

# CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

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## HEARING BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE ONE HUNDRED SEVENTEENTH CONGRESS FIRST SESSION

JUNE 23, 2021

**Serial No. J-117-8**

Printed for the use of the Committee on the Judiciary



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## **CONFIRMATION HEARING ON FEDERAL APPOINTMENTS**

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**WEDNESDAY, JUNE 23, 2021**

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

The Committee met, pursuant to notice, at 9:32 a.m., in Room 216, Hart Senate Office Building, Chair Ossoff presiding.

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

Also present: Senators Warren, Markey, and Menendez; Puerto Rico Governor Pierluisi and Representative Gonzalez-Colon.

### **OPENING STATEMENT OF HON. JON OSSOFF, A U.S. SENATOR FROM THE STATE OF GEORGIA**

Chair OSSOFF. The Senate Judiciary Committee will come to order. Today, we will hear from five nominees: Judge Gustavo Gelpi, nominated to the first circuit; Judge Angel Kelley, nominated to the District of Massachusetts; Christine O'Hearn, nominated to the District of New Jersey; Helaine Greenfeld, nominated to lead the Justice Department's Office of Legislative Affairs, or OLA; and Christopher Schroeder, nominated to lead the Justice Department's Office of Legal Counsel, or OLC.

I'll introduce two of the nominees, and we'll hear from a number of our colleagues today to introduce the remaining three. Before I make my introductions, I'd like to extend a note of thanks to Chair Durbin for the opportunity to preside at this hearing. The Committee does enormously important work, and these nomination hearings are no exception. Thank you, Chair Durbin.

Turning now to the introductions. First, I have the privilege of introducing Judge Gustavo Gelpi, who has been nominated to the First Circuit Court of Appeals. Judge Gelpi currently serves as a United States District Court Judge for the District of Puerto Rico, a position he's held since the Senate unanimously confirmed him to that role in 2006.

In his time on the bench, which included 5 years as a Federal magistrate judge before his appointment to the district court, Judge Gelpi has presided over some 3,400 cases, including 62 jury trials. He's written more than 880 opinions on a range of legal and constitutional issues from Social Security benefits to the Federal Tort Claims Act, to the First Amendment.

Judge Gelpi came to the district court with a unique and varied perspective, having served as both a Federal public defender and

with the Puerto Rico Department of Justice, where he handled criminal matters on behalf of the Attorney General of Puerto Rico. He'll bring that same perspective along with two decades of judicial experience to the first circuit. It's no surprise, then, that the American Bar Association unanimously rated Judge Gelpi "well qualified."

I'd also note that when confirmed, Judge Gelpi will be just the second judge from Puerto Rico to ever sit on the first circuit, and likewise, the second judge of Hispanic origin to serve on that same court.

Congratulations to you and your family, Judge Gelpi. We look forward to hearing from you in just a few minutes.

It's also my privilege to introduce Christopher Schroeder, nominated to lead the Office of Legal Counsel. Mr. Schroeder currently serves as a Deputy Assistant Attorney General at OLC. In many respects, his nomination to head this office is something of a homecoming. His first stint in that office was in 1993, when he served as a counselor to the Assistant Attorney General.

Mr. Schroeder is also well-known to this Committee. He served as a special nominations counsel and chief counsel to the Senate Judiciary Committee when now President Biden was the Committee Chairman. During the Obama administration, he served for 3 years as the Assistant Attorney General in charge of the Office of Legal Policy.

In addition to his Government service, Mr. Schroeder spent more than 40 years in legal academia as a professor of law and public policy at Duke University's School of Law, where he taught classes on environmental law, constitutional law, administrative law, property and civil procedure, and fittingly Congress and the legislative process.

Congratulations to you and your family as well, Mr. Schroeder, for your nomination. We look forward to hearing from you on the second panel.

Is Chair Durbin with us? Before I turn to Ranking Member Grassley for his opening remarks, I'd like to recognize Chair Durbin to make brief opening comments.

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

Chair DURBIN. Senator Ossoff, thank you very much for Chairing this hearing. As I mentioned to several, I have to testify in the House this morning, and I won't be able to stay. You are in good hands, I say to all the nominees.

Senator Ossoff is one of our most recent additions and an invaluable Member of the Committee. As he mentioned, we have five outstanding nominees before us. Senator Ossoff has already introduced two: Judge Gelpi and Christopher Schroeder.

The Committee will also hear from Judge Angel Kelley, nominated to the District of Massachusetts; and Christine O'Hearn to the District of New Jersey. I'd like to say a word, and I'm sure there'll be much more said by Senator Leahy, appropriately, about the final nominee, Helaine Greenfeld, nominated to the Justice Department's Office of Legislative Affairs.

I know that both Senator Leahy and Senator Hirono will make formal introductions, but I wanted to add a word. In a very real sense, Ms. Greenfeld has been the mainstay of this Committee's work. From her time as chief nominations counsel to Senator Leahy to her work as chief counsel to Senator Hirono, Ms. Greenfeld has been a widely respected staff member, a wonderful colleague, and a mentor to so many people.

She has now been given what some might consider a tough assignment, responding to the requests from this Committee. We know, though, that she's up to it, and that she will serve the Justice Department in the way she served this Committee with professionalism, integrity, and dedication.

Thank you to all the nominees. With that, I turn it back to Senator Ossoff.

Chair OSSOFF. Thank you, Mr. Chairman. I'd like to turn to Ranking Member Grassley for any opening statement he wishes to make.

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

Senator GRASSLEY. I congratulate all the nominees, and I'm going to take my time not so much to talk about the nominees, as a couple of other issues that's related to the judiciary.

Last week, the Supreme Court threw out the latest Obamacare suit. Justice Barrett joined Justice Breyer's opinion doing so. I'm old enough to remember when my Democrat friends insisted that the main reason we were confirming Justice Barrett to the Supreme Court was so that that new Justice could dismantle Obamacare in that very case. Of course, that turned out to be nonsense, and it was a nonsense at the time it was stated. My colleagues still boycotted the markup and left in their place pictures of children who would supposedly lose their healthcare if Justice Barrett was confirmed. It was fearmongering, and of course, we know now they ought to be convinced that was false.

Have any Democrats apologized to Justice Barrett for questioning her integrity? Of course not. In fact, one Democrat went so far as to say that maybe the attacks on her character bullied her into voting the right way. It's sad that Democrats see judges as mere politicians beholden to special interests and vulnerable to personal attacks. It's also refreshing to see independent judges, like Amy Barrett and Brett Kavanaugh, do the right thing under the law.

I also want to talk a little bit about judicial philosophy. My Republican colleagues and I have asked Biden nominees many questions about judicial philosophy, some of those may be asked of our nominees today. We don't often get an answer. Hardly ever. In fact, they seem to be allergic to the very idea of judicial philosophy. They won't agree to being originalists or textualists.

They won't oppose the living Constitution. That's fair enough. They're Democrats. They won't embrace that living Constitution philosophy either. It seems they just don't want to talk about philosophy at all. To me, this means one of two things: It could mean that they're interpretative liberals, and they don't want to admit it. Namely, they believe in the liberal method of interpreting the Con-

stitution like Justice Brennan or an interpretative statute like Judge Posner, but don't feel comfortable defending those views in public. More troubling, it could mean that they're being honest, and they don't have any interpretative method at all, and it really is just politics all the way down.

I've started to ask nominees about whether law is just politics. How do they view law generally? How does the law relate to politics? Where does morality fit in? Where does the law get its power? They aren't any more forthcoming on jurisprudence questions than they are in interpretation questions.

Our colleague, Senator Kennedy, has observed, "Surely, they've thought about this," meaning what I just spoke about. They've thought about it. He observes that all these nominees are very smart people. They are smart people. I have no doubt that President Biden and Demand Justice and expect them to have thoughts about these issues. What's the point in hiding your judicial philosophy? They are hiding it.

Chairman Durbin recently quoted a Trump nominee, saying he or she didn't like labels, to argue that nominees over the last 4 years didn't answer questions about judicial philosophy either. Of course, that's just not correct. It's true some Trump nominees didn't embrace the originalist label, but not all Trump nominees were originalists. The fact is that the Trump nominees didn't run from their place.

Neil Gorsuch said, quote, "I'm happy to be called an originalist." Amy Barrett agreed, quote, "I'm an originalist." I count at least a dozen Trump circuit and district nominees who either identified as originalist or said that they subscribe to originalist or textualist methods when asked. Maybe that's why so many Democrats voted against them. Maybe Democrats today figure a diverse group of criminal defense judges will reach policy outcomes that they like, and that's good enough for them.

It's not good enough for me or, I suspect, the American people. It shouldn't be good enough for any Senator who views the role of a judge as someone who will impartially follow the law and not just be a partisan in robes.

We're going to keep asking about judicial philosophy to see if Biden nominees can defend their views of the judiciary and the rule of law. We'll see if any of our friends on the other side join us in that effort.

As to today's nominees, we surely won't get this kind of equivocation from Judge Gelpi, a replacement for the phenomenal Judge Raul Arias, whose nomination was unfortunately withdrawn by Biden. Judge Gelpi has a long history as a judge in Puerto Rico, where he has also opined at great length on multiple language—in multiple languages on his constitutional views. He even wrote a book about constitutional history. I look forward to discussing those views with him.

Judge Kelley and O'Hearn have interesting records that I'll want to talk about. Mr. Schroeder and Ms. Greenfeld hold hands at their respective positions, and I can only hope that they will give them the expertise and knowledge they need to assist me and my oversight requests at the Justice Department. Which, by the way, for all Members of this Committee, I still haven't gotten my documents



from Garland that we wrote about 6 or 8 months—6 or 8 weeks ago.

Thank you all.

Chair OSSOFF. Thank you, Ranking Member Grassley. We'll now hear from several colleagues who are joining this morning to introduce nominees, beginning with Senator Leahy, who will introduce his former aide, Helaine Greenfeld.

**OPENING STATEMENT OF HON. PATRICK J. LEAHY,  
A U.S. SENATOR FROM THE STATE OF VERMONT**

Senator LEAHY. Thank you, Mr. Chairman. I apologize. I'm going to have to be brief because I'm going to the memorial service for a dear friend and former colleague, Senator John Warner.

It is a great pleasure to introduce Helaine Greenfeld this morning. She's dedicated her career to public service. I take special pride, though, in knowing Helaine Greenfeld's first job on Capitol Hill was as my counsel on this Committee.

I knew how well she'd do. She graduated at the top of her law school class at Georgetown Law, also my alma mater, and continued on doing amazing things. She was an instrumental player in the confirmation of the late Justice Ruth Bader Ginsburg. It's no exaggeration that her tireless work to get Justice Ginsburg confirmed changed the world.

She joined my Judiciary Committee team as I took over as Chairman for the first time in 2001. She was my senior nominations counsel. I was a brand-new Committee Chairman, and I had a lot to learn, and she was by my side throughout those years.

Thinking what the Ranking Member just said about should we look at people as individuals. She guided me through two Supreme Court nominations. One of those was the nomination of Chief Justice Roberts. I know a number of Democrats opposed Chief Justice Roberts. I'm proud to say I cross party lines and I supported Chief Justice Roberts' confirmation because our Supreme Court, the crown jewel of our independent judiciary, is so much more important than partisanship.

It was her wise counsel that helped me on every one of these, and helping us get a number of lifetime judgeships through. I think I can say I have voted for probably more Republican nominees as judges than virtually any Republican Member of this Committee when we speak about partisanship. She helped me get through judges, no matter what their political background were, if they were the most qualified.

I also know how—what a great sense of humor she has. I can remember walking down the halls and hearing these roars of laughter coming from her office as she was briefing the staff and getting things ready. I look forward to supporting her throughout this.

I would ask my full statement be placed in the record. I could tell you we could not have a better person. Thank you.

Chair OSSOFF. Thank you, Senator Leahy. Please give our respects to Senator Warner's family. Senator Hirono will join in introducing Ms. Greenfeld.

**OPENING STATEMENT OF HON. MAZIE K. HIRONO,  
A U.S. SENATOR FROM THE STATE OF HAWAII**

Senator HIRONO. Thank you, Mr. Chairman. If you listed the ideal qualifications, skills, and experience for someone nominated to serve as Assistant Attorney General for Legislative Affairs, you'd be hard-pressed to find someone with more suitable experience for the job than Helaine Greenfeld.

Over the 2 years Ms. Greenfeld served as my chief counsel, I came to depend on her expertise, professionalism, and strategic advice. I also benefited regularly from her years of experience serving in the Department of Justice and on the Hill. It is precisely this combination of skill and experience that makes Ms. Greenfeld well-suited to this role, and why I enthusiastically endorse her nomination.

Over the years, Members of the Committee on both sides of the isle have expressed frustration with DOJ's lack of responsiveness to congressional oversight, and requests for technical assistance, and other information. I have shared this frustration at times myself.

Having worked on both the executive and legislative branches of Government, Ms. Greenfeld understands and respects Congress's responsibility to conduct oversight. She also understands that timely information from DOJ is an essential tool for Congress to legislate effectively. As a member of OLA leadership since the beginning of the Biden administration, Ms. Greenfeld is already setting a positive tone in the relationship between Congress and DOJ.

I saw this firsthand earlier this year when DOJ provided timely and important technical assistance on the COVID-19 Hate Crimes Act. Working on a bipartisan basis, we were able to incorporate elements of DOJ's guidance into the bill, which passed the Senate almost unanimously, and which President Biden ultimately signed into law. I understand that other Members of Congress have enjoyed similar productive dialog with OLA, and I'm sure Ms. Greenfeld will speak more about this subject during this hearing.

On a personal note, I can vouch for Ms. Greenfeld's professionalism and character, and yes, her sense of humor. I know how much her family's experience as Jewish refugees fleeing the Holocaust drove her to a life of public service. I know she will excel in the role to which she was appointed and offer a strong endorsement for her confirmation.

Thank you, Mr. Chairman.

Chair OSSOFF. Thank you, Senator Hirono. Senator Warren will introduce Judge Angel Kelley.

**STATEMENT OF HON. ELIZABETH WARREN,  
A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS**

Senator WARREN. Thank you, Senator Ossoff and Ranking Member Grassley. Today I have the privilege of introducing Massachusetts Superior Court Judge Angel Kelley, who has been nominated to serve as a judge on the Federal district court of Massachusetts.

Judge Kelley's 28-year legal career has provided her excellent preparation for joining the Federal bench in Massachusetts. Judge Kelley has served as a judge in the Commonwealth since 2009, as an associate justice on both the State district court and superior

court in Brockton. She also served as a regional administrative judge from 2017 to 2020.

Judge Kelley's legal career has also consistently centered on public interest. She began her career working as a staff attorney in the juvenile rights division at the Legal Aid Society in New York, where she served as a law guardian in child protective matters, representing abused and neglected children. She also worked as a public defender in juvenile delinquency cases. Her public service career continued in the law department of the Port Authority of New York and New Jersey, and later as an assistant U.S. attorney in Boston for 2 years. Judge Kelley also taught at the Legal Aide Bureau at the Harvard Law School, where she supervised students in probate and family court and taught courses in family law and litigation skills.

Judge Kelley is supremely qualified to serve on the Federal district court in Massachusetts. In addition to her professional commitment to public service, Judge Kelley has made it a personal mission to bring about change through her role on the bench, both in her courtroom and in the courtrooms of her colleagues. For years, Judge Kelley has led efforts to encourage our State courts to reflect on and publicly acknowledge the injustices that Black Americans have long faced in this country. Those efforts have included community listening sessions and educational events on race, including a conversation on, quote, "Confronting Racism in the Courts," for Massachusetts judges.

In 2019, Judge Kelley single-handedly organized a judicial educational program to travel to Montgomery, Alabama, to visit the Equal Justice Initiative's Legacy Museum. Judges and their families traveled to Montgomery to meet with members of the Alabama judiciary to tour the Legacy Museum and National Memorial for Peace and Justice; to visit the Rosa Parks Museum; and to reflect, as a group, on the role of the judiciary in our country and the implications of judicial decisions on the broader society.

I could go on and on about her personal and professional qualifications for the bench. Judge Kelley has demonstrated a deep commitment to advancing equal justice under law. She has gone out of her way to educate her colleagues on how they could bring about a more equitable legal system. I have no doubt that she will continue this work on the Federal district court in Massachusetts.

I want to say a welcome to Judge Kelley, and congratulations on your nomination. Also, welcome my colleague and partner, Senator Markey.

Chair OSSOFF. Thank you, Senator Warren. Senator Markey, you're recognized to join in the introduction of Judge Kelley.

**STATEMENT OF HON. EDWARD J. MARKEY,  
A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS**

Senator MARKEY. Thank you, Mr. Chairman, very much. I'm just going to add on to what Senator Warren just presented to the Committee, which is that it is a pleasure for us to be able to recommend for confirmation Judge Angel Kelley to serve as a judge on the United States District Court for the District of Massachusetts.

In a legal career that has already spanned almost 30 years, Judge Kelley has excelled in everything she has done, and she has done a lot. She has been a trial attorney, a legal instructor, a State Court judge in our home State of Massachusetts. She has devoted her entire professional career to public interest and public service work.

She began her practice of law, representing children in delinquency and protective care cases in New York. She went on to serve as a senior trial attorney and assistant chief of litigation in the fast-paced and demanding Port Authority of New York and New Jersey. She served as an assistant United States attorney.

If you Google the words “public service,” Judge Kelley’s picture pops up. It’s been her life. She has taught litigation skills to students at Harvard University Law School and supervised them representing indigent clients appearing in probate and family court. As a judge sitting in Massachusetts district and superior courts, she has presided over several hundred jury trials that have gone to verdict or judgment.

Judge Kelley has, throughout her career, demonstrated one thing above all else, and that is an abiding commitment to our Nation’s promise of equal justice under the law. She has been a leader in the Massachusetts Judiciary on fulfilling this promise, especially to litigants of color. She has been a friend and mentor to many members of the legal community, and there are affinity groups with her nomination receiving strong support from the Massachusetts Black Lawyers Association, the Massachusetts Hispanic Lawyers Association, and the Asian American Lawyers Association of Massachusetts, among others. At a time when our Federal bench needs both diversity and experience in background more than ever, Judge Kelley meets the moment with a set of experiences that are unfortunately too rare for Federal judges.

It is my sincere hope to see more nominees like Judge Kelley in the near future as we help reshape American’s judiciary to better suit the people that it serves. In light of Judge Kelley’s qualifications, expertise, and service, I respectfully ask that you send her nomination to the full Senate for confirmation. I hope that the Senate will quickly confirm her to fill the long-vacant seat on the Massachusetts Federal Court.

Thank you, Mr. Chairman.

Chair OSSOFF. Thank you, Senator Markey. Senator Menendez is now recognized to introduce Christine O’Hearn.

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

Senator MENENDEZ. Thank you, Mr. Chairman, Distinguished Ranking Member, Members of the Committee. Before I do that, I want to take a moment as the highest-ranking Latino in the U.S. Congress to first acknowledge a historic nominee to the United States Court of Appeals for the First Circuit, Judge Gustavo Gelpi. Judge Gelpi will be the only second judge of Hispanic origin and the second judge from Puerto Rico ever to sit on the first circuit. He is deeply respected among his colleagues in the judiciary and a beloved member of the Puerto Rican legal community.

As Governor Pierluisi, who is here with him, the Governor of Puerto Rico, can tell you, there is very little unanimity on many issues in Puerto Rico. There is unanimity on the incredible judge that Judge Gelpi is. I believe he will make an outstanding contribution to the first circuit.

It's also my great privilege to join with my distinguished colleague of this Committee, Senator Booker, to introduce our exceptional nominee to the U.S. District Court for the District of New Jersey, Ms. Christine O'Hearn. She was born and raised in New Jersey, and she is an expert in labor and employment law, highly regarded among her colleagues for her sharp intellect. Ms. O'Hearn was twice named one of the top 40 attorneys under 40. I forgot what that was like, but the top 40 attorneys under 40 in New Jersey, and was featured in New Jersey's Law Journal's Women and Minorities in the Profession. Ms. O'Hearn is currently a partner of Brown & Connery in Westmont, New Jersey, where she practices labor, employment, and complex civil litigation.

In 2020, Ms. O'Hearn was appointed to the U.S. Magistrate Judge Selection Committee, which, in essence, works to select all of the Magistrates of the Federal District, and has served on various distinguished boards, including the New Jersey State Committee of the American College of Trial Lawyers, and the New Jersey Court District for Ethics Committee. She also previously served as an adjunct professor at Rutgers University School of Law in Camden, preparing the next generation of lawyers.

It's clear to me that Ms. O'Hearn has the astute judgment, even temperament, deference to precedence necessary to excel as a Federal judge. I am confident she will serve the people of New Jersey well through her administration of fair and impartial justice. I'm very proud to have recommended her for appointment to the U.S. District of New Jersey.

I would just close, Mr. Chairman, by saying I think the Committee knows, and I appreciate that the Chairman has been working to move some of these nominees. New Jersey has a series of multiple vacancies which have been declared judicial emergencies by the Judicial Conference of the United States. Therefore, I ask your unanimous support and quick expedition of reporting out Ms. O'Hearn to the full Senate.

Thank you very much.

Chair OSSOFF. Thank you, Senator Menendez. I'd like to join you as well as welcoming and acknowledging the presence of Governor Pierluisi. I'd now like to recognize Senator Booker, who will join in the introduction of Ms. O'Hearn.

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

Senator BOOKER. Mr. Chairman, I am grateful to have this opportunity to follow the Senior Senator of New Jersey in heralding the qualifications of Christine O'Hearn, who I am excited that President Biden has nominated to be a U.S. District Judge for the District of New Jersey.

My Senior Senator Menendez has already spoken to her qualifications. I will add that Ms. O'Hearn is truly Jersey through and

through. She is the best of our State. I have heard rumors that both Bruce and Bon Jovi are jealous of her Jerseyness.

[Laughter.]

She was born in Camden, New Jersey. She went to the University of Delaware, who anybody that knows University of Delaware, it is a very Jersey school. She taught at Rutgers University Law School in Camden. She has practiced her career in Westmont, New Jersey, since 1993.

She has decades now, 28 years as a career litigator. She has demonstrated herself to her peers and members of the Judiciary New Jersey as an extraordinarily exceptional litigator. She has represented both defendants and plaintiffs in a variety of issue areas that will be very indicative of her qualifications to be a judge, to be fair, balance, even-handed, judicious, and compassionate.

What is really striking to me is her commitment to serving others. She has logged many, many hours of pro bono work, serving a New Jersey Supreme Court District for Ethics Committee, helping to provide oversight and integrity to her peers in the New Jersey legal community. She has been recognized by New Jersey lawyers for those qualifications. As Senator Menendez mentioned, distinguished herself early in her career.

She has demonstrated a deep commitment to the values that we hold most sacred in our Nation. She understands that her role is to uphold public faith in the law and to make sure that no matter who comes before the bench, that they are treated with justice and equanimity.

Christine O'Hearn's commitment to the law and her breadth of experience will make her a truly capable jurist. As Senator Menendez said, there is an urgency in New Jersey, not just to fill judicial vacancies, but to fill them with people of honor, and integrity, and qualifications. Ms. O'Hearn meets that measure and will make our State even more proud to have her.

I hope that we will move her through this Committee quickly and get her to the floor for a vote. As a Jersey boy myself, it will be one of the prouder votes that I take on the floor to vote for her confirmation.

Chair OSSOFF. Thank you, Senator Booker. I now just ask for everyone's patience for a moment as we finalize the setup for our first panel.

Judge Gelpi, will you please stand to be sworn?

[Witness is sworn in.]

Chair OSSOFF. Thank you, Judge. Please proceed with your opening remarks.

**STATEMENT OF HON. GUSTAVO A. GELPI, NOMINEE  
TO SERVE AS UNITED STATES CIRCUIT JUDGE  
FOR THE FIRST CIRCUIT**

Judge GELPI. Good morning, Senator Ossoff. It is a privilege to appear before you. This is the first hearing you're Chairing in this Committee. I also want to thank Senator Menendez as well as you for making some introductory remarks. I appreciate that. I also want to thank the President of the United States, President Biden, for this nomination; and the Chair of the Committee, Senator Durbin; as well as the Ranking Member, Senator Grassley for making

this hearing possible. I want to thank all the Members of the Committee who are also here today.

It is an honor to be here. I was before this Committee 15 years ago for my district judge nomination. Many of the Senators are still here. That was, at the time, the greatest honor of my professional life. If confirmed for this position, this would be an honor above that honor.

I have been a public servant for almost 30 years, and I have been a judge now for 20 years. I was a magistrate judge for 5 years, and I've been a district judge now for 15 years. If confirmed, I will continue to apply the rule of law and our Constitution and laws to the cases that come before me with the same passion and commitment as I've always had.

Present with me today are family members, my father who looks like me, Maria, law school colleagues, and childhood friends. Thank you also for introducing Governor Pierluisi, who is here. I appreciate his being here.

