confirmed, and I will faithfully follow all binding Supreme Court and Tenth Circuit precedent, including in any case involving the First Amendment.

45. Does illegal immigration impose costs on border communities?

Response: I have no personal knowledge of whether illegal immigration imposes costs on border communities, and I believe that an evaluation of any costs it might impose is best left to policy makers. As an appellate judge, if confirmed, my role would be to consider specific legal claims involving immigration law.

46. When was the last time you visited the U.S.-Mexico border?

Response: I have never visited the U.S.-Mexico border.

47. When was the last time you visited the U.S.-Mexico border outside of a port of entry?

Response: See my response to Question 46.

48. 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: I will seek to hire law clerks from a wide range of backgrounds, without regard to membership or non-membership in any particular organization.

49. The Blackstone Legal Fellowship "prepares Christian law students for careers marked by integrity, excellence, and leadership." Blackstone "is a program of Alliance Defending Freedom. ADF is the world's largest legal organization committed to protecting religious freedom, free speech, and the sanctity of life." Would you hire a Blackstone Fellow to serve in your chambers as a law clerk?

Response: Please see my answer to Question 48.

50. Do Blaine Amendments violate the Constitution?

Response: The original Blaine Amendment "would have amended the Constitution to bar any aid to sectarian institutions." *Mitchell v. Helms*, 530 U.S. 793, 828 (2000). Some states have passed so-called Blaine Amendments, which I understand to be state-law provisions or practices that bar government entities from appropriating funds to religious institutions, because doing so is necessary to prevent Establishment Clause violations. In *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246, 2262 (2020), the Supreme Court considered the Montana Supreme Court's application of a no-aid provision in Montana's Constitution to invalidate a state scholarship program. The Supreme Court struck down the state restriction as violating the First Amendment's neutrality requirement. *See also Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017); *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 524 (1993). If confirmed, I will faithfully follow all binding Supreme Court and Tenth Circuit precedent, including in any case involving the First Amendment.

51. Please explain, with detail, the process by which you became a circuit-court nominee.

Response: In February 2021, shortly after the Honorable United States Circuit Judge Carlos F. Lucero announced that he would be taking senior status, Federal Public Defender Virginia L. Grady submitted my name for consideration to Senator Michael Bennet's State Director. On February 17, 2021, I met with the state directors for Senator Bennet and Senator John Hickenlooper. On March 8, 2021, I interviewed with Senators Bennet and Hickenlooper. On March 12, 2021, I interviewed with attorneys from the White House Counsel's Office. Since then, I have been in contact with officials from the

Office of Legal Policy at the Department of Justice. On May 10, 2021, I interviewed with President Biden and White House Counsel Dana Remus. On May 12, 2021, my nomination was submitted to the Senate.

52. You mentioned in your SJQ that you met with President Biden before being nominated. What was the nature of that meeting?

Response: President Biden interviewed me for approximately 20 minutes over Zoom on May 10, 2021. We discussed why I wanted to become a federal appellate court judge and my experience as an appellate specialist in the Tenth Circuit. The President did not ask me to make any commitments on any matter nor did I offer to make any commitments.

53. 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 the conversations.

Response: I had a conversation with Chris Kang, shortly after my name was submitted to Senator Michael Bennet's State Director. Because I knew nothing about federal judicial nominations, I asked Mr. Kang for basic information about the process, knowing that he had experience serving as chief judicial nominations counsel to President Obama. Mr. Kang also congratulated me on this nomination.

a. To your knowledge, has anyone had such conversations on your behalf?

Response: Not to my knowledge.

54. 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 the conversations.

Response: I had a conversation with Zachary Gima of the American Constitution Society, shortly after my name was submitted to Senator Michael Bennet's State Director. Although I have never been a member of ACS, I reached out to Mr. Gima for basic information about the federal judicial nominations process.

a. To your knowledge, has anyone had such conversations on your behalf?

Response: Not to my knowledge.

55. Please explain with particularity the process by which you answered these questions.

Response: On June 16, 2021, I received these questions from the Office of Legal Policy at the Department of Justice (OLP). I reviewed the questions, conducted legal research, reviewed filings in cases I litigated that were referenced in the questions, and drafted my

answers. OLP provided feedback, which I considered, before submitting my final answers to the Committee.

56. Do these answers reflect your true and personal views?

Response: Yes.

Senator Blackburn
Questions for the Record to Veronica S. Rossman
Nominee to be United States Circuit Judge for the Tenth Circuit

1. **Your record demonstrates that you were an advocate for the release of prisoners to prevent the spread of Covid-19 in the prison system during the pandemic. However, you advocated for the 'compassionate release' for violent criminals as well. For instance, you argued that your client in *United States v. Kevin Maurice Wilson* (10th Cir. 2021) being a felon in possession of a gun is a 'non-violent gun possession offense' and that he should be released because of that. Could you please explain how the courts should balance releasing prisoners early with their potential danger to society?**

   Response: The *Wilson* appeal is an active case now pending before the Tenth Circuit Court of Appeals. Oral argument has not yet been set in the matter. Accordingly, it would be inappropriate to comment specifically on the *Wilson* appeal, beyond the arguments I made in the Tenth Circuit briefs I filed on Mr. Wilson's behalf as his advocate, or to take a general position on the multi-factor balancing a district court must engage in at sentencing. I would note that the felon-in-possession offense "applies to persons with greatly diverse propensities and previously convicted of a wide range of conduct." *United States v. Ingle*, 454 F.3d 1082, 1086 (10th Cir. 2006). As the Tenth Circuit has explained: "Not all felons are potentially more violent than non-felons. Numerous felonies involve economic crimes or regulatory offenses which, while serious, do not entail a substantial risk of physical force. And ex-felons have the same motives as lawful possessors of firearms to possess a firearm—self-defense, hunting, gun collecting, and target practice." *Id.* (internal citations, quotation marks, and alterations omitted).

2. **In response to a question I asked you during the hearing, you said that you do not have a specific judicial philosophy. Please elaborate on your answer. How do you believe the Constitution should be interpreted?**

   Response: I do not have a specific judicial philosophy, meaning I do not ascribe to any single school of interpretive methodology. As I said at my hearing, "I believe the Constitution is an enduring document." If confirmed as a circuit judge, I would be bound by the precedents of the Supreme Court, without regard to any personal view about constitutional interpretation. I expect it will be the rare case where, as a circuit judge, I would be called upon to interpret a constitutional provision that has never been considered in a precedent of the Supreme Court. Should such a case of first impression come before the Tenth Circuit, I would start with the constitutional text and adhere to the modes of constitutional interpretation used by the Supreme Court. In recent years, the Supreme Court has interpreted various constitutional provisions according to the "original public meaning" of the Constitution's text at the time of the Founding. *See, e.g., Ramos v. Louisiana*, 140 S. Ct. 1390, 1395 (2020); *District of Columbia v. Heller*, 554 U.S. 570, 576-600 (2008). The Supreme Court also has referred to the original intent of the Framers when interpreting the Constitution. *See, e.g., Crawford v. Washington*, 541 U.S. 36, 53–54 (2004). If confirmed, I will faithfully follow Supreme Court precedents

regarding constitutional issues, regardless of whether the particular precedent was grounded in any specific judicial philosophy or approach to constitutional interpretation.

While I do not ascribe to a specific judicial philosophy, I have carefully considered the judicial process I will bring with me to the appellate bench, if confirmed. In every case, I will treat all litigants respectfully and impartially; I will carefully consider the issue(s) presented and give due regard to the parties' legal arguments; I will carefully review the record on appeal; I will put aside any personal views; I will faithfully adhere to the rule of law; I will reach a decision, working collaboratively with my judicial colleagues, that adjudicates only the issue presented in the case; and I will strive to issue well-written opinions that make the reasoning underlying the outcome clear to the litigants and to the public.

Nomination of Veronica S. Rossman to be United States Circuit Judge for the Tenth Circuit Questions for the Record Submitted June 16, 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. **Was *D.C. v. Heller*, 554 U.S. 570 (2008) rightly decided?**

   Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held the Second Amendment protects an individual's fundamental right to keep and bear arms. As the Supreme Court later explained in *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010), "our central holding in *Heller* [is] that the Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home." My personal opinion, if any, about any Supreme Court precedent would not bear on my role as a circuit judge. If confirmed, I will faithfully follow *Heller* and *McDonald*, and all other applicable Supreme Court and Tenth Circuit precedents in cases involving the Second Amendment.

4. **Is the Second Amendment right to keep and bear arms an individual right belonging to individual persons, or a collective right that only belongs to a group such as a militia?**

   Response: The Second Amendment right to keep and bear arms is an individual right. *See District of Columbia v. Heller*, 554 U.S. 570, 578-79 (2008) (textual analysis of the operative clause of the Second Amendment confirms it codifies a "right of the people" which "unambiguously refer[s] to individual rights, not 'collective' rights"); *id.* at 592 (Second Amendment "guarantee[s] the individual right"); *see also McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (the "Second Amendment protects a personal right").

5. **Please describe what you believe to be the Supreme Court's holding in *Greer v. United States*, 593 U.S. _____ (2021).**

   Response: In *Greer v. United States,* two defendants challenged their felon-in-possession convictions for the first time on appeal, contending that the district court failed to instruct the jury (Greer) or advise the defendant during a plea colloquy (Gary) of the required *mens rea* element of the offense. *Greer v. United States*, 19-8709, 2021 WL 2405146 (U.S. June 14, 2021). Recall, in *Rehaif v. United States*, 139 S. Ct. 2191 (2019), the Supreme Court held that, in felon-in-possession offenses, the Government must

prove not only that the defendant knew he possessed a firearm, but also that he knew he was a felon when he possessed it.

The Supreme Court rejected both challenges, holding:

First, *Rehaif* error is not "structural error" because such error "does not affect the entire framework within which the proceeding occurs" or "deprive defendants of basic protections[.]" *Greer*, at *7. Accordingly, *Rehaif* error does not require automatic reversal of a conviction and instead, is subject to plain-error appellate review under Federal Rule of Criminal Procedure 52(b). Under Rule 52(b), "[a] plain error that affects substantial rights may be considered even though it was not brought to the court's attention." Fed. R. Crim. P. 52(b); *see Greer*, at *4 ("The defendant has 'the burden of establishing entitlement to relief for plain error'.") (*quoting United States v. Dominguez Benitez*, 542 U.S. 74, 82 (2004)).

Second, to satisfy the third-prong of the plain-error standard (that the error affected "substantial rights"), a defendant must make a sufficient argument or representation on appeal that he would have presented evidence in the district court that he did not in fact know he was a felon. *Greer*, at *7. Absent such an argument or presentation, the Supreme Court determined, the defendant cannot show a "reasonable probability" that the result would have been different absent the *Rehaif* error. *Id.* at *4.

6. **Please describe what you believe to be the Supreme Court's holding in *Terry v. United States*, 593 U.S. _____ (2021).**

Response: The Supreme Court held in *Terry v. United States* that the Fair Sentencing Act of 2010 (FSA), made retroactive by the First Step Act of 2018, "did not modify the statutory penalties for" crack cocaine offenses under 21 § 841(b)(1)(C). *Terry v. United States,* 20-5904, 2021 WL 2405145, at *4 (U.S. June 14, 2021). Accordingly, persons convicted under § 841(b)(1)(C) are not eligible for resentencing under the First Step Act because they were not convicted of a "covered offense" under the FSA. *Terry*, at *5.

7. **Please describe what you believe to be the Supreme Court's holding in *Jones v. Mississippi*, 593 U.S. _____ (2021).**

Response: The Supreme Court held in *Jones v. Mississippi*, 141 S. Ct. 1307 (2021) that the Eighth Amendment does not require a finding that a minor be permanently incorrigible as a prerequisite to a life-without-parole sentence, so long as the sentence resulted from a discretionary sentencing procedure.

8. **Please describe what you believe to be the Supreme Court's holding in *Tandon v. Newsom*, 593 U.S. _____ (2021).**

Response: In reversing the denial of an emergency injunction pending appeal, the Supreme Court held in *Tandon v. Newsom* that government regulations are not "neutral and generally applicable"—and thus would trigger strict-scrutiny review under the Free Exercise Clause—"whenever they treat *any* comparable secular activity more favorably than religious exercise." 141 S. Ct. 1294, 1296 (2021) (emphasis in original).

9. Please describe what you believe to be the Supreme Court's holding in *Sanchez v. Mayorkas*, 593 U.S. _____ (2021).

Response: The Supreme Court held in *Sanchez v. Mayorkas,* 20-315, 2021 WL 2301964, (U.S. June 7, 2021) that an individual who entered the United States unlawfully is not eligible to become a lawful permanent resident under 8 U.S.C. § 1255, even if the United States had granted the individual Temporary Protected Status under 8 U.S.C. § 1254a.

10. What is your view of arbitration as a litigation alternative in civil cases?

Response: My personal opinion, if any, about the merits of arbitration as a litigation alternative in civil cases would not bear on my role as a circuit judge, if confirmed. I am aware the Supreme Court has recently decided a number of cases involving the Federal Arbitration Act (FAA). *See, e.g., New Prime Inc. v. Oliveira,* 139 S. Ct. 532 (2019); *Henry Schein, Inc. v. Archer and White Sales, Inc.,* 139 S. Ct. 524 (2019); *Lamps Plus, Inc. v. Varela,* 139 S. Ct. 1407 (2019); *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612 (2018). I will faithfully follow all applicable Supreme Court and Tenth Circuit precedents, including in civil cases involving arbitration and the FAA.

11. 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 June 16, 2021, I received these questions from the Office of Legal Policy at the Department of Justice (OLP). I reviewed the questions, conducted legal research, reviewed filings in cases I litigated that were referenced in the questions, and drafted my answers. OLP provided feedback, which I considered, before submitting my final answers to the Committee.

12. 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 Veronica Sophia Rossman, Nominee for the United States Court of Appeals for the Tenth 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. **Is it appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns? Please explain.**

Response: The reference to "the executive" in your question may mean the President or the Executive Branch. Under our Constitution, the "executive Power" is "vested in a President," who must "take Care that the Laws be faithfully executed." Art. II, §1, cl. 1;

id., §3. Justice Robert Jackson, in his concurring opinion in *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579 (1952), articulated a tripartite analysis for judicial assessments of executive action. Regarding the Executive Branch, the Supreme Court has affirmed that the decision "[w]hether to prosecute and what charge to file or bring before a grand jury are decisions that generally rest in the prosecutor's discretion." *United States v. Batchelder*, 442 U.S. 114, 125 (1979) ("Selectivity in the enforcement of criminal laws is, of course, subject to constitutional constraints.").

2. 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: I am generally aware, through publicly available news sources, of President Biden's commission. I have no opinion on it. If I am confirmed, my role as a judicial officer of the Tenth Circuit will be to abide faithfully by all the rulings of the Supreme Court, irrespective of the number of justices who serve on it.

3. Do you personally own any firearms? If so, please list them.

Response: No.

4. Have you ever personally owned any firearms?

Response: No.

5. Have you ever used a firearm? If so, when and under what circumstances?

Response: No.

6. Is the ability to own a firearm a personal civil right?

Response: The Supreme Court has held the Second Amendment protects an individual's fundamental right to keep and bear arms. *See District of Columbia v. Heller*, 554 U.S. 570 (2008); *see also McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) ("[O]ur central holding in *Heller* [is] that the Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home."). In *McDonald*, the Supreme Court held that the Second Amendment applies to the states through the Due Process Clause of the Fourteenth Amendment. *Id.* at 791.

7. Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?

Response: Your question may be referring to the level of constitutional scrutiny used in judicial review of laws that infringe on the fundamental right guaranteed by the Second Amendment. The Supreme Court has not answered this question. As the Tenth Circuit has observed, *Heller* left unresolved much of the "who, what, where, when, and why" of

Second Amendment protections. *See United States v. Huitron-Guizar*, 678 F.3d 1164, 1166 (10th Cir. 2012) (internal quotations omitted). The Supreme Court in *Heller* did acknowledge 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). The Court left for another day an analysis of the full scope of the right. If I am confirmed, I will follow all binding Supreme Court and Tenth Circuit precedents, including in cases concerning the Second Amendment and other individual rights.

8. Does the right to own a firearm receive less protection than the right to vote under the Constitution?

Response: Both the right to own a firearm and the right to vote are considered fundamental rights. *See District of Columbia v. Heller*, 554 U.S. 570, 626 (2008); *see also Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) ("[T]he political franchise of voting is . . . a fundamental political right, because preservative of all rights."). If I am confirmed, I will follow all binding Supreme Court and Tenth Circuit precedents, including in cases concerning the Second Amendment and the right to vote.

9. Is the Religious Freedom Restoration Act a civil rights law?

Response: Yes. Congress enacted the Religious Freedom Restoration Act of 1993 (RFRA) "in order to provide very broad protection for religious liberty." *Holt v. Hobbs*, 574 U.S. 352, 356 (2015) (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693 (2014)); *see generally City of Boerne v. Flores*, 521 U.S. 507 (1997). Congress considers litigation involving RFRA claims to be a "proceeding in vindication of civil rights." *See* 42 U.S.C. § 1988.

10. 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: Yes. The Free Exercise Clause of the First Amendment, applicable to the States under the Fourteenth Amendment, provides that "Congress shall make no law ... prohibiting the free exercise" of religion. The Supreme Court has held that "laws incidentally burdening religion are ordinarily not subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable." *See Fulton v. City of Philadelphia, Pennsylvania*, 19-123, 2021 WL 2459253, at *4 (U.S. June 17, 2021) (citing *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990)). The Supreme Court has further held that "[g]overnment fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Fulton*, at *5 (citing *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 584 U. S. ___, ___–___ (2018) (slip op., at 16–17)). "A law also lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, at *5. I am aware of other recent Supreme Court precedents involving the free exercise of religion that may inform the analysis. *See, e.g., Tandon v. Newsom*, 141 S. Ct.

1294 (2021); *see also Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020). If confirmed, I will faithfully follow all binding Supreme Court and the Tenth Circuit precedents, including in cases involving religious liberty claims.

11. Do Americans have the right to their religious beliefs outside the walls of their houses of worship and homes?

Response: Yes.

12. President Biden has promised to nominate judges "who look like America." What do you understand this to mean?

Response: I cannot speculate about what President Biden may have meant. I understand the phrase "who look like America" to acknowledge the many different people we find in our nation, which is home to individuals of all races, ethnicities, religions, genders, ages, abilities, sexual orientations, and professional backgrounds

13. Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?

Response: Under the Appointments Clause of the Constitution, the President and the Senate share the power to make appointments to high-level politically appointed positions in the federal government. U.S. Constitution, Art. II, §2, cl. 2. Every branch of government must follow the Constitution.

14. Is there systemic racism in public policy across America?

Response: The discourse of the law speaks in terms of racial discrimination and racial disparity. The judicial role is concerned with resolving specific legal claims in individual cases and controversies under applicable law. If confirmed, I will adjudicate all appeals raising issues of racial discrimination or racial disparity on a case-by-case basis, according to the Constitution and other controlling authority.

15. Is the criminal justice system systemically racist?

Response: The discourse of the law speaks in terms of racial discrimination and racial disparity. The judicial role is concerned with resolving specific legal claims in individual cases and controversies under applicable law. If confirmed, I will adjudicate all appeals raising issues of racial discrimination or racial disparity on a case-by-case basis, according to the Constitution and other controlling authority.

16. If you are to join the Circuit court, 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;

Response: I am not aware of the Tenth Circuit's training for its employees. I do not know how the human resources program at the Tenth Circuit works or whether judicial officers have any role in supervising it. As a general matter, all judiciary branch training programs must comply with the Constitution and other applicable law.

b. An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;

Response: I am not aware of the Tenth Circuit's training for its employees. I do not know how the human resources program at the Tenth Circuit works or whether judicial officers have any role in supervising it. As a general matter, all judiciary branch training programs must comply with the Constitution and other applicable law.

c. An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or

Response: I am not aware of the Tenth Circuit's training for its employees. I do not know how the human resources program at the Tenth Circuit works or whether judicial officers have any role in supervising it. As a general matter, all judiciary branch training programs must comply with the Constitution and other applicable law.

d. Meritocracy or related values such as work ethic are racist or sexist.

Response: I am not aware of the Tenth Circuit's training for its employees. I do not know how the human resources program at the Tenth Circuit works or whether judicial officers have any role in supervising it. As a general matter, all judiciary branch training programs must comply with the Constitution and other applicable law.

17. Will you commit that the Circuit court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?

Response: I am not aware of the Tenth Circuit's training for its employees. I do not know how the human resources program at the Tenth Circuit works or whether judicial officers have any role in supervising it. As a general matter, all judiciary branch training programs must comply with the Constitution and other applicable law.

18. Is racial profiling categorically banned by the Constitution?

Response: The Fourth Amendment requires individual justification for searches and seizures, and the Equal Protection Clause of the Fourteenth Amendment requires that policing, like other government functions, afford all persons the equal protection of the laws.

19. 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: Whether an individual will report a crime to the police or federal authorities is a personal and fact-intensive decision. The race of the perpetrator may be relevant if the witness to a crime is reporting a suspect's description and part of that description is the suspect's race.

20. Is it racist for a person to call police out of concern over the threatening or unlawful conduct of a person of color?

Response: Whether an individual will report a crime to the police or federal authorities is a personal and fact-intensive decision. The race of the perpetrator may be relevant if the witness to a crime is reporting a suspect's description and part of that description is the suspect's race.

21. 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?

Response: Congress has authorized the death penalty as a punishment for certain federal crimes. The Supreme Court has held that capital punishment is constitutional under certain circumstances. The President cannot unilaterally change criminal penalties enacted by Congress. The President maintains the constitutional authority to grant pardons, commutations, and reprieves. The Department of Justice's death penalty procedure is based on the Federal Death Penalty Act, 18 U.S.C. §§ 3591 to 3599. The decision to seek or not seek the death penalty must be approved by the Attorney General.

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: Congress has authorized the death penalty as a punishment for certain federal crimes. The Supreme Court has held that capital punishment is constitutional under certain circumstances. The President cannot unilaterally change criminal penalties enacted by Congress. The President maintains the constitutional authority to grant pardons, commutations, and reprieves. The Department of Justice's death penalty procedure is based on the Federal Death Penalty Act, 18 U.S.C. §§ 3591 to 3599. The decision to seek or not seek the death penalty must be approved by the Attorney General.

22. Do you believe that unlawfully setting a building on fire, amidst general rioting, is a violent act?

Response: The facts presented in your question may implicate state criminal laws governing rioting and related activity. In addition, issues attendant to rioting and property destruction may implicate certain federal criminal laws governing willful damage to government property (*see, e.g.,* 18 U.S.C. § 1361). The Anti-Riot Act, 18 U.S.C. § 2101, also may be relevant.

23. 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 Attorney General Garland's statements, and therefore, I cannot take a position on them. Any attack on government institutions, property, or employees would be an incredibly serious matter.

24. Do you agree that free speech is an essential and irreplaceable American value?

Response: Yes.

a. What are the present threats to free speech in America?

Response: Cases involving the First Amendment's protection of free speech arise frequently in the federal courts, including in the Tenth Circuit. Accordingly, it would be inappropriate for me as a judicial nominee to opine generally on this question. If confirmed, I would faithfully follow the Constitution and all binding Supreme Court and Tenth Circuit precedents in every case, including in cases involving free speech.

b. What role do the courts have in addressing threats to free speech?

Response: The role of an appellate court is to adjudicate every case and controversy that comes before the court according to the rule of law and without regard to the personal views of any judicial officer.

c. Does the First Amendment protect speech that some may consider offensive?

Response: Yes. This is a foundational principle animating the Supreme Court's First Amendment jurisprudence. *See, e.g., Ashcroft v. Free Speech Coalition*, 535 U.S. 234,

245 (2002) (observing it is "well established that speech may not be prohibited because it concerns subjects offending our sensibilities.") (citing cases).

i. If so, what are the limits to that protection?

Response: In a number of cases, the Supreme Court has held that the First Amendment has "permitted restrictions upon the content of speech in a few limited areas," and has never "include[d] a freedom to disregard these traditional limitations." *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 790–91 (2011) (internal citations and quotation marks omitted). The Supreme Court has identified the following few categories of unprotected speech: obscenity, incitement, fighting words, defamation, fraud, and speech integral to criminal conduct. *See, e.g., United States v. Alvarez*, 567 U.S. 709 (2012).

d. What is "hate speech"?

Response: I am not aware of a Supreme Court case specifically defining "hate speech." The Supreme Court has stated that: "Speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express 'the thought that we hate.'" *Matal v. Tam*, 137 S. Ct. 1744, 1764 (2017) (Alito, J.) (internal citation omitted).

i. Is "hate speech," as you have just defined it, protected by the First Amendment?

Response: In a number of cases, the Supreme Court has held that the First Amendment has "permitted restrictions upon the content of speech in a few limited areas," and has never "include[d] a freedom to disregard these traditional limitations." *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 790–91 (2011) (internal citations omitted). The Supreme Court has identified the following few categories of unprotected speech: obscenity, incitement, fighting words, defamation, fraud, and speech integral to criminal conduct. *See, e.g., United States v. Alvarez*, 567 U.S. 709 (2012). What some may define as "hate speech" could raise First Amendment questions.

ii. If so, what are the limits to that protection?

Response: I am not aware of any Supreme Court precedent that recognizes "hate speech" as an unprotected category of speech. However, there are Supreme Court precedents that address speech that is truly threatening. *See Virginia v. Black*, 538 U.S. 343 (2003); *see also Chaplinsky v. New Hampshire*, 315 U.S. 568 (1962).

25. Do public educational institutions have the legal obligation to protect the speech rights of students and employees?

Response: 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." *Tinker v. Des Moines Independent Community School Dist*., 393 U.S. 503, 506 (1969). Other Supreme Court cases have addressed when public educational institutions may restrict student speech. *See, e.g., Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 685 (1986*); Morse v. Frederick*, 551 U.S. 393, 395 (2007).

26. Do private educational institutions have the legal obligation to protect the speech rights of students and employees?

Response: The First Amendment applies only to state actors. In general, private educational institutions are not state actors, so they would not be required to provide the same First Amendment speech protections as public institutions. Federal statutes and state laws governing speech may be implicated in the analysis, however.

27. Are educational institutions that receive federal funding permitted to discriminate on the basis of speech?

Response: I am not aware of any federal law that prohibits educational institutions receiving federal funds from discriminating based on speech.

28. What do you understand to be the scope of Section 230 protection?

Response: I have no professional experience with Section 230 of the Communications Decency Act of 1996, 47 U.S.C. § 230. My general understanding is that Section 230 "provides limited federal immunity to providers and users of interactive computer services. The law generally precludes providers and users from being held liable…for information provided by a third party, but does not prevent them from being held legally responsible for information that they have developed or for activities unrelated to third-party content." Congressional Research Service, Section 230: An Overview, April 7, 2021, available at https://crsreports.congress.gov/product/pdf/R/R46751.

a. Does Section 230 immunize content publishers only?

Response: Section 230(c)(1) states that a provider or user of an interactive computer service will not be considered a publisher or speaker of content "provided by another information content provider." 47 U.S.C. § 230(c)(1). Whether a defendant claiming protection under Section 230(c)(1) should be treated as a "publisher or speaker" of another's content is actively being litigated in the federal courts. Accordingly, it would be inappropriate for me to opine on this question as a judicial nominee.

b. If an internet platform curates content, and specifically selects what a user sees and does not see, is the platform engaged in publishing?