Not here with me today is my mother, who is in Puerto Rico as well as my children, Diego and Maria. They're here in spirit. Also not present with us today, but present in spirit, are my three grandparents who were an integral part of my upbringing. My two maternal grandparents, my father was a disabled World War II veteran. His wife was a naturalized U.S. citizen. On my dad's side, my grandmother, worked for the U.S. Navy as a civilian for 43 years. That's a personal family record I hope to break someday.

I also want to thank all of my friends in Puerto Rico and across the Nation who have supported me, as well as other individuals who have supported me all the way through these proceedings.

I welcome your questions. Thank you, Senator.

Chair OSSOFF. Thank you, Judge Gelpi. I will now turn to questions. Senators will have 5 minutes to question the nominees in this first panel. I'll begin.

Judge Gelpi, thank you again for joining us today. Congratulations, again, on your nomination and your years of distinguished service. You bring a unique background to the bench, having worked in the Federal Public Defenders' Office in Puerto Rico, where you represented defendants who lacked the resources to retain their own counsel. You served on the U.S. Sentencing Commission, where you worked to revise guidelines. You've also served as a prosecutor. Of course, you have extensive experience on the bench for the past two decades, first as a magistrate and now as a Federal district court judge.

Judge Gelpi, can you address how this broad view and broad experience at multiple levels and in multiple roles in our justice system informs your understanding of justice and the rule of law in the United States today, and will guide your approach to judicial decision-making, should you be confirmed to this judgeship?

Judge GELPI. Senator, as an attorney during the first third of my professional career, I appeared before trial courts, Federal courts, and also courts of appeal, representing clients, both on the criminal side and then representing the Government on the Government side. I think that experience as an attorney was important for me as a judge to see the challenges that attorneys have. On the criminal side, it's important to recognize that attorneys have a constitu-

tional right to represent their clients. Also, under civil rights, attorneys have ethical considerations, and they need to hold their representation to the higher standards. That is very important because I have been there, as I said, at the trial and appellate levels.

As a magistrate judge, it was a very unique and important experience, also, because the magistrate judges are usually the first face of the Federal court any person who's arrested sees. Magistrate judges also work carefully in settling cases in the discovery phase of cases. As a district judge for the last 15 years, I have tried numerous criminal and civil cases of all sorts, ranging from drugs to illegal firearms. On the civil side, I've had antitrust cases, I've had maritime cases, I've had civil rights cases. That gives me a unique experience.

I've also had the opportunity as a district judge to sit by designation on four occasions on the court of appeals. I've been able to see the dynamics of sitting on a panel as resolving cases before me with two other judges, which is different from being the sole decision-maker. I also—being a judge for these years, and presiding over so many cases, I have also cherished the role the jury plays in our justice system, and that is a very unique experience. I have seen the jury from an attorney's perspective and also from a judge's perspective.

Chair OSSOFF. Thank you, Judge Gelpi. In addition to Governor Pierluisi, I want to acknowledge that Representative Gonzalez-Colon, a Delegate from Puerto Rico, has joined us. Thank you, Representative.

At this time, would recognize Ranking Member Grassley for 5 minutes.

Senator GRASSLEY. Judge Gelpi, you've been an outspoken person in your opposition to the so-called Insular Cases because of their effects on Puerto Rico. For almost a decade, the government of America Samoa has invoked the Insular Cases in court to protect what they call the Samoan way of life. Just last week, Judge Carlos Lazaro of the tenth circuit agreed with the America Samoa saying, quote, "The flexibility of the Insular Cases framework gives Federal courts significant latitude to preserve traditional cultural practices that might otherwise run afoul of individual rights enshrined in the Constitution," end of quote.

What effect would your constitutional position have on an unincorporated Territory like America Samoa that has relied on those cases for almost a century to preserve both its unique culture and its American sovereignty?

Judge GELPI. Senator, the Insular Cases that were decided in the early part of the 20th century were based on racist underpinnings, and the Supreme Court that decided those cases was basically the same Supreme Court that decided *Plessy v. Ferguson*. My criticism of those cases is in the historical aspect.

As a sitting judge, and if confirmed to the court of appeals, I will continue to be a sitting judge, the question you have posed is a question that is currently before the tenth circuit. As you correctly stated, it was decided last week. It may be an en banc sitting that may be asked by the parties or may go to the Supreme Court. As a sitting judge, I do not think it's proper for me to answer that



question. I hope my earlier answer has, at least, added something to my response.

Senator GRASSLEY. You have written and spoken extensively on Puerto Rico's Territorial status under the Constitution, denouncing it as colonialism. You even wrote a book about it.

Will you commit to recuse on any future cases involving Puerto Rico's Territorial status, given your extensive commentary on the issue? Let me continue to ask another question along that line. Could you point me to any Territorial status cases where you have held the law compels an outcome different from those you have advocated in your writing?

Judge GELPI. Senator, I have had, over my 15 years' experience as a district judge, several cases involving the constitutional relationship between Puerto Rico and the United States. That is a very small fraction of my overall docket.

I have always upheld the Constitution and the laws of the United States when resolving the issues pertaining to Puerto Rico status, even though those issues may be adverse. In most occasions, my rulings have been averse to Puerto Rico's citizens or status. I apply the law to the facts of each case.

I have—so if the issue of recusal were to come before me, it's an issue I have to decide on a case-by-case basis. I have made expressions regarding the Territories as part of my opinions, but it's been—these expressions have been based on matters that have been raised by the parties in the proceedings before me. Like any other case, I will look at the Code of Judicial Conduct and determine on a case-by-case basis whether recusal is warranted or not.

Senator GRASSLEY. My last question for you. You had a case regarding disability payments in Puerto Rico where you ignored a 1980 Supreme Court judgment that Congress should prevent each payment by saying—prevent such payments by saying your court “cannot simply bind itself to the legal status quo of 1980 and ignore important subsequent developments in the constitutional landscape,” end of quote.

One such subsequent development you identified was the gay marriage case of *Windsor*. This is in stark contrast to what your mentor, Judge Gimenez, said in a Puerto Rico gay marriage case, he addressed *Windsor* saying that he, quote, “cannot see how any doctrinal developments at the Supreme Court changes the outcome of prior Supreme Court precedent or permit a lower court to ignore it,” end of quote. He waited for the Supreme Court to overturn its precedent. He didn't do it at a trial court.

Was Judge Perez wrong?

Judge GELPI. Senator, the case you're referring to is now before the U.S. Supreme Court. That's *United States v. Vaello-Madero*. I have to note that there are very similar challenges presently before me and other Federal judges. In that respect, I should not give an opinion about the case.

I do want to note that when I decided *Vaello-Madero*, which has been confirmed by the first circuit and is now before the Supreme Court, the arguments that were raised before me were arguments that had not been made in the 1980 cases. I resolved those arguments that had not been raised before, and those are the arguments that will, I assume, be before the U.S. Supreme Court.

Senator GRASSLEY. Thank you very much.

Judge GELPI. Thank you, Senator.

Senator GRASSLEY. I congratulate you on your nomination.

Chair OSSOFF. Thank you, Senator Grassley. Senator Hirono is recognized for 5 minutes.

Senator HIRONO. Thank you, Mr. Chairman. Governor Pierluisi, it's good to see you. Welcome to this proceeding.

I ask the following two questions of all nominees before any of the Committees on which I sit. I will ask you, Mr. Gelpi, the same questions.

First of all, 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?

Judge GELPI. Senator, the answer is absolutely no.

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

Judge GELPI. Senator, same answer. Absolutely no.

Senator HIRONO. Senator Menendez, while he was here, noted that you would be only the second Hispanic on the First Circuit Court. Is diversity on our Federal courts important?

Judge GELPI. Senator Hirono, diversity is important in all courts. Diversity comes from my own DNA, or the DNA of any judge, but also comes from my professional experience. If I were to be confirmed to the Court of Appeals for the First Circuit, I would bring my diverse experience. Panels in any appellate court are composed of three judges, and the judges are all diverse. I've sat on the court of appeals. It's a very—for the first circuit. It's a very small court. Six judges. Two senior judges. You get to sit in that court with different judges every time. There is diversity every time you sit on a panel.

Again, as I said, DNA diversity and also experience brings diversity.

Senator HIRONO. Thank you. Between your time as a magistrate judge and as a district court judge, you have been on the Federal bench for 20 years. What have you learned during that time that you will take with you if you are confirmed to the first circuit?

Judge GELPI. Senator, if I'm confirmed to the first circuit, I have learned as a magistrate judge and then a district judge, it is very important to listen to parties carefully, hear the arguments, respect the lawyers, respect the parties. Everybody must be treated equally.

It is very important to always give every case the same type of hard work. There may be huge cases and small cases, but for every case, for every party, that is their case. Everybody needs to have that same attention. That is something I would definitely—based on my experience, I would continue doing at the court of appeals level.

Senator HIRONO. You've also sat, by designation, on the First Circuit Court a number of times. What are some of the key differences you see between the role of a district court judge in comparison to a judge on the circuit court?

Judge GELPI. As a district court judge, I presided over cases, acting on my own capacity. I'm there by myself. If these cases reach trial, I have to preside over—usually it's going to be—most of the

time, it's going to be a jury trial. I have to preside over that event and make sure that the jury is instructed and that certain rules of trial are held.

At the appellate level, it is different because I would be working with two other colleagues, or the cases heard en banc with six other colleagues—or five other colleagues, I mean. You have to decide decisions on a consensus basis. It is also different in that respect. Also, at the appellate level, I would be reviewing trial records from cases that are decided at the district level. It is—appellate review, that is different in that respect from presiding over cases.

Senator HIRONO. You are obviously well suited in either position, I'd say. You've spoken on the importance of your role in overseeing a consent decree between the U.S. Department of Justice and the Commonwealth of Puerto Rico's Police Department, calling it, I'm quoting you, "one of the most satisfying and rewarding functions in which a Federal judge can engage in," end quote.

What did you find so rewarding about this experience?

Judge GELPI. Senator, the consent decree that I preside was a consent decree filed by the United States Department of Justice against the Commonwealth of Puerto Rico. It was the result of an investigation by the Department of Justice that demonstrated that in Puerto Rico, there was a pattern and practice of unconstitutional policing. Profiling, discrimination based on sex, promotions, there were no policies. The idea of the consent decree is we had a 4-year capacity building period, which I oversaw, where the case is now in its monitoring stage.

It is very important to see and it's very rewarding that, for example, there is a police academy now that has a curriculum. The police officers are trained. They get trained on use of force. There are policies. In the past, for example, no woman was a high-ranking colonel. At some point, women would get stuck in the system. It's based on merit. There are women who are commanders; they're colonels.

In that sense, it's very rewarding. I have gone to police academy graduations. You see the pride these officers take. There is continued police education similar to continuing legal education, which attorneys and judges take. It's a matter of ensuring that police will constitutionally protect the public, and at the same time the police officers are trained to be the best police officers they can.

Senator HIRONO. There are a number of us on this Committee who will recognize the important role the consent decrees have in just and fair policing.

Thank you very much, Mr. Chairman.

Chair OSSOFF. Thank you, Senator Hirono. Senator Tillis is recognized for 5 minutes.

Senator TILLIS. Thank you, Mr. Chairman. Judge.

Judge GELPI. Good morning.

Senator TILLIS. Welcome. Congratulations to you and your family for the honor of your nomination. I have a quick question on *United States v. Mercado-Flores*. Are you familiar with that case?

Judge GELPI. Yes, sir.

Senator TILLIS. The grand jury returned a one-count indictment, charging the defendant with transporting a 14-year-old female

minor within the Commonwealth of Puerto Rico with the intent to engage in criminal sexual activity. I believe the defendant pleaded guilty. You ruled that Section 2421 of Title 18 of the United States Code does not apply to a wholly intra-Commonwealth transportation of an individual with the intent to engage in criminal sexual activity.

The first circuit later vacated your opinion. Could you give me some sense of the reasoning behind your ruling?

Judge GELPI. Yes, Senator. Let me say that in Puerto Rico, we do have, unfortunately, a large number of these cases involving sexual abuse or sexual acts against minors. I have always taken these cases extremely seriously, and have applied the law, applied the sentencing guidelines and applied the law as required.

This particular case, the defendant, I sentenced him pursuant to the plea agreement. I believe it was 57 months. Then, after the sentence, I determined that there was a jurisdictional issue. The sentence was vacated on the jurisdictional ground. That is the matter that went to the court of appeals. The court of appeals understood that I had no jurisdiction to discuss the jurisdictional issue, so it got remanded, and I re-sentenced the defendant to the sentence that I originally imposed. It was a procedural jurisdictional issue.

Senator TILLIS. Okay. Thank you. Have you ever heard a case on qualified immunity for a law enforcement officer?

Judge GELPI. Senator, yes. In Puerto Rico, we have—a large portion of our civil rights cases are—involve police misconduct, and doctrine has been raised on numerous cases.

Senator TILLIS. Going through those cases, do you believe that the current jurisprudence provides sufficient protection for law enforcement officers under the current settled law?

Judge GELPI. Senator, as a sitting judge for 20 years, I have applied the doctrine of qualified immunity when the facts and the law are appropriate. Other cases, I have found there is no qualified immunity, but as a doctrine that was created by the Supreme Court a few—several decades ago, and I have to apply it.

There's also first circuit jurisprudence. As long as that is the law, and the law isn't changed, that is what I have to apply.

Senator TILLIS. Okay. Thank you. Congratulations again.

Judge GELPI. Thank you, Senator.

Senator TILLIS. Thank you, Mr. Chair.

Chair OSSOFF. Thank you, Senator Tillis. Senator Blumenthal is recognized for 5 minutes.

Senator BLUMENTHAL. Thanks, Mr. Chairman. Thank you for your service, and you are extraordinary well-qualified as a public defender, as an Assistant Attorney General in an office that I know well and respect from my own days as attorney general. As a judge for some 20 years, and I agree with you totally on the need for diversity, and I really welcome your nomination. Congratulations to you.

I would like to ask you whether you feel that we need more judges. Obviously, you can't speak to the appellate court level, but at the district court level, based on your experience in the District of Puerto Rico and your conversations with your colleagues around the country, do you feel that we need to expand the number of Fed-

eral trial court judges, district court judges, to meet the backlog that has accumulated and the increasing workload that they face?

Judge GELPI. Senator, that is a matter which the Judicial Conference of the United States every 2 years makes reports to the Congress of the United States. In fact, there are—depending on the district, there are certainly districts that require, based on that data, would require based on the workload additional judges.

For example, the District of Puerto Rico, in my experience, it's seven judges. That was last—that hasn't changed since 1979, the number of judges. At certain points, the Judicial Conference has recommended an eighth position. I have also seen that there are districts that the opposite has been recommended, that if there is a future vacancy, to eliminate that position. That's something the Judicial Conference and the Congress work together for district judgeships.

I can say, for sure, in Puerto Rico, there have been requests for an eighth judgeship at particular points in time.

Senator BLUMENTHAL. How do you feel about the representation that Puerto Rico lacks right now? How do you feel that that may have affected the resources available to the judicial district in Puerto Rico? Would you expect that more would be allocated if Puerto Rico had representation in the Congress?

Judge GELPI. Senator, your question in a sense is a political question, which poses whether Puerto Rico would become a State or not. As a judge, I cannot answer that from that perspective. I do want to say that the Judicial Conference of the United States has always treated Puerto Rico as an Article III district court, a constitutional court. Judges are appointed for life. From my perspective, within the judicial branch, Puerto Rico is treated equally, just like any other district in the Nation. When the Judicial Conference makes requests to the Congress, it takes Puerto Rico into account just like it takes into account any other district.

Senator BLUMENTHAL. Do you think that the first circuit is the right place for Puerto Rico? Or should it be possibly the second circuit?

Judge GELPI. Senator, historically the first circuit—Puerto Rico has been a part of the first circuit since 1915, so it's been over 100 years. Even before I was born, my father also practiced before the first circuit for many years. That is what we know. We know the law of the circuit. We're proud to be a part of the first circuit. The first circuit likes Puerto Rico. Particularly in November and February of each year, it historically has had a sitting in Puerto Rico. I cannot reckon why, but I'm proud to be a part of the first circuit.

Senator BLUMENTHAL. We would welcome you in the second circuit if it ever happened.

Judge GELPI. Is it a very good circuit, then I'm also admitted to the second circuit.

Senator BLUMENTHAL. Thank you.

Judge GELPI. Thank you, Senator.

Senator BLUMENTHAL. Thanks, Mr. Chairman.

Chair OSSOFF. Thank you, Senator Blumenthal. Senator Blackburn is recognized for 5 minutes.

Senator BLACKBURN. Thank you, Mr. Chairman. Judge, welcome.

Judge GELPI. Good morning.

Senator BLACKBURN. We appreciate your being here. Just a couple of questions for you. Nan Aron, president for Alliance for Justice, recently praised a number of President Biden's judicial nominations, including you, with the following statement: "President Biden made an open commitment to promoting diversity on our courts, and he is honoring that commitment with these nominations. These are also judges who have a demonstrated commitment to equal justice, a refreshing change from the litany of Trump judges with records of turning the clock back on our rights."

I want to ask you this, is it your opinion that the more than 200 Federal judges nominated by President Trump, confirmed by the U.S. Senate, and currently sitting on the bench include a litany of judges with records of turning the clock back on the rights of Americans?

Judge GELPI. Senator, I have been a judge now—Federal judge for now 20 years, and as a judge, the role I partake is to uphold the Constitution and laws of the United States in every case that comes before me. I, as a judge, if confirmed to a circuit judge, I would sit with judges appointed by different presidents. In my particular case, if confirmed, I would have been appointed by two Presidents: President Bush at the district level, and President Biden at this level—at the appellate level.

As a judge, and from my experience sitting on the circuit with other judges, judges do exactly that. They follow the law. They follow precedent. They apply the law to the facts of each case, regardless of who appointed them.

Senator BLACKBURN. It is not your opinion that this is a litany of judges that are there to turn the clock back on Americans' rights?

Judge GELPI. Senator, that, as a sitting judge, I cannot answer that precise question. Based on my experience, judges are judges, regardless of who appoints them, and they have to do the same thing. That is follow the law and apply precedent, and not make laws. They apply the law.

Senator BLACKBURN. All right. 2006, when you went through your district confirmation, Senator Coburn asked you whether you had a judicial philosophy. You responded, "I do not have a particular judicial philosophy. My own philosophy is to work as hard as I can and to apply the laws and Constitution of the United States at the trial level. That is what we do. We are not there to make new laws to enlarge the Constitution or abridge the Constitution. That is the Supreme Court's role. We have to follow precedent from not only the Supreme Court, but also the first circuit."

This seems contrary to your very prolific work on U.S. Territorial constitutional law since you've taken the bench. Senator Grassley talked with you a little about this with the Insular Cases. As you say, that is the law of the land, despite their imperialistic and racial underpinnings. In an article for *Federal Lawyer*, you again criticized the Supreme Court's handling of the Insular Cases, noting that "the Supreme Court's interpretation of its own concocted doctrine has been fraught with irreconcilable inconsistencies."

You continued to criticize the Insular Cases in your book, "The Constitutional Evolution of Puerto Rico and other U.S. Territories." A book, by the way, that you authored while sitting as a Federal

judge. In Chapter 3 of this book, you describe the Insular Cases as, and I'm quoting you, "a doctrine of pure judicial invention with absolutely no basis in the Constitution, and one that is contrary to all judicial precedent in Territorial practice," end quote.

If you are confirmed to the first circuit, will you follow the precedent of the U.S. Supreme Court?

Judge GELPI. Senator, I will do that if confirmed to the first circuit. I have followed in cases before me the precedent of the Supreme Court, always.

Senator BLACKBURN. Would you like to update your response pertaining to judicial philosophy?

Judge GELPI. Senator, my philosophy, and Senator Coburn asked me that question. I said I don't have a philosophy, but he did say, after your quote, "You do have a philosophy." I agree. My philosophy is to work as hard as I can and to apply the laws and Constitution of the United States to the cases that come before me, and follow the precedent.

Senator BLACKBURN. Okay. Let me ask you this, is it unusual for a sitting judge to author a book about cases or issues that are coming before him?

Judge GELPI. Senator, the book I wrote is based on historical facts and history. It does not touch upon—and I've been very careful because I know I'm a sitting judge. It does not discuss cases that could come before me or the outcome of those possible cases. I have been very careful to follow the Code of Judicial Conduct when writing that book.

Senator BLACKBURN. Thank you so much.

Judge GELPI. Thank you, Senator.

Senator BLACKBURN. Thank you, Mr. Chairman.

Chair OSSOFF. Thank you, Senator Blackburn. Senator Whitehouse is recognized for 5 minutes.

Senator WHITEHOUSE. Thank you, Chairman Ossoff. Good to see you in the Chair. Welcome, Your Honor. Good to have you here. I think I'm the only first circuit member on the panel, so this is terrific news for me to see you nominated by President Biden. You'll have the terrific occasion to join what I think is an outstanding circuit. I really look forward to having you there. I'm just delighted.

Judge GELPI. I concur with you. It's an outstanding circuit, Senator.

Senator WHITEHOUSE. Yes. The Rhode Island member is Rogerie Thompson, as you may know, who I recommended to the President for that position along with Senator Reed, and I think she'll be a wonderful colleague for you. Nobody else in the Committee will know or care about this, but Suffolk University has been a very important law school for Rhode Islanders, and I'm sure you had a great number of Rhode Islanders in your classroom. If you don't mind, we'll consider you a bit of an honorary Rhode Islander through your Suffolk credential.

Judge GELPI. I appreciate that. When I went to Suffolk Law School, Rhode Island did not have a law school. That's—

Senator WHITEHOUSE. Correct. You were kind of it, then.

Judge GELPI. Rhode Islanders went to Suffolk.

Senator WHITEHOUSE. Yes. We have our own, and it's a very, very good one. Roger Williams University School of Law. I commend it to anyone interested.

Two questions. The first is a legal question, and it relates back to the question of qualified immunity. Is it true as a factual matter of legal doctrine that the qualified immunity doctrine interrelates with other doctrines, including sovereign immunity, the *Monell* case doctrine, the *Bivens* case doctrine, and that they interact with one another?

Judge GELPI. In my experience in Puerto Rico handling civil rights cases, they are usually raised in the same cases that come before me because there is sovereign immunity many times for the State, but the officers are sued in both personal and private capacity. Qualified immunity will apply to the officers or government officials. It doesn't have to be a police officer; it could be government officials acting in any capacity. It is a doctrine that is frequently raised.

I do want to say, it's not only—most people think it's only the police context, but you can have a government official, a head of an agency, who fires individuals based on, let's say, political patronage, and then tries to raise the doctrine. It may apply. It may not apply. Depending on the particular case.

Senator WHITEHOUSE. The reason I asked you that question is to highlight for my colleagues that I think we have an opportunity to clear up this area of law in the current reform that is proceeding by solving not only qualified immunity, but also in essence applying the ancient doctrine of respondeat superior throughout the system, and eliminating what are really arbitrary distinctions between municipal, State, and Federal law enforcement agencies with respect to civil liability. I hope that we will take this opportunity to do that.

The second question I have for you, Your Honor, has to do with juries. One of the things that we have seen in the Supreme Court has been a fairly persistent set of decisions that have raised the bars for plaintiffs to plead their cases in Federal court, discouraging certain types of cases from being brought in Federal court, undoing or restricting certain types of jury determinations regarding damages in Federal court, and that is in some districts added to by pressure to settle cases rather than take them to trial. The result has been described as a real crisis in jury trials in Federal courts.

We meet every year with my State judges in our district court with Judge Smith, Judge McConnell, and Judge McElroy. There was a time when they hadn't had a civil trial in a year because lawyers were discouraged from going to Federal court, and they had an exclusively criminal docket. I don't know what the situation is in Puerto Rico, but my feeling is that robust jury trials are a very important part of American democracy.

If you go back to the founding days and to the Constitution itself, the importance of juries and jury trials had great significance in the governance that the Founders were trying to establish, and in the principles that we fought a Revolutionary War over. It's sad to see the institution of the jury trial kind of wither on the vine. I think it can be made more robust. There are judges who are going



out of their way to make it more robust, I think, successfully. I'd like any comments you may have on that situation.

Judge GELPI. Senator Ossoff, I know the red light is on, but if I could answer the question?

Chair OSSOFF. Of course.

Judge GELPI. Senator Whitehouse, in Puerto Rico, in the Federal court, there are a large number of jury trials, civil and criminal, conducted every year. One of the reasons is that at the State level, the local level, in particular in civil cases, civil—there is no right to jury trial in civil cases. Attorneys try to go, either through diversity or Federal question jurisdictions of the Federal court.

I am a true believer in the jury system. I've had, as my Senate Judiciary questionnaire notes, I have presided, I believe, over 64 jury trials over the years. A few more when I was a magistrate judge. It is a very important role that the jurors play.

Senator WHITEHOUSE. Indeed. Thank you.

Judge GELPI. Thank you.

Senator WHITEHOUSE. Thank you, Mr. Chairman.

Chair OSSOFF. Thank you, Senator Whitehouse. Senator Lee is recognized for 5 minutes.

Senator LEE. Thank you, Mr. Chairman. Thanks for being here, Judge Gelpi. There has been some conversation today already about the criticism that you've leveled on the Insular Cases, which of course deal with the relationship under our constitutional system between the United States and Puerto Rico.