Response: This is an open question that could come before the Tenth Circuit, so it would be inappropriate for me to opine on it.

c. Do you believe that corporations like Facebook, Twitter, and Google should have a special immunity from liability when publishing material that is unavailable to traditional publishers like the *New York Times*? Please explain why.

Response: This is an open question that could come before the Tenth Circuit, so it would be inappropriate for me to opine on it.

29. Does it promote violence against, or directly attack, a person on the basis of gender identity to say there are only two genders?

Response: I do not have an opinion on this matter. Legal issues related to gender and gender identity are frequently litigated in federal courts. If confirmed, and a case came before me that presented a legal claim relating to gender or gender identity, I would carefully analyze those issues, just as I would any other legal claim.

30. Does it promote violence against, or directly attack, a person on the basis of religious affiliation to say there are more than two genders?

Response: I do not have an opinion on this matter. Legal issues related to religious affiliation, gender, and gender identity are frequently litigated in federal courts. If confirmed, and a case came before me that presented a legal claim relating to religious affiliation, gender, or gender identify, I would carefully analyze those issues, just as I would any other legal claim.

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: I am not familiar with the 2011 Dear Colleague Letter issued by the U.S. Department of Education. As a general matter, the "more likely than not" standard of proof is another way of describing the preponderance-of-the-evidence standard. The standard of proof that governs in criminal prosecutions is the beyond-a-reasonable-doubt standard. *See In re Winship*, 397 U.S. 358, 362 (1970) ("Expressions in many opinions of this Court indicate that it has long been assumed that proof of a criminal charge beyond a reasonable doubt is constitutionally required."); *id.* at 364 ("[W]e explicitly hold 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.").

32. Are students accused of sexual misconduct entitled to due process?

Response: The Supreme Court has recognized that a student's entitlement to a public education is a property interest protected by the Fourteenth Amendment's Due Process Clause "which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause." *Goss v. Lopez*, 419 U.S. 565, 574 (1975).

33. Given the information in the public domain, do you believe that Brett Kavanaugh sexually assaulted Christine Blasey Ford?

Response: As a judicial nominee, it would be inappropriate for me to comment on any extra-judicial matter concerning any member of the Supreme Court.

34. 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 specific judicial philosophy, meaning I do not ascribe to any single school of interpretive methodology. If confirmed as a circuit judge, I would be bound by the precedents of the Supreme Court, without regard to any personal view about constitutional interpretation. I expect it will be the rare case where, as a circuit judge, I would be called upon to interpret a constitutional provision that has never been considered in a precedent of the Supreme Court. Should such a case of first impression come before the Tenth Circuit, I would start with the constitutional text and adhere to the modes of constitutional interpretation used by the Supreme Court. In recent years, the Supreme Court has interpreted various constitutional provisions according to the "original public meaning" of the Constitution's text at the time of the Founding. *See, e.g., Ramos v. Louisiana*, 140 S. Ct. 1390, 1395 (2020); *District of Columbia v. Heller*, 554 U.S. 570, 576-600 (2008). The Supreme Court also has referred to the original intent of the Framers when interpreting the Constitution. *See, e.g., Crawford v. Washington*, 541 U.S. 36, 53–54 (2004). If confirmed, I will faithfully follow Supreme Court precedents regarding constitutional issues, regardless of whether the particular precedent was grounded in any specific judicial philosophy or approach to constitutional interpretation.

35. Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?

Response: I would respectfully reiterate what I said at hearing, which was that "I believe the Constitution is an enduring document."

36. Over the last year, you routinely and publicly doubted the veracity of the Bureau of Prison statistics, stating in a blog post in December, 2020 that: "There is good reason to believe the numbers reported by the BOP understate the actual number of tested-positive cases. When using BOP data, make sure to keep in mind that just because a facility isn't listed on the BOP website does not mean there are no presumptive positive or clinically confirmed cases in that facility." Were you

accusing BOP of manipulating data or intentionally underrepresenting COVID cases? Please clarify.

Response: No. I was not accusing BOP of manipulating data or intentionally under-representing COVID cases. As I said at my hearing, the pandemic was a "true crisis" and "[a]ll actors, in my view, were doing their very best under extraordinarily difficult circumstances." The blog post referenced in this question was describing the challenge of verifying one particular data point, given the rapidly-evolving nature of COVID-19 diagnosis and testing during the pandemic. As the BOP states on its website, "Data [concerning the number of COVID-19 cases] is subject to change based on additional reporting." *See* https://www.bop.gov/coronavirus/index.jsp

37. **In March and April of 2020, you advised criminal defense attorneys on the latest developments in home confinement, and advised to not "wait for the BOP to identify" eligible clients, rather, to "figure out a release plan and bring eligibility to the attention of the case manager." You then provided an "explanation of why prisons and jails are particularly vulnerable to outbreaks, as well as guidance on Covid-19 release advocacy." Now that prisoners have the opportunity to be vaccinated, do you believe that defense attorneys should be asking for—and judges should be granting—early release based on COVID-19? Please explain.**

Response: The compassionate release provision of 18 U.S.C. § 3582 permits district courts to reduce a prisoner's sentence if the court finds that "extraordinary and compelling reasons warrant such a reduction." 18 U.S.C. § 3582(c)(1)(A)(i). The First Step Act of 2018 amended the compassionate release statute to allow eligible prisoners to directly ask a court to reduce a sentence for extraordinary and compelling reasons. At all times, an advocate's decision to pursue a compassionate release motion for an eligible defendant, and a judge's exercise of discretion to adjudicate that motion, are governed by statutory factors and case law, as applied to the highly-individualized circumstances of each petitioner's case.

Senator Josh Hawley
Questions for the Record

Veronica S. Rossman
Nominee, U.S. Court of Appeals for the Tenth Circuit

1. **In statements prepared for the Illinois Institute of Continuing Legal Education, you discussed the Adam Walsh Child Protection and Safety Act of 2006. That law, as you correctly stated at the time, "include[s] a new mandatory condition of electronic monitoring for all persons charged with a long list of sexual abuse or pornography crimes, including failure to register as a sexual offender under 18 U.S.C. § 2250, if those crimes involve a 'minor victim.'"**

   a. **Were these statements targeted to members of the criminal defense bar?**

      Response: These are not my statements. I have never prepared any statement for the Illinois Institute of Continuing Legal Education.

   b. **In those statements, you noted that "[a] number of district courts have found [the Adam Walsh Child Protection and Safety Act of 2006] unconstitutional as a violation of the Excessive Bail Clause of the Eight Amendment, procedural due process under the Fifth Amendment, and the separation-of-powers doctrine." Do you believe the Adam Walsh Child Protection and Safety Act is unconstitutional on Eighth Amendment grounds?**

      Response: These are not my statements. I have never prepared any statement for the Illinois Institute of Continuing Legal Education.

   c. **Do you believe the Adam Walsh Child Protection and Safety Act is unconstitutional on Fifth Amendment grounds?**

      Response: My personal views, if any, on federal statutes would have no bearing on my role as an appellate judge on the Tenth Circuit, if confirmed.
      The Supreme Court recently found unconstitutional under the Fifth and Sixth Amendments a supervised-release provision, 18 U.S.C. § 3583(k), that applied to a defendant who must register under the Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Child Protection and Safety Act of 2006. *See United States v. Haymond*, 139 S. Ct. 2369, 2373 (2019). Whether the Adam Walsh Act amendments to the Bail Reform Act, 18 U.S.C.A. § 3142(c)(1)(B), violate the Due Process Clause of the Fifth Amendment appears to be a question that is currently being litigated in the lower federal courts, so it would be inappropriate for me, as a judicial nominee, to opine generally on this matter. I will faithfully follow all binding Supreme Court and Tenth Circuit precedent in every case, including precedents addressing the Adam Walsh Protection and Safety Act.

d. Do you believe the Adam Walsh Child Protection and Safety Act is unconstitutional on separation-of-powers grounds?

Response: My personal views, if any, on federal statutes would have no bearing on my role as an appellate judge on the Tenth Circuit, if confirmed. In *Gundy v. United States*, 139 S. Ct. 2116, 2129 (2019), the Supreme Court rejected a constitutional challenge (on separation-of-powers and non-delegation doctrine grounds) to SORNA. I will faithfully follow all binding Supreme Court and Tenth Circuit precedent in every case, including precedents addressing the Adam Walsh Protection and Safety Act.

2. Under Supreme Court and U.S. Court of Appeals for the Tenth Circuit precedent, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?

Response: The Supreme Court has held that "all Eighth Amendment method-of-execution claims" require that "a prisoner must show a feasible and readily implemented alternative method of execution that would significantly reduce a substantial risk of severe pain and that the State has refused to adopt without a legitimate penological reason." *Bucklew v. Precythe*, 139 S. Ct. 1112, 1125 (2019) (*citing Glossip v. Gross*, 135 S. Ct. 2726 (2015) and *Baze v. Rees*, 553 U.S. 35 (2008)). The Tenth Circuit has recognized these Supreme Court precedents as providing the "legal standard that governs Eighth Amendment method-of-execution challenges." *See United States v. Guillen*, 995 F.3d 1095, 1120 (10th Cir. 2021).

3. Under the Supreme Court's holding in *Glossip v. Gross*, is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?

Response: Yes, please see my response to Question 2.

4. Have the Supreme Court or the U.S. Court of Appeals for the Tenth Circuit ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?

Response: No. *See D.A.'s Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 73 (2009) (refusing to recognize a substantive due process right to obtain postconviction access to the State's evidence for DNA testing); *see also Huey v. Kunzweiler for Tulsa County State*, 847 Fed. Appx. 530, 534 (10th Cir. 2021) (unpublished) (acknowledging *Osborne* as controlling precedent).

5. **Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?**

   Response: No.

6.

   a. **Under Supreme Court and U.S. Court of Appeals for the Tenth Circuit precedent, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.**

   Response: The Free Exercise Clause of the First Amendment, applicable to the States under the Fourteenth Amendment, provides that "Congress shall make no law ... prohibiting the free exercise" of religion. The Supreme Court has held that "laws incidentally burdening religion are ordinarily not subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable." *See Fulton v. City of Philadelphia, Pennsylvania*, 19-123, 2021 WL 2459253, at *4 (U.S. June 17, 2021) (*citing Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U. S. 872 (1990)). The Supreme Court has further held that "[g]overnment fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Fulton*, at *5 (*citing Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 584 U. S. ___, ___–___ (2018) (slip op., at 16–17)). "A law also lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, at *5. I am aware of other Supreme Court precedent involving the free exercise of religion that may inform the analysis. *See, e.g., Tandon v. Newsom*, 141 S.Ct. 1294 (2021); *see also Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S.Ct. 2049 (2020).

   In *Abdulhaseeb v. Calbone*, 600 F.3d 1301 (10th Cir. 2010), for example, the Tenth Circuit addressed what constitutes a "substantial burden," finding religious exercise to be substantially burdened "when a government (1) requires participation in an activity prohibited by a sincerely held religious belief, or (2) prevents participation in conduct motivated by a sincerely held religious belief, or (3) places substantial pressure on an adherent either not to engage in conduct motivated by a sincerely held religious belief or to engage in conduct contrary to a sincerely held religious belief[.]" *Id.* at 1316; *see also Yellowbear v. Lampert*, 741 F.3d 48, 55 (10th Cir. 2014).

b. Under Supreme Court and U.S. Court of Appeals for the Tenth Circuit precedent, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent?

Response: As a general rule, laws that discriminate against religion are "odious to our Constitution." *Espinoza v. Montana Dept. of Revenue*, 140 S. Ct. 2263 (2020). In *Espinoza v. Montana Dept. of Revenue*, the Supreme Court held that "[w]hen otherwise eligible recipients are disqualified from a public benefit solely because of their religious character, we must apply strict scrutiny." *Id.* at 2260 (internal citations and quotation marks omitted). The *Espinoza* Court described this as a "rule against express religious discrimination." *Id.* Under these circumstances, where strict scrutiny applies, the "government action must advance interests of the highest order and must be narrowly tailored in pursuit of those interests." *Id.* (internal citations and quotation marks omitted); *see also Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U. S. ——, 137 S.Ct. 2012 (2017).

c. What is the standard in the U.S. Court of Appeals for the Tenth Circuit for evaluating whether a person's religious belief is held sincerely?

Response: The Tenth Circuit has held that, on the issue of whether a person's religious belief are sincerely held, a federal judge's task is a "modest one, limited to asking whether the claimant is (in essence) seeking to perpetrate a fraud on the court—whether he actually holds the beliefs he claims to hold—a comparatively familiar task for secular courts that are regularly called on to make credibility assessments—and an important task, too, for ensuring the integrity of any judicial proceeding." *Yellowbear v. Lampert*, 741 F.3d 48, 54 (10th Cir. 2014). The Tenth Circuit confirmed, that "in suggesting we may ask whether a claimant truly holds a religious belief isn't to suggest we may decide whether the claimant's religious belief is true." *Id.*

7. What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller?*

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held the Second Amendment protects an individual's fundamental right to keep and bear arms. As the Supreme Court later explained in *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010), "our central holding in *Heller* [is] that the Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home."

8. Please state whether you agree or disagree with the following statement and explain why: "Absent binding precedent, judges should interpret statutes based on the meaning of the statutory text, which is that which an ordinary speaker of English

would have understood the words to mean, in their context, at the time they were enacted."

Response: I am not familiar with the source of the above-quoted language. I agree that it is a "'fundamental canon of statutory construction' that words generally should be 'interpreted as taking their ordinary ... meaning ... at the time Congress enacted the statute.'" *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 539 (2019) (quoting *Wisconsin Central Ltd. v. United States*, 138 S. Ct. 2067 (2018)). If confirmed, I will faithfully follow all binding Supreme Court and Tenth Circuit precedent, including precedents regarding the canons of statutory construction.

9. **During your testimony, you defended your decision to seek pretrial release for the defendant in *United States v. Moon*. Please clarify why you thought it was appropriate for the defendant to be released, despite the fact that the defendant was found with an arsenal of automatic machine guns and was accused of making threats against his children.**

Response: I was appointed to represent Mr. Moon in his Tenth Circuit appeal of the district court's order denying pretrial release under the Bail Reform Act, 18 U.S.C § 3142(g). Mr. Moon was a 52-year old, immunocompromised cancer patient, facing a single felon-in-possession charge under 18 U.S.C. §922(g)(1). Mr. Moon was in the middle of cancer treatment when he was arrested, but his chemotherapy and radiation had stopped abruptly because he was taken into custody. The trial court's detention order entered right at the start of the COVID-19 crisis, at a time before the Bureau of Prisons had any meaningful opportunity to implement many of its pandemic-related health and safety protocols. Mr. Moon asked to reopen the bail hearing in the trial court, given COVID-19 and the direct risk it posed to him. The concern at the time was that Mr. Moon's cancer would spread if he did not resume treatment immediately and, if he contracted COVID-19 in his immunocompromised state, he might die. The court again refused to release Mr. Moon, and I filed an appeal to the Tenth Circuit.

I never argued that generalized concerns over COVID-19, without more, should justify release for every pretrial detainee. But, given the specific facts and circumstances of Mr. Moon's case, and fulfilling my obligation under the Sixth Amendment to advocate zealously on his behalf, I argued that Mr. Moon should have been released to home detention, under strict conditions that would assure the safety of the community, so he could immediately resume cancer treatment and practice the CDC-recommended social distancing measures.

I also made a legal argument, which had been recognized by federal courts across the country, that the pandemic changed the Bail Reform Act analysis. Under that statute, "[t]he judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community," consider the following factors: (1) the nature and circumstances of the offense; (2) the weight of the evidence against the person; (3) the history and characteristics of the person, including his "physical and mental condition[,];

and (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. 18 U.S.C. § 3142(g)(1)-(4). I argued that the pandemic altered the danger-to-the-safety of the community risk assessment, which must now incorporate the public-health risks of detention. I argued that, in assessing danger to the community under the Bail Reform Act, courts must weigh not just the risks that a defendant's release would impose on the community, but also the converse—the health risks to prison staff, inmates, and the local community, when defendants with serious medical problems remain in custody under conditions that do not permit compliance with widespread health directives. I also argued that the district court's failure to consider how the heightened risk of COVID-19 transmission in jails affects the detention calculus violated the Bail Reform Act's requirement that courts account for a detainee's physical condition and the community's safety when setting bail.

The Tenth Circuit affirmed the district court's detention order, and Mr. Moon was never released from pretrial custody.

10. Please clarify your understanding of the role that public safety has in considering defendants for pretrial release.

Response: Please see my response to Question 8.

Questions for the Record for Veronica S. Rossman
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.

Senate Judiciary Committee - Questions for the Record from Senator John Kennedy
June 9, 2021

Hearing entitled: "Nominations"

Questions for Veronica Rossman, Nominee for the U.S. Court of Appeals for the Tenth Circuit

1. **Do you personally believe, generally and at the most fundamental level, that the provisions of the United States Constitution should be interpreted according to their respective meanings at the time of adoption?**

   Response: I do not have a specific judicial philosophy, meaning I do not ascribe to any single school of interpretive methodology. As I said at my hearing, "I believe the Constitution is an enduring document." If confirmed as a circuit judge, I would be bound by the precedents of the Supreme Court, without regard to any personal view about constitutional interpretation. I expect it will be the rare case where, as a circuit judge, I would be called upon to interpret a constitutional provision that has never been considered in a precedent of the Supreme Court. Should such a case of first impression come before the Tenth Circuit, I would start with the constitutional text and adhere to the modes of constitutional interpretation used by the Supreme Court. In recent years, the Supreme Court has interpreted various constitutional provisions according to the "original public meaning" of the Constitution's text at the time of the Founding. See, e.g., *Ramos v. Louisiana*, 140 S. Ct. 1390, 1395 (2020); *District of Columbia v. Heller*, 554 U.S. 570, 576-600 (2008). The Supreme Court also has referred to the original intent of the Framers when interpreting the Constitution. *See, e.g., Crawford v. Washington*, 541 U.S. 36, 53–54 (2004). If confirmed, I will faithfully follow Supreme Court precedents regarding constitutional issues, regardless of whether the particular precedent was grounded in any specific judicial philosophy or approach to constitutional interpretation.

2. **If you do not subscribe to Original Meaning as your core judicial philosophy, then what is your approach to constitutional interpretation?**

   Response: Please see response to Question 1. In addition, while I do not ascribe to a specific judicial philosophy, I have carefully considered the judicial process I will bring with me to the appellate bench, if confirmed. In every case, I will treat all litigants respectfully and impartially; I will carefully consider the issue(s) presented and give due regard to the parties' legal arguments; I will carefully review the record on appeal; I will put aside any personal views; I will faithfully adhere to the rule of law; I will reach a decision, working collaboratively with my judicial colleagues, that adjudicates only the issue presented in the case; and I will strive to issue well-written opinions that make the reasoning underlying the outcome clear to the litigants and to the public.

Senator Mike Lee
Questions for the Record
Veronica S. Rossman, Tenth Circuit Court of Appeals

1. How would you describe your judicial philosophy?

Response: I do not have a specific judicial philosophy, meaning I do not ascribe to any single school of interpretive methodology. As I said at my hearing, "I believe the Constitution is an enduring document." If confirmed as a circuit judge, I would be bound by the precedents of the Supreme Court, without regard to any personal view about constitutional interpretation. I expect it will be the rare case where, as a circuit judge, I would be called upon to interpret a constitutional provision that has never been considered in a precedent of the Supreme Court. Should such a case of first impression come before the Tenth Circuit, I would start with the constitutional text and adhere to the modes of constitutional interpretation used by the Supreme Court. In recent years, the Supreme Court has interpreted various constitutional provisions according to the "original public meaning" of the Constitution's text at the time of the Founding. *See, e.g., Ramos v. Louisiana*, 140 S. Ct. 1390, 1395 (2020); *District of Columbia v. Heller*, 554 U.S. 570, 576-600 (2008). The Supreme Court also has referred to the original intent of the Framers when interpreting the Constitution. *See, e.g., Crawford v. Washington*, 541 U.S. 36, 53–54 (2004). If confirmed, I will faithfully follow Supreme Court precedents regarding constitutional issues, regardless of whether the particular precedent was grounded in any specific judicial philosophy or approach to constitutional interpretation.

While I do not ascribe to a specific judicial philosophy, I have carefully considered the judicial process I will bring with me to the appellate bench, if confirmed. In every case, I will treat all litigants respectfully and impartially; I will carefully consider the issue(s) presented and give due regard to the parties' legal arguments; I will carefully review the record on appeal; I will put aside any personal views; I will faithfully adhere to the rule of law; I will reach a decision, working collaboratively with my judicial colleagues, that adjudicates only the issue presented in the case; and I will strive to issue well-written opinions that make the reasoning underlying the outcome clear to the litigants and to the public.

2. What sources would you consult when deciding a case that turned on the interpretation of a federal statute?

Response: I would research to learn whether the statute had been interpreted in any Supreme Court or Tenth Circuit cases, as those precedents would be binding. In a case of first impression, I would look first at the statutory text. Unless Congress has supplied a definition in the statute, I would interpret statutory terms in accordance with their ordinary meaning. In this scenario, there would be no need to consult any

sources; the statute would be applied as written. If the statutory text is ambiguous, I would begin by looking at statutory context, examining the rest of the specific provision or the legislation as a whole. Then, I would turn to semantic and substantive canons of construction. I also would look at Tenth Circuit cases interpreting analogous provisions in other statutes and cases outside the Tenth Circuit that have interpreted that statute as a source of persuasive, not binding, authority. In the final analysis, legislative history might be useful, particularly committee reports.

3. What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?

Response: As a circuit court judge, if confirmed, I would expect that constitutional cases of first impression would be rare. In any constitutional case, I would always begin by researching applicable Supreme Court and Tenth Circuit precedent, and I would be bound by those precedents regardless of the interpretive methodology those precedents used. In a case of first impression, I would do what it appears the Supreme Court does: look first at the text of the constitutional provision. I would familiarize myself with the variety of interpretive methodologies used by the Supreme Court and if there was a particular method that the Supreme Court had used to interpret the provision at issue—for example, the Supreme Court looked to original public meaning to understand the scope of the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008)—then I would follow that methodology. I would interpret the constitutional text in a manner consistent with the methods used by the Supreme Court.

4. What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?

Response: The original meaning approach to constitutional interpretation, as I understand it, considers the plain meaning of the Constitution's text as it would have been understood by the general public who lived at the time the Constitution was ratified. For example, Justice Scalia's majority opinion in *District of Columbia v. Heller*, 554 U.S. 570 (2008) used the "original public meaning" methodology to interpret the Second Amendment.

5. What are the constitutional requirements for standing?

Response: The Supreme Court recently reiterated the requirements of constitutional standing in *Texas v. California,* 19-1019, 2021 WL 2459255 (U.S. June 17, 2021)**:**

> The Constitution gives federal courts the power to adjudicate only genuine "Cases" and "Controversies." Art. III, § 2. That power includes the requirement that litigants have standing. A plaintiff has standing only if he

> can "allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief."

Texas, at *4 (*quoting DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006) and *citing Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561) (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: Constitutional standing enforces the case or controversy requirement in Article III. Prudential standing encompasses "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 interest protected by the law invoked." *Allen v. Wright*, 468 U.S. 737, 751 (1984). More recently, the Supreme Court has observed that prudential standing is "in some tension with our recent reaffirmation of the principle that a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging." *Lexmark Intern., Inc. v. Static Control Components, Inc*., 134 S. Ct. 1377, 1386 (2014) (internal quotation marks omitted). One of these prudential standing considerations was whether "a plaintiff's complaint fall[s] within the zone of interests protected by the law invoked." *Allen*, 468 U.S. at 751. The Supreme Court stated that the notion of "prudential standing is a misnomer as applied to the zone-of-interests analysis, which asks whether this particular class of persons ha[s] a right to sue under this substantive statute." *Lexmark Intern., Inc.*, 134 S. Ct. at 1387 (internal quotation marks omitted). The Tenth Circuit holds that "third party standing should continue to be analyzed under the framework of prudential standing." *Hill v. Warsewa*, 947 F.3d 1305, 1309 (10th Cir. 2020).

7. How would you define the doctrine of administrative exhaustion?

Response: The doctrine of exhaustion of administrative remedies is part of the jurisprudence of administrative and habeas law. It is a kind of order-of-operations requirement for seeking relief in federal court. "The doctrine provides that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Woodford v. Ngo*, 548 U.S. 81, 88–89 (2006) (internal citation and quotation omitted). The Supreme Court has observed that the exhaustion of administrative remedies doctrine "protects administrative agency authority" and "promotes efficiency." *Id.*

8. Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?

Response: Congress "can claim no powers which are not granted to it by the constitution, and the powers actually granted, must be such as are expressly given, or given by necessary implication." *Martin v. Hunter's Lessee*, 1 Wheat. 304, 326 (1816). The Necessary and Proper Clause grants Congress the 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." Art. I, § 8, cl. 18; *see McCullough v. Maryland*, 17 U.S. 316 (1819); *see also Kinsella v. U.S. ex rel. Singleton*, 361 U.S. 234, 247 (1960) ("The [Necessary and Proper Clause] is not itself a grant of power, but a caveat that the Congress possesses all the means necessary to carry out the specifically granted 'foregoing' powers of [Article I, section 8] 'and all other Powers vested by this Constitution."). The Supreme Court has held that the Necessary and Proper Clause provides Congress "implied power to criminalize any conduct that might interfere with the exercise of an enumerated power." *United States v. Comstock*, 560 U.S. 126, 147 (2010).

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 Congress enacts a law without reference to a specific constitutional enumerated power, and this was an issue of first impression with no controlling Supreme Court or Tenth Circuit precedent, I would evaluate the constitutionality of that law as follows: I would apply the de novo standard of review, which the Tenth Circuit uses to review challenges to the constitutionality of a statute. *See, e.g, United States v. Dorris,* 236 F.3d 582, 584 (10th Cir. 2000). I would begin with the presumption of constitutionality ordinarily given to acts of Congress. *See, e.g., United States v. Harris*, 106 U.S. 629, 635 (1883) ("Proper respect for a co-ordinate branch of the government requires the courts of the United States to give effect to the presumption that congress will pass no act not within its constitutional power."). But I would also keep in mind that, as the Supreme Court reiterated in *United States v. Morrison*, "[e]very law enacted by Congress must be based on one or more of its powers enumerated in the Constitution." 529 U.S. 598, 607 (2000); *see generally United States v. Lopez*, 514 U.S. 549 (1995). I would then assess the nature of the statute at issue (for example, whether the law regulates an aspect of interstate commerce), and review Supreme Court jurisprudence analyzing the scope of Congressional power to ascertain guiding principles for analysis.

10. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?

Response: Yes. *See, e.g., Griswold v. Connecticut*, 381 U.S. 479 (1965) (right of privacy); *United States v. Guest*, 383 U.S. 745 (1966) (right of interstate travel); *Coffin v. United States*, 156 U.S. 432, 453 (1895) (right to the presumption of innocence).