I want to make sure that I understand your position on the Insular Cases. Is it your view that the U.S. Supreme Court could give Puerto Rico immediate statehood by overturning the Insular Cases?

Judge GELPI. Senator, I have never spoken about that issue. The issue of statehood is a political question that—it's up to the Congress to admit new States.

Senator LEE. Okay. The Supreme Court couldn't do that?

Judge GELPI. As a sitting judge, I cannot answer that question. I can answer that historically, it has always been up to the Congress to admit the new States.

Senator LEE. Okay.

Judge GELPI. In the case of Alaska and Hawaii, which were the two last States. Historically before, that's the procedure. It's been the Congress, not the Supreme Court.

Senator LEE. Okay. You're unaware of any provision of the Constitution or any precedence suggesting the Supreme Court could do that?

Judge GELPI. I am not aware of any precedent from the Supreme Court, from any court of appeals, from any district court, or from any treatise or commentator. I have—this is the first time I've been asked that, and I studied the matter, but I've never heard of that before, Senator.

Senator LEE. What effect would overturning the Insular Cases have?

Judge GELPI. Senator that is a question that—well, if the Insular Cases are no longer in effect, it is a matter that would come—only the Supreme Court can overturn the Supreme—

Senator LEE. No. I understand that. That's not in dispute. I'm just—you've criticized the Insular Cases a lot. I want to understand

what practical impact it would have if we were to overturn the Insular Cases.

Judge GELPI. Senator, that is a Puerto Rico—and I will say the case of Puerto Rico. Puerto Rico would still continue to be a Territory. Whatever respective relationship with or without the Insular Cases that Puerto Rico has, it's a political question that will be dealt by the U.S. Congress.

Senator LEE. Okay. Let's talk about your judicial philosophy for a moment. You've stated repeatedly in response to other questions by my colleagues both today and in your previous confirmation proceedings that you don't have a judicial philosophy. I want to—but then you've described some of the roles that you think a judge does play and should properly play.

I want to make sure you understand your thinking about this, regardless of whether we call it a judicial philosophy. Do you believe that the original public meaning of a statute or a provision of the Constitution should govern? Or do you believe that the meaning of the Constitution's text or a statutory text changes over time after it's been enacted or incorporated into the Constitution?

Judge GELPI. Senator, originalism is one of the ways to interpret statutes and the Constitution. The Supreme Court has done that in several areas, such as Second Amendment, the Confrontation Clause, just to give you some examples. In those particular areas, and there will be cases that could come before me or other courts, that there may be analogous areas. It is originalism has been recognized by the Supreme Court. As a judge in the area of originalism applies, I have to apply originalism.

Senator LEE. Okay. Where would it not apply? Where would you not want to apply the original public meaning of a statute, for example? Let's—

Judge GELPI. Senator, let me give you an example where the Supreme Court has not applied it, and it's basically in the Fourth Amendment search and seizure context. The most recent example I can think of is the instance of cell phones. Under an originalist approach, there were no cell phones when the Founding Fathers were drafting the Constitution and the Bill of Rights. The Supreme Court, in 2018, recognized that cell phones are protected under the Fourth Amendment, and that is a departure from originalism, but is a departure that applies. As an appellate judge and as a district judge, appellate judge if confirmed, I have to apply.

There are going to be instances where the Supreme Court has told judges to go on a separate route. I would always follow precedent. If it's originalism or it's any other type of precedent.

Senator LEE. Sure. Obviously, you'll follow precedent. Still, there will be lots of instances. You will constantly be addressing issues of first impression, or at least issues where there is no controlling Supreme Court precedent, or perhaps even any first circuit precedent. In those circumstances—under what circumstances would you depart from the original public meaning from a statute after it's been enacted? Or the original public meaning of a provision of the Constitution?

I can point to a myriad of examples of where courts have departed from it, and it's resulted in disastrous consequences. *Dred Scott* and *Korematsu* are both examples of where the court de-

parted dramatically from the original public meaning, with dire consequences to civil rights and civil liberties in America. Under what circumstances would it be appropriate to disregard the original public meaning?

Judge GELPI. Senator, if it's a case of first impression, I'd have to look to originalism. I have to also see if it's an area sort of, for example, analogous within the Fourth Amendment, the cell phone issue for example. You look to similar precedent and determine whether original has to be—originalism has to be applied. Again, the Supreme Court has analogous cases suggesting you have to look to other tests—

Senator LEE. Yes. I have exempted that out by explaining I'm not talking about a case bound by precedent. I'm talking about where you're construing statutory or constitutional text not governed by precedent, and you have to figure out what it means. Within that framework, when would it ever be appropriate to depart from the meaning as accepted by the public at the time of enactment or adoption into the Constitution?

Judge GELPI. Senator, if it's a case of first impression, I have to look to see if it's in an area that precedent, even though not in that particular area, but analogous precedent suggests otherwise or not. I have to be very careful, and it would have to be on a case-by-case analysis. In a vacuum, I cannot say in every case originalism doesn't apply—or in every case originalism doesn't apply or apply. It's a case-by-case analysis. Originalism is a tool that the Supreme Court has adopted and applies to cases, so I do recognize it is one of many tests that I have to apply.

Chair OSSOFF. The Senator's time has expired.

Senator LEE. I see my time is expired. I would note here it's troubling that you can't answer that by saying it would not be appropriate. Look, bad things happen when we allow judges to impose their own will after a statute or a constitutional provision has been adopted. It subverts the will of democratic self-government when we elect lawmakers to make these laws. Then, judges after the fact, change the meaning of it to mean something other than what they meant at the time, the generally accepted public meaning at the time.

I don't know why that one couldn't be answered in one word. Thank you, Mr. Chairman.

Chair OSSOFF. Thank you, Senator Lee. Senator Hawley is recognized for 5 minutes.

Senator HAWLEY. Thank you, Mr. Chairman. Judge, congratulations on your nomination. Thanks for being here. Can we just—I want to come back, if I could, to a question that Senator Whitehouse asked you about qualified immunity. This is a judicial doctrine, among other things. Are you of the opinion that the qualified immunity doctrine needs to be revised?

Judge GELPI. Senator, as a sitting judge, and if confirmed I will continue to be a sitting judge at the appellate level, that is a matter for me to apply the law as it currently stands. If it is revised by Congress or it's revised by the Supreme Court, I will apply whatever the law is.

Senator HAWLEY. It's not for you to revise is what you're saying?

Judge GELPI. It is not for me to revise.

Senator HAWLEY. You'll faithfully apply the precedent as it currently exists?

Judge GELPI. I will, sir.

Senator HAWLEY. Very good. Let me ask you a follow-up on a question Senator Lee just asked you. I want to make sure I'm just crystal clear on this. He asked you whether the Supreme Court could admit new States. You started by saying you couldn't answer that question. I don't think that's your position. Let me just try again for the record. Can the Supreme Court of the United States, through its holdings or judgments, admit new States to the Union?

Judge GELPI. Senator, there is no precedent for that. If I could answer it through that way, that's my answer.

Senator HAWLEY. Okay. There's no precedent for it. Is it permissible under the Constitution? I mean, this is a matter—if it came to you as a matter of first impression whether or not the judiciary could admit new States?

Judge GELPI. If you read the Constitution, it's the Congress that admits the new States.

Senator HAWLEY. Okay. Good. Let's come back to the question of how you would interpret a statute, how you would proceed in a case where you have no controlling precedent on point from the U.S. Supreme Court or from your own circuit, should you be concerned. You have no controlling precedent on point. You've got to interpret a statute or a piece of the Constitution, again, where there's no controlling precedent.

Walk me through how you would approach that. Let's take a statute. Let's just focus on that. How would you approach it? No controlling precedent. How do you move through the process?

Judge GELPI. The first thing, Senator, that any judge will do when interpreting a statute, you would look to its plain text. That would be step number one. Ideally, that will resolve the entire matter. If the text is clear, there's no issues, and you apply that statute to the facts of the case and resolve the case.

Senator HAWLEY. The case when the text is ambiguous?

Judge GELPI. Where the text is ambiguous, you have to go to legislative history. If that does not resolve the matter, you may not have precedent on that same particular statute, but you have to then look for analogous precedent.

Let me give you one example. Title VII of the Civil Rights Act has been applied and interpreted by the courts for many years. Years later, the Age Discrimination in Employment Act was enacted, and the precedent was that it should follow the same framework for ruling on the cases and applying the statute because they're similar.

You have to look, perhaps, to similar statutes. Caselaw from my circuit, of course, but sometimes there's caselaw from other circuits. It's not binding precedent, but you have to look to see how everybody has been resolving the matter and—

Senator HAWLEY. This, I think, gets us into the realm that Senator Lee was just talking about. What I don't hear you saying is that in the situation where the text is not plain on its face, where there isn't an obviously agreed-upon meaning, which you didn't say is, "I would look to the original public meaning of the text at the time it was enacted." In other words, I would look and say, "Well,

when Congress or the State legislature, or whatever—whoever enacted the statute, when they enacted it, at the time, what was the public meaning?” You didn’t say that. Is that not something that you would consider?

Judge GELPI. Senator, if new statutes are enacted, it’s the original public meaning also can be considered for the statute. That is something that, for example, if Congress enacts a statute today or tomorrow, it is earlier to follow those statutes and apply those statutes because the public meaning is usually going to be evident. There’s going to be statements also from the Senators and the Congressmen who enacted that law.

Senator HAWLEY. What if the—a lot of the statutes that you’ll be called upon to apply, of course, and you know this. You’ve been on the bench. You do this every day. Many of the statutes you’ll be called upon to apply are decades old. The legislative history, maybe it exists, maybe it doesn’t, maybe it’s ambiguous. In the case in which you have a statute that you’re trying to interpret, the plain text is disputed, and the litigants say, “No. The plain text means this. No. The plain text means that.” It’s disputed. The statute is older. What do you do? How do you proceed? No precedent on point.

Judge GELPI. Senator, original public meaning is one of the ways to interpret the statute, the same with the Constitution. Again, I have to look at precedent, but that is also something I have to look at definitely.

Senator HAWLEY. This gets at the question of your judicial philosophy, which is just another way of talking about your approach to statutory interpretation, the constitutional interpretation, to the role of the judge.

I have to say I’m a little bit worried by what I’m hearing in response to Senator Lee and in response to the questions I’m asking you here. It doesn’t seem to me that you actually would prioritize the text, its meaning. I don’t hear any discussion about the methods for finding that meaning.

There’s a lot of talk about precedent. I understand that. Of course, if you’re confirmed to this role, I think you’re going to find yourself dealing with cases where you don’t have as much precedent on point. You’re going to have cases of first impression. In those cases, the Supreme Court of the United States has clearly instructed the text is to be the first and primary consideration. Then ascertain the historical meaning of the text. I mean, there’s lots of Supreme Court precedent on point.

I’ll have some additional requestions for you for the record to try and nail this down and make sure I really understand where you’re coming from.

Thank you, Mr. Chairman.

Chair OSSOFF. Thank you, Senator Hawley. Senator Kennedy is recognized for 5 minutes.

Senator Hirono, do you wish to ask a second round of questions?

Senator KENNEDY. I’m sorry. I didn’t know she had a first round. I apologize.

Senator HIRONO. I could—I would like to make a comment after what the Republicans goal—

Chair OSSOFF. Senator Hirono is recognized.

Senator HIRONO. No, no.

Senator KENNEDY. Well——

Senator HIRONO. I think Senator Kennedy should go first because he hasn't——

Senator KENNEDY. Mr. Chair, I think it was my turn. I——

Senator HIRONO. It is.

Senator KENNEDY [continuing]. Was trying——

Chair OSSOFF. I thought you had yielded to Senator Hirono. Senator Kennedy, you're recognized for 5 minutes.

Senator KENNEDY. I didn't know that Senator Hirono had had a first round.

Senator HIRONO. Here you go.

Chair OSSOFF. No problem. Please proceed, Senator Kennedy.

Senator HIRONO. Thank you. There you go.

Senator KENNEDY. Judge, I'm still uncertain about your answer. Can the U.S. Supreme Court, on its own, admit a State to the Union?

Judge GELPI. Senator, as I answered, the Constitution of the United States says——

Senator KENNEDY. This is a real simple question. Can the U.S. Supreme Court, on its own, admit a State to the Union?

Judge GELPI. I understand the answer is no.

Senator KENNEDY. Okay. Thanks. I appreciate that. Do you think the Federal judicial system is systemically racist?

Judge GELPI. Senator, I have had—as a sitting judge for 20 years, I have had cases that come before me involving allegations of racism. I have presided over those——

Senator KENNEDY. Yes. I'm asking about the Federal judicial system. Is it systemically racist?

Judge GELPI. Senator, judges apply the Constitution and laws. We cannot—if you're asking about if judges are racist or the judicial system itself, we apply the laws. We do not—a judge cannot take race into consideration in——

Senator KENNEDY. Do you think the Federal—you know what systemic racism is. I mean, it comes up every day now in America. Do you believe that the Federal judicial system is systemically racist?

Judge GELPI. Well, Senator——

Senator KENNEDY. You've been a part of it.

Judge GELPI. Yes. I can give you an example that the Congress and the Sentencing Commission——

Senator KENNEDY. I appreciate an example. I'm just trying to get an answer. Do you believe it's systemically racist?

Judge GELPI. Senator, that's a question I cannot answer.

Senator KENNEDY. You're a sitting Federal judge right now?

Judge GELPI. I am a sitting Federal judge.

Senator KENNEDY. How long have you been a Federal judge?

Judge GELPI. Twenty years.

Senator KENNEDY. You haven't—you've heard these allegations that all our institutions are systemically racist, and after 20 years, you haven't drawn an opinion?

Judge GELPI. Senator, I can tell you in my court——

Senator KENNEDY. You don't have an opinion about whether the Federal judicial system is systemically racist after 20 years?

Judge GELPI. Senator, I'd have to say no.

Senator KENNEDY. You think it's not. Or you don't have——

Judge GELPI. In my——

Senator KENNEDY [continuing]. An opinion?

Judge GELPI [continuing]. Experience—in my experience the——

Senator KENNEDY. Wait. Let me understand your answer. You think it's not systemically racist? Or you don't have an opinion?

Judge GELPI. No. I don't have an opinion.

Senator KENNEDY. After 20 years?

Judge GELPI. That is correct.

Senator KENNEDY. You want to be on the court of appeals?

Judge GELPI. Senator, yes.

Senator KENNEDY. Okay. What's your definition of justice?

Judge GELPI. Justice, Senator, to me means that the law is applied equally to all individuals, regardless of race, sex, position, and that all cases are heard by a fair and impartial judge, fair and impartial jury, and that the laws are applied equally.

Senator KENNEDY. Okay. How do we know—what is your barometer for deciding whether a law that's being applied equally is just?

Judge GELPI. As a judge, I have cases that come before me, individual cases, so——

Senator KENNEDY. I'm not asking you about a case. I'm asking about philosophy. How do you, just personally, look at a law and determine whether that law, in your judgment, is just?

Judge GELPI. It is not for a judge to determine whether a law is just or not——

Senator KENNEDY. I'm not asking you as a judge. I'm asking you as a person. I'm trying to understand you as a person.

Judge GELPI. Senator, whatever understanding I have if the law is just or not just, I have to apply that law——

Senator KENNEDY. I know. Let me stipulate that. Okay. I'm going to stipulate that. I'm not going to ask you how you rule on a case, and I know you're going to follow precedent. Okay. Always. I get that. How do you personally look at a law and decide whether it's just or not? Pretty basic.

Judge GELPI. Senator, that is not the role of a judge to determine if a law is——

Senator KENNEDY. No. It's the role of a human being. I'm just trying to get to know you. Do you have a personal definition of justice?

Judge GELPI. Senator, justice, in my particular case——

Senator KENNEDY. I know it's applied equally. How do we know if a law is just or unjust? In your opinion.

Judge GELPI. Senator, as I mentioned, I have to apply the laws as they stand, and I have to make——

Senator KENNEDY. Okay. Let's move on, Judge. I don't think you're going to answer. Do you think—let me ask you about crime. Do you sentence people?

Judge GELPI. Yes, Senator.

Senator KENNEDY. Do you think crime is a disease that needs a cure? Or do you think it's antisocial behavior that deserves punishment?

Judge GELPI. Senator, as a judge, and I've been sentencing felony defendants for 15 years as a U.S. district judge, I've always followed the sentencing statute and——

Senator KENNEDY. I'll stipulate that.

Judge GELPI [continuing]. And I have to——

Senator KENNEDY. I'm asking you about if a person commits a crime, do you see it as a disease that needs to be cured? Or do you see it as antisocial behavior that merits punishment?

Judge GELPI. Senator, each individual defendant has to be sentenced individually. I have had individuals who are antisocial. When you look at the presentence reports, you sentence them accordingly. You have career offenders. You have other individuals who have——

Senator KENNEDY. Judge, I can't vote for you if you won't answer my questions. I hate interrupting you. These are pretty basic questions that I would expect somebody who's been on the Federal bench for 20 years to have thought about.

Chair OSSOFF. The Senator's time is expired. Judge, if you wish to respond, you have that opportunity.

Judge GELPI. Senator, as a judge, every time I sentence an individual, and I do this on an individual basis, I consider the nature of the offense, aggravating factors, mitigating factors, the person's individual personal history, his criminal record, and I also consider the sentencing guidelines. I apply that exercise on a case-by-case individual.

Senator KENNEDY. Judge, I'm going to ask you this. We both know that——

Chair OSSOFF. Thank you, Senator Kennedy. Senator Hirono is recognized for a comment.

Senator HIRONO. Thank you very much. There were a lot of questions asked of this nominee relating to originalism, and the way I see it, as this was an effort to get Judge Gelpi to acknowledge originalism as the only way to do either constitutional or statutory interpretation. He did not allow himself to be boxed in in this way. We all know that statutory interpretation, there are canons of construction. We all learn that in law school.

Then, as for applying originalism in the constitutional context, if originalism were applied, I think that *Obergefell*, for example, that protects same-sex marriage would not have been decided in that way. In fact, it's one of the reasons that Justice Scalia was a dissenter in that case and one of the reasons that both Justices Alito and Thomas have indicated that they would like to revisit *Obergefell*. If originalism were applied, I would say that that really puts into jeopardy the decision in *Roe v. Wade*, which protects a woman's right to choose.

All of this effort to try to box this nominee in is seen for what it is as far as I'm concerned. Thank you, Mr. Chairman.

Chair OSSOFF. Thank you, Senator Hirono. Senator Cruz is recognized for 5 minutes.

Senator CRUZ. Thank you, Mr. Chairman. Judge, congratulations on your nomination.

Judge GELPI. Thank you, sir.

Senator CRUZ. As a sitting Federal judge, you wrote a book entitled, "The Constitutional Evolution of Puerto Rico and other U.S. Territories." In that book, you're highly critical of the Insular Cases, a series of opinions from the Supreme Court in 1901 that addressed the application of the Constitution to Territories where



the United States exercised sovereignty. Specifically, you describe these cases as, quote, “a doctrine of pure judicial invention with absolutely no basis in the Constitution and one that is contrary to all judicial precedent and territorial practice.”

Later, in 2011, you concluded a Spanish language academic article on the Insular Cases by saying, quote, “It is now the hour, and indeed it has already grown late, for the Supreme Court to reexamine and remedy this offensive and obsolete judicial dilemma which we have had to tolerate for more than 100 years by over 5 million American citizens who live in Puerto Rico and other Territories of the United States.”

I take it, then, based on your writings that you believe the Insular Cases were wrongly decided.

Judge GELPI. Senator, yes. When I wrote in those academic books about the Insular Cases, I discussed it from an academic perspective. I’ve made reference to the fact, particularly, that the Insular Cases were decided by the same *Plessy v. Ferguson* Supreme Court, and that they considered racial, ethnic discriminatory matters. The same Supreme Court took that into account. Those are matters that nowadays, I don’t believe any Member of any branch of Congress—of the Government, I mean, would take those matters into consideration. That is my criticism of the Insular Cases.

In cases that I’ve had before me, I apply the doctrine as it still stands. That is the law of the United States, whether I like it or not.

Senator CRUZ. You’ve said you believe that Insular Cases were wrongly decided. Do you believe *Brown v. Board of Education*, was rightly decided?

Judge GELPI. Senator, I believe it was rightfully decided. Yes.

Senator CRUZ. Okay. What about *District of Columbia v. Heller*?

Judge GELPI. Senator, that is a case that is the law of the land. I have to apply *Heller*. I have to apply *McDonald*. It is the Supreme Court doctrine which I will apply.

Senator CRUZ. I understand that, but that was not the question I asked you. You just told us you believe the Insular Cases were wrongly decided. You just told us the——

Judge GELPI. Not the Insular Cases. Oh, yes. Excuse me. Yes. Sorry.

Senator CRUZ. You believe the Insular Cases are wrongly decided. You just told us that you believe *Brown v. Board of Education* was rightly decided. I’m asking you what your views are on *Heller v. District of Columbia*. Was it rightly decided or wrongly decided?

Judge GELPI. Senator, as I mentioned, that is the law of the land, and I am aware that there are other challenges that will be upcoming. There’s one in California that a similar challenge could be before my court or the court of appeals, so that is something that as a sitting judge, I—and that is a controversy that is live and ongoing, so I should not decide that. I will apply *Heller* and *McDonald*, I can guarantee you that.

Senator CRUZ. You were a sitting judge when you wrote about the Insular Cases. Correct?

Judge GELPI. Senator, yes. I have criticized historically the underpinnings of the Insular Cases, but——

Senator CRUZ. Not just the underpinnings. You said flat out they were wrongly decided and the Supreme Court should reverse them. That was not just an academic observation. That was calling a decision wrongly decided, saying it should be reversed.

Judge GELPI. Correct. The decision based on racist underpinnings. I agree with you.

Senator CRUZ. *Brown v. Board of Education* certainly questions about race and litigation about what equal protection under the laws means. That litigation continues in courts across the country today. Is that right?

Judge GELPI. Not the *Brown* holding.

Senator CRUZ. The principles on which *Brown* was decided. Those were actively litigated issues.

Judge GELPI. There are particular equal protection cases filed in Federal courts every day. That's the purpose of Federal courts.

Senator CRUZ. How about the *Citizens United* case? Was that wrongly decided?

Judge GELPI. Senator, that is the binding precedent, and that is something that I could have a similar case in the future. Again, that is the law of the land. I have to apply it.

Senator CRUZ. It seems on cases where—I'm not clear what your standard is for when you will answer what questions were wrongly decided—what cases were wrongly decided, and what cases were not.

Judge GELPI. Senator, I can tell you historically speaking, *Brown* I can say was correctly decided. The Insular Cases, historically speaking, the rationale behind those cases was based on racist underpinnings. I have to say that that rationale was incorrectly decided as a matter—

Senator CRUZ. Senator Hirono just offered a defense of you, saying that you refuse to commit to originalism because originalism would prevent outcomes that she supports. It would prevent outcomes in cases like *Obergefell*, and *Roe v. Wade*. Because she supports those outcomes, she doesn't want judges who will follow the original understanding of the Constitution. Is that how you would articulate—is it right that you don't intend to follow the original understanding of the Constitution?

Chair OSSOFF. The Senator's time has expired. Judge, you may answer the question.

Judge GELPI. Senator, as I mentioned in an earlier question, I will apply originalism, and that is one of the factors of the tests that the Supreme Court has laid out for judges to follow, and I cannot ignore it. I have to follow originalism in the cases where it is appropriate.

Senator CRUZ. Do you agree with Senator Hirono—

Chair OSSOFF. The Senator's time has expired.

Senator CRUZ [continuing]. That those are the reasons?

Chair OSSOFF. The Senator's time has expired. Senator Padilla is recognized for 5 minutes.

Senator CRUZ. You know, this is a Committee where we've had a little bit of comedy, and I recognize that—

Senator PADILLA. Thank you, Mr. Chair.