11. What rights are protected under substantive due process?

Response: The Supreme Court's substantive due process jurisprudence recognizes a number of rights, as summarized in *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997):

> The Due Process Clause guarantees more than fair process, and the "liberty" it protects includes more than the absence of physical restraint. Collins v. Harker Heights, 503 U.S. 115, 125 (1992) (Due Process Clause "protects individual liberty against 'certain government actions regardless of the fairness of the procedures used to implement them'") (*quoting Daniels v. Williams*, 474 U.S. 327, 331 (1986)). The Clause also provides heightened protection against government interference with certain fundamental rights and liberty interests. *Reno v. Flores*, 507 U.S. 292, 301–02 (1993); *Casey*, 505 U.S., at 851. 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 (1967); to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); to use contraception, *ibid.*; *Eisenstadt v. Baird*, 405 U.S. 438 (1972); to bodily integrity, *Rochin v. California*, 342 U.S. 165 (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.

521 U.S. 702, 719–20 (1997); *see also Obergefell v. Hodges,* 576 U.S. 644 (2015) (right of same-sex couples to marry).

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 an appellate judge, if confirmed, my personal beliefs about substantive due process, or any other doctrinal matter, would not bear on my ability to apply binding Supreme Court and Tenth Circuit precedent. The issue is not whether these rights are inherently distinguishable, but the fact that the Supreme Court has treated them distinctly over the years. The Supreme Court has consistently reaffirmed the right to choose an abortion in the pre-viability stage of pregnancy. *See Planned Parenthood of S.E. Pennsylvania v. Casey*, 505 U.S. 833, 846 (1992); *see also June Med. Services LLC v. Russo,* 140 S. Ct. 2103, 2135 (2020) (Roberts, C.J.) (concurring) ("*Casey* reaffirmed 'the most central principle of *Roe v. Wade*,"' 'a woman's right to terminate her pregnancy before viability.'") (internal citation omitted). The Supreme Court's view of *Lochner* and its progeny is less certain. *See, e.g., West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 391 (1937) (upholding a state minimum wage law for women, and calling into question the viability of the Supreme Court's liberty-of-contract jurisprudence). If confirmed, I will respect and apply the substantive due process precedents of the Supreme Court and the Tenth Circuit.

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) sets out Congress's power under the Commerce Clause. The Court held in *Lopez* that there are "three broad categories of activity that Congress may regulate under its commerce power," namely, the power to regulate the channels of interstate commerce, 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 affecting that group must survive strict scrutiny?

Response: In determining what qualifies a particular group as a "suspect class," the Supreme Court has referred to the "traditional indicia of suspectedness" which it has understood as an "immutable characteristic determined solely by the accident of birth," or classes of persons "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 citations and quotation marks omitted). The Supreme Court has found race, alienage, national origin, and religion to be suspect classifications, which subject laws affecting those groups to strict scrutiny review. *See, e.g., Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 313 (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 of powers play in the Constitution's structure?

Response: The separation of powers and the system of checks and balances are foundational, structural protections inherent in our Constitution, which "scrupulously avoids concentrating power in the hands of any single individual." *Seila Law LLC v. Consumer Fin. Protec. Bureau*, 140 S. Ct. 2183, 2202 (2020). As the Supreme Court has explained, the Framers "'split the atom of sovereignty' itself into one Federal Government and the States. They then divided the powers of the new Federal Government into three defined categories, Legislative, Executive, and Judicial." *Id.* (internal citation and quotation marks omitted).

The purpose of separating and dividing the power of government was to "diffus[e] power the better to secure liberty." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (Jackson, J., concurring). "[C]hecks and balances were the foundation of a structure of government that would protect liberty. The Framers provided a vigorous Legislative Branch and a separate and wholly independent Executive Branch, with each branch responsible ultimately to the people. The Framers also provided for a Judicial Branch equally independent with "[t]he judicial Power ... extend[ing] to all Cases, in Law and Equity, arising under this Constitution, and the Laws of the United States." *Bowsher v. Synar*, 478 U.S. 714, 722 (1986) (internal citations omitted). The structure of our constitutional system also promotes "a workable government." *Youngstown Sheet & Tube Co.*, 343 U.S. at 635 (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.").

To be sure, "this system of division and separation of powers produces conflicts, confusion, and discordance at times," but "it was deliberately so structured to assure full, vigorous, and open debate on the great issues affecting the people and to provide avenues for the operation of checks on the exercise of governmental power." *Bowsher*, 478 U.S. at 722.

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 would begin by researching applicable Supreme Court and Tenth Circuit precedent. If this was an issue of first impression, I would begin the analysis by examining the text of the Constitution that relates to the issue presented and the particular branch of government involved. I would then examine Supreme Court and Tenth Circuit cases addressing, depending on the facts, the scope of congressional, executive, or judicial power to ascertain guiding principles for deciding whether the action taken overstepped Constitutional limits. *See, e.g., United States v. Lopez*, 514

U.S. 549 (1995); *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004); *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 585 (1999).

17. What role should empathy play in a judge's consideration of a case?

Response: Empathy should play no role in interpreting the law. A judge must be impartial and abide by the rule of law, without regard to any external influences or personal opinions.

18. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: As a general matter, neither option would likely withstand constitutional scrutiny.

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: It is well settled that "[i]t is emphatically the province and duty of the judicial department to say what the law is[.]" *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). It is also well settled that a presumption of constitutionality ordinarily applies to acts of Congress. *See, e.g., United States v. Harris*, 106 U.S. 629, 635 (1883). These basic principles seem to be implicated by the question posed. But I have no personal knowledge about the changes in the Supreme Court's rate of constitutional invalidation nor have I formed any opinion on the relative upsides and downsides of "aggressive" judicial review.

20. How would you explain the difference between judicial review and judicial supremacy?

Response: The landmark decision in *Marbury v. Madison* provides the foundation for judicial review—which is the power of the Court to assess the legality of laws or decisions made by a coordinate branch of government. Judicial supremacy creates "the obligation of coordinate officials not only to obey that ruling but to follow its reasoning in future deliberations." Scott E. Gant, *Judicial Supremacy and Nonjudicial Interpretation of the Constitution*, 24 Hastings Const. L.Q. 359, 368 (1997) (explaining the difference between judicial review and judicial supremacy). As the Supreme Court has explained, "It 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." *City of Boerne v. Flores*, 521 U.S. 507, 536 (1997) (quoting *Katzenbach v. Morgan*, 384 U.S. 641, 651 (1966)).

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: Elected officials have an independent obligation to uphold the Constitution and take an oath affirming their duty to do so. U.S. Const., Art. VI, Sec. 3. As a judicial nominee, it would be inappropriate for me to speculate, in the abstract, on what balance should be struck between an elected official's own interpretation of the Constitution and the need to respect duly rendered 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.

Response: When adjudicating cases, it is important for judges to keep in mind the limited authority of the federal courts. Judges must be ever-mindful that cases are to be decided impartially, in a principled manner according to the rule of law, and not the personal views or "will" of any individual judge. Keeping in mind the limits of the judicial role will ensure that a judge adjudicates only cases and controversies, within the bounds of Article III, and will further respect for the distinct powers and duties of the legislative and executive branches.

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: I would research to learn whether the statute had been interpreted in any Supreme Court or Tenth Circuit cases, as those precedents would be binding. In a case of first impression, I would look first at the statutory text. Unless Congress has supplied a definition in the statute, I would interpret statutory terms in accordance with their ordinary meaning. In this scenario, there would be no need to consult any sources; the statute would be applied as written. If the statutory text is ambiguous, I

would begin by looking at statutory context, examining the rest of the specific provision or the legislation as a whole. Then, I would turn to semantic and substantive canons of construction. I also would look at Tenth Circuit cases interpreting analogous provisions in other statutes and cases outside the Tenth Circuit that have interpreted that statute as a source of persuasive, not binding, authority. In the final analysis, legislative history might be useful, particularly committee reports.

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: A circuit judge must apply applicable, controlling precedents, irrespective of any personal opinion about the relative merits or correctness of the holding or reasoning in the case. "Adherence to precedent is a foundation stone of the rule of law." *Kisor v. Wilkie*, 139 S. Ct. 2400, 2422 (2019) (internal citation and quotation marks omitted). "Respect for precedent promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process. It is the means by which we ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion." *June Med. Services LLC. v. Russo*, 140 S. Ct. 2103, 2134 (2020) (internal citations and quotation marks omitted) (Roberts, C.J.) (concurring). If the precedent is not controlling or applicable, however, it would be appropriate for a circuit judge to distinguish it from the case at hand and explain why it does not control the outcome.

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.

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: Several legal principles may inform the answer to this question.

First, the sentencing statute – 18 U.S.C. § 3553(a) – specifies "various factors that courts must consider in exercising their discretion" at sentencing. *Pepper v. United*

States, 562 U.S. 476, 489 (2011). Among these factors is the "history and characteristics of the defendant." 18 U.S.C. § 3553(a)(1).

Second, the Supreme Court has emphasized that "[h]ighly relevant—if not essential—to [the] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics." *Pepper*, 562 U.S. at 488. Congress codified this long-standing sentencing principle in 18 U.S.C. § 3661, which provides: "No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence." The Sentencing Commission has expressly incorporated § 3661 into the Sentencing Guidelines. *See* USSG § 1B1.4.

Third, the Supreme Court has noted that the sentencing court's discretion to consider a wide range of information under § 3661 "is subject to constitutional constraints." *Pepper*, 562 U.S. 489 n.8.

Finally, the Supreme Court has held that sentencing must be individualized. *See, e.g., Pepper*, 562 U.S. at 487-88 ("It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual").

Accordingly, a defendant's group identities may factor into the sentencing analysis, to the extent they are relevant to the factors listed in § 3553(a) and subject to constitutional constraints, so long as the sentencing judge adheres to the principle of individualized sentencing.

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 systemic sentencing disparities?

Response: No.

28. The President of Alliance for Justice—a left-wing "dark money" group—recently praised your nomination, saying that "Biden and the Senate are ensuring our courts look like and understand the people who will be coming before them." The implication here seems to be that in order to judge someone fairly, you have to look like them—or, stated differently, they have to look like you. Do you believe a judge's rulings should change based on whether they share gender, racial, religious, or other characteristics with either of the parties in a particular case?

Response: No.

29. Have you spoken with anyone affiliated with Demand Justice or the Leadership Conference on Civil Rights regarding your nomination either before or after it was announced?

Response: I had a conversation with Chris Kang of Demand Justice, shortly after my name was submitted to Senator Michael Bennet's State Director. Because I knew nothing about federal judicial nominations, I asked Mr. Kang for basic information about the process, knowing that he had experience serving as chief judicial nominations counsel to President Obama. Mr. Kang also congratulated me on this nomination when it was announced. I have not spoken with anyone affiliated with the Leadership Conference on Civil and Human Rights.

30. What role, if any, do you believe "empathy" should play in the judicial process?

Response: Empathy should play no role in interpreting the law. A judge must be impartial and abide by the rule of law, without regard to any external influences or personal opinions.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
June 9, 2021

For Ms. Veronica Rossman:

1. **Why did you choose to work for the Office of the Federal Public Defender for the Districts of Colorado and Wyoming?**

   Response: After my appellate clerkship, I started my legal career as a civil litigator in private practice, but I hoped that, at some point, I would work in public service. The mission of the Office of the Federal Public Defender for the Districts of Colorado and Wyoming (FPD) is to uphold our fundamental constitutional values, such as ensuring due process through the effective assistance of counsel. In our adversarial criminal justice system, I understood the defense role to be just as important as the role of the prosecutor. I knew that working for the FPD would allow me to serve the public and defend our fundamental rights while practicing trial and appellate litigation at the highest level in complex federal cases.

2. **Were you ever concerned that your work for the Office of the Federal Public Defender for the Districts of Colorado and Wyoming would result in more violent criminals—including gun criminals and sex criminals—being put back on the streets?**

   Response: No. I am proud of the work I have performed upholding our fundamental constitutional rights and ensuring that the right to counsel guaranteed by the Sixth Amendment and the Criminal Justice Act, 18 U.S.C. § 3006A is enforced on behalf of those who cannot afford to retain a lawyer.

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, demonstrations, or other events at which you or other participants have willfully damaged public or private property?**

   Response: No.

3. How would you describe your judicial philosophy?

Response: I do not have a specific judicial philosophy, meaning I do not ascribe to any single school of interpretive methodology. As I said at my hearing, "I believe the Constitution is an enduring document." If confirmed as a circuit judge, I would be bound by the precedents of the Supreme Court, without regard to any personal view about constitutional interpretation. I expect it will be the rare case where, as a circuit judge, I would be called upon to interpret a constitutional provision that has never been considered in a precedent of the Supreme Court. Should such a case of first impression come before the Tenth Circuit, I would start with the constitutional text and adhere to the modes of constitutional interpretation used by the Supreme Court. In recent years, the Supreme Court has interpreted various constitutional provisions according to the "original public meaning" of the Constitution's text at the time of the Founding. *See, e.g., Ramos v. Louisiana*, 140 S. Ct. 1390, 1395 (2020); *District of Columbia v. Heller*, 554 U.S. 570, 576-600 (2008). The Supreme Court also has referred to the original intent of the Framers when interpreting the Constitution. *See, e.g., Crawford v. Washington*, 541 U.S. 36, 53–54 (2004). If confirmed, I will faithfully follow Supreme Court precedents regarding constitutional issues, regardless of whether the particular precedent was grounded in any specific judicial philosophy or approach to constitutional interpretation.

While I do not ascribe to a specific judicial philosophy, I have carefully considered the judicial process I will bring with me to the appellate bench, if confirmed. In every case, I will treat all litigants respectfully and impartially; I will carefully consider the issue(s) presented and give due regard to the parties' legal arguments; I will carefully review the record on appeal; I will put aside any personal views; I will faithfully adhere to the rule of law; I will reach a decision, working collaboratively with my judicial colleagues, that adjudicates only the issue presented in the case; and I will strive to issue well-written opinions that make the reasoning underlying the outcome clear to the litigants and to the public.

4. Would you describe yourself as an originalist?

Response: Please see my response to Question 3.

5. Would you describe yourself as a textualist?

Response: Please see my response to Question 3.

6. Do you believe the Constitution is a "living" document? Why or why not?

Response: I would respectfully reiterate what I stated at my hearing, which was, "I believe the Constitution is an enduring document."

7. Please name the Supreme Court Justice or Justices appointed since January 20, 1953 whose jurisprudence you admire the most and explain why.

Response: I particularly admire both Justices Gorsuch and Kagan because they share a quality that I believe is essential for appellate judges: an ability to write clear, reasoned judicial decisions, in plain language, which then make the Supreme Court's opinions accessible to the litigants, the public, and lower courts.

8. Was Marbury v. Madison correctly decided?
9. Was Lochner v. New York correctly decided?
10. Was Brown v. Board of Education correctly decided?
11. Was Bolling v. Sharpe correctly decided?
12. Was Cooper v. Aaron correctly decided?
13. Was Mapp v. Ohio correctly decided?
14. Was Gideon v. Wainwright correctly decided?
15. Was Griswold v. Connecticut correctly decided?
16. Was South Carolina v. Katzenbach correctly decided?
17. Was Miranda v. Arizona correctly decided?
18. Was Loving v. Virginia correctly decided?
19. Was Katz v. United States correctly decided?
20. Was Roe v. Wade correctly decided?
21. Was Romer v. Evans correctly decided?
22. Was United States v. Virginia correctly decided?
23. Was Bush v. Gore correctly decided?
24. Was District of Columbia v. Heller correctly decided?
25. Was Crawford v. Marion County Election Bord correctly decided?
26. Was Boumediene v. Bush correctly decided?
27. Was Citizens United v. Federal Election Commission correctly decided?
28. Was Shelby County v. Holder correctly decided?
29. Was United States v. Windsor correctly decided?
30. Was Obergefell v. Hodges correctly decided?

Response to Questions 8-30: All of the cases identified here are Supreme Court precedents, which would be binding on circuit courts. If confirmed, I will faithfully follow each precedent whenever it applies to a case that comes before the Tenth Circuit. Consistent with the position taken by other judicial nominees, and the important principle of judicial impartiality, I believe it would be inappropriate for me to comment on the merits of any decision of the Supreme Court. Of the listed cases, I can identify four exceptions to this general rule: *Marbury v. Madison*, *Brown v. Board of Education*, *Gideon v. Wainwright*, and *Loving v. Virginia*. The holdings in these four cases are beyond dispute.

31. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?

Response: Stare decisis applies in the Tenth Circuit. As the Court of Appeals has explained: "[u]nder the doctrine of stare decisis, [one] panel cannot overturn the decision of another panel of this court. We are bound by the precedent of prior panels absent en banc reconsideration or a superseding contrary decision by the Supreme Court." *United States v. Meyers*, 200 F.3d 715, 720 (10th Cir. 2000) (internal quotation marks and citations omitted). Federal Rule of Appellate Procedure 35(a) governs en banc review, which "is not favored." The rule states that en banc review "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." Fed. R. App. P. 35(a)(1)-(2). Likewise, the Tenth Circuit considers en banc review to be "an extraordinary procedure intended to focus the entire court on an issue of exceptional public importance or on a panel decision that conflicts with a decision of the United States Supreme Court or of this court." 10th Cir. R. 35.1(A).

32. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for an appellate 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 31.

33. 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? If so, how so?

Response: The Supreme Court has held that sentencing must be individualized. *See, e.g., Pepper v. United States*, 562 U.S. 476, 487-88 (2011) ("It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual"). The federal sentencing statute—18 U.S.C. § 3553(a)– enumerates several factors that the sentencing court "shall consider[,]" including § 3553(a)(6), under which a sentencing court considers "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." As a general matter, § 3553(a)(6) "looks to uniformity on a national scale." *United States v. Ivory*, 532 F.3d 1095, 1107 (10th Cir. 2008); *see also United States v. Martinez*, 610 F.3d 1216, 1228 (10th Cir. 2010) (holding that, under *Gall v. United States*, 552 U.S. 38, 46 (2007), "although § 3553(a) does not require a consideration of co-defendant disparity, it is not improper for a district court to undertake such a comparison"). "Unwarranted disparities result when the court relies on things like alienage, race, and sex to differentiate sentence terms." *United States v. Bridgewater*, 950 F.3d 928, 936 (7th Cir. 2020), *cert. denied*, 141 S. Ct. 638 (2020); *see also McCoy v. United States*, 145 F.3d 1332 (6th Cir. 1998) ("Mere disparity is not legally impermissible unless the district court considered an improper factor, such as race or a defendant's exercise of his constitutional right to a trial."). The Supreme Court has

observed that even the perception of unwarranted sentencing disparity based on race fosters disrespect for and lack of confidence in the criminal justice system. *See Kimbrough v. United States*, 128 S. Ct. 558, 568 (2007).

Questions for the Record for
Senator Thom Tillis for
Questions for Ms. Veronica Sophia Rossman

1. **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 may have more than one definition. To me, judicial activism occurs when judges decide cases by reference to their personal views, by reaching outside the scope of the issue presented in a case, or by ignoring basic jurisdictional and justiciability requirements under Article III to decide a case or controversy not properly before the court.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: Impartiality is an expectation of the judicial role. *See* Code of Conduct for United States Judges, Canon 3 ("a judge should perform the duties of the office fairly, impartially, and diligently").

4. **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 not be focused on whether any particular outcome is or is not desirable. The duty of a judicial officer is to put aside her personal views and to decide the case, impartially, based on the rule of law, as applied to the specific facts presented.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No.

7. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

   Response: I will faithfully and diligently uphold the Constitution and, in an impartial and fair manner, follow all binding Supreme Court and Tenth Circuit precedent in the Second Amendment context, including *District of Columbia* v. *Heller*, 554 U.S. 570 (2008) and

McDonald v. City of Chicago, 561 U.S. 742, 780 (2010), which held the Second Amendment protects an individual's right to keep and bear arms.

8. 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: Questions concerning the COVID-19 pandemic are actively being litigated in the Supreme Court and the lower federal courts. *See, e.g., Tandon v. Newsom*, 141 S. Ct. 1294 (2021). As a judicial nominee, I cannot comment on pending cases or impending matters that may come before the Tenth Circuit. If I am confirmed, should a case come before me that raises constitutional claims, I will faithfully follow all binding Supreme Court and Tenth Circuit precedent on the issue.

9. 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 had occasion to consider a qualified immunity case, because I have never served as a judge. If I am confirmed, I will diligently research and apply binding Supreme Court and Tenth Circuit precedent concerning the doctrine of qualified immunity. *See, e.g., Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

10. 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: I would respectfully reiterate what I said at my hearing, when I was asked about qualified immunity, which was: "I'd say that law enforcement has a tremendously important and challenging job. If I'm confirmed as a circuit judge, I would follow the law of qualified immunity as developed by the Supreme Court in cases like *Harlow* and others and the case law that's developed in the Tenth Circuit. And with respect to any policy positions that may implicate the doctrine of qualified immunity as a doctrinal judicial matter, that would be outside the scope of what I would be concerned with as a judge, if I'm confirmed."

11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: Please see my answer to Question 10.

Introductory Remarks for the Record
Senator Maria Cantwell
Senate Judiciary Committee Nominations Hearing
June 9, 2021
Nominees: David Estudillo, Lauren King, Tana Lin, Nominees for Federal District Court Vacancies in the Western District of Washington

Chair Durbin and Ranking Member Grassley, it is a privilege to be here to introduce these three experienced judicial nominees from my home state of Washington.

It has been a pleasure to work with the nominees, Senator Murray, and her staff throughout this nomination process. I am proud to see such a diverse and highly qualified panel selected to fill the vacancies on the U.S. District Court for the Western District of Washington.

I urge the Committee to swiftly confirm all three distinguished and historic nominees to serve my home state.

Introduction of Judge David Estudillo

It is an honor to introduce Judge David Estudillo of Grant County, Washington.

The son of Mexican immigrants who came to the Yakima Valley as part of the Bracero Program in the 1960s, Judge Estudillo has lived the experience of so many Washingtonians. Growing up, he learned and embraced both the culture of his parents and that of the United States. Judge Estudillo is a great example of the successes and contributions of immigrant families to our great state.

Judge Estudillo attended the University of Washington School of Law. He formerly practiced immigration and general civil litigation in Moses Lake and Seattle, and has tried cases in the Seattle and Tacoma Immigration Courts.

When he was appointed to Grant County Superior Court in 2015, he was the only Latino judge in any Eastern Washington State Court, and Judge Estudillo received bipartisan support, with endorsements from both local Democrat and Republican officials.

With his decades of experience, Judge Estudillo is highly qualified to serve on the U.S. District Court for the Western District of Washington.

Introduction of Lauren King

It is my honor to introduce Lauren King of Seattle, Washington. Should she be confirmed, she would be the first Native American federal judge from my home state.

Ms. King has an abundance of Tribal court experience.

She chairs the Native American Law Practice Group and serve as a Pro Tem Appellate Judge for the Northwest Intertribal Court System.

Ms. King was appointed by the Principal Chief of her tribe to serve on the Muscogee Nation Reservation Protection Commission to support economic development and social services for those living on the reservation.

She also served on the Seattle Indian Health Board and taught a course on Federal Indian Law at the Seattle University School of Law.

Washington has 29 federally recognized tribes, and it is long-overdue that our federal court system include someone with so much tribal law experience in Washington state.

This confirmation is significant, and I hope you will join me in supporting Ms. King's nomination to our federal court.

Introduction of Tana Lin

It is a privilege to introduce Tana Lin of Seattle, Washington.

Ms. Lin has over 16 years of litigation experience in a variety of areas, including labor and civil rights cases. In addition to her role as Of Counsel at a Seattle law firm, she also serves as a cooperating attorney for the ACLU of Washington.

As an Asian-American woman, the barriers Ms. Lin faced have inspired her to fight for equal access to justice and promote diversity within the legal field.

If confirmed, Ms. Lin would be the first Asian American appointed as a federal judge in the State of Washington. Western Washington has one of the largest populations of Asian Americans in our country, and it is important that our federal bench reflects the diversity of our state.

A highly-qualified and dedicated nominee, Ms. Lin would make a great addition to the federal bench.

PRESIDENT
NAN ARON

CHAIR
PAULETTE MEYER

June 4, 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 express strong support for the confirmation of David Estudillo, Lauren King and Tana Lin, as judges to the United States District Court for the Western District of Washington.

Each of these three outstanding nominees are eminently qualified and have a demonstrated commitment to equal justice. They have spent years working to preserve critical rights and protections, including the rights of workers and consumers, immigrants, Native Americans, and the accused. They would also bring diversity to the federal bench, including the first ever Native American and first ever Asian American to sit on the bench in Washington.

Mr. Estudillo, the son of immigrant farmworkers, has developed extensive courtroom experience as a Superior Court judge in Washington. And for over a decade before beginning judicial service, he worked as a civil litigator, representing plaintiffs in personal injury cases, and fighting for immigrants before trial and appellate level courts, including in deportation proceedings and at Deferred Action for Childhood Arrivals (DACA) hearings.

Ms. King has spent much of her career representing Native American tribes and, if confirmed, would be only the fifth active Native American federal judge in American history and the first in Washington. Notably, she litigated the largest treaty rights case in the history of the Western District of Washington, preserving offshore fishing rights for the Quileute and Quinault tribes. Aside from her legal work, King is a citizen of the Muscogee nation and serves on the Muscogee Reservation Protection Commission. She is also a former member of the Seattle Indian Health Board.

Ms. Lin has spent her career as an advocate for the rights of everyday Americans, including years representing workers and consumers as a litigator in Washington. Prior to that, she worked at the Civil Rights Division of the Department of Justice and the Equal Employment Opportunity Commission. In those offices, she fought employment discrimination by both public and private entities, from local police apartments to large corporations, including Wal-Mart. She also was litigation coordinator for Michigan Poverty Law Program and

has performed significant pro bono work, most notably suing to block portions of the Trump administration's discriminatory Muslim ban. Ms. Lin has also served admirably as a public defender, helping to ensure a fair justice system for all.

These nominees are highly qualified for federal judgeships. The Senate should expeditiously move to confirm these three individuals to the United States District Court for the Western District of Washington.

Sincerely,

Nan Aron
President

June 8, 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 confirmation of the three nominees for the Western District of Washington whose hearing is scheduled for June 9, 2021: David Estudillo, Lauren King, and Tana Lin.

It is vitally important for our nation to have highly qualified judges who recognize that the law should protect all of us, not just the powerful. Even before then-President-elect Biden took office, incoming White House Counsel Dana Remus wrote to every U.S. Senator regarding their recommendations for federal judges in their states:

> President-elect Biden is eager to nominate individuals who reflect the best of America, and who look like America. We are confident this is a shared goal. We therefore ask that you propose talented individuals who would bring to these critically important roles a wide range of life and professional experiences, including those based on their race, ethnicity, national origin, gender, sexual orientation, gender identity, religion, veteran status, and disability. … With respect to U.S. District Court positions, we are particularly focused on nominating individuals whose legal experiences have been historically underrepresented on the federal bench, including those who are public defenders, civil rights and legal aid attorneys, and those who represent Americans in every walk of life.

This slate of three nominees for the Western District of Washington reflects this recognition that a federal judiciary with a broad range of personal and experiential diversity plays a vital role in ensuring that courts protect the interests of everybody, not just the wealthy and the powerful.