Senator CRUZ [continuing]. Senator Ossoff is new—

Senator PADILLA. My time—

Senator HIRONO. Chairman——  
 Senator CRUZ [continuing]. But we generally don't have the Chairman trying to jump in——  
 Senator HIRONO [continuing]. I want a personal privilege——  
 Senator CRUZ [continuing]. On 30 seconds in——  
 Senator HIRONO [continuing]. Mr. Chairman.  
 Chair OSSOFF. Thank you so much.  
 Senator PADILLA. I want my time.  
 Senator CRUZ. Mr. Chairman——  
 Senator PADILLA. The floor is mine.  
 Senator CRUZ [continuing]. Doesn't want these questions answered——  
 Senator PADILLA. Senator Cruz, the floor is mine.  
 Senator HIRONO. A point of personal privilege, Mr. Chairman.  
 [Gavel is tapped three times.]  
 Chair OSSOFF. There will be order in the Judiciary Committee.  
 Senator Cruz, your comment is noted. Senator Padilla is recognized——  
 Senator HIRONO. Mr. Chairman, a point of——  
 Senator PADILLA. Thank you, Mr. Chair.  
 Senator HIRONO [continuing]. Personal privilege.  
 Senator CRUZ. Chairman Ossoff just——  
 Chair OSSOFF. Senator Padilla——  
 Senator PADILLA. Out of respect to——  
 Senator CRUZ [continuing]. Does not want these questions answered.  
 Senator HIRONO. Point of personal privilege.  
 Chair OSSOFF. Senator Hirono.  
 Senator HIRONO. I would request that my colleague, Senator Cruz, not misstate what I'm saying. You know what, all this mansplaining, please stop. Thank you.  
 Chair OSSOFF. Senator Padilla is recognized for 5 minutes.  
 Senator PADILLA. Thank you, Mr. Chairman.  
 Senator CRUZ. What was mischaracterized, Senator Hirono?  
 Senator PADILLA. Mr. Gelpi——  
 [Gavel is tapped two times.]  
 Senator CRUZ. You just said I mischaracterized something.  
 What——  
 [Gavel is tapped three times.]  
 Senator PADILLA. The floor is mine, Senator Cruz.  
 Chair OSSOFF. Senator Padilla is——  
 Senator CRUZ. Very proud you have a gavel——  
 Chair OSSOFF [continuing]. Recognized for 5 minutes.  
 Senator CRUZ [continuing]. But a point of personal privilege. Senator Hirono just said I mischaracterized something she said. I am asking her what was mischaracterized. You are welcome to explain what was mischaracterized.  
 Senator PADILLA. Mr. Chair—Mr. Chair. Mr. Chair, is the floor mine?  
 Senator CRUZ. Okay. So, you're not going to explain what——  
 Chair OSSOFF. Senator Cruz——  
 Senator PADILLA. Mr. Chair——  
 Senator CRUZ [continuing]. Was mischaracterized.

Chair OSSOFF. Everyone bear with me. Senator Cruz, you may respond to Senator Hirono.

Senator CRUZ. I described what Senator Hirono said. I asked the judge if he agreed with her defense that he should not embrace originalism because it would not allow him to reach outcomes that she favored. She's now come back and said that was a mischaracterization of what she said. I'm inquiring, what is mischaracterized?

Senator HIRONO. Mr. Chairman, very briefly—because otherwise—you know, the thing with my colleague is he always has to get the last word in. That is a fact.

One of the ways he mischaracterizes that I do not object to originalism is applied because it results in decisions that I don't agree with. I disagree with the way that the Court proceeded in some of the Members of the Court and how they proceed with originalism to get to the results that they want. That's it.

Senator CRUZ. Is it not accurate that you said you thought originalism—

Senator HIRONO. Thank you, Mr. Chairman.

Senator CRUZ [continuing]. Shouldn't be followed because it would lead to a different result in *Obergefell* and a different result in *Roe*? Is that not what you said in this Committee just a few minutes ago?

Senator HIRONO. No.

Senator CRUZ. Okay. Well, the record is clear.

Senator HIRONO. Some of the Court Members—some of the Court Members apply originalism, not all of them do. That is why in some instances, they have been in the minority.

Senator CRUZ. The record—

Senator HIRONO. Maybe not so much now.

Senator CRUZ [continuing]. Is clear what you said. Now, you're saying you didn't say that.

Senator HIRONO. Mr. Chairman, thank you—

Chair OSSOFF. Thank you for this exchange, Senators.

Senator HIRONO [continuing]. For your indulgence.

Chair OSSOFF. Senator Padilla is recognized for 5 minutes.

Senator PADILLA. Thank you, Mr. Chairman. Thank you to Mr. Gelpi for his patience. In 2006, this Senate unanimously confirmed you to serve as a Federal district judge for the District of Puerto Rico. Since then, you've heard thousands of civil and criminal cases, issued at least 880 opinions, and presided over 60 jury trials. In short, you're an experienced hand as a district judge.

Given your depth of experience on the district court, why do you want to become a judge on the court of appeals?

Judge GELPI. Good morning, Senator, if it's still good morning.

Senator PADILLA. It's still morning.

Judge GELPI. I've been a judge—my legal career, since I graduated from law school 30 years ago, I had the opportunity when I was a law student to see a lot of the arguments before the Court of Appeals for the First Circuit. My father, who actually is here with me, argued many of those cases. Over the years, when I was a law clerk, I really cherished and appreciated the role of the court of appeals. To me, that was amazing as a law student. I would go sit through all our arguments.

I always wanted to have a trial experience because—aside from appellate experience, but in all of my positions as a lawyer, when I was a Federal defender, I did all of my trial work, and I would always do my appellate work, and my colleagues who did not like doing appellate work, I would say, “Please, hand me over the cases,” because I really liked the dynamics of the appellate practice.

When I was working for the Commonwealth of Puerto Rico, at the Department of Justice, as Solicitor General, I also—that was the bulk of my work, appellate practice.

I’ve been on the district bench for 20 years. I love it. It’s dynamic every day. I always go to work with a smile. I always come home with a smile. I feel this is a vocation. It is something I—my way of serving our great Nation.

I understand that, based on the practice and experience I’ve had, and I sat on the court of appeals for many years. You get more admiration having done that. Also, you know, being a part of the first circuit, it is something that I would take as an honor and a privilege, bringing all of that experience that I’ve had to create—to join an already experienced bench, and to bring that perspective from Puerto Rico to the first circuit, which of course, encompasses other States.

Senator PADILLA. Great. You make a good case for how your experience gained as a district judge will inform your work on the circuit court. I want to go back slightly further back into your career and your trajectory.

After you graduated from law school and finished your district court clerkship, you chose to work as an assistant Federal public defender for about 4 years. Is that correct?

Judge GELPI. That is correct. Three and a half years.

Senator PADILLA. The choice is notable because in the past, it was often said that the surest way to become a Federal judge is to first be a prosecutor. You chose a different path. I’d like to change that seemingly conventional wisdom too, and you’re a great example. Let me ask you, what was it that drew you to become a public defender? How did that experience affect the arc of your legal career, including the time you spent on the other side as a lawyer for the Government?

Judge GELPI. Senator, what drew me to work for the public defender was the—I had been a law clerk, so I had seen many criminal trials. I had seen great prosecutors. I had seen great public defenders. What drew my attention at that time was that I recognized that I would be serving a constitutional role in representing clients. When I interviewed, I was told, “You’re going to have some very good clients. You’re going to have some very bad clients.”

To me, it was very important because every single client that I had, I represented him or her to the fullest. I ensured he or she was guaranteed every constitutional right, every benefit of the law. That is what—it’s the important thing of being a public defender.

You also have to deal not only with your client and with their families, you also learn how to deal with the prosecutors, particularly when the law favors the Government, and that is why criminal laws are enacted.

It was a very dynamic experience. Having gone through that experience, it is something—same with representing the Government. It's a total opposite dynamic, but at the same time, you work as part of a larger justice system. Each person has an advocate. As a judge, I've taken those experiences into my judicial—as a part of my judicial background. I'm very aware of the roles of prosecutors and defense attorneys when they come before me. I've done that for 20 years.

Senator PADILLA. Thank you very much.

Judge GELPI. Thank you, Senator.

Senator PADILLA. Thank you, Mr. Chair.

Chair OSSOFF. Thank you, Senator Padilla. Thank you, Judge Gelpi, for appearing before the Committee today. That concludes our questioning. Please be mindful that Senators may submit written requests for additional answers following the hearing, and we'd ask that you work diligently to respond to those requests.

With that, we will move to our second panel. I'd ask for everyone's patience for a moment as we finalize this setup for these next four nominees.

Thank you, Your Honor.

Judge GELPI. Thank you, Senator. Thank you, Senator Grassley, and Senator Hirono, and Senator Padilla, and everybody else who is here.

Chair OSSOFF. We will now hear from our next four nominees. Before making your opening statements, I would ask that the nominees please stand and raise your right hand to be sworn in. [Witnesses are sworn in.]

Chair OSSOFF. Thank you. Please be seated. Judge Kelley, you may proceed with your opening statement.

Judge KELLEY. Good morning, Senator Ossoff—

Chair OSSOFF. I believe you need to toggle your microphone, Judge.

Judge KELLEY. Okay.

Chair OSSOFF. There we go.

**STATEMENT OF HON. ANGEL KELLEY, NOMINEE  
TO SERVE AS UNITED STATES DISTRICT JUDGE  
FOR THE DISTRICT OF MASSACHUSETTS**

Judge KELLEY. Good morning, Senator Ossoff. Thank you for Chairing this hearing. I'd like to thank Chairman Durbin and Ranking Member Grassley for including me in today's panel.

I wish to thank publicly President Biden for nominating me to the U.S. District Court for the District of Massachusetts. I am truly humbled by this high honor and President Biden's faith in me. Also I wish to thank my home State Senators, Elizabeth Warren and Ed Markey, for their kind remarks, and having their trust and confidence in me. Thank you to the bipartisan Committee who forwarded my name to the Senators.

First, I want to acknowledge my mother and father, who are no longer with me physically, but always in my heart. Through their life lessons, my parents taught me to be resilient when faced with adversity, to live an honorable life, and to adopt a work ethic that does not permit excuses. I know I would not be here before this Committee if it was not for my parents and all those who contrib-

uted to my life's journey as role models, mentors, supporters, and uplifters.

Some of my supporters and uplifters are here with me today. Introducing first, Mrs. Elsey, who traveled from California to be here in place of her daughter, Gina Elsey, who we lost 9 months ago. Gina was my best friend at Georgetown Law Center. I know she's here with us now.

Also joining me from Georgetown is another dear friend, Alexis Taylor. Naomi Thompson and her mother, Mrs. Cabral, are also present. They represent the Massachusetts contingent. Naomi Thompson is my best friend from Colgate University. I am doubly blessed to have two mother figures with me today. They counsel me and comfort me like my mother would.

Representing my birth State and New York contingent is my best friend Darlene Jareeth Mangani. We began our legal careers together at the Legal Aid Society.

Thank you to those who could not be here, but send their love and support, like my brother in Texas, other family members, friends, and colleagues.

With that, Senators, I thank you again for this invitation to appear before you, and welcome your questions today.

Chair OSSOFF. Thank you, Judge Kelley. Ms. O'Hearn, you may now also proceed with your opening remarks.

**STATEMENT OF CHRISTINE P. O'HEARN, NOMINEE  
TO SERVE AS UNITED STATES DISTRICT JUDGE  
FOR THE DISTRICT OF NEW JERSEY**

Ms. O'HEARN. Good morning. Thank you. I would like to thank Chairman Durbin and Ranking Member Grassley for scheduling this hearing, Senator Ossoff for Chairing the hearing, and the entire Committee for considering my nomination. I would like to thank Senators Menendez and Booker for recommending me to the President, and Senators Menendez and Booker also for their kind introduction this morning. I would like to thank President Biden for the honor of nominating me to serve in this important position.

First, I would like to recognize my parents. My mother, Charlene Steinmetz, is a retired public-school teacher. She is unable to be here today but is watching from home. I appreciate her love and support. I'd also like to recognize my late father, William McCall, who was always there for me and gave the best advice.

I would like to introduce my two children who are here with me today. My daughter, Jessica, is a recent graduate of Widener Law School. She is completing a clerkship, and I know she will be an excellent lawyer. My son, Robert, is a graduate of Marist College, and works for a global aerospace company as a systems integration analyst. He has the most extraordinary work ethic, and I'm so proud of the young adults they have both become.

I would next like to introduce my law partner and mentor of nearly 30 years, Bill Tambussi. Everything I know about being a lawyer I learned from watching or working with Bill.

Finally, I would like to introduce two of my closest friends: Hon. Sherri Schweitzer and Susan Leming. I thank them both for their friendship and for being here.

There are many other friends, family, and colleagues who could not be here today and who are watching from home, including my brother, Bill, and his family. I thank them for their support during this process.

I would like to especially recognize my Brown & Connery family, the law firm I have spent my entire career. Thank you, and I'm happy to answer any questions you may have for me.

Chair OSSOFF. Thank you, Ms. O'Hearn. Ms. Greenfeld, please proceed with your opening statement.

**STATEMENT OF HELAINE ANN GREENFELD, NOMINEE  
TO SERVE AS ASSISTANT ATTORNEY GENERAL,  
OFFICE OF LEGISLATIVE AFFAIRS**

Ms. GREENFELD. Thank you. Thank you to Chairman Durbin and Ranking Member Grassley for arranging this hearing today, and to you, Mr. Chairman. If I may, I'd like to thank all the staff. As a former staffer, I know how hard they work to put these hearings together. A truly heartfelt thank-you to my former bosses, Senator Leahy and Senator Hirono, for introducing me to the Committee today. It was my time working for each of them that taught me to love the Senate, understand its history, and respect its responsibilities.

After so many years sitting behind Senators and witnesses, it is strange for me to be sitting on this side of the table. Having Senators Leahy and Hirono speak for me today makes me feel at home.

I'd like to introduce my family with me here today: my husband, Richard; my children, Jake and Abby; as well as my mother, Ruth; and sister, Susan. Watching from home are my sister, Jennifer, my brothers- and sisters-in-law, my mother-in-law, and other extended family. I'd like to thank them for their love and support. My dad, who passed away almost 5 years ago, cannot be with us, but if he were, he would be the first one to brag about this to every stranger he met.

[Laughter.]

Eighty-two years ago, when my grandparents fled Nazi Germany with their 2-year-old, my mother, got off a boat in Hoboken, New Jersey, and headed for Baltimore, Maryland, they could not have dreamt that their granddaughter would have the great honor of being nominated by the President of the United States to a position working for the Attorney General of the United States. I know they would be proud.

My grandparents and my mother's life journey, escaping the Holocaust, and finding a home in the United States, led to my interest in studying law and in public service. From a young age, I understood that the United States, a country founded and dedicated to the rule of law, gave my family refuge, and I wanted to be a part of that system. I have been very lucky to do that over the course of my nearly 30-year career, serving 8 years as a Senate staffer in the Judiciary Committee, going on 13 at the Department of Justice.

During that time, I came to appreciate the complementary powers and responsibilities of the executive and legislative branches, which require close communication and the spirit of dynamic compromise. The American people expect and deserve no less. If I am confirmed as Assistant Attorney General for Legislative Affairs, I



will do my best to lead the proud professionals of OLA, to ensure that the Department of Justice supports you completely in fulfilling your role under the Constitution.

Chair OSSOFF. Thank you, Ms. Greenfeld. Finally, Mr. Schroeder, your opening remarks.

**STATEMENT OF CHRISTOPHER H. SCHROEDER, NOMINEE  
TO SERVE AS ASSISTANT ATTORNEY GENERAL,  
OFFICE OF LEGAL COUNSEL**

Mr. SCHROEDER. Thank you, Senator Ossoff. My thanks as well to Chairman Durbin and Ranking Member Grassley for organizing this hearing and for the honor bestowed on me by President Biden with this nomination.

With your permission, I'll just briefly introduce my family who is with me today: my wife of 45 years, Catherine Bartlett; two of my three children—two of our three children, Dr. Emily Schroeder and Ted Schroeder; and my daughter-in-law, Katherine Turner. We're missing our youngest, our third child today, who is home in Newton, Mass., taking care of a newborn who is 1 week old—1 week and a day, and she makes the sixth of our grandchildren, none of whom made the trip today and may be watching today, who are probably climbing the walls and doing other kinds of things with their time.

I would just say if I am fortunate enough to be confirmed by the Senate, I would be returning to an office that I served in the Clinton administration. I think I have a real appreciation for the role and responsibilities of the Office of Legal Counsel. It's not a policy-making office in the Department of Justice. We assist in the legal interpretation tasks of the Attorney General, providing advice to the executive branch in the most competent, even-handed, impartial, and objective way that we can in order to help contribute to the important work for the country of bringing to life the ideal of the rule of law in which all individuals are created and treated equally and in the system of the administration of law that follows those precepts as well.

I am honored to be here today, and happy to answer any of your questions.

Chair OSSOFF. Thank you, Mr. Schroeder. Members will have 5 minutes to question this panel. I'd like to begin with you, Mr. Schroeder.

At its best, the Office of Legal Counsel should develop what it believes to be the best interpretation of a statute and offer rigorously vetted advice, independent of partisan pressure or personal interest, that protects the separation of powers and ensures that executive action respects congressional prerogatives. Mr. Schroeder, how will you ensure that the OLC operates according to these principles? Do you agree with the principles just stated?

Mr. SCHROEDER. Senator, I agree thoroughly with them. I think they are fundamentally important to the work of the Office. I also think the Attorney General has indicated the same expectations for the Office, as has the President. The starting point is I will work with—for two bosses who are giving me exactly the same kind of instructions that you have just articulated.

We attempt, in the Office of Legal Counsel, to observe a form of deliberation that ensures that all matters are thoroughly ventilated by both career and the political leadership in the Office as thoroughly as time permits. In many instances, that is enough time, I think, to delve very deeply and carefully into the questions that are posed.

I would—I plan to implement the practices of the Office that I think have worked best in the past to ensure that that kind of thorough deliberation is visited on every question that comes before us.

Chair OSSOFF. Mr. Schroeder, during your career at DOJ and your past tenure at OLC, have you provided advice that perhaps you disagreed with personally or politically, but that you believed reflected the law?

Mr. SCHROEDER. Senator, I have. I perhaps can give you an example from the Clinton years, which have been explored in hearings before the House and the Senate. They're matters of public record.

This reflects work we did on something that we came to call the "Shoot Down Opinion," which was a decision that we reached after being asked a question about whether in connection with the war on drugs, some of our armed forces information about the location of small, private planes coming out of South American countries could be provided to those countries to aid in the interception of those planes because they were delivering illegal drugs across the border, into the southwestern States, landing and departing without enough warning for our law enforcement to apprehend them. We attempted to establish a cooperative relationship with some South American countries who were being supportive of our efforts.

We had to deliver the news that upon analysis of this program, which was a very high priority in the war against drugs, that it was quite likely unlawful. Perhaps even worse, it exposed participants in the assistance and the possibility of being liable for aiding and abetting in the event that innocent people were harmed by actions by other countries on the basis of the information we were supplying. As in shooting down those planes.

This was not received well because this was an important policy priority of the administration at the time. It is an example that I can talk about in which we had to render advice that was not consistent with the policy positions being taken in the administration.

Chair OSSOFF. Thank you, Mr. Schroeder. In addition to serving on the Judiciary Committee, I Chair the Homeland Security Committee's Permanent Subcommittee on Investigations, also known as PSI. In the past, at times, Federal agencies have been reluctant to provide PSI with documents concerning matters subject to ongoing litigation or Federal investigations which can impair the legitimate oversight prerogatives of Congress and of that Subcommittee. Can you please speak, Mr. Schroeder, to the advice or guidance that you'll provide to Federal agencies facing congressional requests for information relevant to ongoing litigation?

Mr. SCHROEDER. Senator, I understand the importance of oversight review by this body and the other body. I've worked for the Senate Judiciary Committee myself for about 4 years in the

Reagan and Bush administrations, and I know how frustrating it is to make requests that are not timely complied with.

At the same time, there are long-standing issues related to the disclosure of information that affects important law enforcement interests and ongoing investigations that have to be weighed as well in an equation about whether documentation is provided. I think the Department is going to make every effort it can to accommodate oversight requests in all areas, but there may be situations in which the nature of the documents that are involved will be ones in which we are just going to have to agree to disagree.

Chair OSSOFF. Thank you, Mr. Schroeder. Ranking Member Grassley, you're recognized for 5 minutes.

Senator GRASSLEY. Thank you very much. Mr. Schroeder, I'm going to start with you. OLC, under President Trump, issued an opinion relating to the Equal Rights Amendment and the current belated ratification process. It's unlikely that the current administration agrees with the previous one as a matter of policy on the ERA, but the law is the law. I'm not asking you how you would rule, but I'd like to know what factors would you consider in deciding whether or not to rescind that opinion?

Mr. SCHROEDER. Senator Grassley, that specific opinion, I believe, is the object of litigation currently against the Archivist who has announced that he will follow the OLC advice. He has also said he will follow whatever the final judgment of the court is in the case.

I don't—I would not come into the job, under any circumstances, with an agenda to look specifically at any prior opinion. In this instance in particular, I think we will all be best suited if we allow the litigation process to answer that question.

Senator GRASSLEY. I agree with that part of it. I'm only asking you what you would—what factors you would take into consideration to decide whether or not to rescind that opinion.

Mr. SCHROEDER. What would be most important to me is if there was an ongoing request for legal advice that we had received in the Office. The Office of Legal Counsel is a very reactive office. We don't have our own agendas. We answer questions that other parts of the executive branch have posed to us.

That would be—initially, we would need, I believe, a request to look at that exact issue, which I doubt that we would receive because of the nature of the ongoing litigation.

Senator GRASSLEY. Okay. Let me go on. As you know, I'm a strong advocate for Government transparency and congressional oversight. You've suggested that the Justice Department should have released more OLC opinions, saying that, quote, "Congress cannot exercise its governance responsibilities in regard to a problem if they don't know the problem exists," end of quote.

Will you commit to transparency by releasing all of your opinions as an Assistant Attorney General for the Office of Legal Counsel in a timely manner to help Congress properly perform its oversight role? However, if you do not release an opinion, will you commit to ensuring that the public knows why that opinion was not released?

Mr. SCHROEDER. Senator, I'm a very strong advocate of transparency, as that quote from—that you have read from me indicates.

It is my intention to release Office of Legal Counsel opinions in a timely manner. We will make every effort to do so. There are situations in which the requestor may have requested confidentiality, and we have a relationship with the people who request opinions of us that we need to respect that judgment on their part because people will stop coming to us for advice if we say we will be confidential, and then we release the information. That may present an obstacle on an individual case-basis situation.

Overall, I'm very much committed to the timely release of formal opinions of the Office of Legal Counsel. Yes, sir.

Senator GRASSLEY. In regard where maybe privacy or confidentiality is an issue, would you commit then saying, at least you can't release it because of the confidentiality that was promised?

Mr. SCHROEDER. In that situation, we would make every effort to develop a method to make the basics of an opinion available to legitimate inquiries by the Congress.

Senator GRASSLEY. Okay.

Mr. SCHROEDER. How exactly that would take place, what form it would take, it would have to depend upon the circumstances of a particular case.

Senator GRASSLEY. Okay. Ms. Greenfeld, on our call together that we had, I believe it was over the phone, I asked you about oversight, and specifically, about the lack of responsiveness from both DOJ and FBI to my oversight letters and requests. In your current role, you're responsible for responding to congressional oversight. Have you been instructed not to respond to any of my oversight requests? If so, by whom?

Ms. GREENFELD. Senator, my experience as a Senate staffer has given me tremendous respect for the role of Congress in conducting oversight. No one has given me instructions not to answer your requests. Indeed, the Attorney General has been very clear that we should respond to congressional requests, which we do. Every day, they come in through email, phone. We get requests for briefings for technical assistants on legislation. The vast majority of requests that we get are easily complied with. We are able to work on a bipartisan basis with many offices.

Every once in a while, we do get more complex requests, and some of yours are among them. We have been working very hard to get responses for you. Where we can, we have members of the Office of Legislative Affairs are in conversation—very frequent conversation with your oversight counsel trying to find ways that we can get you the very best answers we can.

Senator GRASSLEY. My time has run out. I've got five things that I'm going to submit to you in writing. I'd like an update on those five separate requests.

Ms. GREENFELD. Yes, Senator.

Chair OSSOFF. Thank you, Senator Grassley. Senator Hirono is recognized for 5 minutes.

Senator HIRONO. Thank you very much. I'd like to thank Senator Klobuchar for her courtesy in letting me go first. I will not take up the full 5 minutes.

I would just like to ask my preliminary questions of this panel. By the way, welcome to all of you, and a special aloha to Helaine, of course.

I will ask the two initial questions that I ask of every nominee, and I will ask the full panel. 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?

Judge KELLEY. No, Senator.

Ms. O'HEARN. No, Senator.

Ms. GREENFELD. No, Senator.

Mr. SCHROEDER. No, Senator.

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

Mr. SCHROEDER. No.

Ms. O'HEARN. No, Senator.

Ms. GREENFELD. No.

Judge KELLEY. No, Senator.

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

Chair OSSOFF. Thank you, Senator Hirono. Senator Cotton is recognized for 5 minutes.

Senator COTTON. Mr. Chairman, rising rapidly to the top so early. Us younger, newer Members have to stick together.

Ms. Greenfeld, I want to talk about the case of *Terry v. United States* which the Supreme Court recently handed down. It concerns convictions and sentencing for crack cocaine, specifically under the First Step Act. The United States had defended its conviction and sentence for this crack dealer, which is typical in these cases, even when the Government thinks the verdict might have been overturned. That was not the case, though, here since it wasn't even close.

In March, while you were the Acting Assistant Attorney General before your nomination, however, the Department waited until the very last moment. I think the day its brief was due in the Supreme Court, and then sent the Court a letter, saying the Department had changed its mind following the change in administration and would no longer defend the sentence. In fact, it took a step further and took the unusual step of confessing the error, saying that it wasn't just going to stop defending the case, but rather it said the Department had been wrong all along.

This required the Supreme Court to appoint an outside lawyer to the Department of Justice's job. Just last week, the Court ruled unanimously in favor of the very position the Department abandoned in March.