David Estudillo is the president of the Washington State Superior Court Judges' Association, having served as a state court judge since 2015. For a decade before that, he operated his own firm, representing immigrants in removal proceedings. He also represented plaintiffs in personal injury and breach of contract cases. He is the son of Mexican immigrants and would be only the second Latino judge ever to serve in the Western District.

Lauren King is a member of the Muscogee Nation and would only be the fifth Native American ever to serve as a federal judge—and the first in the Western District of Washington. She has significant experience representing tribes in litigation involving federal laws on historic preservation, tribal landholdings, and repatriation of Native American remains and other

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funerary items. In addition to her private practice, she has served as a pro tem appellate court judge for the Northwest Intertribal Court System since 2013.

Tana Lin began her career as a public defender, then spent several years with the Justice Department and the Equal Employment Opportunity Commission enforcing Title VII against public and private employers. She then spent three years as litigation coordinator of the Michigan Poverty Law Program before moving to Seattle, where she has spent more than 15 years representing individuals in cases including antitrust, consumer protection, employee retirement plan protection, environmental claims, fiduciary duty breaches by financial services companies, and labor and employment matters. If confirmed, Lin would be the Western District's first Asian American federal judge.

We urge senators to support this qualified slate of nominees from Washington.

Sincerely,

Marge Baker
Executive Vice President

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AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

Please reply to:
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June 8, 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 David G. Estudillo to the United States District Court for the Western District of Washington

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 David G. Estudillo, who has been nominated by the President to the United States District Court for the Western District of Washington. 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 Judge Estudillo is **"Qualified,"** and a minority determined that he is "Well Qualified" to serve on the United States District Court for the Western District of Washington. The Standing Committee's rating means that, under our guidelines, Judge Estudillo satisfies the Standing Committee's very high standards with respect to integrity, professional competence, and judicial temperament and is qualified to perform all the duties and responsibilities required of a federal judge. 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*)
The Honorable David G. Estudillo (*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*)

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May 18, 2021

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
U.S. Senate Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
U.S. Senate Washington, DC 20510

RE: Judge David Estudillo

Senator Murray.

This letter is intended to be a letter of recommendation for Judge David Estudillo. I have known Judge Estudillo since he decided to run for Superior Court Judge in Grant County. I have had the opportunity to get to know him over the past few years and have found Judge Estudillo to be an honest man of integrity. As the Police Chief of Ephrata, I worked with Judge Estudillo on a professional level. I found him to be very dedicated to applying the law equally to all who came into his court.

Judge Estudillo is someone that I can highly recommend for the position of Federal District Court Judge. His dedication, professionalism, and his compassion for all who enters his court makes him uniquely qualified for this position.

If you have any follow up questions that I might answer, please feel free to contact me.
.

SINCERELY,

Mike Warren
ADMINISTRATOR, CITY OF EPHRATA

GRANT COUNTY
DEPARTMENT OF PUBLIC DEFENSE

35 C Street NW, Suite 104
PO Box 37
Ephrata, WA 98823
(509) 754-6027

June 4, 2021

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
U.S. Senate Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
U.S. Senate Washington, DC 20510

RE: Judge David Estudillo
Nomination for Federal District Court Judge

Dear Senators Durbin and Grassley,

It is with pleasure I recommend Judge David Estudillo for confirmation to become a federal District Court judge. Judge Estudillo was appointed to the Grant County Superior Court bench a few years ago. He has won two elections for that position since. I have personally had a chance to appear in front of Judge Estudillo and our office appears before him on a regular basis.

When Judge Estudillo was appointed, he was thrown right into the fire. He presided over some very difficult trials within the first few weeks of taking the bench. It was not long before he presided over a difficult murder trial. I was personally impressed with his ability to handle the pressure of the situation that quickly.

Judge Estudillo has worked hard to organize and try to find funding for the county's first specialty court. He recognized the need for a drug court, going beyond his regular duties to try to make it a reality. Unfortunately, when progress was being made, we encountered the Covid pandemic and things were put on hold. We are still hoping that the drug court will come to fruition.

Judge Estudillo enjoys a reputation of being a kind man and has a good disposition for one on the bench. He always treats people with courtesy and respect. I am not aware of any thing that would disqualify him from being able to serve on the bench. I support a confirming vote.

Sincerely,

Brett Hill,
Director of Public Defense

The Superior Court of the State of Washington
County of Kitsap

HON. JENNIFER A. FORBES
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614 DIVISION STREET, MS-24
PORT ORCHARD, WASHINGTON 98366
(360) 337-7140

King County Superior Court

Honorable
Judith H. Ramseyer

King County Courthouse
516 Third Avenue, C203
Seattle, Washington 98104

May 25, 2021

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
U.S. Senate Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
U.S. Senate Washington, DC 20510

RE: Hon. David Estudillo: Nominee for the United States District Court
Western District of Washington

Dear Chairman Durbin and Ranking Member Grassley:

As Washington State Superior Court Judges who have had the privilege of working with Judge David Estudillo, we write to express our whole-hearted support of his nomination to the United States District Court for the Western District of Washington.*

Although we each preside in different Washington State counties, we have served with Judge Estudillo as officers of the statewide Superior Court Judges Association (SCJA). Judge Estudillo is the current SCJA President. As President-Elect (Judge Forbes) and Immediate-Past President (Judge Ramseyer), we have worked closely with Judge Estudillo over the past tumultuous year. As courts across the country have faced unprecedented challenges, Judge Estudillo has been a calm, conscientious, and collaborative leader as we worked to keep our courts open to serve the needs of the public. Judge Estudillo is knowledgeable, independent, practical, and dedicated; having devoted countless hours beyond his "day job" as a Superior Court Judge in service of our statewide organization. His patience, respect, and professionalism demonstrate precisely the judicial demeanor that will bring honor to the U. S. District Court.

We are confident Judge Estudillo will serve the federal court with intelligence and compassion, as he has our state court. If we can be of service, feel free to contact Judge Forbes at 360-337-7140 and Judge Ramseyer at 206-477-1605.

Sincerely,

JENNIFER A. FORBES, Judge

Sincerely,

JUDITH H. RAMSEYER, Judge

* Pursuant to the Code of Judicial Conduct Rules and Opinions we are required to advise that this letter reflects our personal opinions and not the opinions of the either the Kitsap or King County Superior Courts, nor should it be considered as submitted on behalf of the Superior Court Judges' Association. Further, we are not permitted to comment on an applicant's moral character.

STATE OF WASHINGTON
DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES
1651 S. Pilgrim St., Moses Lake, WA 98837

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
U.S. Senate Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
U.S. Senate Washington, DC 20510

From:

Moses Lake WA DCYF Adoptions Unit
Bobbi Lloyd MSW, Adoptions Supervisor
Mike McAtee M.Ed., Adoption Specialist
Luis Ochoa MSW, Adoption Specialist

Re: Nomination of Judge David Estudillo

We in the Moses Lake Adoptions Unit of DCYF have had the distinct pleasure of working with Judge David Estudillo since his appointment to the bench in Grant County Superior Court. Over the years, Judge Estudillo has displayed an extraordinary dedication to his job and the responsibilities his role encompasses. His integrity, commitment to people, and justice are evident in his work ethic. He has also revealed a very deep admiration for the adoptive families we work with. When he's been on the bench for our adoption hearings, he's made them very personable and special for the families. He's engaging with the parties involved, while making sure that the process is run smoothly, with all legal requirements being met. During hearings, he often takes time to read stories about adoption that he feels reflect the love and importance of such a commitment. His kindness and warm heartedness are easily felt in his court room. He always conducts his hearings with high integrity and efficacy. Judge Estudillo has also dedicated his time and talents to our annual National Adoption Day celebration, where he volunteers to preside over adoptions at the celebration, outside of the court setting. He not only has a tenacious drive for the work he does, he also has a kind heart for the families that provide permanency for kids in need. We in the Moses Lake Adoptions Unit feel strongly that Judge David Estudillo will make an exceptional candidate for the role of Federal District Court Judge.

Sincerely,

Bobbi Lloyd

Bobbi Lloyd / Regional Adoption Supervisor
(Moses Lake, Wenatchee, Omak, Colfax & Clarkston)
Washington State Department of Children, Youth, and Families
(O) 509-764-5757 / (C) 509-989-7633 / bobbi.lloyd@dcyf.wa.gov

Michael McAtee M.Ed

Mike McAtee, M.Ed / Region 1 Adoptions
Division of Children, Youth and Family Services
1651 S. Pilgrim St., Moses Lake WA 98837
(509)707-9597 ; michael.mcatee@dcyf.wa.gov
Transforming Lives

Luis A. Ochoa

Luis A. Ochoa M.S.W.
1651 S. Pilgrim Street
Moses Lake, WA 98837
(509) 761-1801 – Cell
(509) 764-5685 – fax

Washington State Department of
CHILDREN, YOUTH & FAMILIES

June 1, 2021

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
U.S. Senate Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
U.S. Senate Washington, DC 20510

Re: Judge David Estudillo Nomination Support

After winning the Nobel Prize for Physics, Albert Einstein was holding a press conference. During the press conference a young reporter asked if he could ask a question of Mrs. Einstein. Of course, Dr. Einstein said yes. His question was: Mrs. Einstein, do you understand Dr. Einstein's Theory of Relativity? Without hesitation Mrs. Einstein's response was quite profound. She said "I understand something far more important than Dr. Einstein's Theory of Relativity, I understand Dr. Einstein." I relate this story to my recommending Judge Estudillo for a Federal District Court appointment. I don't know much about his "judging" skills, but I do know about his human skills. I know what kind of person he is.

Judge Estudillo is a humble, honorable, humane person. He has never forgotten his heritage. He frequently tells others of the hard work that his parents did so he could get an education and better himself as a person. That isn't to say he didn't work hard, but he understands the sacrifices others made for his success. That says a great deal about him as a person.

He has been involved in his church with many activities including running a Vacation Bible School with his wife. This shows his love of God, his church, and the children that attended the classes. He also took vacation time off work to do this.

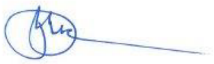
Judge Estudillo has had to deal with prejudice here in Grant County. He was initially appointed by Governor Inslee to fill a vacancy. When he ran for election, his opponent stated at a voter's forum that he was only appointed because of "the color of his skin." Rather than counter attacking, Judge Estudillo chose the high ground and talked about his accomplishments as a Judge in Grant County. He, of course, won the election.

On multiple occasions I have asked Judge Estudillo for advice regarding certain legal matters. He has always responded quickly and appropriately.

He is a respected member of our community. He is involved in our community. He is committed to our community. This is what I understand about Judge Estudillo and why I can recommend him highly for a Federal Judge position.

If I may be of further service please do not hesitate to contact me.

Sincerely,



David Curnel
Mayor, Moses Lake, WA

DC/db

Moses Lake Police Department
Kevin J. Fuhr, Police Chief

May 19, 2021

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
U.S. Senate Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
U.S. Senate Washington, DC 20510

Re: Judge David Estudillo

Dear Senate Judiciary Committee:

I have known Judge David Estudillo for the past five years in both a personal and professional manner. David is a family man who is devoted to his wife and children. He frequently attends community events with his family and is a well-respected member of our community. David is a person that is easy to speak to, is an active listener and is well spoken. He is a man of unwavering integrity and character.

As a member of the Grant County Superior Court bench, Judge Estudillo presides in a fair and unbiased manner. He treats everyone with respect and dignity and does not let biases or personal feelings sway his decisions. Judge Estudillo is well respected within the law enforcement community, defense attorneys, prosecutors and court staff.

I would highly recommend Judge David Estudillo as a Federal Court Judge and truly believe that the Federal Court system will be better with him on the bench.

Sincerely,

Kevin Fuhr, Police Chief
Moses Lake Police Department

WASHINGTON STATE ASSOCIATION for JUSTICE™

June 4, 2021

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
U.S. Senate Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
U.S. Senate Washington, DC 20510

RE: David Estudillo

Dear Honorable Durbin and Honorable Grassley;

It is with great pleasure that I submit this Letter of Support for Judge David Estudillo in his application to serve as a Federal District Court Judge in Western Washington, sent on behalf of myself and the Washington State Association of Justice (WSAJ). I am the current WSAJ President and a personal injury attorney. I am also a Latina/o with strong connections to the Latina/o community in Washington State. I personally met David Estudillo over 20 years ago at a Latina/o Bar Association of Washington (LBAW) event. Over the years I have followed his career. I have nothing but respect and admiration for David Estudillo.

Judge Estudillo is an amazing American success story. While much of this is probably known through background checks, I want to share my knowledge and impression of his life.

His parents legally immigrated to the United States from Mexico via the Bracero Program to labor in the fields in the early 1960's. While raising 10 children, Eloy and Esperanza Estudillo were eventually able to save enough money to become small business owners. Judge Estudillo has noted his earliest memories are of helping clean and maintain his family's modest grocery store – still a fixture in this small town.

The Estudillo's impressed upon all their children the need to work hard and take advantage of every possible educational opportunity. Like many young people whose families had limited means, Judge Estudillo began his education at a community college but was able to graduate from the University of Washington with a degree in Finance and then earn a UW Law Degree.

Prior to his appointment to the Superior Court bench in the State of Washington, Judge Estudillo had significant experience in courtroom practice and procedure. For 16 years, he represented clients in civil disputes and immigration matters. He has represented both plaintiffs and defendants in complex civil litigation ranging from million dollar-plus claims to smaller issues faced by ordinary working people. As a lawyer, Judge Estudillo faced off against some of the state's most prominent law firms. Despite the

contentious nature of legal disputes, Judge Estudillo earned a reputation for his calm, professional relationships with opposing parties and attorneys.

Judge Estudillo speaks fluent Spanish, which is a significant advantage to him in a Superior Court where nearly 50% of the area's population is Latina/o. He is the only Latino judge in any trial court in this part of the state, which also features a heavy Spanish speaking population. Judge Estudillo serves as a role model for young people who come from disadvantaged families and communities, and he speaks to them regularly about the importance of education. He is a great example of giving back and helping others climb the rung.

For nearly six years, Judge Estudillo has been a respected and experienced trial court judge and has become both the court's Presiding Judge and the President of the statewide Superior Court Judges Association. This shows the very high regard his colleagues hold for him.

The strength of our federal judiciary is an important part of this country's democratic foundation. Our judiciary can only gain continued respect from the American people if it embraces the full diversity of perspective and experiences we have as a nation. Judge Estudillo's experiences are at once both unique and representative of the millions of Americans who lack privilege – but who work hard to give back to the people of this country.

Judge David Estudillo is a great asset and contributor to our community and to our legal system. He epitomizes the strength of character, intellect, and disposition we should be looking for in our Court system. He will be a great asset to the Federal bench in our region. Our only regret is that we lose him at the state court level, but our loss is the gain for the justice system in our nation.

Sincerely,

Celia Rivera
President, WA State Association for Justice

RIVERA LAW OFFICES, PLLC
1800 Cooper Point Road SW, #14
Olympia, WA 98502
Main: (360) 705-8200
Direct: (360) 764-7200
Fax: (360) 705-8203
www.riveralawoffices.com

Skagit County Superior Court

Skagit County Courthouse
205 W. Kincaid Street, Room 202
Mount Vernon, WA 98273

Phone: (360) 416-1200

BRIAN L. STILES
JUDGE, DEPARTMENT NO. 1

LAURA M. RIQUELME
JUDGE, DEPARTMENT NO 2

ELIZABETH Y. NEIDZWSKI
JUDGE, DEPARTMENT NO. 3

THOMAS L. VERGE
JUDGE, DEPARTMENT NO 4

HEATHER D. SHAND
COURT COMMISSIONER

JAMES DOLAN
COURT COMMISSIONER

LISA WEST
ADMINISTRATOR
SUPERIOR & JUVENILE COURTS

MICHELLE COOK
SUPERIOR COURT MANAGER

June 4, 2021

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
U.S. Senate Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
U.S. Senate Washington, D.C. 20510

Re: Nomination of Judge David Estudillo to United States District Court, Western District of Washington

Dear Chairman Durbin and Ranking Member Grassley,

I am writing in support of Judge David Estudillo's nomination to the United States District Court. Judge Estudillo is already a respected judge and a steady leader who would be an excellent addition to the federal bench.

Although Judge Estudillo and I serve in different geographic areas of the state, his positive reputation reached me before we had even met. We have crossed paths over the years at multiple trainings. He has consistently expressed an earnest desire to educate new judges in how to ensure due process in the courtroom or to mentor attorneys who seek judicial positions.

I have had the pleasure of developing a closer working relationship with Judge Estudillo through the Superior Court Judge's Association, for which I am a trustee. We have worked together on a recent significant change in state law requiring the resentencing of thousands of prison inmates. Judge Estudillo always has a firm grasp on the legal issues while exercising strong leadership and a calm but focused demeanor during what can be stressful meetings with various stakeholders. These are qualities that I am sure he brings to the courtroom.

I have every confidence in Judge Estudillo as a jurist and strongly support his nomination to the federal bench.

Sincerely,

Judge Laura M. Riquelme
Skagit County Superior Court, Dept. 2

Ewiiaapaayp Tribal Office

Ewiiaapaayp Band of Kumeyaay Indians

4054 Willows Road
Alpine, CA 91901
TEL: (619) 445-6315
FAX: (619) 445-9126
E-mail: ceo@ebki-nsn.gov

June 2, 2021

Senator Richard Durbin, Chairman
Senate Committee on the Judiciary
Washington, DC 20510

Senator Charles Grassley, Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

RE: Support for Lauren J. King for U.S. District Court Judge

Dear Chairman Durbin and Ranking Member Grassley:

The Ewiiaapaayp Band of Kumeyaay Indians strongly supports President Joseph Biden's nomination of Lauren J. King to serve as U.S. District Court Judge for the Western District of Washington. As a citizen of the Muscogee Nation, Ms. King would become the first Native federal judge in Washington State, and the third sitting Native judge in the nation.

Ms. King is highly qualified for a federal judgeship. She is experienced in complex litigation over the past 14 years. She is top rated by her peers and clients for her practice of commercial and IP transactions, intellectual & property litigation, IP & technology, sports arts & entertainment, and native american law. She served as a pro tem appellate judge for the Northwest Intertribal Court System since 2013 where she heard appeals, including commercial disputes, employment matters, and sovereign immunity. Ms. King is admitted to the bar for Washington State (2008), US District Court for the Western District of Michigan (2020), First Circuit Court of Appeals (2017), Ninth Circuit Court of Appeals (2019), US District Court for the Western District of Washington (2009), and the US Supreme Court (2018).

Ms. King's knowledge and experience are vitally important for the federal judiciary. We hope that the Judiciary Committee will move swiftly to confirm Ms. King. Please direct any questions to the Tribe's Chief Executive Officer, Mr. Will Micklin, by mobile phone at (619) 368-4382 or email at ceo@ebki-nsn.gov. Thank you.

Sincerely,

Robert Pinto, Sr.
Tribal Chairman
Ewiiaapaayp Band of Kumeyaay Indians

National Congress of American Indians

NARF
NATIVE AMERICAN RIGHTS FUND

June 3, 2021

Senator Richard Durbin, Chairman
Senate Committee on the Judiciary
Washington, DC 20510

Senator Charles Grassley, Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

RE: Support for Lauren J. King for U.S. District Court Judge

Dear Chairman Durbin and Ranking Member Grassley:

The National Congress of American Indians (NCAI) and the Native American Rights Fund (NARF) write in support of Lauren J. King's nomination to serve as a judge on the U.S. District Court for the Western District of Washington. NCAI and NARF have long called for the appointment of federal court judges who are tribal citizens and those who demonstrate an understanding of tribal sovereignty and Indian law. As a citizen of the Muscogee Nation, Ms. King would become the first Native federal judge in Washington State, and the third active Native American Article III judge in the nation.

Ms. King is a first-rate attorney with impeccable qualifications for a federal judgeship. She is an experienced litigator who has handled complex federal litigation matters ranging from commercial transactions and intellectual property to treaty rights, cultural resources protections, and tribal jurisdiction. In addition, she has served as a pro tem appellate judge for the Northwest Intertribal Court System since 2013, where she has heard appeals on a broad range of subject matter, including commercial disputes, employment matters, and sovereign immunity.

We believe that Ms. King's knowledge and experience is vitally important for the federal judiciary, particularly in a location like the Western District of Washington. Many issues of daily life on Indian reservations are controlled by federal statutes and federal common law. Accordingly, Indian tribes are affected by the federal courts to a greater degree than any other group in the country. This is particularly true in the Western District of Washington, which is home to 26 federally recognized Indian tribes and where individual Native people are often litigants.

NCAI and NARF are proud to support Ms. King's nomination. We hope that the United States Senate will move swiftly to confirm this outstanding nominee. If you have any questions, please contact NCAI CEO Dante Desiderio at ddesiderio@ncai.org or (202) 466-7767, as well as NARF Staff Attorney Dan Lewerenz at lewerenz@narf.org or (202) 785-4166.

Sincerely,

Fawn Sharp, President
National Congress of American Indians

John E. Echohawk, Executive Director
Native American Rights Fund

CC: Senator Patty Murray
Senator Maria Cantwell

Samish Indian Nation
OF WASHINGTON

Senator Richard Durbin, Chairman
Senate Committee on the Judiciary
Washington, DC 20510

Senator Charles Grassley, Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

RE: Support for Lauren J. King for U.S. District Court Judge

Dear Chairman Durbin and Ranking Member Grassley:

It is with great pleasure that the Samish Indian Nation writes in support of Lauren J. King's nomination to serve as U.S. District Court Judge for the Western District of Washington as a citizen of the Muscogee Nation, Ms. King would become the first Native federal judge in Washington State, and the third sitting Native judge in the nation.

Ms. King is a first-rate attorney with impeccable qualifications for a federal judgeship. She is an experienced litigator with over a decade of experience handling complex federal litigation matters ranging from complex commercial transactions and intellectual property to treaty rights, cultural resources protections, and tribal jurisdiction. In addition, she has served as a pro tem appellate judge for the Northwest Intertribal Court System since 2013 where she has heard appeals on a broad range of subject matter, including commercial disputes, employment matters, and sovereign immunity.

The United States Constitution gives the federal government exclusive authority over Indian affairs, and the federal judiciary is regularly tasked with making decisions that have a lasting impact on day-to-day life in tribal communities. The jurisdictional scheme on Indian lands is painfully complex, and due to the federal enforcement responsibilities under various federal laws and administrative regulations, Native people are parties to federal court proceedings at grossly disproportionate rates to their non-Native counterparts. Despite this fact, few federal judges have ever visited an Indian community or a tribal court, let alone lived or worked in them. We believe that Ms. King's knowledge and experience are vitally important for the federal judiciary.

We are committed to seeing the federal judiciary include individuals who understand the unique legal status of Indian tribes and can approach Indian issues from an informed, unbiased perspective. We hope that the Judiciary Committee will move swiftly to confirm Ms. King. Should you have any questions, please contact me at tomwooten@samishtribe.nsn.us.

Sincerely,

Thomas D. Wooten
Tribal Chairman

MAILING ADDRESS P.O. Box 217 · Anacortes, Washington 98221
LOCATION 2918 Commercial Avenue · Anacortes, Washington 98221
PHONE 360-293-6404 **FAX** 360-299-0790 **WEB** www.samishtribe.nsn.us

MIDWEST ALLIANCE OF SOVEREIGN TRIBES
P.O. Box 265
Gresham, WI 54128-0265
715-787-4494 Office
m.a.s.t@frontiernet.net

June 4, 2021,

Senator Richard Durbin, Chairman
Senate Committee on the Judiciary
Washington, DC 20510

Senator Charles Grassley, Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

RE: Support for Lauren J. King as a United States District Court Judge

Dear Chairman Durbin and Ranking Member Grassley:

It is with great pleasure that the Midwest Alliance of Sovereign Tribes writes in support of Lauren J. King's nomination to serve as U.S. District Court Judge for the Western District of Washington. As a citizen of the Muscogee Nation, Ms. King would become the first Native American federal judge in Washington State, and the third active Native American Article III judge in the United States.

Ms. King is a first-rate attorney with impeccable qualifications for a federal judgeship. She is an experienced litigator who has handled complex federal litigation ranging from complex commercial transactions and intellectual property, to treaty rights, cultural resources protections, and tribal jurisdiction. In addition, she has served as a pro tem appellate judge for the Northwest Intertribal Court System since 2013, where she heard appeals on a broad range of issues, including commercial disputes, employment matters, and sovereign immunity.

We are committed to seeing the federal judiciary include individuals who understand the unique legal status of Indian tribes and can approach Indian issues from an informed, unbiased perspective. The United States Constitution vests the federal government with exclusive authority over Indian affairs, and the federal judiciary is regularly makes decisions that have a lasting impact on daily life in tribal communities. Due to the painfully complex jurisdictional scheme in Indian country and the unique federal role, Native Americans and tribal governments are party to federal proceedings at very high rates. Yet, few federal judges have ever visited an Indian community or a tribal court, let alone lived or worked in them. Therefore, we believe that Ms. King's knowledge and experience are the type that is vitally important for a federal judge to possess.

We hope that the United States Senate will move swiftly to confirm Ms. King. Should you have any questions, please contact President Aaron Payment at aaron.payment@saulttribe.net.

Sincerely,

Scott R. Vele Executive Director

Nez Perce
TRIBAL EXECUTIVE COMMITTEE
P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

June 3, 2021

Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Honorable Charles Grassley
Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Support for Lauren J. King for U.S. District Court Judge

Dear Chairman Durbin and Ranking Member Grassley:

It is with great pleasure that the Nez Perce Tribe writes in support of Lauren J. King's nomination to serve as U.S. District Court Judge for the Western District of Washington. As a citizen of the Muscogee Nation, Ms. King would become the first Native federal judge in Washington State, and the third sitting Native judge in the nation.

Ms. King is a first-rate attorney with impeccable qualifications for a federal judgeship. She is an experienced litigator with over a decade of experience handling complex federal litigation matters ranging from complex commercial transactions and intellectual property to treaty rights, cultural resources protections, and tribal jurisdiction. In addition, she has served as a pro tem appellate judge for the Northwest Intertribal Court System since 2013 where she has heard appeals on a broad range of subject matter, including commercial disputes, employment matters, and sovereign immunity.

The United States Constitution gives the federal government exclusive authority over Indian affairs, and the federal judiciary is regularly tasked with making decisions that have a lasting impact on day-to-day life in tribal communities. The jurisdictional scheme on Indian lands is painfully complex, and due to the federal enforcement responsibilities under various federal laws and administrative regulations, Native people are parties to federal court proceedings at grossly disproportionate rates to their non-Native counterparts. Despite this fact, few federal judges have ever visited an Indian community or a tribal court, let alone lived or worked in them. We believe that Ms. King's knowledge and experience are vitally important for the federal judiciary.

We are committed to seeing the federal judiciary include individuals who understand the unique legal status of Indian tribes and can approach Indian issues from an informed, unbiased perspective. We hope that the Judiciary Committee will move swiftly to confirm Ms. King. Should you have any questions, please contact me at samuelp@nezperce.org.

Sincerely,

Samuel N. Penney

Samuel N. Penney
Chairman

PONCA TRIBE OF NEBRASKA
P.O. Box 288 • Niobrara NE 68760 • Phone: 402.857.3391 • Fax: 402.857.3736

June 8, 2021

Senator Richard Durbin, Chairman
Senate Committee on the Judiciary
Washington, DC 20510

Senator Charles Grassley, Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

RE: Support for Lauren J. King as a United States District Court Judge

Dear Chairman Durbin and Ranking Member Grassley:

It is with great pleasure that the Ponca Tribe of Nebraska writes in support of Lauren J. King's nomination to serve as U.S. District Court Judge for the Western District of Washington. As a citizen of the Muscogee Nation, Ms. King would become the first Native American federal judge in Washington State, and the third active Native American Article III judge in the United States.

Ms. King is a first-rate attorney with impeccable qualifications for a federal judgeship. She is an experienced litigator who has handled complex federal litigation ranging from complex commercial transactions and intellectual property, to treaty rights, cultural resources protections, and tribal jurisdiction. In addition, she has served as a pro tem appellate judge for the Northwest Intertribal Court System since 2013, where she heard appeals on a broad range of issues, including commercial disputes, employment matters, and sovereign immunity.

We are committed to seeing the federal judiciary include individuals who understand the unique legal status of Indian tribes and can approach Indian issues from an informed, unbiased perspective. The United States Constitution vests the federal government with exclusive authority over Indian affairs, and the federal judiciary is regularly makes decisions that have a lasting impact on daily life in tribal communities. Due to the painfully complex jurisdictional scheme in Indian country and the unique federal role, Native Americans and tribal governments are party to federal proceedings at very high rates. Yet, few federal judges have ever visited an Indian community or a tribal court, let alone lived or worked in them. Therefore, we believe that Ms. King's knowledge and experience are the type that is vitally important for a federal judge to possess.

We hope that the United States Senate will move swiftly to confirm Ms. King. Should you have any questions, please contact me at ldwrightjr@gmail.com or at 402-540-7122 (cell) or office number above.

Respectfully,

Larry Wright, Jr., Chairman
Ponca Tribe of Nebraska

cc: Senators Fischer and Sasse

Foster Garvey

1111 Third Avenue
Suite 3000
Seattle, WA 98101

Main: 206.447.4400
Fax: 206.447.9700
foster.com

May 21, 2021

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
U.S. Senate Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
U.S. Senate Washington, DC 20510

Re: Nomination of Lauren King for United States District Judge for the Western District of Washington

Dear Senators Durbin and Grassley:

On behalf of Foster Garvey P.C., please accept this letter as our expression of the strongest possible support for the nomination of our colleague Lauren King for the position of United States District Court Judge for the Western District of Washington.

For nearly a decade, Lauren has been a valued colleague and a pillar of our Litigation Group. As a member of the federal bench and the first Native American person to serve in that capacity in the Western District of Washington, Lauren will be a role model for everyone who comes in contact with the court. Parties, practitioners and the public will all benefit from her service on the bench.

Lauren possesses many strengths that make her extremely well qualified to serve as a United States District Court Judge.

- Work Ethic & Curiosity. Lauren has an amazing work ethic. She is always extremely well-prepared on the facts and the law on any matter in which she becomes involved. The combination of her strong analytical skills and deep curiosity for searching out right and equitable outcomes will serve the court and the parties appearing before Lauren very well.

- Prior Experience. Lauren already has judicial experience from her service with the Northwest Tribal Court System since 2013, where she hears appeals from numerous different tribal courts in the Northwest. Lauren's broad litigation practice includes areas at the core of matters that arise in federal court, including Native American law matters, intellectual property disputes, and complex commercial disputes.

In addition, Lauren appeared and argued in both federal and state courts of appeals, and has deep experience in federal district court, including a 23-day trial in federal court involving extensive expert witness testimony and complex legal issues, as well as many contested hearings and appearances before state, federal and tribal courts.

- Integrity & Temperament. Clients consistently recognize that Lauren provides them with thoughtful advice on challenging issues with empathy, respect and deep concern for how the outcome of the particular matter will affect them in the broader context of their endeavors. We fully expect that to carry over to judicial service where she will provide evenhanded decisions through a process that will let all participants know that their positions were carefully considered and the outcomes will be clearly explained.

As we expect has become apparent, our colleagues at Foster Garvey and us hold Lauren in extremely high regard. If she is confirmed (and she unquestionably should be), we will deeply miss having her as our partner and a tremendous member of our Firm—but we will assuage our own disappointment in losing her as our colleague with the knowledge that she is serving a higher purpose for our country. Lauren will be a very valuable addition to the federal bench.

Please do not hesitate to contact either one of us if you would like any additional information regarding Lauren.

Sincerely,

FOSTER GARVEY PC

Rafael V. Stone
Firm Co-Chair & Principal

Diana S. Shukis
Firm Co-Chair & Principal

Foster Garvey

Foster Garvey PC
618 West Riverside Avenue
Suite 300
Spokane, WA 99201
foster.com

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The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
U.S. Senate Washington, DC 20510

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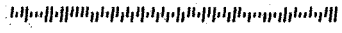

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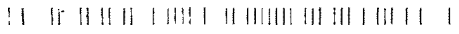

P.O. Box 11145
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www.nativeamericanbar.org
facebook.com/NationalNABA
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President, Colleen E. Lamarre
Immediate Past President, Thomasina Real Bird
President Elect, Phil Brodeen
Secretary, Heather Torres
Treasurer, Andrea Snowball

June 10, 2021

Senator Richard Durbin, Chairman
Senate Committee on the Judiciary
Hart Senate Office Building, SH-711
Washington, DC 20510

Senator Charles Grassley, Ranking Member
Senate Committee on the Judiciary
Hart Senate Office Building, SH-135
Washington, DC 20510

Re: Support for Lauren J. King as a United States District Court Judge

Dear Chairman Durbin and Ranking Member Grassley:

I write to express the National Native American Bar Association's (NNABA) support of Lauren King to be a judge on the United States District Court for the Western District of Washington. Ms. King's background and experience will make her an outstanding judge on this court.

As our name implies, NNABA is a professional organization comprised of indigenous attorneys from what is now the United States: American Indians, Alaska Natives, and Native Hawaiians. All branches of the federal government play an integral role in justice for Native Americans and their government-to-government relationship with the United States. The unique legal posture of Indian tribes to the federal government is deeply rooted in American history and has always been heavily intertwined with often-shifting federal Indian policy, but frequently a central role in justice for Native Americans rests with federal court judges. Accordingly, it is crucially important that consideration be given to individuals with experience or interest in federal Indian law and who respect the role of tribal sovereigns under the Constitution and treaties with the United States. Ms. King is a NNABA member who certainly possesses that experience and understanding and is also a strong candidate in every other regard.

Native Americans are alarmingly under-represented in the federal judiciary. Ms. King is a citizen of the Muscogee Nation, and, if confirmed, she will be the first Native American federal judge in the Western District of Washington. Likewise, there are only a two active Native American Article III judges: The Honorable Diane Humetewa of the District of Arizona and The Honorable Ada Brown of the Northern District of Texas. There is currently only one Native Hawaiian serving in the federal judiciary: The Honorable Derrick Watson of the District of Hawaii. Accordingly, confirming Ms. King is an important step forward in building a federal judiciary that mirrors America.

While judicial diversity is crucially important, our support for Ms. King is not simply because she is a Native American. She also meets and exceeds the qualifications required to serve as a federal judge and will bring important experience and perspective to the federal bench. Ms. King possesses a broad range of experience that she would bring to this judicial position. She is an experienced litigator who has handled a wide range of federal litigation, including complex commercial transactions, intellectual property, treaty

rights, cultural resources protections, and tribal jurisdiction. In addition, she has served since 2013 as a pro tem appellate judge for the Northwest Intertribal Court System, where she heard appeals on a broad range of issues, including commercial disputes, employment matters, and sovereign immunity. Ms. King has excelled in those roles and is well respected within the legal community.

In conclusion, NNABA enthusiastically supports the confirmation of Ms. King as a judge for the Western District of Washington. Thank you for considering our views. If you have any further questions, do not hesitate to contact me via e-mail at Colleen.Lamarre@pillsburylaw.com or via telephone at (415) 983-1056.

Sincerely,

Colleen Lamarre

Colleen E. Lamarre (Mohawk)
President
National Native American Bar Association

LOWER ELWHA KLALLAM TRIBE

ʔəʔɬx̣ʷə nəxʷsƛaɏəm "Strong People"

2851 Lower Elwha Road
Port Angeles, WA 98363

Phone: 360.452.8471
Fax: 360.452.3428

Via email

June 10, 2021

Senator Richard Durbin, Chairman
Senate Committee on the Judiciary
Washington, DC 20510

Senator Charles Grassley, Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

Re: Support for Confirmation of Lauren J. King as U.S. District Court Judge

Dear Chairman Durbin and Ranking Member Grassley:

The Lower Elwha Klallam Tribe, a treaty tribe located in northwest Washington State, is pleased and proud to express our strongest possible support for the swift confirmation of Seattle attorney Lauren J. King as a judge for the U.S. District Court for the Western District of Washington. We applaud President Biden for this historic nomination. As you know, Ms. King is a citizen of the Muscogee (Creek) Nation of Oklahoma, and when confirmed would become only the third native woman on the federal bench.

Ms. King is extremely well qualified for this position, in terms of legal excellence and experience as well as judicial temperament. Our Tribe and our own attorneys know her best through her representation of several Indian tribal governments, sometimes as an ally and sometimes as an opponent. She has always displayed consummate professionalism and patience toward allies and opponents alike. She has handled a wide array of legal matters in her Seattle-based legal practice, including commercial litigation as well as tribal, natural resources, and land use matters, at the trial and appellate level. She has also served as an inter-tribal appellate judge and on numerous professional boards. She has taught Indian law subjects at one of the Seattle law schools and at numerous continuing education seminars. She is highly intelligent, always well prepared, and liked and respected by her peers.

Lauren King will be an outstanding addition to the federal district court in Seattle, which includes roughly 26 Indian tribes within its jurisdiction. While she will be an even-handed and thoughtful jurist for all who come before her, her background in Indian law will underscore the

increasing importance of that area of law in the business of the Court and the society it serves. The Lower Elwha Klallam Tribe appreciates that the Judiciary Committee has conducted a hearing, and urges that Ms. King's nomination be advanced to the full Senate for confirmation at the earliest possible time.

Thank you for your consideration. Please do not hesitate to contact me with any questions, including any you may have for our Tribal Attorneys who have worked with her.

Sincerely,

Frances G. Charles, Chairwoman
Lower Elwha Klallam Tribe

Cc: Senator Patty Murray
Senator Maria Cantwell

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The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
U.S. Senate
Washington, DC 20510

K&L GATES

May 27, 2021

William H. Neukom
bill.neukom@klgates.com

T +206 370 8120

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
U.S. Senate
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
U.S. Senate
Washington, DC 20510

Dear Senators Durbin and Grassley,

I write to support the nomination of Lauren King to the Federal District Court for the Western District of Washington State.

Ms. King is a prominent and highly respected lawyer here in Seattle and throughout the state of Washington. She has extensive trial and appellate experience and would also bring to the bench expertise in a broad range of law, including but by no means limited to Native American law. Her intellect, professional experience, integrity and temperament would make her an outstanding member of our Federal District Court.

Thank you for your consideration.

Sincerely,

William H. Neukom

cc: The Honorable Patty Murray

June 14, 2021

Senator Richard Durbin, Chairman
Senate Committee on the Judiciary
Hart Senate Office Building, SH-711
Washington, DC 20510
phillip_brest@judiciary-dem.senate.gov

Senator Charles Grassley, Ranking Member
Senate Committee on the Judiciary
Hart Senate Office Building, SH-135
Washington, DC 20510
michael_fragoso@judiciary-rep.senate.gov

Dear Chairman Durbin and Ranking Member Grassley:

I am writing on behalf of Native Peoples Action (NPA), an Indigenous led non-profit organization that works to uplift Indigenous voices across Alaska and the Nation. We take direction and work with our Tribes and community leaders, and it is with this responsibility and gratitude that we would like to express our support for the nomination and confirmation of Lauren J. King to serve as a Judge on the U.S. District Court for the Western District of Washington.

Ms. King is a highly respected attorney with impeccable qualifications for the federal bench. She is an experienced litigator who has handled a wide range of federal litigation, including complex commercial transactions, intellectual property, treaty rights, cultural resources protections, and tribal jurisdiction. In addition, she has served since 2013 as a pro-tem appellate judge for the Northwest Intertribal Court System, where she heard appeals on a broad range of issues, including commercial disputes, employment matters, and sovereign immunity.

It is critical that federal judges better reflect the communities they serve and understand the unique histories of Native peoples and the often complex areas of Indian law. Washington State is home to twenty-nine federally recognized Tribes, making it even more imperative the experience of Ms. King, a citizen of the Muscogee Nation, is brought to the federal judiciary.

NPA is committed to achieving a federal judiciary whose members understand the unique legal status of Tribes in our Constitutional framework, and who can approach issues that affect Indian Country from an informed perspective. The federal judiciary regularly makes decisions that have a lasting impact on daily life in Tribal communities. Federal Indian law is often complex, and Tribal governments regularly find

themselves party to federal court proceedings. Yet few federal judges have ever visited a Native American or Alaska Native community or a Tribal court, let alone lived or worked in them. Therefore, we believe that Ms. King, with her knowledge of and experience with Native communities, would be a valuable addition to the federal judiciary.

We urge the United States Senate to confirm Ms. Lauren King. We appreciate your consideration.

Gunalchéesh/Háw'aa/Quyana/Mahsi'/Baasee'/Maasee'/Dogedinh/Thank you,

Kendra Kloster

Kendra Kloster
Executive Director
Native Peoples Action

Native Peoples Action, Inc. • PO Box 210914 • Anchorage, AK 99521 • (907) 917-0854
info@nativepeoplesaction.org • www.nativepeoplesaction.org

Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

June 3, 2021

Sent via Electronic Mail

Hon. Richard Durbin
United States Senator
Senate Committee on the Judiciary
Washington, D.C. 20510

Hon. Charles Grassley
United States Senator
Senate Committee on the Judiciary
Washington, D.C. 20510

Re: Support For Confirmation Of Lauren King As United States District Court Judge For The Western District of Washington

Dear Senator Durbin and Senator Grassley,

On behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation"), I write to express the Yakama Nation's strong support for the confirmation of Ms. Lauren King as a Judge for the United States District Court for the Western District of Washington. It is long overdue for the federal judiciary in Washington State to have Native representation like Ms. King. She has the background and experience to excel as a federal judge, but more importantly she has the heart to undertake these duties with a humility and compassion that will make Indian Country proud.

The Yakama Nation's legal team has worked alongside Ms. King for years on various complex litigation matters implicating Native treaty rights in state and federal courts. Our attorneys report that Ms. King is extremely qualified to serve on the federal bench. In our mutual cases, she consistently demonstrated the strength of her advocacy skills, founded upon her diligence, discipline, and hard work. In inter-tribal settings amongst tribal attorneys, she took on leadership roles and brought insightful and effective legal recommendations to the group.

The United States District Court for the Western District of Washington is one of the most active courts for federal Indian law issues in the United States. It will be well served by having the knowledge and experience of a federal Indian law expert, both in education and in her Native identity, among its ranks. The Yakama Nation recommends and supports Ms. King's confirmation to the federal judiciary without reservation.

Sincerely,

Delano Saluskin, Chairman
Yakama Nation Tribal Council

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(901) 680-7346

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AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

Please reply to:
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Randy.Noel@butlersnow.com

June 8, 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 Lauren J. King to the United States District Court for the Western District of Washington

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 Lauren King, who has been nominated by the President to the United States District Court for the Western District of Washington. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. A majority of the Standing Committee is of the opinion that Judge King is **"Well Qualified,"** and a minority determined that she is "Qualified" to serve on the United States District Court for the Western District of Washington. 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*)
The Honorable Lauren J. King (*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*)

ASSOCIATION ON AMERICAN INDIAN AFFAIRS
Protecting Sovereignty ◦ Preserving Culture
Educating Youth ◦ Building Capacity
SINCE 1922

June 2, 2021

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
U.S. Senate Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
U.S. Senate Washington, DC 20510

Re: In support of the Nomination of Ms. Lauren J. King to the U.S. District Court for the Western District of Washington

Dear Chairman Durbin and Ranking Member Grassley,

It is with our deepest consideration that the Association on American Indian Affairs would like to firmly and enthusiastically support the Biden administration's nomination of Ms. Lauren J. King to the U.S. District Court for the Western District of Washington.

As an attorney myself, I understand the importance of a diverse federal bench to truly represent the United States and all of its perspectives. Moreover, a federal bench that includes Native Americans is critical to upholding the rule of law and ensuring the continuation of democracy and strengthen equality in our shared country.

As you are aware, federal courts possess an authority over Indian Country and the assertion of inherent sovereignty of Native Nations as they govern to protect their citizens – and it is an authority that is often wielded without a secure understanding of the immense body of federal Indian law. There are few judges with a significant background and practice in federal Indian law, and an understanding of Native American Nations and communities, like Ms. King. The federal bench desperately needs the expertise and perspective that Ms. King can bring.

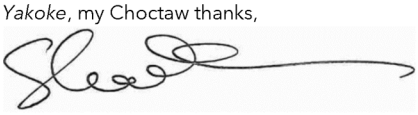
Ms. King would be the first ever Native American judge to serve on the Western District of Washington, the sixth ever and fourth current sitting member of the federal judiciary that is

Native American, Alaska Native, or Native Hawaiian joining Judge Derrick Kahala Watson, nominated by President Obama in 2013 who currently serves in the U.S. District Court for the District of Hawaii; Judge Diane J. Humetewa nominated by President Obama in 2014 who currently serves in the U.S. District Court for the District of Arizona; and Judge Ada E. Brown, nominated by President Donald Trump in 2019, who currently serves in the U.S. District Court for the Northern District of Texas.

Ms. King exemplifies professionalism and expertise in her legal practice and with teaching and involvement in community organizations. As a citizen of the Muscogee Nation, Ms. King upholds the dreams of her Ancestors, as well as those that will come after her following in her footsteps. The Association supports the Biden Administration's nomination of Ms. King to the federal bench.

Thank you for your attention. The Association on American Indian Affairs is the oldest non-profit serving Indian Country protecting sovereignty, preserving culture, educating youth and building capacity. The Association was formed in 1922 to change the destructive path of federal policy from assimilation, termination and allotment, to sovereignty, self-determination and self-sufficiency. Throughout its 99-year history, the Association has provided national advocacy on watershed issues that support sovereignty and culture, while working at a grassroots level with Tribes to support the implementation of programs that affect real lives on the ground.

Yakoke, my Choctaw thanks,



Shannon O'Loughlin
CEO & Attorney

309 Lewis Street
Vermillion, SD 57069
May 31, 2021

Chair Dick Durbin
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Ranking Member Chuck Grassley
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chair Durbin and Ranking Member Grassley,

I write in my personal capacity to enthusiastically endorse Lauren J. King for the position of United States District Court Judge for the Western District of Washington. I am currently an Associate Professor at the University of South Dakota Knudson School of Law, where I specialize in Federal Indian Law. I have worked with Ms. King for several years both in my capacity as Chair (and Deputy Chair) of the Federal Bar Association's Indian Law Section and, from 2014 through 2019, in my capacity as an attorney practicing in federal district court in Washington.

For several years, beginning in 2018, Ms. King has served on the Planning Committee of the flagship Indian Law Conference of the Indian Law Section of the Federal Bar Association. As Chair (and as Deputy Chair) of the Section, I worked very closely with her. I and the other members of Section leadership were always extremely impressed with her professionalism, dedication, and high standards.

As noted above, I also worked with Ms. King between 2014 and 2019 when I served as an attorney for Muckleshoot Indian Tribe and practiced in federal court. During those five years, I worked with Ms. King, who represented Quileute Indian Tribe, at various points. We collaborated on briefs for sub-proceedings in *United States v. Washington*. Additionally, I observed Ms. King argue in court several times and participated in negotiations with her. Her expertise and attention to detail are legendary, and I have consistently been impressed with her work.

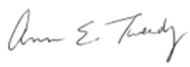
Another impressive aspect of Ms. King's career is that she has established herself as a legal expert in difficult subject areas beyond her main focus area of Federal Indian Law, such as Intellectual Property. Ms. King is fair-minded, highly intelligent, and has maintained the highest ethical standards throughout her career. She has the temperament and legal skills necessary to confront and resolve complex legal issues within the federal legal system. Of special importance, Ms. King's litigation research has always been thorough and complete, and her writing is clear, cogent and precise. Those personal standards will set the bar high for all

personnel who work for her and will help maintain the exceptional professional standards that are the hallmark of the United States District Courts.

Ms. King maintains the utmost integrity and professionalism in her work. She gives everything she sets out to do one hundred percent. She is highly respected in the legal profession and will make an excellent federal district court judge.

I strongly urge the Committee on the Judiciary to approve the nomination of the Lauren J. King to serve as a judge of the United States District Court for the Western District of Washington.

Sincerely,



Ann E. Tweedy
Associate Professor

GREAT PLAINS TRIBAL CHAIRMEN'S ASSOCIATION, INC.
US Post Office Box 988, Rapid City, SD 57709

June 4, 2021

Senator Richard Durbin, Chairman
Senate Committee on the Judiciary
Washington, DC 20510

Senator Charles Grassley, Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

RE: Support for Lauren J. King as a United States District Court Judge

Dear Chairman Durbin and Ranking Member Grassley:

It is with great pleasure that the Great Plains Tribal Chairmen's Association (representing 16 Indian nations and tribes in Nebraska, North and South Dakota) writes in support of Lauren J. King's nomination to serve as U.S. District Court Judge for the Western District of Washington. As a citizen of the Muscogee Nation, Ms. King would become the first Native American federal judge in Washington State, and the third active Native American Article III judge in the United States.

Ms. King is a first-rate attorney with impeccable qualifications for a federal judgeship. She is an experienced litigator who has handled complex federal litigation ranging from complex commercial transactions and intellectual property, to treaty rights, cultural resources protections, and tribal jurisdiction. In addition, she has served as a pro tem appellate judge for the Northwest Intertribal Court System since 2013, where she heard appeals on a broad range of issues, including commercial disputes, employment matters, and sovereign immunity.

We are committed to seeing the federal judiciary include individuals who understand the unique legal status of Indian tribes and can approach Indian issues from an informed, unbiased perspective. The United States Constitution vests the federal government with exclusive authority over Indian affairs, and the federal judiciary is regularly makes decisions that have a lasting impact on daily life in tribal communities. Due to the painfully complex jurisdictional scheme in Indian country and the unique federal role, Native Americans and tribal governments are party to federal proceedings at very high rates. Yet, few federal judges have ever visited an Indian community or a tribal court, let alone lived or worked in them. Therefore, we believe that Ms. King's knowledge and experience are the type that is vitally important for a federal judge to possess.

We hope that the United States Senate will move swiftly to confirm Ms. King. Should you have any questions, please contact Gay Kingman, Executive Director, Great Plains Tribal Chairmen's Association at 605-484-3036.

Sincerely,

A. Gay Kingman

Arlouine Gay Kingman, Executive Director

CC: Senator Thune
Senator Rounds
Senator Hoeven
Senator Cramer
Senator Fischer
Senator Sasse

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May 19, 2021

James F. Williams
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VIA E-MAIL & U.S. MAIL

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
U.S. Senate
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
U.S. Senate
Washington, DC 20510

Re: Support for Federal Judicial Nominee Lauren King

Dear Senators Durbin and Grassley:

It is with great enthusiasm and pride that I support the nomination of Lauren King for the U.S. District Court for the Western District of Washington in Seattle. I write in my capacity as a federal court practitioner in Seattle, as one of Lauren's colleagues in the local bar, and as the co-chair of the Washington Leadership Institute ("WLI"), where I first met Lauren.

The WLI is a leadership training program that was created by the Washington State Bar Association as a vehicle for accelerating the skill, maturation, and professional network of young diverse lawyers who are selected annually from a highly competitive statewide pool of applicants because they show signs of excellence within the profession. Lauren was selected for the program and successfully completed the eight-month curriculum in August 2012. Over the course of those eight months, I had the opportunity to interact with and observe Lauren engage on challenging issues, such as how leaders should deal with chaos, how they should handle ethical dilemmas faced in public service, and how to address racial, gender, and sexual preference discrimination within the legal profession. Since her graduation from the WLI, I have had the opportunity to observe Lauren masterfully build a first-class commercial litigation law practice while also focusing on issues of concern to the Native American legal community.

Based on my personal and professional experience with Lauren, there are three reasons why she will make an outstanding federal court judge and bring great credit to the State of Washington:

1. **Lauren Listens Deeply and Thoughtfully Before Speaking** – The best judges are those who come to the table with open minds, a willingness to fully hear all sides, and clear thoughts on the key legal issues presented. Lauren has always been a deep listener, a clear thinker, and an articulate spokesperson. With those instinctive qualities, she will quickly and comfortably fit into the federal district court position.

2. **Lauren Has the Necessary Intellectual Gravitas and Experience** – Our federal courts handle the most sophisticated and complicated litigation found anywhere in the world. This means that we sorely need people with the intelligence to do the legal analysis and produce opinions that are well written and show a mastery of the controversies that come before the court. Lauren has consistently shown that she has the intellectual gravitas needed for a federal court position. Indeed, she started her legal career as a graduate of the University of Virginia School of Law and since 2012 has practiced at the Seattle office of the prestigious Foster Garvey PC law firm, where she is currently a principal and the chair of the Native American Law Practice Group. Moreover, Lauren would come to the federal district court with prior judicial experience, having served as a pro tem appellate judge for the Northwest Intertribal Court System since 2013.

3. **Lauren Has Visibility and Credibility Within the State's Legal Community** – Lauren is authentic, is justifiably proud of her Native heritage, and is firmly rooted in our state's legal community. She is consistently recognized by her peers in industry publications such as *Super Lawyers* and *The Best Lawyers in America*© for her work in non-Native litigation matters and in Native American law. Lauren dedicates a significant amount of her time to public service. She currently serves as a commissioner on the Washington State Gambling Commission and as a member of the Muscogee Reservation Protection Commission. Lauren is deeply involved with the state and local bar organizations. For example, she served on the board of the Northwest Tribal Court Judges Association and as chair of the Washington State Bar Association Indian Law Section Board. Lauren is also connected to our local law school community through the Federal Indian Law course she teaches as an adjunct professor at Seattle University School of Law.

In sum, the Senate Judiciary Committee rarely sees a lawyer with the personal background, professional experience, and exceptional qualifications for the federal bench that Lauren has. I urge you to vote in favor of her nomination and to encourage your colleagues to do the same.

Best regards,

James F. Williams

James F. Williams
Litigation Partner and Seattle Office Managing Partner
Perkins Coie

MIDWEST ALLIANCE OF SOVEREIGN TRIBES
P.O. Box 265
Gresham, WI 54128-0265
715-787-4494 Office
m.a.s.t@frontiernet.net

June 4, 2021,

Senator Richard Durbin, Chairman
Senate Committee on the Judiciary
Washington, DC 20510

Senator Charles Grassley, Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

RE: Support for Lauren J. King as a United States District Court Judge

Dear Chairman Durbin and Ranking Member Grassley:

It is with great pleasure that the Midwest Alliance of Sovereign Tribes writes in support of Lauren J. King's nomination to serve as U.S. District Court Judge for the Western District of Washington. As a citizen of the Muscogee Nation, Ms. King would become the first Native American federal judge in Washington State, and the third active Native American Article III judge in the United States.