Who decided in the Department to change the Department's position in this case?

Ms. GREENFELD. Senator, I do not know. I presume the decision was taken in the Office of Solicitor General.

Senator COTTON. Were you aware of this case?

Ms. GREENFELD. No, Senator.

Senator COTTON. Or the Department's unusual behavior in the case for the day?

Ms. GREENFELD. I think I was aware generally from reading the news. I was not involved in that.

Senator COTTON. You and your Office was not involved in the decision—

Ms. GREENFELD. No. The Office—

Senator COTTON [continuing]. To change its position?

Ms. GREENFELD. The Office of Legislative Affairs serves as, I would say, a conduit for communication between the Department and the Congress. We take in questions from staff members, from Members of Congress, about enforcement schemes, about pieces of legislation that they want to author. We give technical assistance on those. We get letters that Members of Congress send on behalf of constituents and on behalf of themselves. We are not involved in any decisions about litigation.

Senator COTTON. Okay. I think the First Step Act was a disaster. If the Department proceeds in similar fashion in the future, and you're confirmed, you should probably just go ahead and reach out to my office in advance because you'll be hearing from us very quickly to get answers about these kinds of matters.

Mr. SCHROEDER, I want to ask you about the case as well. The Department's letter to the Court on March 15th said the Department no longer defended the sentence. It also said the Department had, quote, "begun a process of reviewing the Government's interpretation of Section 404 of the First Step Act," after President Biden was sworn in.

At the time, you were the Acting Assistant Attorney General for the Office of Legal Counsel. Were you involved in this review of Section 404 of the First Step Act in particular or the broader interpretations of the First Step Act?

Mr. SCHROEDER. No. I wasn't, Senator Cotton.

Senator COTTON. If it wasn't OLC conducting this review, who was conducting it?

Mr. SCHROEDER. I don't know. I was unaware of the review. It strikes me as a kind of a—

Senator COTTON. You were the Acting Assistant Attorney General. The Department was conducting a review of its interpretation of a major statute, and you were not aware of this review?

Mr. SCHROEDER. Senator, I was not.

Senator COTTON. That's pretty amazing. How could the Department have gotten it so wrong in this case? This is not a highly charged political case. This was not like the Yale University discrimination case where the Department decided that it was okay for Yale University to discriminate as long as it was discriminating against Asians. This was a statutory interpretation case that was easily decided below, and then decided unanimously at the Supreme Court. How is it possible the Department got it so wrong?

Mr. SCHROEDER. I'm just—I'm sorry. I just can't speculate, Senator.

Senator COTTON. Okay. It reminds me of the old line that goes, "Do you know why the Supreme Court decided this case 9 to nothing? Because there aren't 11 Justices to decide it 11 to nothing."  
[Laughter.]

Mr. Schroeder, the administration has come out in favor of a House bill that would grant DC statehood. Setting aside the political arguments about whether Washington should or should not be a State, I want to ask you a very specific constitutional issue on DC statehood, namely the Twenty-Third Amendment. Have you been involved in the Department's review of that House bill and whether it's constitutional under the Twenty-Third Amendment?

Mr. SCHROEDER. Yes, sir.

Senator COTTON. What is your conclusion about that bill's constitutionality?

Mr. SCHROEDER. We have not completed an analysis, but we did take a preliminary look at the bill and participated in the formulation of the administration position.

Senator COTTON. You believe that bill would pass constitutional muster if Congress passed it and the President signed it into law?

Mr. SCHROEDER. That's a matter we are still reviewing.

Senator COTTON. This may be a pretty simple take, but I think sometimes the simple takes are the right one. The Twenty-Third Amendment, of course, says that Washington, DC is entitled to the number of electors in the Electoral College to which it would be entitled, quote, "if it were a State." It's hard for me to imagine how a law could make Washington, DC, a State when the Constitution itself refers to DC, "if it were a State." My time's expired.

Chair OSSOFF. Thank you, Senator Cotton. Senator Klobuchar is recognized for 5 minutes.

Senator KLOBUCHAR. Thank you very much, Chairman. It is wonderful to be here with all the nominees. I'll have some questions of our judicial—of our nominees here at the beginning of the panel. I noticed you haven't been asked as many questions, but I will do that in writing.

I wanted to start out by asking you, Mr. Schroeder, and good to see you again, just to reaffirm some of the questions Senator Grassley had asked about the opinions from the OLC. Back in 2017, I sent a letter along with five of my colleagues to then AG nominee Sessions, asking for his commitment to publicly disclose OLC's written legal opinions to the President. Do you think we should have a process for the Department to review prior, undisclosed OLC opinions to determine whether public disclosure is now appropriate? Do you think that's important for maintaining transparency?

Mr. SCHROEDER. Senator, thank you for that. Yes, I do think it is important for transparency. We do have a process in the Office of Legal Counsel to do a publication review of opinions that have not yet been published. I have not ascertained the status of the unpublished opinions that you are referring to. I would be happy, however, to communicate with you further about specifics. In general, I do think that it is very important for the Office to be transparent in the legal advice that it reduces to final opinions.

Senator KLOBUCHAR. Okay. We talked about this. During the previous administration, the Brookings Institute published a report on the reversal rate of the Trump administration's agency actions. You can go back and look at the whole time period, and they had a 29.5 percent success rate when defending agency actions with previous administrations, including Republican administrations having an average of 69 percent success rate.

Why do you think the reversal rate is high? Most importantly, you will lead an office that advises the executive branch on whether its actions are legal. How would you reverse the trend? Do you intend to do that?

Mr. SCHROEDER. Senator, I suspect we have to give better legal advice to reverse that trend to the extent we're participating. I

haven't looked at the individual cases. I know the general failure rates that you're referring to.

It's very important, I think, for the entire administration. I know the Department thinks and feels this way, that we do our very best work interpreting statutes and staying within the confines of the statutes that Congress has enacted so that we can avoid the kinds of really unproductive administrative action that doesn't affect the purposes for which it's designed because they are reversed that courts. That doesn't sound like a very productive way to proceed to me.

Senator KLOBUCHAR. Okay. Very good. Ms. Greenfeld, welcome back. Good to see you.

Ms. GREENFELD. Hello, Senator.

Senator KLOBUCHAR. Before rejoining the Justice Department, at the beginning of this year, you served as a senior counsel on this Committee, chief counsel to our friend Senator Hirono, and chief nominations counsel to then Chairman Leahy on the Judiciary Committee. Earlier in your career, you were a law clerk for a Federal judge. Could you talk about how with your background, how your views are on Congress's constitutional role to provide oversight of the executive branch? What do you think is the role of the executive branch in responding to our inquiries and oversight?

Ms. GREENFELD. Thank you, Senator. My time spent working as a Senate staffer and also in the Department of Justice has given me a keen appreciation and immense respect for the role of Congress, the role of Congress in conducting oversight, the role of Congress in legislating. The Office of Legislative Affairs at the Department of Justice has a duty to assist Congress in those responsibilities as best we can, consistent with our responsibilities to protect confidentiality interest, to make sure we protect the criminal investigations, and information protected by law, for instance, grand jury material.

It is important for the Department to assist Congress. We should do the very best we can. We should always be listening very closely to what Members of Congress are saying. They are reflecting important needs of their constituents, and important aims, and we should try our very best to assist you when we can.

Senator KLOBUCHAR. Very good. I appreciate that. Again, good look. Judge Kelley, Ms. O'Hearn, I look forward to getting your answers on the record. I'm very pleased about your nominations. Thank you.

Chair OSSOFF. Thank you, Senator Klobuchar. Senator Kennedy is recognized for 5 minutes.

Senator KENNEDY. Thank you, Mr. Chairman. I want to talk to our judicial nominees, and I'm going to stipulate up front to save you time and me time that you're going to follow precedent. Okay. Counsel, tell me the test that the U.S. Supreme Court uses to overturn its precedent. Counsel O'Hearn?

Ms. O'HEARN. Thank you, Senator Kennedy for that question. As you know, my practice has primarily focused on civil matters for the past 28 or 30 years. I have not had occasion to deal with a case where it would go to the Supreme Court where the issue of overturning its own precedent would be an issue, but they are obviously far and few between.



Senator KENNEDY. Okay. You don't know the test?

Ms. O'HEARN. Sitting here today, Senator, I could not articulate that for you.

Senator KENNEDY. Okay. That's cool. Let's talk about a pretty famous case that we all learned in the first year of law school. Tell me the importance of *McCulloch v. Maryland*.

Ms. O'HEARN. Senator, I went to law school 30 years ago. I've practiced law for 30 years in many different areas for both plaintiffs and defendants in State and Federal court, and I have not come across that case that I can recall and tell you its holding as I sit here today.

Senator KENNEDY. Okay. If you're going to be on the Federal district court bench, you're going to come across the issue of universal or nationwide injunctions. What's the legal basis for a universal injunction?

Ms. O'HEARN. Senator, I'm aware of the current discussion in the public domain about the propriety of district courts issuing nationwide injunctions. I have not encountered a case in my practice in State or Federal court where that's been an issue. I think as a nominee, it would be inappropriate for me to comment on the propriety of that issue since it's currently being litigated.

Senator KENNEDY. I'm not asking about the propriety. I'm just asking you, do you know the legal basis for it?

Ms. O'HEARN. Senator, I know that Federal courts are courts of limited jurisdiction and are supposed to be restrained in taking action, and decide only the issues before them involving the parties before them and the issues. I think it would have to be a rare exception that an issue before a district court judge—

Senator KENNEDY. Yes, ma'am. I know. We both know universal injunctions are issued, and if you issue a universal injunction and you're asked by one of the litigants, "Well, why did you do that, Judge? What's your legal basis?", what are you going to say?

Ms. O'HEARN. Senator, as I said, Federal courts are courts of limited jurisdiction, and I think it would be extremely rare that as a district court judge—

Senator KENNEDY. What's the legal basis, Counselor?

Ms. O'HEARN. I think I—

Senator KENNEDY. I'm just asking you what the legal basis is for a universal injunction.

Ms. O'HEARN. Senator, I think as a district court judge—if confirmed as a district court judge, I would need to have jurisdiction and believe I had appropriate jurisdiction to issue—

Senator KENNEDY. Okay. Let's move on.

Ms. O'HEARN [continuing]. That.

Senator KENNEDY. You're not going to answer it. Tell me the holding in *Marbury v. Madison*.

Ms. O'HEARN. *Marbury v. Madison* is one of the pinnacle decisions about the judicial branch, as you mentioned earlier, every law student learns in law school.

Senator KENNEDY. Yes. What's the holding?

Ms. O'HEARN. In terms of affirming that the judiciary is the interpreter of the Constitution.

Senator KENNEDY. Okay. What rule does the Supreme Court follow in determining whether an admissions policy of a university that uses race as part of the admissions process is constitutional?

Ms. O'HEARN. Senator, my understanding is that race would qualify the application of strict scrutiny. In cases the Supreme Court has addressed this issue, they have found that while they do not—while quotas are not constitutional, that race may be a factor that's considered if there's a legitimate and rational purpose for it.

Senator KENNEDY. Okay. Let me just ask your personal philosophy on a couple of things. Do you believe that crime is a disease that we should try to cure? Or do you believe that it is an anti-social behavior that should be punished?

Ms. O'HEARN. Senator, my practice over the past 28 years has been in the civil arena. I have—

Senator KENNEDY. Right.

Ms. O'HEARN [continuing]. Not had occasion to practice criminally. I must—

Senator KENNEDY. No. I'm just asking your philosophy. I'm not asking the law.

Ms. O'HEARN. Absolutely. I will say that from what I have seen and—as a human being, as you referenced earlier, I think that that's a very complicated question.

Senator KENNEDY. Yes. That's why I ask it.

Ms. O'HEARN. I think there are many factors that would play into any case of any particular crime or defendant.

Senator KENNEDY. Can you tell me what you believe?

Ms. O'HEARN. Senator, I don't know that I can say one way or the other what I believe is the answer—

Senator KENNEDY. Have you thought about it?

Ms. O'HEARN [continuing]. Of the question. I'm sorry?

Senator KENNEDY. Have you thought about it?

Ms. O'HEARN. I can't say that it's something that I've given an extensive amount of thought.

Senator KENNEDY. Okay. Thank you.

Ms. O'HEARN. It's very complicated.

Senator KENNEDY. Thanks, Mr. Chair.

Chair OSSOFF. Thank you, Senator Kennedy. Senator Whitehouse is recognized for 5 minutes.

Senator WHITEHOUSE. Thank you. Just for the record, I've been the State's attorney general with plenary criminal authority, and I've been the United States attorney, and I haven't given much thought to the question of whether crime is an illness or behavior. You're presented with a set of facts. You have laws. You apply them, and you try to make sure you deter crime. Where people need treatment, you try to make sure that they get it. I think that's a pretty simple answer there.

If I may, let me start with Ms. Greenfeld. I'll focus on the DOJ witnesses. You are probably well-aware that I have been a constant critic of the persistent and recurring refusals by the Department of Justice and the FBI to answer Committee questions. A persistent and recurring refusal which seems to rise in difficulty in synch with the likely difficulty of the answers, were they to be provided.

You aren't terrible about getting the easy stuff to us, but anything that looks like it might be required to disclose something

challenging, it pretty much stops. There are variations around that. The FBI wouldn't tell me what their tip-line rules are. They refused to answer that question. We were able to find out through internet searches that the FBI publicly disclosed what its tip-line rules were in other forums. We were able to find it that way.

From the FBI's point of view, even public stuff like that were being denied probably because it touched on a difficult topic, which is whether the Kavanaugh tip-line was real or not. I don't think that's acceptable.

At the other end, when stuff actually could have a real law enforcement concern about it, we've seen a fast-lane that runs around the stonewall, the traffic jam, and brings stuff, including pretty delicate FBI stuff directly to at least the Republicans on the Committee when they wanted to investigate the FBI investigation of the Trump Committee.

There doesn't seem to be a solid rule here. We've heard every excuse in the world. It has to go through OMB. Great. The political operatives at OMB stopping information that is duly requested from the Department of Justice, I don't think, is a good outcome. There's an interagency process. I mean, you can invent an inter-agency process to slow things down. That doesn't seem credible to me.

There's a new Congress, and so stuff we stalled you on for 2 years, we're going to now ignore. That is, I think, an imagined obstacle. Very often, just no excuse at all. Just total stonewall.

Can you give me any assurance that this nonsense will stop? Can you give me any assurance that you will have some authority over the FBI, which has been its own separate set of disclosure problems?

Ms. GREENFELD. Senator, I am aware that you have sometimes been a critic of the responsiveness of the Department. I appreciate your need and the need of every Member of Congress for information from the Department for purposes of oversight and legislation.

I can assure you that we—and the Attorney General has instructed us to respond to every inquiry. When there are times that we feel that the balancing test that we use doesn't permit us to reveal some information or produce some documents, that we explain why.

Senator WHITEHOUSE. Yes.

Ms. GREENFELD. That we be clear.

Senator WHITEHOUSE. That's the way it's supposed to work. That's the way it works in civil discovery. That's the way it works in criminal discovery. That's the way it works everywhere, and we just have varied from that now for quite a long period of time at the Department of Justice. So good. I will count on you to fix that.

Mr. Schroeder, you are coming into the OLC, which has its own rather unfortunate history. There are a variety of highly critical decisions of OLC memoranda and opinions, and the most recent one being Judge Amy Berman Jackson's slamming of the OLC conduct in *CREW v. DOJ*. Before that, you had the twin poundings in the Committee on *Judiciary v. McGahn*, of Judge Ketanji Brown Jackson, and of Judge Marrero up in the Southern District of New York in *Trump v. Vance*. Interestingly, the latter two referred back to the Committee on *Judiciary v. Meyers*, which slammed the OLC de-

cision on absolute immunity, which OLC didn't seem to take seriously as a judicial decision because it was still making the same arguments 10 years later in *Vance* and *McGahn* cases.

Every time an OLC opinion seems to get in front of a court, it gets pounded into the ground, and that doesn't seem to be a good thing. I think ignoring *Meyers*, and I don't know if OLC is going to respond to the other decisions I just mentioned, or if they're just going to bull their heads down and say, "We know better," and insist on sticking by their guns, even when judges have overruled them. You've got the whole question of prosecuting the President of the United States, which OLC has put into a boxed canyon so that it never gets judicial review, which I think an absolute—just a seizure of authority that doesn't belong.

Then you've got this history of Department revolt, both on the torture memos out of OLC when they became public. The Department, in that administration, blew up, and withdrew and corrected them. With the warrantless wiretapping cases, people threatened to resign if the conduct continued that the OLC had approved. You've got a real problem on your hands. I think OLC has a real credibility problem with courts, and with this Committee, and we can spend more time talking about this, but I wanted to put that on the record and give you the chance to make a quick response of how seriously you take this record of problems at OLC that used to be the great place, the high temple of the law in the Department of Justice.

Bring it back and respond.

Mr. SCHROEDER. Thank you, Senator, for the encouragement and the litany of, what I hope will be viewed from the perspective of history, aberrations in the work of the Office of Legal Counsel. I know all of the instances to which you have referred. It's my intention, if I'm fortunate enough to be confirmed, to aspire to the highest quality analysis that we can achieve. That certainly will take cognizance of judicial decisions that differ from interpretive stances that the office has taken in the past, and much more. We are hoping that we will be able to have a conversation with you 4 or 5 years from now in which the litany will feel a little more dated than it does now.

Senator WHITEHOUSE. Good. Count on me to be a persistent scourge, thorn in the side, nag, pain in the rear, whatever you want to call it, until we get that back because it's a really important part of the Department of Justice. When it sends signals like that, it harms the reputation of the entire Department. Thank you.

Chair OSSOFF. Thank you, Senator Whitehouse. Senator Cruz is recognized for 5 minutes.

Senator CRUZ. Thank you, Mr. Chairman. Welcome, to each of the nominees. Ms. Greenfeld, let's start with you. You were chief counsel to Senator Hirono during the now infamous confirmation of Justice Brett Kavanaugh. As we know, after Justice Kavanaugh's first hearing, when it was clear that he had the votes to be confirmed, somebody on this Committee leaked the allegations by Dr. Christine Blasey Ford to the publication *The Intercept*. Do you know who leaked Dr. Ford's allegations to *The Intercept*?

Ms. GREENFELD. No, sir.

Senator CRUZ. Did anyone on the Committee ever tell you or otherwise communicate to you who leaked the story to The Intercept?

Ms. GREENFELD. No, sir.

Senator CRUZ. When did you first learn about the allegations against Justice Kavanaugh?

Ms. GREENFELD. I think when they were in the news.

Senator CRUZ. All right. Mr. Schroeder, you and I had a good conversation this week. The Office of Legal Counsel is an extraordinarily important office in the Department of Justice, one that in more recent years has had less respect than it had in prior decades. You and I discussed, a major reason for that has been the willingness of OLC, at times, to subordinate following the law to the political or policy priorities of whichever administration happens to be in power. How should the Office of Legal Counsel handle an issue when there is a conflict between what the law provides and the political or policy priorities of the administration?

Mr. SCHROEDER. Senator Cruz, I think the responsibilities of the Office of Legal Counsel, and certainly my intention should I be confirmed to be able to lead it, is a very direct injunction to interpret the law. We are not a policymaking operation inside the Department of Justice or inside the administration. Our function is to, through delegation from the Attorney General, to fulfill that obligation to provide the best legal advice in an impartial and independent way to the executive branch.

Senator CRUZ. When you and I talked in the office, you also expressed concern about the decision early in the Obama Justice Department when the Office of Legal Counsel had given a particular opinion concerning the District of Columbia, the Attorney General's decision to go instead to the Solicitor General and seek a different opinion. You expressed concerns in terms of the institution of the Department of Justice. What are those concerns you have?

Mr. SCHROEDER. The instance you referred to was an occasion in which the Attorney General sought the advice of the Office of Legal Counsel, and then sought other advice from the Solicitor General. I think, as a general operating rule, that's not a good practice. I think the Department should be relying upon the Office of Legal Counsel, which by the way consults in difficult matters on many occasions with the very skillful attorneys who are in the Solicitor General's Office as well as the other components in the Department.

Hard issues that the Office of Legal Counsel faces are the object of discussion, debate, advice, with skilled people throughout the Department. We perform something of a collecting function when we are trying to wrestle with a hard problem. If we've gone through that process in that careful, thorough, deliberative way, it would be my hope and expectation that that's the advice that would be followed once we give it.

Senator CRUZ. Okay. Judge Kelley, I want to ask you about a case, *Commonwealth v. Muniz*. In that case, you allowed a dangerous, violent, illegal alien to vacate his guilty plea. This defendant originally pled guilty to two counts of armed assault with intent to murder, two counts of assault with a dangerous weapon, one count of possessing a firearm without an FID Card, one count

of carrying a loaded firearm without a license, and one count of malicious damage to a motor car.

During his plea colloquy, you warned him that, "If you are not a citizen of the United States, your guilty plea can result in your deportation, exclusion from the United States, and denial of citizenship."

Sure enough, several months later, after his guilty plea, ICE determined that this violent, criminal, illegal alien was deportable. However, you decided to vacate his guilty plea because you said, quote, "the interest of justice required you to do so because you," quote, "inadequately warned the defendant of the immigration consequences of his guilty plea."

Why wasn't your warning very clear? Why would you allow and admitted violent criminal to vacate his guilty plea?

Judge KELLEY. Senator, that case, the defendant had filed a motion to vacate his conviction—or his guilty plea—excuse me—because I had failed to advise him that he could be denied admission into the United States, per our statute. That was the reason why I denied it, and then it was reversed by the appeals court.

Senator CRUZ. Wasn't your warning clear and sufficient?

Judge KELLEY. It was not a verbatim warning, as required by the statute, so I thought that I had made an error, and so I tried to correct that error.

Senator CRUZ. Thank you.

Chair OSSOFF. Thank you, Senator Cruz. Senator Blumenthal is recognized for 5 minutes.

Senator BLUMENTHAL. Thank you, Chairman. Thank you all for your service. I'd like to begin with Ms. Greenfeld, and I know that I am repeating in some part ground that's already been covered in raising the politicization of the Department of Justice's response to questions and requests that have been posed in the past.

In the previous administration, your Office, or the Office to which you have been nominated, would respond quickly to oversight requests from Republican, not so much from Democrats. In fact, Members on this side of the aisle were routinely stonewalled by the Office of Legislative Affairs in the Department of Justice. I would like your commitment that you will, in fact, restore the integrity and independence of the Office of Legislative Affairs.

Ms. GREENFELD. Yes, Senator.

Senator BLUMENTHAL. I'm confident that you will because you have seen it from our side as well as, I know, from your previous experience, your commitment to the goals and mission of the Department of Justice. Over the last couple of years, I have been involved with families that suffered losses on 9/11. They have sued the Government of Saudi Arabia.

The Senate of the United States enabled them, in fact, to get relief in that lawsuit through the JASTA Legislation. President Obama vetoed it, we overrode the veto, they are proceeding with their litigation. I'm not taking an advocacy position in the litigation, but I know that they have been denied information that is absolutely essential to their day in court. The Department of Justice and the FBI has invoked the State secret privilege, to withhold documents, testimony, and information that is relevant and important to that litigation.

I've sent letters on this issue in February and May of this year, which followed on letters that I sent in 2019 and 2020. I have been joined by various colleagues in these letters. I've received no response.

I've asked Attorney General Garland about them, most recently in the confirmation hearings, that is the public discussion with him. I asked Director Wray about this issue in oversight hearings. I would like a commitment from you that there will be a response from the Department of Justice to these inquiries that I pose.

Further, I would like to suggest that the Department of Justice should avoid standing in the way of these families having their day in court and should provide the public and them with an explanation as to why this information is continuing to be withheld. They owe that explanation to the American people as well as these families. Can you commit to me that you will be responsive to these requests?

Ms. GREENFELD. Yes.

Senator BLUMENTHAL. Thank you. On February 19th of this year, I wrote to then Acting Attorney General Wilkinson concerning the Department of Justice's failure to release a long-pending Inspector General report on the FBI's mishandling of the Larry Nassar investigation. You will recall, I'm sure, that Larry Nassar was convicted and sentenced to life imprisonment as a result of his abusing young girls, women, in the Olympics training program. I have yet to receive a response to this letter, and there has been no report issued on the IG investigation. Will you commit that you will be responsive to these requests that I have made for release of that report?

Ms. GREENFELD. Yes. I will.

Senator BLUMENTHAL. Thank you. Mr. Schroeder, I know from your previous and current tenure as Deputy Assistant Attorney General at the Office of Legal Counsel, that you are committed to independent and principled advice on the application of the law to ensure the administration of justice. I hope that you will, if confirmed, fulfill that goal.

I'd like to ask whether you will commit to reviewing the opinions of your predecessors for instances of improper political influence?

Mr. SCHROEDER. Senator, I don't come to the Office—I would not come to the Office, if I am fortunate enough to be confirmed, with an agenda to go back, reviewing prior opinions of the Office. To my knowledge, no predecessor of mine has done that. At the same time, to the extent that there are opinions that take positions that are relevant to questions that we are being asked by the current administration, and therefore we look to them for what they have said, and they will—and determine that they are mistaken, we will not hesitate to revise them and revisit them as the case may be, depending upon the contents and the merits of the individual opinions we're reviewing.

Senator BLUMENTHAL. I think accountability is important, and I hope you will go back and review those prior opinions for mistakes or errors in legal opinions. If the reasons for those mistakes or errors were related to improper motives or benefits, accountability is important. I recognize this issue runs through the Department of Justice, and the new administration's evaluation of past performance.

In a number of instances, as I have raised with the Attorney General, when he sat where you are in his confirmation hearing, I think that the Department of Justice, which is responsible for law enforcement, has a responsibility to review its own past performance for possible lawbreaking. What I'm asking from you is a commitment that you will, in fact, report to us in the event you find impropriety or lawbreaking in your view of those past opinions.

Mr. SCHROEDER. Senator, I appreciate that, and I appreciate your wider concern about the Department. As I'm thinking about this, it is very difficult to ascertain intent when you're reviewing a formal legal opinion, and it would require, it seems to me, a great deal of forensic inquiry into the circumstances around the creation of opinions about which we don't keep precise records. We keep precise records about what we write, not about interactions of the kind that might lead to an interest in exploring the possibility of improper influence.

Should we come over that kind of circumstance, we will certainly draw it to the attention of the appropriate leadership components of the Department because I think that's the kind of referral that would be appropriate in the first instance, should we come across that kind of situation.

Senator BLUMENTHAL. I hope that you will be proactive in that review, and that you will report any indication of impropriety or wrongdoing.

I want to ask you about a specific Office of Legal Counsel opinion. On January 15, 2021, at the tail end of the last administration, there was a memorandum of opinion issued for the Bureau of Prisons relating to home confinement for Federal prisoners after COVID-19. The opinion essentially commands the Bureau of Prisons to stop home confinement under the CARES Act for medically vulnerable inmates and to haul them, in effect, back to prison from their homes, even though they were nonviolent, posed no harm—no danger of harm to the community.

That interpretation strikes me as unnecessary and cruel, and possibly even vindictive. I would like to get from you a commitment that you will review that opinion and correct it if, in fact, there is no legal basis for it, and in fact, it serves no public policy purpose.

Mr. SCHROEDER. Senator, this, I think is a very important issue that you have raised. I'm aware of the situation. I know that the leadership of the Department is actively engaged in working out the most humane approach to the inmates who have been released into home confinement early that you have referred to under the CARES Act, and I will commit that our Office will provide whatever support the leadership Office requires of us in order to develop a policy that is consistent with the laws as we understand them.

Chair OSSOFF. The Senator's time has expired.

Senator BLUMENTHAL. Yes. Let me just conclude by saying I don't know what that means. You know, I'm asking that you review an opinion that essentially, in my view, was simply vindictive, unnecessarily unnecessary. I know Senators Durbin and Grassley have expressed the same concerns about this memo. I'm asking for a commitment to reevaluate this opinion under the CARES Act and other controlling legal authorities related to home confinement and the pandemic. I am disappointed by a failure to commit clearly to



reevaluate that opinion with respect to inmates who are medically vulnerable and pose no risk to public health or public safety.

Mr. SCHROEDER. I appreciate that, Senator. What I can tell you is I will commit myself to working with the leadership offices who are now engaged actively with this issue to ascertain what is the most appropriate and humane way forward.

Senator BLUMENTHAL. Thank you, Mr. Chairman.

Chair OSSOFF. Thank you, Senator Blumenthal. Senator Whitehouse is recognized for 5 minutes.

Senator WHITEHOUSE. Just—I won't take 5 minutes. This will be very quick. One will be a question for the record to Mr. Schroeder. That is, I would like to ask you to, when you get in there, get for me a description of what was done at OLC between the *McGahn* decision in 2019 and the *Vance* decision in 2019, and today's date, at OLC to reconsider the merits of the OLC opinions that were critiqued in those judicial decisions. Okay?

The purpose here is to test whether before I asked this question, OLC undertook any steps to reconsider its own undercut opinions in the wake of the judicial decisions, the Article III decisions that undercut them. Can you get me that information once you're in?

Mr. SCHROEDER. Understood. Yes, I will.

Senator WHITEHOUSE. Great. Thank you. Ms. Greenfeld, this is a process question. Many of the problems we've had with selective response to Committee questions and highly politicized selective response to Committee questions have come out of the FBI. As a former U.S. attorney, I'm aware of there's a certain amount of healthy rivalry, if you'll say, between the FBI and the DOJ. I heard it once said that the problem with the Department of Justice is that it doesn't understand that it works for the Federal Bureau of Investigation. There's always a bit of a tension there.

Do you, in your position as OLA at DOJ, oversee and control how the FBI responds to us? Or does that go through a separate channel that you do not oversee?

Ms. GREENFELD. There is some consultation when responding to requests. The FBI does write and the Director signs, or the head of the Office of Congressional Affairs, signs letters addressed to the FBI.

Senator WHITEHOUSE. Over at the FBI?

Ms. GREENFELD. Correct.

Senator WHITEHOUSE. We have to have the same conversation with the FBI Office of Legislative Affairs because you don't control the FBI's response to our requests. The FBI does that.

Ms. GREENFELD. We work with the FBI. There should not be, as you described, any kind of preferential answering or refusing to answer on any basis that's partisan in any way. That is the job of the office—

Senator WHITEHOUSE. Presumably if that—if this gets kicked up to the DAG's desk or the Attorney General's desk, at that point, the FBI has to conform to what the Attorney General and the DAG decide. That's correct?

Ms. GREENFELD. Yes. The Office of Legal—the Office of Legislative Affairs does have cooperation, and we work very closely with the FBI. We can do better. We should do better in that relationship.

Senator WHITEHOUSE. Great. It may take the Deputy or the Attorney General to make them do better. That's in the chain of command. I look forward to working with you in that structure, and I appreciate you clarifying all of that. Thank you very much, Chairman.

Ms. GREENFELD. Thank you, Senator.

Chair OSSOFF. Thank you, Senator Whitehouse. Thank you, again, to our panel. Before adjourning today's hearing, I will enter a number of letters into the record and make a few logistical notes.

We've received several letters of support for today's nominees, including letters of support for Judge Gelpi from the Federal BAR Association and Puerto Rico BAR Association; a letter of support for Judge Kelley from the Massachusetts Association of Hispanic Attorneys; letters of support for Ms. O'Hearn from among other organizations, the New Jersey State Bar Association and the Ironworkers Local Union 399; and a letter of support for Mr. Schroeder from more than 30 academics and former executive branch lawyers.

Questions for the record will be due to the nominees by 5 p.m. on Wednesday, June 30th. The record will likewise remain open until that time to submit letters and similar materials.

Thank you, again, to the nominees for your attendance and answers today.

With that, this hearing is adjourned.

[Whereupon, at 12:29 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

**Statement of Senator Patrick Leahy  
On the Nomination of Helaine Greenfeld  
to be Assistant Attorney General in the Justice Department's Office of Legislative Affairs  
June 23, 2021**

It gives me great pleasure to introduce Helaine Greenfeld this morning, nominated by President Biden to serve as Assistant Attorney General leading the Justice Department's Office of Legislative Affairs. Helaine has dedicated her career to public service in both the legislative and executive branches, but I take special pride in noting that Helaine's first job on Capitol Hill was as my counsel on this committee. Right from the beginning, I knew Helaine would accomplish great things, so it's no surprise that she's sitting before this Committee today.

After graduating at the top of her law school class at Georgetown Law, also my alma mater, Helaine quickly began climbing the ranks of the Department of Justice doing nominations focused work right at the intersection of the Senate and the Executive Branch. Helaine was an instrumental player in the confirmation of the late Justice Ruth Bader Ginsburg. It's no exaggeration to say the Helaine's tireless work to get Justice Ginsburg confirmed to the Supreme Court changed the world.

After rising up to become Deputy Assistant Attorney General in the Office Of Policy Development, Helaine then decided to take her formidable skills and utilize them in the U.S. Senate. She joined my Judiciary Committee team just as I took over as Chairman for the first time in 2001, serving as my Senior Nominations Counsel. As a brand new Judiciary Committee Chairman, I had a lot to learn, and Helaine was by my side during those formative years. She helped shape my thinking about the judiciary, its critical role in our democracy, and the importance of its independence.

As one of my top nominations counsels, Helaine guided me through two Supreme Court confirmations. One of those was the confirmation of Chief Justice Roberts. I'm proud to say that I crossed party lines to support Chief Justice Roberts' confirmation, because our Supreme Court – the crown jewel of our independent judiciary – is so much more important than petty partisanship. During these stressful confirmation processes, it was Helaine's wise counsel that always kept me focused on the big picture: ensuring that the best, brightest, and most qualified individuals received lifetime judgeships – regardless of party.

No matter how tense things got on Committee, Helaine's warmth and amazing sense of humor kept us all grounded. I recall walking into meetings where staff would be roaring with laughter at Helaine's jokes. She built genuine friendships on both sides of the aisle and never let politics get more important than people. She treated everybody with kindness and respect and I'm confident she would do the same in her new role.

Helaine would go on to do another tour of duty in the Justice Department and then return again to the Senate to serve as Chief Counsel to Senator Mazie Hirono, who will be singing Helaine's praises after me. Helaine feels a genuine call to public service. Whenever her talents were needed in service of our country, she answered the call. Her deep experience in both the executive and legislative branches has given her a profound appreciation for the important role

each branch of government plays. And she will bring that perspective to her new role whose central function is to ensure that the branches of government are working together.

I am so proud of Helaine. I feel very confident she will serve as Assistant Attorney General with dignity, honor, and a good sense of humor. I look forward to supporting her confirmation here in Committee and on the Senate Floor. Helaine – even though you’ve worked for a number of different bosses over the years, including now President Biden, I will always consider you a member of the Leahy family. I wish you the best as you take on this new endeavor to once again serve the American people.

**Senator Dick Durbin**  
**Chair, Senate Judiciary Committee**  
**Written Questions for Judge Gustavo Gelpi**  
**Nominee to the Court of Appeals for the First Circuit**  
**June 30, 2021**

1. Since your appointment to the District of Puerto Rico in 2006, you have presided over more than 2,100 civil cases and nearly 1,300 criminal cases. Notably, you have presided over 62 jury trials, including 37 criminal trials, and another seven bench trials. And you've issued more than 880 written opinions.

**How do you think your experience as a federal district court judge will inform your approach to serving on the First Circuit?**

Response: If confirmed, my fifteen-year experience as a district judge presiding over a considerable number of civil and criminal cases provides me with the unique perspective of personally and fully understanding what the record on appeal consists of. I have come to deeply value that in each case -no matter how complex or simple - to every party, the outcome thereof is the most important matter. I also understand the rights of every criminal defendant to due process and counsel, as well as that of the government in representing the people of the United States. Equally important, I recognize the quintessential constitutional role district judges as well as juries play in our system of justice. As an appellate judge, in reviewing the record below for errors of law, I would always be extremely mindful of all these principles.

As a district judge, I have handled complex civil and criminal litigation in multiple areas of the law, such as constitutional law, search and seizure, sentencing, civil rights, environmental matters, antitrust, police reform, contract, torts, insurance, bankruptcy, and copyright. My experience in such a wide range of areas allows me to confidently address the myriad of appellate issues that may come before me.

Above all, as I stated during my opening statement before the Judiciary Committee on June 23, 2021, if confirmed to the Court of Appeals for the First Circuit, I will continue to apply the Constitution and laws of the United States to all cases before me with the same passion and commitment as I have faithfully done as a district judge.

**Senator Grassley, Ranking Member**  
**Questions for the Record**  
**Judge Gustavo Gelpi**  
**Nominee to be United States Circuit Judge for the First Circuit**

1. During Senator Cruz’s questioning, you stated that you believed the *Insular Cases* were wrongfully decided, and that *Brown v. Board of Education* was correctly decided, but you refused to answer whether the decisions in *DC v. Heller* or *Citizens United v. FEC* were correctly or incorrectly decided.

You seemed to defend your refusal to give a view on *Heller* or *Citizens United* based on them being subject to litigation today. But as you said in response to one of my questions, the *Insular Cases* are currently being litigated in the Tenth Circuit and yet you have said that you think they were wrongly decided. In many ways the *Insular Cases* present a more sensitive situation in that no one is seriously seeking to overturn *Heller* or *Citizens United*—it’s merely their application that’s being litigated—whereas the continued validity of the *Insular Cases* is frequently challenged.

- a. Was *Heller* correctly decided?
- b. Was *Citizens United* correctly decided?

Response: *Citizens United* and *District of Columbia v. Heller* are binding Supreme Court precedent and if confirmed as a Circuit Judge, I must follow the same whenever applicable to a case that comes before the First Circuit. As a pending judicial nominee and a sitting federal judge it is generally inappropriate under the Code of Conduct for United States Judges to comment on the merits of said Supreme Court decisions.

2. If you won’t answer why *Heller* or *Citizens United* was correctly decided, on what basis is it acceptable under Canon 3 to give an opinion on the correctness of the *Insular Cases* but not on those cases?

Response: Prior judicial nominees over the years have made a few exceptions to the practice of avoiding comments on the merits of certain Supreme Court decisions, such as *Brown v. Board of Education*, which is referenced in the premise of Question 1. The holding in *Brown v. Board of Education*, as that in *Marbury v. Madison*, is beyond dispute and so firmly established that it is unlikely to come before the Supreme Court again.

I have expressed academic criticism on the *Insular Cases* doctrine in my book *THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT)*, and other academic articles which were all written as a “scholarly presentations made for purposes of legal education” pursuant to Canon 3A(6). In my book, I stated: “Over the years, various Supreme Court Justices, as well as appellate and district court judges, have voiced concerns about the continued validity of the *Insular Cases* doctrine.” *THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT)* 94 (2007). I then proceed to summarize and discuss those

concerns voiced by Justice John Marshall Harlan, Justice William J. Brennan Jr., and Judge Juan R. Torruella, who himself has used similar language. *See, e.g.* JUAN R. TORRUELLA, *THE SUPREME COURT AND PUERTO RICO: THE DOCTRINE OF SEPARATE AND UNEQUAL* 267-268 (1985); *see also* *Igartia v. United States*, 626 F.3d 592, 612 (1st Cir. 2010) (Torruella, J., concurring in part and dissenting in part) (citations omitted) (“As in the case of racial segregation, it is the courts that are responsible for the creation of this inequality.”). Notwithstanding my academic criticism, the *Insular Cases* doctrine constitutes binding Supreme Court precedent. I am bound by it as a district judge and if confirmed as a Circuit Judge, I would continue to adhere to it whenever applicable to a case that comes before the First Circuit. *See Boumediene v. Bush*, 553 U.S. 723 (2008) (applying the *Insular Cases* doctrine).

3. **In response to one of my questions you said that you have frequently applied the Constitution and laws regarding Puerto Rico in ways that “may be adverse to Puerto Rico’s citizens or status.” Please provide me with some examples.**

Response: In *United States v. Pedro-Vidal*, 371 F. Supp. 3d 57 (D.P.R. 2019), *aff’d* 991 F.3d 1 (1st Cir. 2021), a criminal case involving Federal Death Penalty Act of 1994, 18 U.S.C. §§ 3591-3598, the defendant sought to strike the death penalty on the ground that Puerto Ricans were disfranchised. I held that U.S. citizens in Puerto Rico could not rely on said argument to avoid the applicability of federal laws.

In *Club Gallístico de Puerto Rico Inc. v. United States*, 414 F. Supp. 3d 191 (D.P.R. 2019), *aff’d sub nom. Hernández-Gotay v. United States*, 985 F.3d 71 (1st Cir. 2021), I rejected the plaintiffs’ claim that Congress, under the Commerce Clause, could not regulate and ban cockfighting events, practiced in Puerto Rico since the late eighteenth century. In said case, I held that Congress had the authority to so legislate and that regardless of the enormous adverse economic impact to the island’s economy as a judge I was not a “super-legislator” who may review and repeal the work of Congress.

In *Consejo de Salud de Puerto Rico, Inc. v. United States*, 450 F. Supp. 3d 103 (D.P.R. 2020), *reconsideration denied*, Civil No. 18-1045, 2020 WL 1934447 (D.P.R. Apr. 22, 2020), I rejected the Government of Puerto Rico’s Spending Clause challenge to congressional Medicaid funding and held that the precise sum of such assignment was the sole prerogative of Congress in legislating over its territories.

4. A different example is *United States v. Vaello-Madero*. In that case you concluded that the status of Puerto Rico constituted “a citizenship apartheid.” This is consistent with how Justice Estrella described the views in your book according to a report: “[Estrella] [a]firmó que Gelpí reconoció que Puerto Rico constituye un ‘apartheid’ territorial, por el trato dado por el gobierno federal.”

- a. **Was Justice Estrella correct that you recognized that Puerto Rico constitutes a territorial “apartheid” because of its treatment by the federal government?**

Response: The direct quote in Question 4 comes from the newspaper article *Juez Gelpi analiza la historia de los territorios en su libro* published in *El Vocero* by Melissa Correa Velázquez on February 24, 2018. The same is press coverage from the presentation of my book, *The Constitutional Evolution of Puerto Rico and Other U.S. Territories (1898 - Present)*, which was written as a “scholarly presentation[] made for purposes of legal education” as provided in Canon 3A(6).

It is correct that I used the term “citizenship apartheid” in *United States v. Vaello Madero*, 356 F. Supp. 3d 208, 215 (D.P.R. 2019), *aff’d on other grounds*, 956 F.3d 12 (1st Cir. 2020), *cert. granted*, 141 S. Ct. 1462 (2021). To the best of my knowledge, the characterization that “Puerto Rico” constitutes a citizenship or political “apartheid” was first coined and used by the late Judge Juan R. Torruella in both his academic publications and judicial opinions. *See* Juan R. Torruella, *The Insular Cases: The Establishment of A Regime of Political Apartheid*, 29 U. Pa. J. Int’l L. 283, 347 (2007)(“The Supreme Court, as it did with Plessy, must step forward to correct the wrong it created by sanctioning the Insular Cases and their progeny. The continued vitality of these cases represents a constitutional antediluvian anachronism that has created a de jure and de facto condition of political *apartheid* for the U.S. citizens that reside in Puerto Rico and the other territories.”) (emphasis added); *see also United States v. Cotto-Flores*, 970 F.3d 17, 50 n. 24 (1st Cir. 2020), *cert. denied*, 141 S. Ct. 1121 (2021) (Torruella, J., concurring); *Aurelius Inv., LLC v. Puerto Rico*, 915 F.3d 838, 854 n. 12 (1st Cir. 2019), *rev’d and remanded sub nom. Fin. Oversight and Mgt. Bd. for Puerto Rico v. Aurelius Inv., LLC*, 140 S. Ct. 1649 (2020). Puerto Rico Supreme Court Justice Luis F. Estrella Martínez has also used said term in both his academic publications and judicial opinions. *See* Luis F. Estrella Martínez, *Puerto Rico: la evolución de un apartheid territorial*, 52 Rev. Jur. UIPR 425, 425 (2017); *see also Pueblo v. Torres Rivera*, 204 D.P.R. 288, 309 (P.R. 2020) (Estrella, J., dissenting).

I further note that Justice Estrella and the late Judge Torruella both presented my book in the event reported in the newspaper article referenced in Question 4.

**b. Given that public interpretation of your writings on the subject by another judge, do you think the United States Government should have been surprised when you concluded that its treatment of citizens in Puerto Rico constituted “apartheid” when the issue came before you?**

Response: As a pending judicial nominee and a sitting federal judge, it would be inappropriate under the Code of Conduct for United States Judges for me to comment as to how a party, litigating before me, reacted to my ruling. As mentioned in the preceding question, the term “apartheid” has also been used by Judge Toruella and Justice Estrella in academic publications and judicial opinions.

5. You once said, regarding your book, in an interview with the Puerto Rican newspaper *El Vocero*, “Constitucionalmente, hay un déficit democrático porque estamos a la merced de que el Congreso nos ayude. Muchas veces nos ayuda de manera bien benévola, otras veces



nos ayuda de otras maneras, otras veces nos discrimina. Pero, el problema es que aquí no tenemos participación en las altas esferas del gobierno federal como lo tienen los estados.”

- a. In which case has Congress helped Puerto Rico “in a very benevolent way”?
- b. In what ways has Congress “discriminated” against Puerto Rico?

Response: The direct quote in Question 5 comes from the newspaper interview titled *Libro de juez recoge historia de los territorios de EE. UU.* published in El Vocero by Melissa Correa Velázquez on December 27, 2017. The same was an interview I gave about my book, *THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT)*, which was written as a “scholarly presentation[] made for purposes of legal education” as provided in Canon 3A(6). In all interviews in connection to the promotion of my book, I reviewed and was exclusively guided by the Code of Conduct for United States Judges, its Commentary, and the Committee on Codes of Conduct Advisory Opinions, notably Committee on Codes of Conduct Advisory Opinion, No. 114: Promotional Activity Associated with Extrajudicial Writings and Publications (November 2014).

As to Questions 5(a) and (b), Chapter IX of my book provides examples to said questions. There I stated that: “Examples of notable and creative uses of this power [under the Territorial Clause] are discussed, such as the ability of a territory’s laws to supplant uniform federal maritime laws, the establishment and subsequent relinquishment of sovereignty over the territory located within another nation’s borders, and the transformation of an Article I court to an Article III court, absent formal statehood.” *THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT)* 271-72 (2017). I also noted that the same power “on the other hand, has allowed Congress to discriminate against the territory. For example, just as in any state, workers and employers in Puerto Rico are subject to the federal payroll tax, which funds Social Security and Medicare. However, U.S. citizens residing in Puerto Rico are eligible for fewer benefits under said program.” *Id.*

6. In that same interview you said, “Un ejemplo que vimos ahora es el efecto del huracán María, que la comisionada residente (Jenniffer González) está haciendo el trabajo de cinco congresistas y dos senadores y si aquí ahora mismo esto fuera un estado con esa participación congresional estoy seguro que aquí habría mucho más ayuda y más beneficios.” As a sitting federal judge what was your basis for assuming that Puerto Rico, as a State, “would have received much more help and benefits” than it did in the wake of Hurricane Maria?

Response: The direct quote in Question 6 comes from the newspaper interview titled *Libro de juez recoge historia de los territorios de EE. UU.* published in El Vocero by Melissa Correa Velázquez on December 27, 2017. The same was an interview I gave about my book *THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT)*, which was written as a “scholarly presentation[] made for purposes of legal education” as provided in Canon 3A(6). In all interviews in connection to the promotion of my book, I reviewed and was exclusively guided by the Code of

Conduct for United States Judges, its Commentary, and the Committee on Codes of Conduct Advisory Opinions, notably Committee on Codes of Conduct Advisory Opinion, No. 114: Promotional Activity Associated with Extrajudicial Writings and Publications (November 2014).

It is a fact that Puerto Rico only has one non-voting congressional representative, while States in contrast have two senators as well as representatives for each congressional district.

7. **Now-Senator Rick Scott has said of that tragic event, “As Governor and now as Senator, I have stood with the Puerto Rican community, both in Florida and on the Island, and worked to provide every resource available to aid in their recovery.” Do you agree with his assessment of his political efforts? If not, why not?**

Response: Personally, I am not familiar with the quoted statement. As a citizen affected by Hurricane María, I appreciate the efforts of every person and organization that aided the Puerto Rican community, including then-Florida Governor and now-Senator Rick Scott.

8. **Senator Marco Rubio wrote to President Trump in the wake of that tragic event, saying, “It is critical that the federal government continue our commitment to help our fellow American citizens in Puerto Rico recover in the aftermath of Hurricane Maria. We must ensure the stability of displaced Puerto Ricans, affording them the opportunity to return if they wish, or the prospects to work and provide for their families on the mainland. Therefore, I urge your administration’s continued attention to their plight, so the island can continue to receive the vital assistance it needs to recover.” Do you agree that Senator Rubio sought to ensure help and benefits for the people of Puerto Rico following Hurricane Maria?**

Response: Personally, I am not familiar with the quoted statement. As a citizen affected by Hurricane María, I appreciate the efforts of every person and organization that aided the Puerto Rican community, including Senator Marco Rubio.

9. **The article in *El Vocero* continues: “Asimismo, el juez federal indicó que si Puerto Rico fuera una nación independiente tendría la facultad de hacer tratados internacionales con otros países de Latinoamérica y de Europa. ‘Podríamos echar para un lado o para el otro y ante la situación territorial en la que estamos, no nos permite ni fu ni fa’, puntualizó.”**

Response: The direct quote in Question 9 comes from the newspaper interview titled *Libro de juez recoge historia de los territorios de EE. UU.* published in *El Vocero* by Melissa Correa Velázquez on December 27, 2017. The same was an interview I gave about my book, *THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT)*, which was written as a “scholarly presentation[] made for purposes of legal education” as provided in Canon 3A(6). In all interviews in connection to the promotion of my book, I reviewed and was exclusively guided by the Code of

Conduct for United States Judges, its Commentary, and the Committee on Codes of Conduct Advisory Opinions, notably Committee on Codes of Conduct Advisory Opinion, No. 114: Promotional Activity Associated with Extrajudicial Writings and Publications (November 2014).