Ms. King is a first-rate attorney with impeccable qualifications for a federal judgeship. She is an experienced litigator who has handled complex federal litigation ranging from complex commercial transactions and intellectual property, to treaty rights, cultural resources protections, and tribal jurisdiction. In addition, she has served as a pro tem appellate judge for the Northwest Intertribal Court System since 2013, where she heard appeals on a broad range of issues, including commercial disputes, employment matters, and sovereign immunity.

We are committed to seeing the federal judiciary include individuals who understand the unique legal status of Indian tribes and can approach Indian issues from an informed, unbiased perspective. The United States Constitution vests the federal government with exclusive authority over Indian affairs, and the federal judiciary is regularly makes decisions that have a lasting impact on daily life in tribal communities. Due to the painfully complex jurisdictional scheme in Indian country and the unique federal role, Native Americans and tribal governments are party to federal proceedings at very high rates. Yet, few federal judges have ever visited an Indian community or a tribal court, let alone lived or worked in them. Therefore, we believe that Ms. King's knowledge and experience are the type that is vitally important for a federal judge to possess.

We hope that the United States Senate will move swiftly to confirm Ms. King. Should you have any questions, please contact President Aaron Payment at aaron.payment@saulttribe.net.

Sincerely,

Scott R. Vele Executive Director

Mechoopda Indian Tribe of Chico Rancheria

June 2, 2021

Senator Richard Durbin, Chairman
Senate Committee on the Judiciary
Washington, DC 20510

Senator Charles Grassley, Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

RE: Support for Lauren J. King for U.S. District Court Judge

Dear Chairman Durbin and Ranking Member Grassley:

It is with great pleasure that the Mechoopda Indian Tribe of Chico Rancheria writes in support of Lauren J. King's nomination to serve as U.S. District Court Judge for the Western District of Washington. As a citizen of the Muscogee Nation, Ms. King would become the first Native federal judge in Washington State and the third sitting Native judge in the nation.

Ms. King is a first-rate attorney with impeccable qualifications for a federal judgeship. She is an experienced litigator with over a decade of experience handling complex federal litigation matters ranging from complex commercial transactions and intellectual property to treaty rights, cultural resources protections, and tribal jurisdiction. In addition, she has served as a pro tem appellate judge for the Northwest Intertribal Court System since 2013 where she has heard appeals on a broad range of subject matter, including commercial disputes, employment matters, and sovereign immunity.

The United States Constitution gives the federal government exclusive authority over Indian affairs and the federal judiciary is regularly tasked with making decisions that have a lasting impact on day-to-day life in tribal communities. The jurisdictional scheme on Indian lands is painfully complex and due to the federal enforcement responsibilities under various federal laws and administrative regulations, Native people are parties to federal court proceedings at grossly disproportionate rates to their non-Native counterparts. Despite this fact, few federal judges have ever visited an Indian community or a tribal court, let alone lived or worked in them. We believe that Ms. King's knowledge and experience are vitally important for the federal judiciary.

We are committed to seeing the federal judiciary include individuals who understand the unique legal status of Indian tribes and can approach Indian issues from an informed, unbiased perspective. We hope that the Judiciary Committee will move swiftly to confirm Ms. King. Should you have any questions, please contact me at dramirez@mechoopda-nsn.gov.

Sincerely,

Dennis Ramirez

Dennis Ramirez
Tribal Chairman

125 Mission Ranch Blvd. Chico, CA 95926 **ph.** (530) 899-8922 **fx.** (530) 899-8517

MUCKLESHOOT TRIBAL COUNCIL
39015 172nd Avenue S.E. • Auburn, Washington 98092-9763
(253) 939-3311 • Fax (253) 931-8570

May 18, 2021

Chair Dick Durbin
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Ranking Member Chuck Grassley
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Support for confirmation of Lauren King as a federal judge in the Western District of Washington

Chair Durbin & Ranking Member Grassley:

I write on behalf of the Muckleshoot Indian Tribe ("Tribe") to urge the Committee on the Judiciary to support the nomination of Lauren King as a federal judge to the United States District Court for the Western District of Washington.

The Muckleshoot Tribe's ancestral territory is centered within the Western District of Washington. The Tribe, like most tribes, is uniquely impacted by federal courts because much of what is known as federal Indian law, is actually federal common law. Therefore, federal judges have a profound impact on tribal sovereign rights through their interpretations of law, treaties, and other agreements.

Ms. King is a well-qualified nominee, and her resume speaks for itself. She holds a B.A. in Business Administration from the University of Washington and a Juris Doctor from the University of Virginia Law School. She has worked at several large law firms, and is currently a partner at Foster Garvey PC. Ms. King serves as an appellate judge for the Northwest Intertribal Court System and as a commissioner on the Washington State Gambling Commission.

Ms. King has the credentials to serve as a federal judge, but she has something more, a different perspective. Indian Country's voice has been largely absent on the federal bench. Ms. King's expertise in federal Indian law will benefit the court, but her life experience will benefit those that appear before it. As a Native American woman (Muscogee Creek Nation), she will bring her life experiences with her as she views important matters before the court. This will benefit litigants and ensure that the diverse perspectives of all Americans are visible from the federal bench.

The Muckleshoot Indian Tribe urges to you to take up, and support, the nomination of Lauren King to serve as a federal judge on the United States District Court for the Western District of Washington.

Sincerely,

Jaison Elkins

National Congress of American Indians

NARF
NATIVE AMERICAN RIGHTS FUND

June 3, 2021

Senator Richard Durbin, Chairman
Senate Committee on the Judiciary
Washington, DC 20510

Senator Charles Grassley, Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

RE: Support for Lauren J. King for U.S. District Court Judge

Dear Chairman Durbin and Ranking Member Grassley:

The National Congress of American Indians (NCAI) and the Native American Rights Fund (NARF) write in support of Lauren J. King's nomination to serve as a judge on the U.S. District Court for the Western District of Washington. NCAI and NARF have long called for the appointment of federal court judges who are tribal citizens and those who demonstrate an understanding of tribal sovereignty and Indian law. As a citizen of the Muscogee Nation, Ms. King would become the first Native federal judge in Washington State, and the third active Native American Article III judge in the nation.

Ms. King is a first-rate attorney with impeccable qualifications for a federal judgeship. She is an experienced litigator who has handled complex federal litigation matters ranging from commercial transactions and intellectual property to treaty rights, cultural resources protections, and tribal jurisdiction. In addition, she has served as a pro tem appellate judge for the Northwest Intertribal Court System since 2013, where she has heard appeals on a broad range of subject matter, including commercial disputes, employment matters, and sovereign immunity.

We believe that Ms. King's knowledge and experience is vitally important for the federal judiciary, particularly in a location like the Western District of Washington. Many issues of daily life on Indian reservations are controlled by federal statutes and federal common law. Accordingly, Indian tribes are affected by the federal courts to a greater degree than any other group in the country. This is particularly true in the Western District of Washington, which is home to 26 federally recognized Indian tribes and where individual Native people are often litigants.

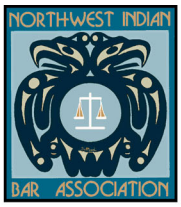
NCAI and NARF are proud to support Ms. King's nomination. We hope that the United States Senate will move swiftly to confirm this outstanding nominee. If you have any questions, please contact NCAI CEO Dante Desiderio at ddesiderio@ncai.org or (202) 466-7767, as well as NARF Staff Attorney Dan Lewerenz at lewerenz@narf.org or (202) 785-4166.

Sincerely,

Fawn Sharp, President
National Congress of American Indians

John E. Echohawk, Executive Director
Native American Rights Fund

CC: Senator Patty Murray
Senator Maria Cantwell



Northwest Indian Bar Association

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May 28, 2021

Senator Dick Durbin
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

Senator Chuck Grassley
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

> *The profession of the law of which [a judge] is a part is charged with the articulation and the final incidence of the successive efforts toward justice; it must feel the circulation of the communal blood or it will wither and drop off, a useless member.*
>
> *—Learned Hand*

Dear Chairman Durbin and Ranking Member Grassley:

The Northwest Indian Bar Association ("NIBA") unreservedly supports swift and decisive confirmation of Lauren King (Muscogee Nation citizen) to serve as a judge for the U.S. District Court for the Western District of Washington. Ms. King is ready to serve.

When confirmed, she will be only the third active Native American federal judge, and only the fifth Native American judge in the history of the federal courts. In short, this historic nomination is long overdue.

Northwest Indian Bar Association

NIBA is an association of legal professionals in Alaska, Idaho, Oregon, and Washington. NIBA represents and fosters the education and welfare of Native American legal professionals and takes action to improve the legal and political landscape for the First Peoples of the Pacific Northwest.

Ms. King is Qualified to Serve

Lauren King's qualifications demonstrate her commitment to excellence in legal practice, public service, and education. Ms. King excels as a litigator and practitioner in diverse areas of law, including Native American and intellectual property law. She has judicial experience as an appellate judge for the Northwest Intertribal Court System. She has taught Native American law as an adjunct professor at Seattle University. And she has served as a volunteer board member for various organizations, including NIBA, and as a Commissioner on the Washington State Gambling Commission.

Ms. King's Confirmation Will Help Remedy Underrepresentation

A 2015 study by the National Native American Bar Association found that Native Americans comprise only .3% of attorneys in the United States, while Native Americans comprise 1.6% of the U.S. population. This study also concluded that Native attorneys are *severely* underrepresented in the federal and state judiciary. Native underrepresentation is particularly pronounced in Washington State, which is home to 29 federally recognized tribes but no Native American federal judges. Ms. King's confirmation will be one step toward remedying this underrepresentation.

For the above reasons and more, NIBA strongly urges the U.S. Senate to confirm Ms. King to serve as a judge for the U.S. District Court for the Western District of Washington.

háʔnəŋ cn (Thank you),

Anthony Jones
President, Northwest Indian Bar Association Governing Council

Northwest Tribal Court Judges Association
Email: csmith@suquamish.nsn.us

June 2, 2021

Senate Judiciary Chairman Dick Durbin and Ranking Member Grassley:

The Northwest Tribal Court Judges Association is writing this letter in support of Lauren King's nomination as a federal judge in the Western District of Washington. Appellate Justice King, a Muscogee Nation tribal member, has served on our Board since 2015 and is now our current Secretary. Justice King does not know that we are sending this letter on her behalf, and was not included in the discussion and decision of the Board to submit this letter of recommendation. She is highly intelligent, dependable, a hard-worker and detail-oriented, and the Northwest Tribal Court Judges Association strongly advocates for her appointment.

Justice King has valuable experience in federal law having served as an appellate tribal court justice since 2013 for various tribes. Tribal courts deal with a broad variety of subject matters including issues regarding federal law, and our appellate courts are often the court of last resort for litigants. She also has extensive federal court experience as a litigator at her firm, having litigated complex cases in various jurisdictions on a broad range of subject matters. In addition to her federal district and circuit court litigation experience, she has been counsel of record and has submitted briefs to the Supreme Court of the United States. Lauren King is absolutely qualified for this federal judicial position as she is not only a skilled litigator and drafter, but also a pleasant person to work with.

In short, we are proud to support Justice King's nomination to serve as a federal judge. We are honored that a well-respected tribal court judicial officer and member of NWTCJA is being considered for this position in the Western District of Washington, where we have many local tribes and issues of great importance to the Native American community at large. Lauren King is an excellent choice for this position and would be an excellent addition to the bench. Thank you for allowing us to submit this letter of recommendation for Lauren King's confirmation.

Very Truly Yours,

CINDY SMITH
President NWTCJA

Law Enforcement Services

Location
2175 Shunk Road

Correspondence
P.O. Box 925
Sault Ste. Marie
Michigan
49783

Phone
906.635.6065

Fax
906.632.0691

E-mail
rmarchand@saulttribe.net

Robert Marchand
Chief of Police

June 3, 2021

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
U.S. Senate Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
U.S. Senate Washington, DC 20510

Re: Letter of recommendation for Lauren King

To Whom It May Concern:

I am writing this letter of recommendation to the Judicial Nomination Commission for Lauren King for appointment as a Federal Judge in Seattle, Washington.

I have known Lauren for approximately two years. Lauren has been instrumental in working with the Sault Ste. Marie Tribe of Chippewa Indians leadership in pursuit of a renewed Consent Decree between the Tribes, State of Michigan, and the Federal Government. Sault Tribe is governed by a 13-member board of directors, and in her role through the development of legal positions from that many individuals, she has shown remarkable ability to hear all sides of a position and then turn it into something that could be entered into the official Consent Decree that all parties are satisfied with.

It is my opinion that Lauren is a uniquely qualified candidate for the position of Federal Judge. She is a fine lawyer, and I have been very impressed with her knowledge and command of the laws related to Indigenous Treaty Rights. She would bring the right mix of humility, diligence, and intelligence to the cases presented before her. She has a unique ability to quickly get to the heart of any legal issue and with uncanny ability, can recall laws and facts.

Lauren has all of the credentials, experience, and wisdom to be a fine Federal Judge. She also brings the fair and ethical values and integrity that are important for any jurist to possess. It is my hope that the Judicial Nomination Commission will consider placing her on its short list for recommendation of appointment to the Federal Judge position.

Sincerely,

Robert Marchand
Chief of Police
Sault Ste. Marie Tribe of Chippewa Indians
Sault Tribe Law Enforcement

Aaron A. Payment, EdD, EdS,MEd, MPA

Tribal Chairperson

Address:
523 Ashmun St.
Sault Ste. Marie,
MI 49783

Phone:
906.440.5937

Email
aaronpayment@saulttribe.net

FaceBook
'Aaron Payment'

June 2, 2021

Senator Richard Durbin, Chair
Senate Committee on the Judiciary
Washington, DC 20510

Senator Charles Grassley, Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

RE: Support for Lauren J. King for U.S. District Court Judge

Dear Chairman Durbin and Ranking Member Grassley:

On behalf of the *Sault Ste. Marie Tribe of Chippewa Indians*, it is with great pleasure that I write in support of Lauren J. King's nomination to serve as U.S. District Court Judge for the Western District of Washington.

I have firsthand knowledge of Lauren's competencies and advanced qualifications in Federal Indian Law as she is currently treaty council for my Tribe which is situation in a different judicial district. She has been amazing in tracking complex legal issues and in fairly and judiciously leading our negotiations on behalf of my Tribal Nation which is the largest east of the Mississippi. Her nomination is historic as she is a citizen of the Muscogee Nation and if appointed will become the first Native federal judge in Washington State, and the third sitting Native judge in the nation.

Ms. King is a first-rate attorney with impeccable qualifications for a federal judgeship. She is an experienced litigator with over a decade of experience handling complex federal litigation matters ranging from complex commercial transactions and intellectual property to treaty rights, cultural resources protections, and tribal jurisdiction. In addition, she has served as a pro tem appellate judge for the Northwest Intertribal Court System since 2013 where she has heard appeals on a broad range of subject matter, including commercial disputes, employment matters, and sovereign immunity.

The United States Constitution gives the federal government exclusive authority over Indian affairs, and the federal judiciary is regularly tasked with making decisions that have a lasting impact on day-to-day life in tribal communities. The jurisdictional scheme on Indian lands is painfully complex, and due to the federal enforcement responsibilities under various federal laws and administrative regulations, Native people are parties to federal court proceedings at grossly disproportionate rates to their non-Native counterparts. Despite this fact, few federal judges have ever visited an Indian community or a tribal court, let alone lived or worked in them. We believe that Ms. King's knowledge and experience are vitally important for the federal judiciary.

We are committed to seeing the federal judiciary include individuals who understand the unique legal status of Indian tribes and can approach Indian issues from an informed, unbiased perspective. We hope that the Judiciary Committee will move swiftly to confirm Ms. King. Should you have any questions, please contact me at **906-635-6050** or via email at: **aaronpayment@saulttribe.net**

Respectfully,

Aaron A Payment

Aaron A. Payment

Seattle Indian Health Board
For the Love of Native People
611 12th Avenue South
Seattle, WA 98144
(206) 324-9360
www.sihb.org

Esther Lucero
President & CEO
Seattle Indian Health Board

The Honorable Dick Durbin
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

May 25, 2021

Dear Chairman Durbin,

The Seattle Indian Health Board (SIHB) strongly supports the nomination of Lauren King, JD of the Muscogee Nation, and ask that you support her confirmation as Judge on the U.S. District Court, Western District of Washington. This ask aligns with support from the Muscogee Nation, National Native American Bar Association, National Congress of American Indians, and the Native American Rights Fund. Ms. King's background in Native American litigation has demonstrated she can navigate the social, economic, and political environment to serve as a federal judge for the Western District of Washington. We know that Lauren King will be an invaluable addition to the federal judiciary.

Ms. King's specialization in Native American treaty rights, construction disputes, intellectual property matters, commercial disputes, and matters involving protection of sacred sites makes her well-suited to serve as a federal judge in the Western District of Washington. Nationally, King is a member of the National Native American Bar Association, American Bar Association, Federal Bar Association of the Western District of Washington, Fellows of the American Bar Foundation, and is the Indian Law Section Conference Chair for the Federal Bar Association. Ms. King's prodigious litigation experience and legal expertise will complement the achievements of the Western District of Washington.

Ms. King has demonstrated her professional expertise and devotion to public service in Washington State and to the 29 federally recognized tribes within the state. She chaired the longest treaty rights trial in the United States District Court for the Western District of Washington and successfully defended the trial victory in the Ninth Circuit and Supreme Court. King has previously served lead outside counsel in natural resource and treaty rights matters for the Quileute Tribe. Ms. King is Commissioner of the Washington State Gambling Commission, Secretary of the Northwest Tribal Court Judges Association, and serves as a pro tem appellate judge for the Northwest Intertribal Court System. She is the former Chair of the Washington State Bar Association Indian Law Section Board, former adjunct professor of Federal Indian Law at Seattle University School of Law, and a former board member for SIHB. Ms. King's eclectic background has prepared her to serve the best interests of Washingtonians.

Ms. King has a unique understanding of legal principles for American Indians and Alaska Natives in Washington State. Of the 890 authorized federal United States judgeships, only two of the active positions are held by Native Americans. Beyond the Honorable Diane Humetewa (AZ) and Honorable Ada Brown (TX), only two other Native Americans have served as federal judges in the history of the federal judiciary. Ms. King would be the third active Native American federal district court judge in the United States and the first Native American federal judge in Washington.

We thank you for acknowledging Ms. King's professional merit and the underrepresentation of American Indian and Alaska Native expertise within the federal judiciary. SHIB fully supports the nomination and confirmation of Lauren King as a federal district court judge for the Western District of Washington. Thank you for your consideration of the information contained herein.

Respectfully,

Esther Lucero (Dinè), MPP
President & CEO
206-324-9360
EstherL@sihb.org

Abigail Echo-Hawk (Pawnee), MA
Executive Vice President
Urban Indian Health Institute Director
206-812-3030
AbigailE@uihi.org

Spokane Tribe of Indians
P.O. Box 100 Wellpinit, WA 99040 (509) 458-6500 Fax: 509-458-6575

Senator Richard Durbin, Chairman
Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

Senator Charles Grassley,
Senate Committee on the Judiciary
Washington, DC 20510

RE: Support for Lauren J. King for U.S. District Court Judge

Dear Chairman Durbin and Ranking Member Grassley:

It is with great pleasure that on behalf of the Spokane Tribe of Indians, we write in support of Lauren J. King's nomination to serve as U.S. District Court Judge for the Western District of Washington. As a citizen of the Muscogee Nation, Ms. King would become the first Native federal judge in Washington State, and the third sitting Native judge in the nation.

Ms. King is a first-rate attorney with impeccable qualifications for a federal judgeship. She is an experienced litigator with over a decade of experience handling complex federal litigation matters ranging from complex commercial transactions and intellectual property to treaty rights, cultural resources protections, and tribal jurisdiction. In addition, she has served as a pro tem appellate judge for the Northwest Intertribal Court System since 2013 where she has heard appeals on a broad range of subject matter, including commercial disputes, employment matters, and sovereign immunity.

The United States Constitution gives the federal government exclusive authority over Indian affairs, and the federal judiciary is regularly tasked with making decisions that have a lasting impact on day-to-day life in tribal communities. The jurisdictional scheme on Indian lands is painfully complex, and due to the federal enforcement responsibilities under various federal laws and administrative regulations, Native people are parties to federal court proceedings at grossly disproportionate rates to their non-Native counterparts. Despite this fact, few federal judges have ever visited an Indian community or a tribal court, let alone lived or worked in them. We believe that Ms. King's knowledge and experience are vitally important for the federal judiciary.

We are committed to seeing the federal judiciary include individuals who understand the unique legal status of Indian tribes and can approach Indian issues from an informed, unbiased perspective. We hope that the Judiciary Committee will move swiftly to confirm Ms. King. Should you have any questions, please contact me at carole@spokanetribe.com or (509)458-6504.

Respectfully,

Carol Evans

Chairwoman Carol Evans
Spokane Tribal Business Council

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THE SUQUAMISH TRIBE

Office of Tribal Council

Post Office Box 498
Suquamish, WA 98392-0498
Phone (360) 598-3311
Fax (360) 598-3686

May 19, 2021

Chair Dick Durbin
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Ranking Member Chuck Grassley
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Support for nomination of Lauren J. King as a federal judge in the Western District of Washington

Chair Durbin & Ranking Member Grassley:

I write on behalf of the Suquamish Tribe to urge the Committee on the Judiciary to approve the nomination of Lauren King to serve as a federal judge to the United States District Court for the Western District of Washington. President Biden's nomination of Lauren J. King on May 12, 2021 was an excellent selection based on her legal expertise, judicial experience, commitment to public service, and her perspective as a citizen of the Muscogee Creek Nation.

Only four Native Americans have ever been federal judges in the 230-year history of the U.S. courts. If confirmed by the Senate, Ms. King would be one of only three active Native American judges on the federal bench. Further, she would be the first Native American judge to serve on the federal bench in Washington State.

Ms. King has a strong background in federal Indian law, which includes serving as Chair of the Native American Law Practice Group at Foster Garvey, P.C.; serving as a Commissioner on the Washington State Gambling Commission; and having taught federal Indian law at the Seattle University School of Law. In addition to her expertise in Indian law, Ms. King's practice has also focused on key areas that comprise a significant portion of the federal court's docket, including intellectual property disputes, and complex commercial disputes.

Ms. King has demonstrated her commitment to Indian Country by her service to the Northwest Tribal Court Judges Association, Mvskoke Reservation Protection Commission, Seattle Indian Health Board, Northwest Indian Bar Association, and Washington State Bar Association Indian Law Section. In addition, she has served as a pro tem appellate judge for the Northwest Intertribal Court System, which adjudicates cases for its 24 member tribes.

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The Suquamish Tribe urges to you to promptly consider and approve the nomination of Lauren J. King to serve as a federal judge on the United States District Court for the Western District of Washington.

Sincerely,

DocuSigned by:

Leonard Forsman

Leonard Forsman
Chairman
Suquamish Tribe

USET
SOVEREIGNTY PROTECTION FUND

711 Stewarts Ferry Pike
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Nashville, TN 37214
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www.usetinc.org

June 4, 2021

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley,

We write on behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) to convey our strong support for Lauren J. King, who has been nominated by President Biden to serve as a federal district judge for the United States District Court for the Western District of Washington. A citizen of the Muscogee Nation, if confirmed, she will be the third active Native American federal district court judge in the country, the fifth in the history of the federal judiciary, and the first Native American federal judge in the Western District of Washington. Her significant legal expertise in combination with her lived experience as a Native American woman prepare her to serve on the federal bench in a way that honors the United States' obligation to support Tribal sovereignty and self-governance.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico. [1]USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

Ms. King's experience in the legal field includes service as a judge, practitioner, and educator. Importantly, she has dedicated her career to federal Indian law and the protection of Tribal Nation rights. A principal at Foster Garvey, P.C., she chairs the firm's Native American Law Practice Group, while also serving as a pro tem appellate judge for the Northwest Intertribal Court System. Additionally, Ms. King is an appointed Commissioner on the Washington State Gambling Commission. Previously, she was a professor of federal Indian Law at the Seattle University School of Law. This background provides her with a strong understanding and appreciation for U.S. law, particularly as it applies to Tribal Nations and the Tribal-

[1] USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

federal relationship. With 29 federally recognized Tribal Nations served by the Western District of Washington, her expertise will be an asset, as the Court considers matters of Tribal sovereignty and the federal trust obligation.

In addition to her legal credentials, Ms. King carries with her the unique experiences of life as a Muscogee woman in the 21st century. This provides her with an innate knowledge of Indian Country's history, challenges, and opportunities. Moreover, this nomination sends yet another powerful message to Tribal Nations and Native people—one of regard, honor, affirmation, and visibility. For too long, Native experiences, perspective, understanding, and voices have been largely invisible or fundamentally misrepresented in public discourse—particularly in the federal judiciary. This leads to court opinions and case law that fail to reflect our unique status and, often, are hostile to our interests. If confirmed, Ms. King's presence on the federal bench will both inspire others and result in decisions that reflect the inherent sovereign rights and authorities of Tribal Nations.

USET SPF extends our full support Ms. King's nomination to the United States District Court for the Western District of Washington. We call upon the United States Senate to act swiftly on her confirmation in accordance with its responsibility to honor its obligations to Tribal Nations. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,

Chief Kirk Francis
President

Kitcki A. Carroll
Executive Director

Bud Sizemore
401 N. I Street, Tacoma, WA 98403
budsize@gmail.com
(253) 951-5090

Senate Judiciary Committee

June 2, 2021

Dear members of the Senate Judiciary Committee:

Thank you for your diligence in discharging your duties of Advice and Consent in the confirmation of judicial nominees to the federal bench. In the case of Lauren King, I strongly support a speedy confirmation to District Judge of the United States District Court for the Western District of Washington.

As Chair of the Washington State Gambling Commission for the past five years, I have had the opportunity to come to know Commissioner King as a consummate professional that is not only always well prepared, but also engaged at a high level that belies the short period of time that we have had to work with her. In addition to the traditional duties as a commissioner, Lauren agreed to participate directly in tribal gaming compact amendments and her contributions were praised by both tribal and state negotiation teams.

The Washington State Gambling Commission is an accredited, limited-jurisdiction law enforcement agency and the only statewide agency devoted to gambling licensing, regulation and enforcement. Through collaboration with local, state, federal, tribal and international law enforcement agencies, we work to fulfill our legislative declaration of: (1) Keeping the criminal element out of gambling, and (2) Promoting social welfare through strict regulation and control. Commissioner King's knowledge of the law at multiple jurisdictional levels has strongly benefitted both our policy and operational considerations and capabilities.

Lauren King has accomplished an incredible body of work, achieved amazing credentials, and has been an absolute pleasure to work alongside. Her demeanor, diligence and professionalism are what we should all strive for. Please consider my strong recommendation of Lauren King to serve as District Judge to benefit Western Washington and the entire United States.