- a. **As “a federal judge,” what “other Latin American and European countries” did you have in mind as ones Puerto Rico could enter into treaties with as an independent country?**

Response: This was a general comment to the effect that independent nations, like the United States, can enter into treaties with other nations.

- b. **When you “pointed out” in that context, “We could go to one side or the other,” which sides did you have in mind?**

Response: In addition to the territorial status, that phrase referred to the historically and legally recognized status options, which would be to become a State, or attain sovereign status. I did not, however, advocate for any particular political status.

- c. **Who’s “we”?**

Response: The people of Puerto Rico.

10. **During my questioning at your hearing, you would not commit to recusing yourself in cases that involve issues you have previously expressed opinions on in your written scholarship, in particular Puerto Rico’s status. In what situations do you believe recusal would be appropriate when faced with an issue similar to those for which you advocate in your writings?**

- a. **If a case involving an issue similar to those presented in the *Insular Cases* comes before you on the First Circuit, will you commit to recusing yourself?**

Response: As I stated during my confirmation hearing on June 23, 2021, and have done for the past 20 years as a federal judge, I will follow the Code of Judicial Conduct for United States Judges and 28 U.S.C. § 455 concerning the legal standards that pertain to recusal, to determine, on a case-by-case basis, whether recusal is warranted.

- b. **If you will not commit to recusing yourself, will you commit to faithfully applying the *Insular Cases* as precedent?**

Response: Yes. Notwithstanding my academic criticism, the *Insular Cases* doctrine constitutes binding Supreme Court precedent and, if confirmed as a Circuit Judge, I would continue to adhere to it whenever applicable to a case that comes before the First Circuit. See *Boumediene v. Bush*, 553 U.S. 723 (2008) (applying the *Insular*

*Cases doctrine).*

- 11. If the People of Puerto Rico and Congress were to agree in the future to grant Puerto Rico independence (as happened with Cuba in 1901 and the Philippines in 1946) or to enter into a free association (as has happened in 1986 with the Republics of Micronesia and the Marshall Islands, and in 1994 with the Republic of Palau), what effect would this have on life tenure for Puerto Rico's judges under Article III?**

Response: This is a hypothetical situation that has no precedent in history, as Congress neither established a federal court in Cuba (while a U.S. protectorate) or the Philippines (while a territory and Commonwealth). Nor has Congress established a federal court in any of the free-associated states (Republics of Micronesia, Marshall Islands, and Palau). The only other former territory to have a federal court was the Panama Canal Zone, however, the judges who sat there were originally non-life tenured Article IV judges and later visiting Article III judges. As such, the situation described in the hypothetical Question 11 did not arise when the court was abolished following the 1979 treaty between the United States and Panama reverting the Canal Zone to the latter.

As a pending judicial nominee and a sitting federal judge, it would be inappropriate, under the Code of Conduct for United States Judges for me to opine as to the hypothetical legal question as to the effect that independence for Puerto Rico would have for Article III judges in the District of Puerto Rico.

- 12. Currently income earned in Puerto Rico enjoys special tax status under § 933 of the Internal Revenue Code.**

- a. Wouldn't a change in Puerto Rico's political status have an effect on § 933?**
- b. If so, shouldn't any judges who enjoy the tax benefits conferred by § 933 recuse themselves from cases involving Puerto Rico's political status?**

Response: As a pending judicial nominee and a sitting federal judge, it would be inappropriate, under the Code of Conduct for United States Judges for me to opine as to the hypothetical legal question that "a change in Puerto Rico's political status [would] have an effect on § 933." I do recognize that § 933 is a federal law and as such Congress has the authority to amend or repeal the same.

As I stated during my confirmation hearing on June 23, 2021, and have done so for the past 20 years as a federal judge, I will follow the Code of Judicial Conduct for United States Judges and 28 U.S.C. § 455 concerning the legal standards that pertain to recusal, to determine, on case-by-case basis, whether recusal is warranted.

- 13. During your hearing, you stated that there is no Supreme Court precedent granting the courts the authority to admit new states into the Union. As a matter of first impression, do you believe the courts have this authority?**

Response: As I stated during my confirmation hearing on June 23, 2021, the text of the Constitution, specifically Article IV Section 3 provides that: “New states may be admitted by the Congress into this union; but no new states shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.” U.S. Const. Art. IV, § 3. I have consistently recognized this constitutional provision in my rulings. *See, e.g. United States v. Pedro-Vidal*, 371 F. Supp. 3d 57, 59 (D.P.R. 2019), *aff’d* 991 F.3d 1 (1st Cir. 2021) (“It is not within the Article III purview and whim of federal courts to order Puerto Rico admitted to the Union as a State or have its commonwealth status changed in any form so that a more democratic form of government ensue. This lies within the political process.”).

**14. Assuming, for the sake of argument, that Puerto Rico’s territorial status is truly “apartheid,” wouldn’t the Supreme Court be abetting this injustice if it failed to make Puerto Rico a State?**

Response: As a pending judicial nominee and a sitting federal judge, it would be inappropriate, under the Code of Conduct for United States Judges for me to opine as any given action or inaction by the Supreme Court.

**15. I asked you at your hearing about the different approach taken between you and Judge Pérez-Giménez as it relates to anticipating developments in Supreme Court doctrine. I noted how in *Vaello-Madero* you set aside a Supreme Court judgment that Congress could prevent Social Security Disability payments to Puerto Rico by saying your court “cannot simply bind itself to the legal status quo of 1980, and ignore important subsequent developments in the constitutional landscape.” But at the same time, Judge Pérez-Giménez responded to one of those same developments in the Puerto Rico gay marriage case by saying that he “cannot see how any ‘doctrinal developments’ at the Supreme Court change the outcome of [prior Supreme Court precedent] or permit a lower court to ignore it.” You didn’t answer because your case is currently before the Supreme Court.**

**But I didn’t ask you about your case. I asked you about Judge Pérez-Giménez. Again, he waited for the Supreme Court to overturn its precedent; he didn’t do it at the trial court. Was Judge Pérez-Giménez wrong to wait?**

Response: Judge Pérez-Giménez ruled on the validity of same-sex marriage before the Supreme Court decided *Obergefell*. While his ruling was on appeal before the First Circuit, the Supreme Court issued the *Obergefell* decision. Accordingly, the First Circuit, vacated and remanded said ruling. *See Conde-Vidal v. García-Padilla*, 54 F. Supp. 3d 157 (D.P.R. 2014), *vacated and remanded sub nom. Conde-Vidal v. Rius-Armendariz*, Case No. 14-2184, 2015 WL 10574261 (1st Cir. July 8, 2015), *abrogated by Obergefell v. Hodges*, 576 U.S. 644 (2015).

As a pending judicial nominee and a sitting federal judge, it would be inappropriate, under the Code of Conduct for United States Judges for me to opine on whether or how another district judge should or should have not issued a ruling in a particular matter.

**16. As a general matter, if a judge encounters unsettled Supreme Court precedent, should he anticipate where the Supreme Court will end up, or simply do his best to apply what the Supreme Court has already held?**

Response: Having served as a federal judge for 20 years, it is not my role to resolve cases predicting how exactly the Supreme Court will rule on a future matter not yet before its consideration. If confirmed as a Circuit Judge, I must continue to apply binding Supreme Court precedent. As a pending judicial nominee and a sitting federal judge, it would be inappropriate, under the Code of Conduct for United States Judges for me to opine as to the hypothetical scenario without any factual context.

**17. At your hearing you repeatedly defended your analysis of the *Insular Cases* by referencing the racist attitudes of some of the Supreme Court Justices who heard the cases. At one point you referenced that it was the same Court (more or less) that issued the infamous *Plessy v. Ferguson* decision. Many Americans surely held racist attitudes at the turn of the 20th Century and I do not defend those views. But this same Court also issued the decision in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), which held that the Fourteenth Amendment granted birthright citizenship to the son of Chinese aliens born in the United States.**

- a. Was *Wong Kim Ark* correctly decided?**
- b. Is the doctrine of birthright citizenship—like that of unincorporated territories—flawed because it was first articulated by the same Court that handed down *Plessy v. Ferguson*?**

Response: *Wong Kim Ark* constitutes a binding Supreme Court precedent and if confirmed as a Circuit Judge, I must continue to follow it whenever applicable to a case that comes before the First Circuit. The Tenth Circuit recently considered *Wong Kim Ark* in *Fitisemanu v. United States*, Case No. 20-4017, 2021 WL 2431586 (10th Cir. June 15, 2021) in regard to persons born in American Samoa. As a pending judicial nominee and a sitting federal judge, it would be generally inappropriate under the Code of Conduct for United States Judges, to comment on the merits of said Supreme Court decision.

I have expressed academic criticism on the *Insular Cases* doctrine in my book *THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT)*, and other academic articles which were all written as a “scholarly presentations made for purposes of legal education” pursuant to Canon 3A(6). In my book, I stated: “Over the years, various Supreme Court Justices, as well as appellate and district court judges, have voiced concerns about the continued validity of the *Insular Cases* doctrine.” *THE CONSTITUTIONAL*

EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT) 94 (2007). I then proceed to summarize and discuss those concerns voiced by Justice John Marshall Harlan, Justice William J. Brennan Jr., and Judge Juan R. Torruella, who himself has used similar language. *See, e.g.* JUAN R. TORRUELLA, THE SUPREME COURT AND PUERTO RICO: THE DOCTRINE OF SEPARATE AND UNEQUAL 267-268 (1985); *see also* *Igartia v. United States*, 626 F.3d 592, 612 (1st Cir. 2010) (Torruella, J., concurring in part and dissenting in part) (citations omitted) (“As in the case of racial segregation, it is the courts that are responsible for the creation of this inequality.”). Notwithstanding my academic criticism, the *Insular Cases* doctrine constitutes binding Supreme Court precedent. I am bound by it as a district judge and if confirmed as a Circuit Judge, I would continue to adhere to it whenever applicable to a case that comes before the First Circuit. *See Boumediene v. Bush*, 553 U.S. 723 (2008) (applying the *Insular Cases* doctrine).

18. Substantially the same Court that handed down *Plessy* and the *Insular Cases* handed down *Swift & Co. v. United States*, 196 U.S. 375 (1905), implicitly overturning *E.C. Knight* and upholding the ability of Congress to regulate interstate monopolies under the Commerce Clause when President Roosevelt and Attorney General Knox went after the “beef trust.”

- a. Was *Swift* correctly decided?
- b. Is the doctrine of federal competition law—like that of unincorporated territories—flawed because it was first articulated by the same Court that handed down *Plessy v. Ferguson*?

Response: *Swift* constitutes a binding Supreme Court precedent and if confirmed as a Circuit Judge, I must continue to follow it whenever applicable to a case that comes before the First Circuit. As a pending judicial nominee and a sitting federal judge, it would be generally inappropriate under the Code of Conduct for United States Judges, to comment on the merits of said Supreme Court decision.

I have expressed academic criticism on the *Insular Cases* doctrine in my book THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT), and other academic articles which were all written as a “scholarly presentations made for purposes of legal education” pursuant to Canon 3A(6). In my book, I stated: “Over the years, various Supreme Court Justices, as well as appellate and district court judges, have voiced concerns about the continued validity of the *Insular Cases* doctrine.” THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT) 94 (2007). I then proceed to summarize and discuss those concerns voiced by Justice John Marshall Harlan, Justice William J. Brennan Jr., and Judge Juan R. Torruella, who himself has used similar language. *See, e.g.* JUAN R. TORRUELLA, THE SUPREME COURT AND PUERTO RICO: THE DOCTRINE OF SEPARATE AND UNEQUAL 267-268 (1985); *see also* *Igartia v. United States*, 626 F.3d 592, 612 (1st Cir. 2010) (Torruella, J., concurring in part and dissenting in

part) (citations omitted) (“As in the case of racial segregation, it is the courts that are responsible for the creation of this inequality.”). Notwithstanding my academic criticism, the *Insular Cases* doctrine constitutes binding Supreme Court precedent. I am bound by it as a district judge and if confirmed as a Circuit Judge, I would continue to adhere to it whenever applicable to a case that comes before the First Circuit. See *Boumediene v. Bush*, 553 U.S. 723 (2008) (applying the *Insular Cases* doctrine).

19. Substantially the same Court that handed down *Plessy* and the *Insular Cases* handed down *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), holding that mandatory vaccination was within the purview of the plenary police powers of States.

- a. Was *Jacobson* correctly decided?
- b. Is the doctrine of police power, which underlies almost all public health regimes—like that of unincorporated territories—flawed because it was first articulated by the same Court that handed down *Plessy v. Ferguson*?

Response: *Jacobson* constitutes a binding Supreme Court precedent and if confirmed as a Circuit Judge, I must continue to follow it whenever applicable to a case that comes before the First Circuit. As a pending judicial nominee and a sitting federal judge, it would be generally inappropriate under the Code of Conduct for United States Judges, to comment on the merits of said Supreme Court decision.

I have expressed academic criticism on the *Insular Cases* doctrine in my book *THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT)*, and other academic articles which were all written as a “scholarly presentations made for purposes of legal education” pursuant to Canon 3A(6). In my book, I stated: “Over the years, various Supreme Court Justices, as well as appellate and district court judges, have voiced concerns about the continued validity of the *Insular Cases* doctrine.” *THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT)* 94 (2007). I then proceed to summarize and discuss those concerns voiced by Justice John Marshall Harlan, Justice William J. Brennan Jr., and Judge Juan R. Torruella, who himself has used similar language. See, e.g. JUAN R. TORRUELLA, *THE SUPREME COURT AND PUERTO RICO: THE DOCTRINE OF SEPARATE AND UNEQUAL* 267-268 (1985); see also *Igartia v. United States*, 626 F.3d 592, 612 (1st Cir. 2010) (Torruella, J., concurring in part and dissenting in part) (citations omitted) (“As in the case of racial segregation, it is the courts that are responsible for the creation of this inequality.”). Notwithstanding my academic criticism, the *Insular Cases* doctrine constitutes binding Supreme Court precedent. I am bound by it as a district judge and if confirmed as a Circuit Judge, I would continue to adhere to it whenever applicable to a case that comes before the First Circuit. See *Boumediene v. Bush*, 553 U.S. 723 (2008) (applying the *Insular Cases* doctrine).



20. Substantially the same Court that handed down *Plessy* and the *Insular Cases* handed down *Muller v. Oregon*, 208 U.S. 412 (1908), holding that certain state labor laws capping the number of hours women could work didn't violate the Fourteenth Amendment.

- a. Was *Muller* correctly decided?
- b. Is the constitutionality of state labor laws—like that of unincorporated territories—flawed because it was first articulated by the same Court that handed down *Plessy v. Ferguson*?

Response: *Muller* constitutes a binding Supreme Court precedent and if confirmed as a Circuit Judge, I must continue to follow it whenever applicable to a case that comes before the First Circuit. As a pending judicial nominee and a sitting federal judge, it would be generally inappropriate under the Code of Conduct for United States Judges, to comment on the merits of said Supreme Court decision.

I have expressed academic criticism on the *Insular Cases* doctrine in my book THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT), and other academic articles which were all written as a “scholarly presentations made for purposes of legal education” pursuant to Canon 3A(6). In my book, I stated: “Over the years, various Supreme Court Justices, as well as appellate and district court judges, have voiced concerns about the continued validity of the *Insular Cases* doctrine.” THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT) 94 (2007). I then proceed to summarize and discuss those concerns voiced by Justice John Marshall Harlan, Justice William J. Brennan Jr., and Judge Juan R. Torruella, who himself has used similar language. *See, e.g.* JUAN R. TORRUELLA, THE SUPREME COURT AND PUERTO RICO: THE DOCTRINE OF SEPARATE AND UNEQUAL 267-268 (1985); *see also* *Igartúa v. United States*, 626 F.3d 592, 612 (1st Cir. 2010) (Torruella, J., concurring in part and dissenting in part) (citations omitted) (“As in the case of racial segregation, it is the courts that are responsible for the creation of this inequality.”). Notwithstanding my academic criticism, the *Insular Cases* doctrine constitutes binding Supreme Court precedent. I am bound by it as a district judge and if confirmed as a Circuit Judge, I would continue to adhere to it whenever applicable to a case that comes before the First Circuit. *See Boumediene v. Bush*, 553 U.S. 723 (2008) (applying the *Insular Cases* doctrine).

21. When the American Samoa Government relies on the *Insular Cases* to defend U.S. law (as it has in the D.C. and Tenth Circuits), is that racist?

Response: As I stated during my confirmation hearing on June 23, 2021, *Fitisemamu v. United States*, Case No. 20-4017, 2021 WL 2431586 (10th Cir. June 15, 2021), in which the American Samoa Government relied on the *Insular Cases*, is a pending case. As a judicial nominee and a sitting federal judge, it would be generally inappropriate under the Code of Conduct for United States Judges, to comment on the merits of said decision.

**22. Do you believe that all district and circuit court judges must apply Supreme Court precedent, regardless of their personal opinions on that precedent?**

Response: Yes.

**23. Throughout your book, you make reference to existing precedent establishing the distinction between incorporated and unincorporated U.S. territories being “pure judicial invention, with...no basis in the Constitution and...contrary to all judicial precedent.” In fact, in your *Consejo* opinion, you go as far as to say that “Congress...is no longer justified in treating Puerto Rico as an unincorporated territory of dissimilar traditions and institutions, when the Constitutional reality is otherwise.” Are you attempting to say that existing Supreme Court precedent is no longer valid?**

Response: Only the Supreme Court can overturn its own precedent and decide it is “no longer valid.” Therefore, notwithstanding my academic criticism, the *Insular Cases* doctrine constitutes binding Supreme Court precedent. I am bound by it as a district judge and if confirmed as a Circuit Judge, I would continue to adhere to it whenever applicable to a case that comes before the First Circuit. See *Boumediene v. Bush*, 553 U.S. 723 (2008) (applying the *Insular Cases* doctrine).

I note as a recent example that in two 2020 rulings, issued subsequent to *Consejo de Salud Playa de Ponce v. Rullán*, 586 F. Supp. 2d 22 (D.P.R. 2008) referenced in the premise of Question 23, I held that: “The parties devote much of their arguments to the constitutional status of Puerto Rico vis-à-vis the United States. It is unnecessary to address the same at this time. The Commonwealth, whether incorporated or unincorporated is nonetheless a territory. It is not the fifty first member of the Union within the constitutional definition of the term ‘State.’ Cf. *United States v. Maldonado-Burgos*, 844 F. 3d 339 (1st Cir. 2018). As such, the Commonwealth’s assignment of Medicaid funds is the sole prerogative of Congress. That is, because constitutionally speaking, Congress is not legislating for one of the States, but rather, as to a territory.” *Consejo de Salud de Puerto Rico, Inc. v. United States*, 450 F. Supp. 3d 103, 104-05 (D.P.R. 2020), *reconsideration denied*, Civil No. 18-1045, 2020 WL 1934447 (D.P.R. Apr. 22, 2020); see also *Consejo de Salud de Puerto Rico, Inc. v. United States*, Civil No. 18-1045, 2020 WL 1934447, at \*1 (D.P.R. Apr. 22, 2020) (“[It is] the constitutional reality that Puerto Rico in 2020 remains a territory of the United States, albeit [it] be incorporated or unincorporated. When the Court decided the original *Consejo* case in 2008 and 2009 the Supreme Court had not yet decided *Puerto Rico v. Sánchez Valle*, 136 S. Ct. 1863 (2016). As such, the Court relied on existing Circuit precedent, to wit primarily, *Cordova & Simonpietri Ins. Agency v. Chase Manhattan Bank*, 649 F. 2d 36 (1st Cir. 1981). Back then, the constitutional landscape permitted the Commonwealth’s argument. Not now.”)

**24. What other Supreme Court precedents are no longer valid?**

Response: Only the Supreme Court can overturn its own precedent and decide it is “no longer valid.” Therefore, if confirmed as a Circuit Judge, I would continue to adhere to binding Supreme Court precedents.

**25. What is the constitutional basis for the “undue burden” test established in *Planned Parenthood v. Casey*?**

Response: In *Planned Parenthood of S.E. Pennsylvania v. Casey*, 505 U.S. 833 (1992), the Supreme Court held that the constitutional protection of a woman’s decision to terminate her pregnancy derives from the Due Process Clause of the Fourteenth Amendment.

**26. What was the constitutional basis of the “trimester framework” established in *Roe v. Wade*?**

Response: In *Roe v. Wade*, 410 U.S. 113 (1973) the Supreme Court held that the constitutional protection of a woman’s decision to terminate her pregnancy derives from the Due Process Clause of the Fourteenth Amendment.

**27. What is the constitutional basis for the Exclusionary Rule found in *Weeks v. United States*?**

Response: In *Weeks v. United States*, 232 U.S. 383 (1914), the Supreme Court held that in a federal prosecution the Fourth Amendment bars the use of evidence secured by virtue of a warrantless search of a private residence.

**28. What is the constitutional basis for Qualified Immunity found in *Pierson v. Ray*?**

Response: In *Pierson v. Ray*, 386 U.S. 547 (1967), the Supreme Court held that the Civil Rights Act of 1871, codified by 42 U.S.C. § 1983, provides qualified immunity to government officials who reasonably believe they are acting under a valid law.

**29. If a case comes before you in the First Circuit, will you apply existing Supreme Court precedent, which creates the distinction between incorporated and unincorporated territories, even though you have previously stated that you believe such a distinction has no basis in the Constitution?**

Response: Yes. If confirmed as a Circuit Judge, I would continue to adhere to binding Supreme Court precedent distinguishing incorporated and unincorporated territories. See *Boumediene v. Bush*, 553 U.S. 723 (2008) (applying the *Insular Cases* doctrine).

I note as a recent example that in two 2020 rulings, issued subsequent to *Consejo de Salud Playa de Ponce v. Rullán*, 586 F. Supp. 2d 22 (D.P.R. 2008) referenced in the premise of Question 23, I held that: “The parties devote much of their arguments to the

constitutional status of Puerto Rico vis-à-vis the United States. It is unnecessary to address the same at this time. The Commonwealth, whether incorporated or unincorporated is nonetheless a territory. It is not the fifty first member of the Union within the constitutional definition of the term ‘State.’ *Cf. United States v. Maldonado-Burgos*, 844 F. 3d 339 (1st Cir. 2018) (distinguishing commonwealth status from a legislative intent perspective). As such, the Commonwealth’s assignment of Medicaid funds is the sole prerogative of Congress. That is, because constitutionally speaking, Congress is not legislating for one of the States, but rather, as to a territory.” *Consejo de Salud de Puerto Rico, Inc. v. United States*, 450 F. Supp. 3d 103, 104-05 (D.P.R. 2020), *reconsideration denied*, Civil No. 18-1045, 2020 WL 1934447 (D.P.R. Apr. 22, 2020); *see also Consejo De Salud De Puerto Rico, Inc. v. United States*, Civil No. 18-1045, 2020 WL 1934447, at \*1 (D.P.R. Apr. 22, 2020) (“[It is] the constitutional reality that Puerto Rico in 2020 remains a territory of the United States, albeit be incorporated or unincorporated. When the Court decided the original *Consejo* case in 2008 and 2009 the Supreme Court had not yet decided *Puerto Rico v. Sánchez Valle*, 136 S. Ct. 1863 (2016). As such, the Court relied on existing Circuit precedent, to wit primarily, *Cordova & Simonpietri Ins. Agency v. Chase Manhattan Bank*, 649 F. 2d 36 (1st Cir. 1981). Back then, the constitutional landscape permitted the Commonwealth’s argument. Not now.”)

**30. What practical rule would you set forth that allows lower-court judges to evaluate “pure judicial inventions[s]” from the Supreme Court when confronted by them?**

Response: As a pending judicial nominee and a sitting federal judge, it would be inappropriate under the Code of Conduct for United States Judges, to respond to this question.

As noted in previous response, I reiterate that the direct quote in Question 30 comes from the book *THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT)*, which I authored and was written as a “scholarly presentations made for purposes of legal education” pursuant to Canon 3A(6). In my book, I stated: “Over the years, various Supreme Court Justices, as well as appellate and district court judges, have voiced concerns about the continued validity of the *Insular Cases* doctrine.” *THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT)* 94 (2007). I then proceed to summarize and discuss those concerns voiced by Justice John Marshall Harlan, Justice William J. Brennan Jr., and Judge Juan R. Torruella, who himself has used similar language. *See, e.g. JUAN R. TORRUELLA, THE SUPREME COURT AND PUERTO RICO: THE DOCTRINE OF SEPARATE AND UNEQUAL* 267-268 (1985); *see also Igartúa v. United States*, 626 F.3d 592, 612 (1st Cir. 2010) (Torruella, J., concurring in part and dissenting in part) (citations omitted) (“As in the case of racial segregation, it is the courts that are responsible for the creation of this inequality.”). Notwithstanding my academic criticism, the *Insular Cases* doctrine constitutes binding Supreme Court precedent. I am bound by it as a district judge and if confirmed as a Circuit Judge, I would continue to adhere to it whenever applicable to a case that comes before the First Circuit. *See Boumediene v. Bush*, 553 U.S. 723 (2008) (applying the *Insular Cases*

doctrine).