Sincerely,

Bud Sizemore

2021 Virtual Mid-Year Convention

RESOLUTION #2021 – 21

"SUPPORTING SENATE CONFIRMATION OF LAUREN J. KING AS A FEDERAL DISTRICT COURT JUDGE"

PREAMBLE

We, the members of the Affiliated Tribes of Northwest Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian Treaties, Executive Orders and benefits to which we are entitled under the laws and constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution:

WHEREAS, the Affiliated Tribes of Northwest Indians (ATNI) are representatives of and advocates for national, regional, and specific tribal concerns; and

WHEREAS, ATNI is a regional organization comprised of American Indians/Alaska Natives and tribes in the states of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of ATNI; and

WHEREAS, on May 12, 2021, President Joseph R. Biden nominated Lauren J. King, a citizen of the Muscogee Creek Nation, to serve as a federal district judge for the United States District Court for the Western Washington District of Washington; and

WHEREAS, in the 230-year history of the U.S. courts, only four Native Americans have ever served as federal judges; and

WHEREAS, if confirmed, Lauren J. King would be one of only three active Native American judges on the federal bench, and she would be the first Native American judge to serve

on the federal bench in the State of Washington; and

WHEREAS, Lauren J. King has a strong background in federal Indian law, which includes serving as Chair of the Native American Law Practice Group at Foster Garvey, P.C., serving as a Commissioner on the Washington State Gambling Commission, serving as a pro tem appellate judge for the Northwest Intertribal Court System; and having taught Federal Indian Law at the Seattle University School of Law; and

WHEREAS, Lauren J. King has demonstrated her commitment to Indian Country by her service to the Northwest Tribal Court Judges Association, Muscogee Reservation Protection Commission, Seattle Indian Health Board, Northwest Indian Bar Association, and Washington State Bar Association Indian Law Section; and

WHEREAS, Lauren J. King's nomination has been endorsed by the Muscogee Creek Nation, National Congress of American Indians, and Native American Rights Fund, now

THEREFORE BE IT RESOLVED, that ATNI urges the United States Senate to confirm the nomination of Lauren J. King to serve as a federal district judge for the United States District Court for the Western Washington District of Washington.

CERTIFICATION

The foregoing resolution was adopted at the 2021 Virtual Mid-Year Convention of the Affiliated Tribes of Northwest Indians, Portland, Oregon, on May 24 – May 27, 2021, with a quorum present.

Leonard Forsman, President

Norma Jean Louie, Secretary

Native Village of Ouzinkie
PO Box 130
Ouzinkie AK. 99644
907-680-2259 or 907-680-2217

June 3, 2021

Senator Durbin, Chairman
Senate Committee on the Judiciary

Washington, DC 20510

Senator Charles Grassley, Ranking Member
Senate Committee on the Judiciary

Washington, DC 20510

RE: Support for Lauren J. King for U.S. District Court Judge

Dear Chairman Durbin and Ranking Member Grassley:

It is with great pleasure that the Native Village of Ouzinkie writes in support of Lauren J. King's nomination to serve as U.S. District Court Judge for the Western District of Washington. As a citizen of the Muscogee Nation, Ms. King would become the first Native federal judge in Washington State, and the third sitting Native judge in the nation.

Ms. King is a first-rate attorney with impeccable qualifications for a federal judgeship. She is an experienced litigator with over a decade of experience handling complex federal litigation matters ranging from complex commercial transactions and intellectual property to treaty rights, cultural resources protections, and tribal jurisdiction. In addition, she has served as a pro tem appellate judge for the Northwest Intertribal Court System since 2013 where she has heard appeals on a broad range of subject matter, including commercial disputes, employment matters, and sovereign immunity.

The United States Constitution gives the federal government exclusive authority over Indian affairs, and the federal judiciary is regularly tasked with making decisions that have a lasting impact on day-to-day life in tribal communities. The jurisdictional scheme on Indian lands is painfully complex, and due to the federal enforcement responsibilities under various federal laws and administrative regulations, Native people are parties to federal court proceedings at grossly disproportionate rates to their non-Native counterparts. Despite this fact, few federal judges have ever visited an Indian community or a tribal court, let alone lived or worked in them. We believe that Ms. King's knowledge and experience are vitally important for the federal judiciary.

We are committed to seeing the federal judiciary include individuals who understand the unique legal status of Indian tribes and can approach Indian issues from an informed, unbiased perspective. We hope that the Judiciary Committee will move swiftly to confirm Ms. King. Should you have any questions, please contact me at, the Native Village of Ouzinkie,

907-680-2259, 907-680-2214.

Sincerely,

Robert Boskofsky, Tribal President

PRESIDENT
NAN ARON

CHAIR
PAULETTE MEYER

June 4, 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 Eunice Lee as a Judge on the United States Court of Appeals for the Second Circuit.

Eunice Lee is eminently qualified to be a federal judge. Lee has spent her career as a public defender in New York City and, if confirmed, will be the only judge on the circuit with experience as a public defender. She will also be only the second Black woman to ever serve on the Second Circuit.

Lee's career has been immersed in criminal appellate work. She spent over two decades with the Office of the Appellate Defender (OAD) in New York City, becoming a supervising attorney in 2001 after just three years with the organization. Most recently, Lee joined the Federal Defenders of New York in 2019 as a staff attorney. In her career, Lee has represented over 380 indigent clients in both federal and state appellate courts, focusing primarily on post-conviction relief. She has represented clients in numerous habeas proceedings in federal court, one of the most frequent types of cases heard by federal courts of appeal.

Lee has worked to ensure that indigent defendants are represented in court and that her clients' constitutional and statutory rights have been protected throughout the entire criminal process. Recently, Lee successfully argued for the compassionate release of a client who had a heightened vulnerability to the COVID-19 virus. *United States v. Gargan*, Docket No. 18-cr-723 (S.D.N.Y. 2020).

Excelling at every step of her career, Eunice Lee graduated summa cum laude from Ohio State University in 1993 and received her J.D. from Yale Law School three years later. She was a 1993 recipient of the Earl Warren Shearman and Sterling NAACP Scholarship. After receiving her law degree, Lee clerked for Judge Susan Dlott of the United States District Court for the Southern District of Ohio and Judge Eric Clay of the United States Court of Appeals for the Sixth Circuit.

Outside of the courtroom, Lee has worked to train the next generation of public servants. She served as the Office of the Appellate Defender's director of recruitment and outreach, recruiting, supervising, and training

new staff and pro bono attorneys. From 2003 to 2019, she was an adjunct professor at New York University School of Law where she designed and taught the Criminal Appellate Defender Clinic. In 2014, Lee helped to draft the New York State Office of Indigent Legal Services Appellate Standards and Best Practices.

Given her exemplary qualifications, the Senate should expeditiously confirm Eunice Lee to the United States Court of Appeals for the Second Circuit.

Sincerely,

Nan Aron
President

ALUMNI OF U.S. ATTORNEY'S OFFICES, EDNY & SDNY
IN SUPPORT OF THE NOMINATION OF EUNICE C. LEE

June 7, 2021

Senator Richard Durbin
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Senator Charles Grassley
Ranking Member, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley:

We, the undersigned, are former federal prosecutors and alumni of the United States Attorneys' Offices for the Southern and Eastern Districts of New York. We write in support of the nomination of Eunice C. Lee to be a judge on the United States Court of Appeals for the Second Circuit and urge her swift consideration and confirmation.

Ms. Lee is currently an Assistant Federal Defender who works as an appellate attorney for the Federal Defenders of New York, Inc., and she previously served for more than two decades in the Office of the Appellate Defender in New York City. If confirmed, Ms. Lee would be the first federal public defender, and only the second African American woman, ever to serve as a judge on the Second Circuit.

Since graduating from Yale Law School and serving as a law clerk to two federal judges, Ms. Lee has spent over 20 years representing hundreds of clients in state and federal courts of appeals. As an adjunct law professor, she helped design and teach a course on appellate advocacy at New York University School of Law. In short, she is a brilliant, accomplished advocate, who is supremely well qualified to serve on the bench.

We enthusiastically support Ms. Lee not just because of her sterling credentials. We believe that after a career as a public defender serving indigent clients in criminal cases, Ms. Lee would bring a unique and under-represented perspective to the job of hearing and deciding federal appeals. Included among the judges on the Second Circuit Court of Appeals are many former federal prosecutors, including a number of our extremely talented former colleagues. We know that our former colleagues' work as federal prosecutors continues to provide critical experience that aids their efforts to administer justice in many of the cases that come before them. We also recognize, however, that the experience of representing indigent clients in criminal cases is no less valuable for a judge attempting to administer justice. And yet not a single judge who has ever served on the Second Circuit has ever worked as a federal public defender.

We applaud the Biden Administration's efforts to nominate talented lawyers who would bring professional diversity to our federal courts. Nowhere is that diversity more needed than in our own Second Circuit. In Eunice Lee, the President has nominated an incredibly talented lawyer and dedicated public servant, whose career representing the most vulnerable among us will bring a critical, unique perspective to the bench. Her deep commitment to the preservation of civil rights for all make her the right candidate at the right time for this important seat.

Respectfully submitted,

Jonathan Abernethy (SDNY 2001-2008)
Daniel R. Alonso (EDNY 1996-2005)
Marion Bachrach (EDNY 1980-1986)
Jillian Berman (SDNY 2004-2013)
Michael P. Beys (EDNY 2000-2005)
Douglas Bloom (SDNY 2009-2015)
Michael Bosworth (SDNY 2005-2007, 2008-13)
Jacob Buchdahl (SDNY 2002-2007)
Roger A. Burlingame (EDNY 2004-2013)
Sean Casey (EDNY 2004-2009)
Leslie Cornfeld (EDNY 1995-2001)
Shawn Crowley (SDNY 2014-2020)
Kelly T. Currie (EDNY 1999-2010, 2014-2016)
Jenna Dabbs (SDNY 2006-2014)
Christian Everdell (SDNY 2007-2016)
Michael Ferrara (SDNY 2010-2020)
Morris Fodeman (EDNY 2003-2010)
Lee J. Freedman (EDNY 2002-2011)
Christopher D. Frey (SDNY 2008-2015)
James D. Gatta (EDNY 2007-2018)
Andrew M. Genser (EDNY 1998-2004)
Daniel Gitner (SDNY 1997-2005)
John Gleeson (EDNY 1985-1994)
Helen Gredd (SDNY 1985-1993)
Ilene Jaroslaw (EDNY 1991-2013)
Darren LaVerne (EDNY 2010-2016)
Jonathan Leiken (SDNY 2001-2004)
Matthew Levine (EDNY (2001-2007)

Brian E. Maas (EDNY 1980-1986)
David Massey (SDNY 2004-2013)
Suzanne McDermott (EDNY 2000-2008)
Denis J. McInerney (SDNY 1989-1994)
Gordon Mehler (EDNY 1984-1999)
Marshall L. Miller (EDNY 1999-2003, 2006-2014)
William J. Muller (EDNY 1980-2020)
Mary Mulligan (SDNY 1997-2002)
Christopher L. Nasson (EDNY 2013-2016)
Rosemary Nidiry (SDNY 2001-2005, 2007-2015)
Jessica Ortiz (SDNY 2008-2016)
Winston Paes (EDNY 2008-2017)
Catherine Palmer (EDNY 1985-1994, 1996-1998)
Tai Park (SDNY 1989-1999)
Guy Petrillo (SDNY 1990-97, 2008-09)
Patricia A. Pileggi (EDNY 1983-2004)
Pablo Quiñones (SDNY 2004-2012)
Robert M. Radick (EDNY 2003-2009)
Paul Radvany (SDNY 1997-2007)
Lauren J. Resnick (EDNY 1993-2003)
Jennifer Rodgers (SDNY 2000-2013)
Daniel S. Ruzumna (SDNY 1999-2005)
Harry Sandick (SDNY 2001-2006)
David Sarratt (EDNY 2010-2014)
Paul Schoeman (EDNY 1998-2003, 2007-2009)
Alexandra Shapiro (SDNY 1994-1999)
John Siffert (SDNY 1974-1979)
Daniel Silver (EDNY 2006-2016)
Patrick Smith (SDNY 1995-2002)
Andrey Spektor (EDNY 2014-2021)
George A. Stamboulidis (EDNY 1989-2000)
Sung-Hee Suh (EDNY 1994-1999)
Eric Tirschwell (EDNY 1997-2002)
Michael Tremonte (EDNY 2008-2011)
Jeffrey Udell (SDNY 1999-2005)
Alan Vinegrad (EDNY 1990-2002)

Paul T. Weinstein (EDNY 1989-2007)
Andrew Weissmann (EDNY 1991-2006)
Jonathan A. Willens (SDNY 1995-2000)
Milton Williams (SDNY 1990-1994)
Alex Willscher (SDNY 2004-2010)
Frank Wohl (SDNY 1971-1979)

The Leadership Conference
on Civil and Human Rights

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Religious Action Center Of Reform Judaism
Rebecca Pringle
National Education Association
Lisa Rice
National Fair Housing Alliance
Anthony Romero
American Civil Liberties Union
Fawn Sharp
National Congress of American Indians
Maria Town
American Association of People with Disabilities
Richard L. Trumka
AFL-CIO
Randi Weingarten
American Federation of Teachers
John C. Yang
Asian Americans Advancing Justice | AAJC

Interim President & CEO
Wade Henderson

The Leadership Conference

June 8, 2021

SUPPORT THE CONFIRMATION OF EUNICE LEE TO THE U.S. COURT OF APPEALS FOR THE SECOND 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 Eunice Lee to the U.S. Court of Appeals for the Second Circuit.

Ms. Lee is highly qualified to serve on the Second Circuit given her extensive legal experience and record of protecting and defending civil rights. She has devoted her entire career to representing clients involved in the criminal-legal system who cannot afford an attorney. Since 2019, Ms. Lee has served as an assistant federal defender in the Appeals Bureau at the Federal Defenders of New York. Previously, for more than 20 years, Ms. Lee was an attorney at the Office of the Appellate Defender in New York City, starting as a staff attorney and later serving as a supervising attorney and director of recruitment. She also spent more than 15 years as an adjunct assistant professor at New York University School of Law, where she co-designed and taught the Criminal Appellate Defender Clinic. Ms. Lee has clerked for Judge Eric L. Clay of the U.S. Court of Appeals for the Sixth Circuit and Judge Susan J. Dlott of the U.S. District Court for the Southern District of Ohio. A graduate of The Ohio State University and Yale Law School, her community involvement includes membership in the Metropolitan Black Bar Association and the Association of Legal Aid Attorneys. She has also served on the Committee on Professional Responsibility for the Association of the Bar of the City of New York. Ms. Lee's professional background and legal experience qualify her to serve on the Second Circuit.

Ms. Lee would bring decades of vital experience and much-needed professional diversity to the federal judiciary. If confirmed, she would be the only judge on the Second Circuit with experience as a public defender.[1] Public defenders provide an essential function in our criminal-legal system: ensuring that the constitutional rights of all people, including those accused of crimes, are protected. Yet, lawyers with this kind of legal background are underrepresented on the federal bench. For every one former criminal defense attorney on the federal bench, there are at least four former prosecutors.[2] At the appellate level, fewer

[1] "Biographical Directory of Article III Federal Judges, 1789-present." *Federal Judicial Center*. Accessed June 2021. Search includes all Second Circuit judges who listed "public defender" or "federal defender" as non-volunteer work experience.
[2] Neily, Clark. "Are a Disproportionate Number of Federal Judges Former Government Advocates?" *Cato Institute*. September 18, 2019.

The Leadership Conference

than 3 percent of all active federal judges have experience as a public defender.[3] 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 court.

In addition to Ms. Lee's professional experience, it is also notable that if confirmed she would be only the second Black woman ever to serve on the Second Circuit.[4] The Second Circuit is home to 4.4 million Hispanic or Latino residents, 3.9 million Black residents, and 2.1 million Asian American residents.[5] It is vital that those serving in the judiciary share characteristics with the people their decisions impact, as it helps improve public trust in our courts.[6] Diversity can improve decision-making and ensure that rulings reflect a broad set of viewpoints — especially from perspectives that have historically been excluded from the federal judiciary — including Black, Brown, and Asian American and Pacific Islander individuals, women, LGBTQ people, and people with disabilities.[7] The nomination of the eminently qualified Ms. Lee is an important step towards ensuring that our federal courts reflect and represent the diversity of our nation.

Ms. Lee's decades of experience in criminal appellate defense demonstrate her commitment to upholding constitutional and legal rights and protections. She has proven to be a dedicated defender of the rights of all people, and she has the kind of legal background that is sorely needed on our federal appellate courts.

We strongly urge the Senate to confirm Eunice Lee to the Second 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

---

[3] "**Biographical Directory of Article III Federal Judges, 1789-present.**" *Federal Judicial Center.* Accessed June 2021. Search includes all currently active federal judges on appellate courts who list "public defender" or "federal defender" as non-volunteer work experience.
[4] *Id.* Search includes all Second Circuit judges who listed their gender as female and whose race or ethnicity includes African American or Afro-Latina.
[5] "**2019 American Community Survey 1-Year Estimates**." *United States Census Bureau.* Accessed June 2021. Search includes Connecticut, New York, and Vermont.
[6] Sen, Maya. "**Diversity, Qualifications, and Ideology: How Female and Minority Judges Have Changed, or Not Changed, Over Time**." 2017 Wis. L. Rev. 367 (2017).
[7] *Id.*

National Council of Jewish Women
2055 L St NW Suite 650
Washington, DC 20036

T: 202. 296. 2588

National Council of Jewish Women

June 8, 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 Eunice C. Lee to the United States Court of Appeals for the Second Circuit. For over 20 years, NCJW has advocated for judicial nominees who are fair, independent, qualified, and reflect the communities they serve, and Lee meets our criteria.

Eunice C. Lee has spent over 20 years as a public defender in New York City representing more than 380 clients with the Office of the Appellate Defender in both federal and state appellate courts, focusing on post-conviction relief. If confirmed, not only would she be the only judge on the Second Circuit with experience as a public defender, she would also be the second Black woman to ever serve on the Second Circuit.

Lee has spent her career ensuring her clients' constitutional and statutory rights are protected throughout the criminal process, including experience in federal habeas proceedings. This experience is critical for judges on our appeals courts as its one of the most common types of cases they hear. Lee has also represented incarcerated people during the COVID-19 pandemic, successfully securing compassionate release for a client who was particularly vulnerable to the virus.

Judaism affirms again and again the importance of having a judiciary that is committed to justice and truth. Lee's record and experience overwhelmingly speak to this sentiment, and it is without hesitation that **NCJW urges you to support her nomination to the United States Court of Appeal for the Second Circuit.**

Sincerely,

Jody Rabhan
Chief Policy Officer
National Council of Jewish Women

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AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

Please reply to:
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June 8, 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 Eunice C. Lee to the United States Court of Appeals for the Second 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 Eunice C. Lee, who has been nominated by the President to the United States Court of Appeals for the Second 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. Lee is **"Well Qualified,"** and a minority determined that she is "Qualified" to serve on the United States Court of Appeals for the Second 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*)
Eunice C. Lee (*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*)

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AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

Please reply to:
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June 8, 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 Tana Lin to the United States District Court for the Western District of Washington

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 Tana Lin, who has been nominated by the President to the United States District Court for the Western District of Washington. 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. Lin is **"Well Qualified"** to serve on the United States District Court for the Western District of Washington.

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*)
Tana Lin (*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*)

June 3, 2021

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
U.S. Senate
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
U.S. Senate
Washington, DC 20510

Re: Letter of Support to Confirm Tana Lin, Nominee for the United States District Court for the Western District of Washington

Dear Chairman Durbin and Ranking Member Grassley:

The Asian Bar Association of Washington ("ABAW"), the Filipino Lawyers of Washington ("FLOW"), and the Vietnamese American Bar Association of Washington ("VABAW") write to strongly support the confirmation of Tana Lin to serve as District Court Judge for the United States District Court for the Western District of Washington.

If confirmed, Ms. Lin will be the first Asian American in the state of Washington to serve as an Article III judge. Thus, Ms. Lin's confirmation would be a monumental achievement for the AAPI community in Washington state. Asians make up the largest minority racial group in Washington, comprising 9.2 percent of the state's total population as of 2020. We believe it is imperative that the federal judiciary reflect the people the court serves.

Ms. Lin is an accomplished and experienced litigator, with a reputation in the legal community for exceptional legal acumen, work ethic, and integrity. Ms. Lin has had a wide and varied legal career, both in the private and public sectors, and her depth of experience will be a significant asset to the Western District of Washington.

Ms. Lin's personal story is particularly compelling. Ms. Lin immigrated to the United States from Taiwan when she was three years old, speaking only Mandarin at home before she enrolled in school. Ms. Lin worked at a K-Mart in high school while juggling school and extracurricular activities. Through tremendous hard work and determination, Ms. Lin earned the right to attend Cornell University and New York University School of Law, working multiple jobs during both college and law school. Ms. Lin has fought to overcome adversity and has achieved greatness in the law. She embodies a fortitude that we all should be proud of, and that we all should strive for.

Ms. Lin has been a member of ABAW since 2016, including past service as a volunteer with the Joint Asian Judicial Evaluations Committee, a committee that evaluates judges and candidates for judicial positions within the State of Washington and provides such evaluations for review by the Governor of the State of Washington and the general public. In addition, Ms. Lin has served as a mentor to many attorneys, volunteering her time to help train the next generation of lawyers. Ms. Lin's efforts have helped continue traditions of excellence and professionalism in the judiciary and in the practice of law.

ABAW, FLOW, and VABAW are extremely proud of Ms. Lin's historic nomination and urge the Senate to swiftly confirm Ms. Lin for District Court Judge for the Western District of Washington.

Very truly yours,

Asian Bar Association of Washington	Filipino Lawyers of Washington	Vietnamese American Bar Association of Washington
John Fetters President	John Laney President	Amy Phan Taylor Maria Williams Co-Presidents

About ABAW

The Asian Bar Association of Washington is Washington State's largest voluntary bar association of Asian attorneys. Formed in 1987 by a small group of Seattle area attorneys, ABAW now counts hundreds of member attorneys, judges, professors, and law students in a wide range of practice areas and locations in the state of Washington and throughout the country. As a voice for the Asian Pacific American legal profession in the State of Washington, ABAW promotes justice, equity and opportunity for Asian Pacific Americans. We serve as a resource for our members and foster professional development, legal scholarship, advocacy and community involvement.

About FLOW

The Filipino Lawyers of Washington is a professional association of lawyers in the Filipino community dedicated to fostering the exchange of ideas and information among and between its members and other members of the legal profession, the judiciary and the community; promoting the professional growth of its members; assisting in efforts to diversify the legal profession; cooperating with other organizations of minority attorneys; celebrating Filipino culture; and providing a vehicle and forum for the expression of opinions and positions about current social, political, economic, legal or other matters or events that concern the members of the association.

About VABAW

The Vietnamese American Bar Association of Washington was formed in 2005 in order to provide support to attorneys in the advancement of their careers, be a trusted resource for students who aspire towards the legal profession, and serve as a voice for the interest of the local Vietnamese-American community. Our current membership includes practicing attorneys from Seattle, greater King County, Snohomish County as well as Washington-admitted attorneys who are now practicing in Oregon, California, New York, and Washington, D.C.

May 25, 2021

Senator Dick Durbin
711 Hart Senate Building
Washington, DC 20510

Senator Chuck Grassley
135 Hart Senate Office Building
Washington, DC 20510

Re: Tana Lin

ACLU
AMERICAN CIVIL LIBERTIES UNION
Washington

P.O. Box 2728
Seattle, WA 98111-2728
(206) 624-2184
aclu-wa.org

Michele Storms
Executive Director

Dear Senators Durbin and Grassley:

I write at the request of Senator Murray to inform the Committee regarding Tana Lin's qualifications to be a federal judge, including her work with the American Civil Liberties Union of Washington (ACLU-WA). ACLU-WA is a statewide, nonprofit, nonpartisan organization with over 135,000 members and supporters. It is an affiliate of the national ACLU. ACLU is dedicated to defending and promoting civil liberties and civil rights. ACLU policy prohibits any endorsement of candidates for any public office.

Due to this longstanding prohibition against supporting or opposing candidates or nominees for office, we will not be lobbying Senate offices in support of Ms. Lin's confirmation. We are glad to respond to this request for information regarding Ms. Lin so that the Senate may appropriately discharge its advise-and-consent responsibilities, and to inform the public debate around Ms. Lin's candidacy.

Ms. Lin's deep dedication to the rights of all has been demonstrated through her long career, including time as a public defender, attorney with the US Justice Department Civil Right Division and Equal Employment Opportunity Commission, and legal services lawyer for the poor. In addition, during her time in private practice, she has employed her considerable legal skills in two cases involving the ACLU. Ms. Lin and her colleagues represented the ACLU and over 100 other organizations in arguing that a bar applicant with an old criminal record was fully rehabilitated and should be permitted to become a lawyer, an argument with which the Washington Supreme Court unanimously agreed. Ms. Lin also was ACLU cooperating counsel along with another law firm, legal staff of ACLU and several national immigration organizations on *Doe v. Trump,* in which a federal district court in Seattle enjoined the government from preventing children and spouses of refugees who were already in the United States from joining their family members in the United States.

Ms. Lin's leadership and legal abilities are well-described by this statement from ACLU Staff Attorney Lisa Nowlin regarding Ms. Lin's work on the *Doe v. Trump* case:

> Tana Lin was a cooperating attorney on our *Does v. Trump* case and was the lead litigator on that case. I was always impressed by how prepared she was for everything – every brief, every meeting, oral argument – all of it. It was always clear that she had taken the time to think through all the legal theories, all the possible arguments opposing counsel might make, and all the peripheral details. She has a great grasp of the law and is an experienced litigator, and though immigration was a newer area of law to her, she quickly brought herself up to speed on what is a very complex area of law. She was a pleasure to work with, a strong leader, and our clients and team are better for having her on that case.

Ms. Lin also served as a member of the ACLU-WA Board of Directors from January 2016 to May 2021. When our previous Executive Director announced she would be retiring in 2018, Ms. Lin served on the Executive Search committee to hire our new Executive Director. In January 2019 she became President of the board. As President, she facilitated the successful transition from a longtime Executive Director to a new Executive Director. She engaged in a policy review of Board Policies and updated many longstanding policies to be in line with best practices in nonprofit governance. She worked closely with the Vice President and Governance Committee to diversify the board through the board nomination process. She has supported the organization's work toward centering race equity both internally and in its work in the community, legislative bodies and courts, recognizing that communities impacted by racism and poverty face significant barriers to full enjoyment of their civil liberties and civil rights. In short, her service on the Board has been exemplary and forward-looking and has helped lead the organization through a crucial period of transformation.

All at the ACLU-WA have been similarly impressed with Ms. Lin's skill, diligence, judgment, and caring commitment to doing the very best in all of the arenas in which she has worked.

Thank you for your attention. Please feel free to contact me if you have any questions.

Sincerely,

Michele E. Storms
Executive Director

June 4, 2021

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
United States Senate
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
United States Senate
Washington, DC 20510

Re: Ms. Tana Lin's Nomination to the United States District Court for the Western District of Washington

Dear Senators Durbin and Grassley:

I write in support of Ms. Tana Lin's nomination to be a United States District Judge of the United States District Court for the Western District of Washington. I hold Ms. Lin in the highest esteem, and I have no doubt that she will serve the judiciary very well.

Ms. Lin worked for the Michigan Poverty Law Program (MPLP) as the statewide litigation coordinator from 2001 – 2004. Michigan Poverty Law Program is a statewide resource center for legal services programs in Michigan. MPLP supports the advocacy of other legal services programs; coordinates advocacy for the poor among the local programs; and ensures that a full range of advocacy projects that benefit the poor are maintained. MPLP advocates for Michigan's low-income population with respect to low-income housing, family law, public benefits, consumer protections, and issues affecting the elderly.

Michigan Poverty Law Program
15 S. Washington Street, Suite 202, Ypsilanti, MI 48197
Phone 734.998.6100 | **Fax** 734.998.9125
mplp.org

As the MPLP managing attorney I supervised Ms. Lin's work and co-counseled in some of her cases. Ms. Lin is very resourceful, creative, and self-motivated. As the litigation coordinator, Ms. Lin was responsible for developing and strengthening MPLP's impact litigation docket and advocacy project. When Ms. Lin assumed this role, the litigation coordinator's position had been vacant for some time and consequently there was no template for her to follow. Ms. Lin met the challenge of essentially creating a new position. To develop litigation that would positively impact Michigan's low-income population, she needed to understand the community's needs. She very quickly reached out to the legal services providers throughout the state and community organizations to learn about their programs and the community. She then developed an impact litigation docket that included, among other things, challenges to widespread illegal billing practices by a local medical provider, a welfare fraud diversion program, and challenges to mass water shutoffs by a local municipality.

Ms. Lin is highly intelligent, conscientious, and hardworking. Ms. Lin came to MPLP lacking substantive knowledge in housing, family, elder, public benefits, and consumer law. But as the litigation coordinator she rose to the challenge and with hard work she quickly achieved mastery of relevant substantive law.

Based on my daily interactions with Ms. Lin and our frequent discussions about her cases and projects, I found her to be exceptionally attentive, engaged, and very perceptive. She possessed genuine intellectual curiosity and she consistently demonstrated initiative. She possesses precisely the temperament needed for judicial service.

I am confident that Ms. Lin will be an outstanding federal judge. I support her nomination without reservation. If you have any questions, please feel free to contact me at (734) 998 - 6100, ext. 613 or lorrayb@mplp.org.

Sincerely,

Lorray S.C. Brown
Co-Executive Director, Michigan Statewide Advocacy Services
Managing Attorney, Michigan Poverty Law Program

May 24, 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 Tana Lin for the U.S. District Court for the Western District of Washington**

Dear Chairman Durbin and Ranking Member Grassley:

The National Asian Pacific American Bar Association (NAPABA) extends its strong support for the historic nomination of Tana Lin to serve on the U.S. District Court for the Western District of Washington. If confirmed, Ms. Lin will be the first Asian Pacific American to serve as an Article III judge in the state.

NAPABA is the largest Asian Pacific American membership organization representing the interests of over 60,000 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.

Ms. Lin has a demonstrated lifetime commitment to public interest law and her community, including as an active member of our NAPABA affiliate, the Asian Bar Association of Washington (ABAW), where she previously served as a board member and Chair of ABAW's Asian Judicial Evaluation Committee.

Her exemplary career of public legal service began with the Public Defender Service for the District of Columbia, where she handled cases at both the trial and appellate stages. She then joined the Civil Rights Division of the U.S. Department of Justice where she enforced federal anti-discrimination laws as a trial attorney with the Employment Litigation Section. She continued her public service at the Chicago office of the U.S. Equal Employment Opportunity Commission, where she investigated and litigated employment discrimination cases, enforcing civil rights statutes including Title

VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Between 2001-2004, she was the litigation coordinator for the Michigan Poverty Law Program. Ms. Lin is currently of Counsel at Keller Rohrback LLP in Seattle, Washington, where she handles an extensive caseload and variety of complex litigation matters. Her pro bono work there includes securing a nationwide preliminary injunction against the suspension of follow-to-join refugee admissions which was part of the Muslim travel ban. With 30 years of legal experience, she has been named to the Super Lawyers List for Washington from 2012, and 2014-2020.

Ms. Lin immigrated to the United States with her family from Taiwan when she was 3 - years old, eventually settling in the Chicago suburbs. She worked her way through high school and also while attending Cornell University, where graduated with distinction, and the New York University School of Law, where she earned her J.D. and was a Root-Tilden-Snow Scholar.

Ms. Lin is well qualified to serve on the U.S. District Court for the Western District of Washington and NAPABA strongly supports her nomination and swift confirmation by the Senate.

Sincerely,

Priya Purandare

Priya Purandare
Executive Director

June 4, 2021

Chairman Dick Durbin
224 Dirksen Senate Office Building
Washington, DC 20510

Ranking Member Chuck Grassley
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

We, the National Asian Pacific American Women's Forum (NAPAWF), write to express our support for Tana Lin to be District Judge of the Western District of Washington.

NAPAWF is the only multi-issue, progressive, community organizing and policy advocacy organization for Asian American and Pacific Islander (AAPI) women and girls in the U.S. NAPAWF's mission is to build collective power so all AAPI women and girls can have full agency over our lives, our families, and our communities. Using a reproductive justice framework, we elevate AAPI women and girls to impact policy and drive systemic change in the United States.

The reproductive justice framework is rooted in the human right to control our own bodies, our sexuality, our gender, and our reproduction. Reproductive justice will be achieved only when all people, of all immigration statuses, have the social, economic, and political power and resources to define and make decisions about our bodies, health, sexuality, families, and communities in all areas of our lives with dignity and self-preservation.

Not only will Ms. Lin be the first Asian American district court judge on the federal bench in the state of Washington,[1] but her career demonstrates she would bring unique perspectives as an immigrant woman of color to the bench.

During Ms. Lin's time with the Equal Employment Opportunity Commission, she represented employees who were discriminated against due to their protected status such as race, age, and gender,[2] and whose wages were stolen or unfairly lowered.[3] She also worked for the Michigan Poverty Law Program, which works to represent people without resources to hire attorneys.

The intersection of class with gender and race for many AAPI women is not often talked about. The "model minority myth," or the false idea that all AAPI women are the same--high achieving immigrants with stable incomes--furthers the misconception that AAPI women do not need support or resources. This is far from true: AAPI women are overrepresented in the most poorly paid jobs in the country and are often subject to wage theft, unsafe working conditions, and workplace harassment.[4] Currently, the Asian American community is facing a very high rate of long-term unemployment rate, higher than other communities,[5] especially Asian American women.[6]

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[1] News Release, United States Senator Patty Murray, Senator Murray Hails Historic Nomination of former Public Defender and Civil Rights Lawyer Tana Lin and former Immigration Lawyer Judge David Estudillo to Federal District Court (Apr. 29, 2021), https://www.murray.senate.gov/public/index.cfm/mobile/newsreleases?ID=7DE3B00D-704F-4BB1-8D22-714A774845AD

[2] *United States v. N.Y. City Bd. of Educ*., 85 F. Supp. 2d 130 (E.D. N.Y. 2000); *Volvo GM Heavy Truck Corp. v. United States Dept. of Labor*, 1996 U.S. Dist. LEXIS 13739 (W.D. Va., Aug. 9, 1996); https://www.latimes.com/archives/la-xpm-2001-jul-11-fi-20881-story.html

[3] *In re Wells Fargo Wage & Hour Empl. Practices Litig.*, 2011 U.S. Dist. LEXIS 159953 (S.D. Tex. Dec. 19, 2011); Cason-Merenda v. Detroit Med. Ctr., 862 F. Supp. 2d 603 (E.D. Mich. 2012).

[4] National Asian Pacific American Women's Forum, (Oct. 31, 2019), https://www.napawf.org/our-work/content/2019/10/31/issue-brief-sexual-harassment-in-the-workplace; National Asian Pacific American Women's Forum (Mar. 9, 2021), https://www.napawf.org/our-work/content/2021/3/9/aapi-womens-economic-security; National Asian Pacific American Women's Forum, Earning a Living Wage (Feb. 6, 2020), https://www.napawf.org/our-work/content/2020/2/6/earning-a-living-wage.

[5] Robin Bleiweis, Cent. for Am. Progress, The Economic Status of Asian American and Pacific Islander Women, (Mar. 4, 2021), https://www.americanprogress.org/issues/women/reports/2021/03/04/496703/economic-status-asian-american-pacific-islander-women/. As the study states, the lack of data on Native Hawaiian or Pacific Islander (NHOPI) women make it difficult to gauge the full impact of COVID-19's impact on NHOPI women's employment rate. But it is likely that they are also facing high levels of unemployment; Jasmine Tucker, Asian American and Pacific Islander Women Lose $10,000 Annually to the Wage Gap, (Mar. 2021), https://nwlc.org/wp-content/uploads/2020/01/AAPI-EPD-2021-v1.pdf

[6] *Id.*

Recent polls have demonstrated that a majority of Americans are less comfortable with having Asian Americans as their bosses rather than co-workers,[7] demonstrating the existence of bias that works to limit opportunities for Asian Americans in the workplace.

The wage disparities within the AAPI community, along with the high long-term unemployment rates many AAPI women currently face mean many live in poverty and Ms. Lin's work on behalf of employees and low-income individuals demonstrates she understands the challenges employees and low-income individuals face.

Ms. Lin was also part of a case that challenged portions of former President Trump's Executive Order 13769, more commonly known as the Muslim Travel Ban.[8] After a long legal battle, Ms. Lin's work helped to unify the plaintiff with his family.[9]

As the fastest and the third fastest-growing immigrant populations[10] in the country, immigration laws and regulations greatly impact AAPIs' ability to unite with our families. Ms. Lin's work in this case, coupled with her background as an immigrant, demonstrates her understanding of immigration and its impact on families.

At a time when many AAPI women face numerous challenges due to the COVID-19 pandemic, including high unemployment rates and increased overt acts of anti-AAPI racism,[11] we need judges like Ms. Lin, who has demonstrated she understands the issues facing the AAPI community. We strongly urge you to support Ms. Lin's nomination. Thank you for your time.

Sincerely,

National Asian Pacific American Women's Forum

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[7] Shawna Chen, Quarter of White Americans Don't View Anti-Asian Racism as a Problem, Report Finds, (May10, 2021), https://theyappie.com/quarter-of-white-americans-dont-view-anti-asian-racism-as-a-problem-report-finds/

[8] Jim Brunner, (Jun. 26, 2018), Gov. Jay Inslee, Immigration-rights Advocates Blast Supreme Court Travel Ban Ruling as 'abhorrent' https://www.seattletimes.com/seattle-news/politics/immigrant-rights-advocates-condemn-supreme-courts-ruling-upholding-trump-travel-ban/

[9] Press Release, American Civil Liberties Union of Washington, Settlement of ACLU-WA Lawsuit Makes Reunification Possible for Hundreds of Families, (Feb. 10, 2020) https://www.aclu.org/press-releases/after-aclu-wa-lawsuit-government-agrees-prioritize-processing-refugees-stymied-travel

[10] Abby Budiman and Neil G. Ruiz, Asian Americans are the Fastest-growing Racial or Ethnic Group in the U.S., (Apr. 9, 2021), https://www.pewresearch.org/fact-tank/2021/04/09/asian-americans-are-the-fastest-growing-racial-or-ethnic-group-in-the-u-s/

[11] Shawna Chen, Poll: 1 in 2 AAPI Women Says Racism Has Impacted Their Life, (Mar. 30, 2021), https://theyappie.com/poll-1-in-2-aapi-women-says-racism-has-impacted-their-life/

NLADA
National Legal Aid & Defender Association
nlada.org

June 4, 2021

Senator Patty Murray
Assistant Democratic Leader
154 Russell Senate Office Building
Washington, D.C. 20002

Dear Senator Murray:

I write in reference to Tan Lin's nomination to be a United States District Judge for the Western District of Washington. Ms. Lin would be a tremendous asset to the well-regarded bench and the community it serves. I strongly support Ms. Lin's nomination.

In considering Ms. Lin's qualifications for the judiciary, I am mindful that the degree to which the public has confidence in the fairness and integrity of the justice system rests largely on their perception of individual judicial officers. As such, strong legal skills are only the beginning of the list of necessary qualifications. Beyond knowledge of substantive and procedural law, one must have an appreciation for the interplay between the law and its impact on the lives of the most vulnerable members of our society. One must have the empathy and life experiences to render decisions that are legally sound and also take into account the intricacies of the human experience. Judicial officers must possess a temperament that reflects integrity, fairness, sound judgment and equal respect for everyone who appears before them. Ms. Lin excels in each of these areas.

I have known Ms. Lin since approximately 1991, when she was a staff attorney with the Public Defender Service for the District of Columbia (PDS). We continue to have contact through professional channels. Ms. Lin's legal practice at the Public Defender Service and her success as a trial attorney demonstrated strong skills in all of the law-related areas – research, writing, analysis and oral communications. Her experience in juvenile and misdemeanor cases, and then felony jury trials early in her career provided her with an excellent command of the courtroom, which her significant subsequent experience has only further honed. Her breadth of experience in both public and private legal sectors gives her an extraordinary knowledge of the law.

I know Ms. Lin to be a diligent, thorough attorney, who reliably brings sound judgment, solid research and thorough analysis to every situation. Equally importantly, she is an individual who deeply believes in fairness and justice. Her courteous and respectful demeanor is an important aspect of an appropriate judicial temperament. It is my pleasure to support Ms. Lin's nomination. I have no doubt that the Seattle community would benefit greatly by her addition to the federal bench.

Sincerely,

Jo-Ann Wallace
President & CEO

New York University
A private university in the public service

School of Law
Faculty of Law

245 Sullivan Street, office 626
New York, New York 10012-1301
Telephone: (212) 998-6434
Fax: (212) 995-4031
Email: randy.hertz@nyu.edu

Randy Hertz
Clinical Professor of Law

May 30, 2021

Senator Patty Murray
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510
via e-mail to Jaron_goddard@murray.senate.gov

RE: Nomination of Tana Lin to the U.S. District Court

Dear Senator Murray,

I am writing to express my enthusiastic support for the nomination of Tana Lin to the United States District Court.

I am a clinical professor of law at New York University School of Law, where I teach both clinical and substantive law courses and I serve as the law school's Vice Dean for curricular matters and also the Director of the law school's clinical program.

I had the pleasure of working with Tana when she was a student at NYU Law School. When she was in her third year of law school, she was in my year-long Juvenile Rights Clinic. She also worked for me as a research assistant in both her second and third years of law school. In the years since her graduation, I have remained in periodic touch with Tana and also her husband, Paul Holland, who was also a student of mine.

I believe that Tana would be an outstanding addition to the bench. She is highly intelligent, has outstanding judgment, is scrupulously ethical and conscientious, and is an incredibly hard worker. During the year that she was in my clinic, she handled actual cases in court and also conducted simulated hearings and trials. Even at that early stage in her career, she was already extremely skilled at trial advocacy skills. Based on her work in writing motions and assisting me as a research assistant, I know her to be an excellent researcher and writer.

Of course, since that time, Tana went on to do extensive work as a litigator, first at the Public Defender Service for the District of Columbia, and then for the Department of Justice's Civil Rights Division, the Chicago EEOC, the Michigan Poverty Law Program, and the firm of Keller Rohrback. She would bring to the bench an invaluable range of experience in litigating cases and a deep knowledge of the federal and state court processes.

I believe that Tana has precisely the right temperament to be a superb judge. She is able to see both sides of an issue and is attuned to alternative perspectives. She is always respectful of other people's views and eager to hear new information or opinions that might inform her view of a matter.

For all of these reasons, I strongly support her appointment.

Sincerely,

Randy Hertz

PRESIDENT
NAN ARON

CHAIR
PAULETTE MEYER

June 4, 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 express strong support for the confirmation of Veronica Rossman to serve as judge on the Tenth Circuit Court of Appeals.

While still a young child, Ms. Rossman came to the United States with her family as political and religious refugees, fleeing antisemitism in Russia. She attended Columbia University and the University of California, Hastings College of Law, then clerked for Chief Justice A. William Maupin on the Supreme Court of Nevada.

Ms. Rossman's legal career has been impressive; she has extensive courtroom experience from over 12 years of service as a Federal Public Defender in Colorado, representing over 250 clients at both the trial and appellate level. In fact, she has represented clients in cases arising out of every judicial district in the Tenth Circuit. She currently serves in a supervisory role in the Defender's office, and in recent years has helped respond to the new circumstances brought on by the COVID-19 pandemic. For example, she has advised attorneys on making use of compassionate release and home confinement during the pandemic and represented a medically vulnerable 63-year-old man who contracted COVID-19 in prison.

In addition to her admirable work as a public defender, Ms. Rossman has an impressive record as a civil litigator. While an associate at Morrison & Foerster, she worked on one of the largest international patent cases in history, conducting depositions, working with witnesses, and assisting at trial. And while at Mastbaum & Moffat, she worked on additional antitrust and intellectual property matters, including representing an employee alleging his name and professional reputation had been improperly used by his former employer.

Beyond her direct legal advocacy, Ms. Rossman has extensive appellate experience from her previous work for the U.S. Court of Appeals for the Ninth Circuit as a Staff Attorney. In this role, she reviewed cases on appeal and provided recommendations to Circuit Judge screening panels set to hear the cases.

Ms. Rossman would bring an important perspective to the bench based on her work representing many of the most vulnerable in our society. If confirmed, she would be the only public defender to sit on the Court of

Appeals for the Tenth Circuit. The Tenth Circuit, and the federal bench as a whole, sorely needs more judges who have spent their careers preserving and protecting the constitutional rights of all.

Ms. Rossman is incredibly well-qualified, and the Senate should expeditiously confirm her to the United States Court of Appeals for the Tenth Circuit.

Sincerely,

Nan Aron
President

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

June 4, 2021

Dear Chairman Durbin and Ranking Member Grassley:

We write to you in enthusiastic support of Veronica Rossman's nomination to the U.S. Court of Appeals for the Tenth Circuit, and respectfully urge her confirmation.

We represent a wide range of legal experience in the Colorado legal community: civil lawyers, in-house counsel, former prosecutors, criminal defense lawyers, public interest lawyers, former government attorneys, larger firm practitioners, small town lawyers, and academics. We all have worked with Veronica, know her personally, or know her body of work and reputation. All of us believe that Veronica Rossman would bring a unique combination of substantial intellect, work ethic, life and professional experiences to the court.

Indeed, Veronica's diverse background would lend a distinct and unique voice to the court. She immigrated to the United States with her family from the former Soviet Union as a child, leaving behind a history of discrimination against Jews like her, and embracing the opportunities the United States afforded immigrants. The perspective she would offer would contribute enormously to the pressing need for a greater diversity of experiences on the federal bench in general, and on the Tenth Circuit in particular.

Veronica graduated from Columbia University and the University of California, Hastings College of Law, and has spent the majority of her legal career representing individuals under the Criminal Justice Act of 1964. Throughout her career as a federal public defender, she has taught us all that credible, effective advocacy requires the ability to respect the law and to argue for its accurate and equitable application on behalf of those whose lives will be forever changed by the outcome of the case. She brings this perspective from her work as a defender, and she will bring it to the Tenth Circuit where no federal public defender has ever sat. As evidenced by the diverse group of her supporters, many of whom are prosecutors, there is wide agreement that she will bring wisdom and balance to the court.

Veronica's legal experience extends beyond public defense. Her long career has included a clerkship on the Nevada Supreme Court; serving as a staff attorney for the Ninth Circuit;; teaching at the University of Denver, Sturm College of Law; and working as a litigation associate at Morrison & Foerster LLP. The broad spectrum of topics she has briefed showcase a unique ability to unpack complex intersections of law and fact with clear, systemic reasoning.

Veronica has always demonstrated an abiding respect for her colleagues on the other side of the aisle. Her commitment to fairness and collegiality will serve the bench and the public well. She has a celebrated work ethic, a well-deserved reputation for objectivity, and an excellent temperament. She will be a model representative of the judiciary.

We believe Veronica Rossman represents the best of the Colorado legal community and will be an excellent addition to the court.

Sincerely,

Marnie Adams
Recht Kornfeld, P.

Rebecca Aviel
Professor of Law
University of Denver Sturm College of Law

Ciara M. Anderson
Thomas, Ahnell, Laraway & Smith, LLC

John C. Arceci
Assistant Federal Public Defender
Districts of Colorado and Wyoming

Mark Baker
Peifer, Hanson, Mullins & Baker, P.A.

Frederick J. Baumann
Partner
Lewis Roca Rothgerber Christie LLP

Jennifer Beck
Assistant Federal Public Defender
Office of the Federal Public Defender,
Districts of Colorado and Wyoming

David Beller
Recht Kornfeld, P.C.

Jessica Beaulieu

Michael Burg
Burg Simpson

Mary V. Butterton
Senior Litigator
Office of the Federal Public Defender,
Districts of Colorado and Wyoming

Reuben Camper Cahn
Partner
Keller Anderle, LLP
Irvine, CA

John T. Carlson
CJA appellate-panel lawyer
Boulder CO

Webster C. Cash III
Partner
Wheeler Trigg O'Donnell LLP

Catherine Chan

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Interim President & CEO
Wade Henderson

The Leadership Conference

June 8, 2021

SUPPORT THE CONFIRMATION OF VERONICA ROSSMAN TO THE U.S. COURT OF APPEALS FOR THE TENTH 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 Veronica Rossman to the U.S. Court of Appeals for the Tenth Circuit.

Given her demonstrated record of defending the Constitution by protecting civil rights, Ms. Rossman is highly qualified. She has spent most of her career as a public defender, representing clients who could not afford an attorney. She currently serves as senior counsel and supervisory assistant federal public defender at the Office of the Federal Public Defender for the Districts of Colorado and Wyoming, where she has worked for more than 10 years. While there, she has personally handled and supervised more than 100 criminal appellate cases stemming from every judicial district in the Tenth Circuit. Previously, Ms. Rossman spent three years as a visiting professor at the University of Denver Sturm College of Law. She has also worked as a staff attorney for the U.S. Court of Appeals for the Ninth Circuit, and in counsel and associate roles at law firms in Denver and Washington, D.C. Ms. Rossman has clerked for Justice A. William Maupin of the Supreme Court of Nevada and is a graduate of Columbia University and the University of California Hastings College of the Law. Ms. Rossman's community involvement includes serving as a member of several educational and legal organizations, including the Colorado Bar Association's Hate Crimes Education Program and the Tenth Circuit Criminal Pattern Jury Instruction Committee. Her professional and legal experience qualify her to serve on the Tenth Circuit.

Ms. Rossman would bring much-needed professional diversity to the federal judiciary. If confirmed, she would be the only former public defender on the Tenth Circuit.[1] Public defenders play an essential role in our criminal-legal system by ensuring that the constitutional rights of people accused of crimes are protected. Yet, lawyers with this kind of professional experience are notably underrepresented on the federal bench. Our federal judiciary has four times as many former prosecutors as former criminal defense attorneys.[2] At the appellate level, fewer than 3 percent of all active federal judges have experience as a

[1] "Biographical Directory of Article III Federal Judges, 1789-present." *Federal Judicial Center.* Accessed June 2021. Search includes all Tenth Circuit judges who listed "public defender" or "federal defender" as non-volunteer work experience.
[2] Neily, Clark. "Are a Disproportionate Number of Federal Judges Former Government Advocates?" *Cato Institute.* September 18, 2019.

The Leadership Conference

public defender.[3] It is vital that our judiciary reflects the diversity of the legal profession, including more judges experienced in ensuring that their clients have access to justice and that their rights are recognized in court.

In addition to her impressive qualifications, Ms. Rossman's lived experience would also bring important perspectives to the judiciary. Notably, when she was a young child, Ms. Rossman and her family emigrated to the United States as political and religious refugees fleeing antisemitic persecution in Moscow. The Tenth Circuit is home to nearly 1.5 million immigrants;[4] it is imperative that judges share characteristics and experiences with the people their decisions impact. Courts rely on public trust for legitimacy, and diversity helps improve both public trust and judicial decision-making.[5] Diversity also helps ensure that rulings reflect a wide variety of viewpoints, especially from perspectives and communities that have historically been excluded from the judiciary, including Black, Brown, and Asian American and Pacific Islander individuals, women, LGBTQ people, and people with disabilities.[6]

Throughout her career, and especially in her role as a public defender, Ms. Rossman has demonstrated her commitment to safeguarding constitutional and legal rights and protections. Her experience defending the rights of the people most marginalized by the criminal-legal system, particularly those who cannot afford an attorney, will make her an asset to our federal judiciary.

We strongly urge the Senate to confirm Veronica Rossman to the Tenth Circuit. If you 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

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[3] "Biographical Directory of Article III Federal Judges, 1789-present." *Federal Judicial Center.* Accessed June 2021. Search includes all currently active federal judges on appellate courts who list "public defender" or "federal defender" as non-volunteer work experience.
[4] "2019 American Community Survey 1-Year Estimates." *United States Census Bureau.* Accessed June 2021. Search includes Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming.
[5] Sen, Maya. "Diversity, Qualifications, and Ideology: How Female and Minority Judges Have Changed, or Not Changed, Over Time." 2017 Wis. L. Rev. 367 (2017).
[6] *Id.*

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NCJW
National Council of Jewish Women

June 8, 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 Veronica S. Rossman to the United States Court of Appeals for the Tenth Circuit.

Rossman has represented over 250 indigent clients at both the trial and appellate level in her more than 12 years as a federal public defender, including several cases where she was successful in getting sentences vacated or reduced for people who were facing significant time in prison for nonviolent offenses, despite having no prior criminal record. Additionally, she has been a proponent of more humane sentencing during the COVID-19 pandemic, from writing about the unsatisfactory health conditions of federal detention centers to advising other attorneys on securing compassionate release and home confinement for clients in poor health.

In addition to her extensive record as a public defender, Rossman brings a critical perspective to the federal bench as an immigrant whose family fled Russia in her early childhood due to antisemitic persecution. In a moment when religious liberty is at the center of many debates and antisemitism is steadily increasing within the United States, Rossman's personal background brings a crucial perspective to a court that frequently hears religious discrimination and religious liberty cases.

For more than 20 years, NCJW has been working for a fair and independent judiciary with an unwavering commitment to constitutional rights. Rossman's background and experience more than fit our criteria — she would be a welcome addition to our federal appellate courts.

NCJW urges you to support the nomination of Veronica S. Rossman to the United States Court of Appeals for the Tenth Circuit.

Sincerely,

Jody Rabhan
Chief Policy Officer
National Council of Jewish Women

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June 8, 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 Veronica S. Rossman to the United States Court of Appeals for the Tenth 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 Veronica S. Rossman, who has been nominated by the President to the United States Court of Appeals for the Tenth 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. Rossman is **"Qualified,"** and a minority determined that she is "Well Qualified" to serve on the United States Court of Appeals for the Tenth Circuit. The Standing Committee's rating means that, under our guidelines, Ms. Rossman satisfies the Standing Committee's very high standards with respect to integrity, professional competence, and judicial temperament and is qualified to perform all the duties and responsibilities required of a federal judge. 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*)
Veronica S. Rossman (*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*)