**31. In your book, you include an article from the late Judge Juan Torruella that “dissents from [the]...celebration [of the Constitution].” Do you think the Constitution is worth celebrating?**

Response: The full direct quote of the article written by the late Judge Torruella included in my book reads as follows: “Although I join the exaltation of the Constitution and the ideals for which it stands, I respectfully dissent from this bicentennial celebration because the Constitution is not equally applied to all of its citizens, and in particular to the residents of Puerto Rico and other territories.” *THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT)* 52 (2007). As a proud and committed fourth generation United States citizen, I have always celebrated our Constitution and its significance to all citizens of our Nation. As Chief Judge of the United States District Court of the District of Puerto Rico, I have continued the tradition of commemorating Constitution Day each year with a series of public events at the Court.

**32. In *Igartua de la Rosa v. United States*, you argued on behalf of Puerto Rico that the courts are permitted to enact policy where the legislative and executive branches of government fail to act. Do you still hold this position today?**

Response: As Solicitor General of Puerto Rico, I represented the Puerto Rico government in *Igartúa de la Rosa v. United States*, 229 F.3d 80 (1st Cir. 2000), arguing that U.S. citizens residing in Puerto Rico enjoyed a fundamental right to vote in presidential elections.

Regarding the premise of Question 32 that “courts are permitted to enact policy where the legislative and executive branches of government fail to act,” I note that this statement was not made in the brief I filed as Solicitor General. This statement was rather made by Judge Torruella in his concurring opinion. *See Igartúa de la Rosa v. United States*, 229 F.3d 80, 90 (1st Cir. 2000) (Torruella, J., concurring) (“It may be that the federal courts will be required to take extraordinary measures as necessary to protect discrete groups completely under the sovereignty and dominion of the United States.”) (citations and internal quotations marks omitted). For the last 20 years, I have served as a federal judge and not as an advocate. As a pending judicial nominee and a sitting federal judge, any personal views that I might have regarding this legal issue have no bearing as I would adhere to Supreme Court and First Circuit precedent on this matter.

**33. Do you believe that it is the province of the judiciary to extend the right to vote in presidential elections to the territories where Congress has chosen not to, as you argued in *Igartua*?**

Response: As a pending judicial nominee and a sitting federal judge, any personal views that I might have regarding this hypothetical legal question have no bearing as I would continue to adhere to Supreme Court and First Circuit precedent on this matter.

**34. In that case you chided the United States, saying, “This elemental error of the appellant stems from its rigid approach to the development of individual constitutional rights.”**

- a. Should the development of individual constitutional rights be “flexible”?**
- b. What forms the constitutional basis of “flexible” individual rights?**

Response: As Solicitor General of Puerto Rico, I represented the Puerto Rico government in *Igartúa de la Rosa v. United States*, 229 F.3d 80 (1st Cir. 2000), arguing that U.S. citizens residing in Puerto Rico enjoyed a fundamental right to vote in presidential elections. It was in said capacity that I filed a brief containing the direct quote in the premise of Questions 34a and 34b. For the last 20 years, I have served as a federal judge and not as an advocate. As a pending judicial nominee and a sitting federal judge, it would be inappropriate under the Code of Conduct for United States Judges for me to opine as to these hypothetical legal questions.

**35. Would you describe a method of interpreting enumerated individual constitutional rights that depends on their original public meaning at the time of their enumeration as “rigid”?**

Response: The Supreme Court has held that the Constitution protects certain rights that are not specifically enumerated in the Constitution, in cases such as *Griswold v. Connecticut*, 381 U.S. 479 (1965) and *Roe v. Wade*, 410 U.S. 113 (1973). According to the Supreme Court, the Due Process Clauses of the Fifth and Fourteenth Amendments are the primary sources for the recognition of unenumerated rights. If confirmed as a Circuit Judge, I must continue to follow said binding Supreme Court precedent.

As a pending judicial nominee and a sitting federal judge, it would be inappropriate under the Code of Conduct for United States Judges for me to opine as to the hypothetical question asking to describe “a method of interpreting enumerated individual constitutional rights that depends on their original public meaning at the time of their enumeration as ‘rigid’.”

**36. Would you describe a method of interpreting unenumerated individual constitutional rights that depends on them being “deeply rooted in the nation’s history” as “rigid”?**

Response: Under binding Supreme Court precedent, the Due Process Clause 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,” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal quotation marks and citations omitted). As a pending judicial nominee and a sitting federal judge, it would be inappropriate under the Code of Conduct for United States Judges for me to opine as to the hypothetical question asking to describe “a method of interpreting enumerated individual constitutional rights that depends on them being “deeply rooted in the nation’s history” as ‘rigid’.” If confirmed as a Circuit Judge, I must continue to follow binding Supreme Court precedents.

37. **Do you agree with the following proposition: “Equal Protection and Due Process are fundamental rights afforded to every American, including those who because of their age are still in their mothers’ wombs. As such, state legislation that creates a citizenship apartheid based on stage of development goes against this very concept. It is in the Court’s responsibility to protect these rights if the other branches do not.” If not, why not?**

Response: *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of S.E. Pennsylvania v. Casey*, 505 U.S. 833 (1992), constitute binding Supreme Court precedent regarding the constitutional protection of a woman’s decision to terminate her pregnancy. If confirmed as a Circuit Judge, I must continue to follow the same whenever applicable to a case that comes before the First Circuit. As a pending judicial nominee and a sitting federal judge, it would be inappropriate under the Code of Conduct for United States Judges for me to opine as to the hypothetical legal question without any factual context.

38. **In your opinion in *United States v. Pedro-Vidal*, you wrote:**

The more profound conundrum, however, is the fact that, unlike United States citizens in the States, those in Puerto Rico have never elected federal lawmakers, nor voted for the federal executive. As a corollary, United States citizens in Puerto Rico do not participate through elected officials in the process of nominating and confirming the Attorney General, nor the United States Attorney and District Judges in Puerto Rico. These federal officials all participate directly in death penalty prosecution and trial of defendant.

Such electoral disenfranchisement and lack of participation in federal affairs is without question undemocratic and unacceptable in a Nation that was founded over two hundred and forty-three (243) years ago on the sacrosanct principle of consent of the governed.

**You nevertheless held against the criminal defendant in his claim that his lack of representation made a possible capital conviction inconsistent with Due Process. On what law or judicial precedent did you base the opinion that “[s]uch electoral disenfranchisement and lack of participation in federal affairs is without question undemocratic and unacceptable”?**

Response: The direct block quote referenced in Question 38 was made in the context of addressing the arguments presented by the parties. After making such assertion, I asked the following rhetorical question in my ruling: “Is such territorial predicament unconstitutional?” *United States v. Pedro-Vidal*, 371 F. Supp. 3d 57, 59 (D.P.R. 2019), *aff’d* 991 F.3d 1 (1st Cir. 2021). Immediately thereafter, I held that: “The answer in no.” *Id.* After applying controlling precedent to the facts, I denied the defendant’s petition that the death penalty could not be applied to him.

- 39. In *Pedro-Vidal*, you went on to say, “Puerto Rico’s democratic void lies in the hands of Congress.” Why was it appropriate for you, as a federal judge, to opine on the merits of an issue you acknowledged to be a political question?**

Response: The direct quote referenced in Question 39 was made in the context of the addressing arguments presented by the parties in the case before me. After making such assertion, I stated that: “It is not within the Article III purview and whim of federal courts to order Puerto Rico admitted to the Union as a State or have its commonwealth status changed in any form so that a more democratic form of government ensue. This lies within the political process. What the Court can and must do is safeguard the constitutional rights of United States citizens in Puerto Rico should a violation of a fundamental or other constitutional right exist.” *United States v. Pedro-Vidal*, 371 F. Supp. 3d 57, 59 (D.P.R. 2019) *aff’d* 991 F.3d 1 (1st Cir. 2021). After applying controlling precedent to the facts, I denied the defendant’s petition that the death penalty could not be applied to him.

- 40. When else is it appropriate for federal judges to opine on the merits of political questions?**

Response: As a sitting federal judge, I have not ruled, and cannot rule, on the merits of a political question. *See Baker v. Carr*, 369 U.S. 186, 210 (1962) (“The nonjusticiability of a political question is primarily a function of the separation of powers.”); *see also Rosario v. Fin. Oversight and Mgt. Bd. for Puerto Rico*, Civil No. 20-1307 (CCC-GAG), 2020 WL 7689592, at \*1 (D.P.R. Dec. 23, 2020) (wherein I held that “The plebiscite claim presents an insurmountable justiciability issue under the political question doctrine. A controversy involves a political question when there is a textually demonstrable constitutional commitment of the issue to a coordinate political department.”) (internal quotations marks and citations omitted).

- 41. Is your status, as a Constitutional Officer of the United States, complicity in an unjust and discriminatory system, given your writings in and out of the courtroom?**

Response: No.

- 42. What is a “democratic fallacy”?**

Response: I have characterized as a “democratic fallacy” a system of otherwise constitutionally valid laws, but in which citizens do not directly participate in the political process or lack political rights. *See THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT)* 188-190 (2017).

- 43. If the legitimacy of the law depends upon the consent of the governed, then why is it legitimate for unelected federal judges to strike down legislation?**

Response: In *Marbury v. Madison*, 5 U.S. 137, 177 (1803) the Supreme Court set forth the principle of judicial review holding that, under the Constitution, “[i]t is emphatically



the province and duty of the judicial department to say what the law is.” See Federalist No. 78 (Alexander Hamilton) (“The interpretation of the laws is the proper and peculiar province of the courts.”).

**44. Would you agree that exceeding jurisdictional limitations to opine on questions of substantive law is a form of judicial activism?**

Response: Judicial activism occurs when a judge is unwilling or unable to rule as the law requires and instead inappropriately resolves cases consistent with his or her personal views. My record as a federal district court judge demonstrates that in cases that come before me, my rulings on the merits have been based on binding Supreme Court and First Circuit precedent.

**45. During your hearing, you stated that you reserved judgment on “a jurisdictional matter” in *United States v. Mercado-Flores*. The question at issue involved a decision by your court on Puerto Rico’s political status in a Mann Act criminal sentencing. The First Circuit delivered what reads like an unusual rebuke of your actions:**

Congress has given courts and parties tools for challenging a conviction and sentence that were imposed in error. A court may reject a plea agreement or postpone a sentencing hearing *sine die* until it has had an opportunity to resolve all relevant issues. If the defendant is dissatisfied with the outcome of the proceeding, he may file a direct appeal of his sentence or may attack it collaterally by petitioning for post-conviction relief under 28 U.S.C. § 2255. But the district court, acting sua sponte, lacks jurisdiction to vacate a defendant’s sentence simply because the court has come to conclude, more than three weeks later, that the government has grounded the charge against the defendant on an inapposite statute. Following the imposition of sentence and the expiration of the time allotted under Rule 35(a), it is up to the defendant to decide whether to stand by his guilty plea, and no provision of positive law allows the district court to usurp the defendant’s choice.

**In other words, the actual jurisdictional issue was that your court lacked any authority to vacate a sentence sua sponte. I have a number of questions for you about this case. To begin with, what do you understand to be the source of jurisdiction for lower federal courts?**

Response: Federal courts have limited subject matter jurisdiction and are empowered to hear only those cases that are within the judicial power of the United States, as defined in the Constitution, and that have been entrusted to them by a jurisdictional grant by Congress. See 5C Charles Alan Wright & Arthur R. Miller § 3522 Courts of Limited Jurisdiction, FEDERAL PRACTICE AND PROCEDURE § 3522 (3d ed. 2008).

**46. As a general matter, what situations would authorize a district court to vacate an imposed sentence?**

Response: A ruling by the Court of Appeals or the Supreme Court ordering that it be vacated. Another instance would be if a *habeas corpus* petition, under 28 U.S.C. § 2255, is granted, for example, due to ineffective assistance of counsel or a new rule of constitutional law that the Supreme Court holds applies retroactively. Congress also may enact laws which allow particular sentences to be vacated for resentencing in particular circumstances.

- 47. I take your statements at your hearing to mean that Puerto Rico’s status constituted a predicate jurisdictional question for your court that needed to be resolved. If so, by what authority do you understand the jurisdictional *element* of a federal criminal statute to constitute a source of federal-courts jurisdiction?**

Response: The particular statute upon which the defendant was prosecuted, 18 U.S.C. § 2421(a), required the Court to address whether the same applied in Puerto Rico. As such it was necessary to analyze Congress’s intent in granting State-like autonomy to Puerto Rico and, thus, treat it as a State under the scope of the statute. *See United States v. Maldonado-Burgos*, 844 F.3d 339 (1st Cir. 2016) (holding that § 2421(a) does not apply to Puerto Rico).

- 48. Doesn’t a charge under Title 18 automatically confer §1331 jurisdiction, regardless of whether the jurisdictional elements of the particular charged crime are met? If not, why not?**

Response: As a pending judicial nominee and a sitting federal judge, it would be inappropriate, under the Code of Conduct for United States Judges for me to answer this the hypothetical question. However, to the extent that the question refers to 28 U.S.C. §1331, that pertains to federal question jurisdiction in civil, not criminal, actions.

- 49. Why did you conclude that a judgment requiring you to vacate a sentence following a plea—three weeks after the fact—was the correct vehicle with which to explore Puerto Rico’s commonwealth status under the Mann Act?**

Response: Just as the First Circuit subsequently held in *United States v. Maldonado-Burgos*, 844 F.3d 339 (1st Cir. 2016), I concluded that the defendant had been charged under a specific provision of the Mann Act that was inapplicable to Puerto Rico. Although I interpreted the statute’s scope in the same manner as did the First Circuit, I did so after sentencing, when I should have done so prior to sentencing.

- 50. Given Puerto Rico’s territorial status, is it within Congress’s power to enact statutes that treat Puerto Rico as if it were a State?**

Response: Yes. Congress has repeatedly done so in the majority of criminal and civil statutes. *See United States v. Pedro-Vidal*, 371 F. Supp. 3d 57, 58-59 (D.P.R. 2019) *aff’d* 991 F.3d 1 (1st Cir. 2021). (“Since the United States acquired the territory in 1898, Congress has enacted thousands of federal laws that apply therein. On most occasions,

these laws apply to citizens in the territory exactly as they would to citizens in the States.”)

**51. Have you read *A Matter of Interpretation* by Antonin Scalia?**

Response: No.

**52. Like you, Justice Scalia believes that the legitimacy of our constitutional order comes from democratic accountability. He argued that democratic accountability required statutes to be read according to their original public meaning at the time of enactment. As a fellow scholar of democratic political theory, do you agree with Justice Scalia? If not, why not?**

Response: I do not consider myself as a “scholar of democratic political theory” and have not expressed “that the legitimacy of our constitutional order comes from democratic accountability.” As I stated during my confirmation hearing on June 23, 2021, I would apply originalism as a “test” or methodology of constitutional interpretation in those areas where the Supreme Court has applied it. Similarly, I must follow any other “test” or methodology of interpretation that the Supreme Court applies to a particular constitutional provision. As a pending judicial nominee and a sitting federal judge, it would be inappropriate under the Code of Conduct for United States Judges for me to answer this question.

**53. If the *Insular Cases* were overturned, how would that affect the political status of:**

- a. Puerto Rico;
- b. Guam;
- c. American Samoa;
- d. the U.S. Virgin Islands;
- e. the Commonwealth of the Northern Mariana Islands;
- f. Naval Station Guantanamo Bay?

Response: As I stated during my confirmation hearing on June 23, 2021, U.S. territories continue to be such under the Territorial Clause. U.S. Const. Art. IV, § 3, cl. 2.

**54. 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: I would apply originalism as a “test” or methodology of constitutional interpretation in those areas where the Supreme Court has applied it. Similarly, I must follow any other “test” or methodology of constitutional interpretation that the Supreme Court applies to a particular provision. As a pending judicial nominee and a sitting federal judge, it would be inappropriate under the Code of Conduct for United States

Judges for me to answer the hypothetical question, without factual context, of whether “[i]n a case of first impression should the Constitution be interpreted according to how it was understood by the public at the time of enactment.”

**55. What role should empathy play in interpreting the law?**

Response: Empathy should play no role in interpreting the law.

**56. Should judicial decisions take into consideration principles of social “equity”?**

Response: No.

**57. 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: Question 57 appears to refer to different schools of jurisprudence and legal theory. To safeguard an independent judiciary, a judge must always be impartial and abide by the rule of law.

**58. How do you define formalism?**

Response: According to Black’s Law Dictionary, “formalism” is defined as “[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.” BLACK’S LAW DICTIONARY (11th ed. 2019).

**59. Do you consider yourself a formalist?**

Response: I do not ascribe to any school of jurisprudence and legal theory. if confirmed as a Circuit Judge, I would continue to adhere to binding Supreme Court precedents, regardless of whether or not the precedent is considered as “formalist.”

**60. Is the complexity of precedent and its multiplicity a feature or a bug of the law?**

Response: The complexity of precedent is both a feature and a bug of the law.

**61. How do you define legal realism?**

Response: According to Black’s Law Dictionary, “legal realism” is defined as a “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.”  
BLACK’S LAW DICTIONARY (11th ed. 2019).

**62. Do you consider yourself a legal realist?**

Response: I do not ascribe to any school of jurisprudence and legal theory. If confirmed as a Circuit Judge, I must apply binding Supreme Court precedents, regardless of whether or not the precedent is considered as “legal realism.”

**63. Do you agree that all lawyers are, at some level, legal realists?**

Response: If confirmed, my views, if any, about the prevalence or the lack thereof of legal realism amongst members of the bar would have no bearing on my decision-making.

**64. 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).

**65. What is the purpose of criminal sentencing from a moral perspective?**

Response: My moral perspective has no bearing in my judicial decision-making process, and I would not consider the same when adjudicating criminal cases that come before the First Circuit. When sentencing an individual, I have always applied the factors set forth in 18 U.S.C. § 3553(a).

**66. 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 65.

**67. What is the relationship between morality and the law generally?**

Response: See answer to Question 65.

**68. Is the practice of judicial review defensible absent the existence of neutral legal principles?**

Response: The Supreme Court in *Marbury v. Madison*, 5 U.S. 137, 177 (1803) established the principle of judicial review holding that, under the Constitution, “[i]t is emphatically the province and duty of the judicial department to say what the law is.” *See*

Federalist No. 78 (Alexander Hamilton) (“The interpretation of the laws is the proper and peculiar province of the courts.”).

**69. In the First Circuit, what is the level of scrutiny a court must apply to a claim arising under the Second Amendment?**

Response: Guided by *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the First Circuit applies a two-step approach for analyzing Second Amendment challenges. See *Gould v. Morgan*, 907 F.3d 659 (1st Cir. 2018), *cert. denied*, 141 S. Ct. 108 (2020); see also *Worman v. Healey*, 922 F.3d 26 (1st Cir. 2019), *cert. denied*, 141 S. Ct. 109 (2020). Under this approach, the Court “ask[s] whether the challenged law burdens conduct that is protected by the Second Amendment,” which is considered a “backward-looking” inquiry that “seeks to determine whether the regulated conduct was understood to be within the scope of the right at the time of ratification.” *Gould*, 907 F.3d at 669 (quoting *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010)). If that step is “successfully negotiated,” then the Court must decide whether “the challenged law burdens conduct falling within the scope of the Second Amendment.” *Id.* Finally, the First Circuit must then “must determine what level of scrutiny is appropriate and must proceed to decide whether the challenged law survives that level of scrutiny.” *Id.*

**70. Do minors have rights under the Second Amendment?**

Response: To the best of my knowledge, the Supreme Court has not explicitly held whether minors have the same rights under the Second Amendment as adults. Notwithstanding, the First Circuit, without deciding this issue, discussed the matter in *United States v. Rene E.*, 583 F.3d 8, 15-16 (1st Cir. 2009), *cert. denied*, 558 U.S. 1133 (2010).

**71. Is it more important for the law to be certain or for it to be correct?**

Response: All laws enacted by Congress are presumed to be constitutional until proven otherwise. As a pending judicial nominee and a sitting federal judge, it would be inappropriate under the Code of Conduct for United States Judges, to answer this hypothetical question without any context.

**72. Where in the text of the Constitution is the right to enter into a same-sex marriage found?**

Response: In *Obergefell v. Hodges*, 576 U.S. 644 (2015), the Supreme Court held that there is a fundamental right to marry, inherent in the liberty of the person, under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and that same-sex couples may not be deprived of said right. *Obergefell* constitutes binding Supreme Court

precedent and if confirmed as a Circuit Judge, I must continue to follow it whenever applicable to a case that comes before the First Circuit.

**73. Do you agree with the following statement: Not everyone deserves a lawyer, there is no civil requirement for legal defense?**

Response: The Supreme Court has not extended the right to counsel to civil cases. In the United States District Court for the District of Puerto Rico where I preside, a pro bono program for civil cases was established in September 2010. Accordingly, *pro se* litigants in the District of Puerto Rico are routinely appointed pro bono counsel under the same. See P.R. Local Civil Rule 83L.

**74. Is *Morrison v. Olson* good law?**

Response: *Morrison v. Olson*, 487 U.S. 654 (1988) constitutes binding Supreme Court precedent and the Court has not overruled the same. If confirmed as a Circuit Judge, I must continue to follow the same whenever applicable to a case that comes before the First Circuit.

**75. You can answer the following questions yes or no:**

- a. Was *Downes v. Bidwell* correctly decided?
- b. Was *Gideon v. Wainwright* correctly decided?
- c. Was *Miranda v. Arizona* correctly decided?
- d. Was *Dickerson v. United States* correctly decided?
- e. Was *Meyer v. Nebraska* correctly decided?
- f. Was *Griswold v. Connecticut* correctly decided?
- g. Was *Roe v. Wade* correctly decided?
- h. Was *Planned Parenthood v. Casey* correctly decided?
- i. Was *Gonzales v. Carhart* correctly decided?
- j. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?
- k. Was *Sturgeon v. Frost* correctly decided?
- l. Was *Rust v. Sullivan* correctly decided?

Response: These cases constitute binding Supreme Court precedent and if confirmed as a Circuit Judge, I must continue to follow the same whenever applicable to a case that comes before the First Circuit. As a pending judicial nominee and a sitting federal judge, it would be generally inappropriate under the Code of Conduct for United States Judges, to comment on the merits of these Supreme Court decision.

As I have previously noted I have commented on the “racist underpinnings” of the *Insular Cases*, which include *Downes v. Bidwell*, 182 U.S. 244, 282 (1901) (“It is obvious that in the annexation of outlying and distant possessions *grave questions will*

*arise from differences of race, habits, laws, and customs of the people, and from differences of soil, climate, and production, which may require action on the part of Congress that would be quite unnecessary in the annexation of contiguous territory inhabited only by people of the same race, or by scattered bodies of native Indians.”)* (emphasis added).

**76. Under the Supreme Court’s First Amendment jurisprudence, can someone shout “fire” in a crowded theater?**

Response: The Supreme Court stated 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.”

**77. 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: As I have done for the past 20 years as federal judge, I will continue to hire law clerks from a wide range of backgrounds, without regard to membership or non-membership in any particular organization.

**78. Is climate change real?**

Response: I am aware that a substantial majority of scientific studies indicate that climate change exists. If a case came before me presenting an issue related to this topic, I would carefully review the facts of the case, the evidence in the record, and any binding Supreme Court and First Circuit precedent.

**79. Do masks prevent the transmission of COVID-19?**

Response: As Chief Judge of the United States District Court of the District of Puerto Rico, I have followed the Centers for Disease Control and Prevention (CDC) and the Puerto Rico Health Department guidelines that have indicated, according to scientific data from published studies, that mask wearing significantly reduces Covid-19 infections.

**80. Does human life begin at conception?**

Response: The question of whether life begins at conception continues to be litigated. In *Roe v. Wade*, 410 U.S. 113, 159 (1973), the Supreme Court held that it “need not resolve the difficult question of when life begins.” As a pending judicial nominee and a sitting federal judge, it would be inappropriate under the Code of Conduct for United States Judges, to answer this question.



**81. If the Supreme Court can decide whether or not human life begins at conception, can it also decide whether or not climate change is real? If not, why not?**

Response: As answered in Question 78, I am aware that a substantial majority of scientific studies indicate that climate change exists. As a pending judicial nominee and a sitting federal judge, it would be inappropriate under the Code of Conduct for United States Judges, to answer this question. If a case came before me presenting an issue related to this topic, I would carefully review the facts of the case, the evidence in the record, and any binding Supreme Court and First Circuit precedent.

**82. Do you agree with the proposition that some clients do not deserve representation on account of their:**

- a. Heinous Crime?**
- b. Political beliefs?**
- c. Religious beliefs?**

Response: The Sixth Amendment to our Constitution guarantees right to counsel to criminal defendants regardless of the particular crime committed.

**83. Do the following qualify as public health emergencies? Please explain why or why not:**

- a. Racism?**
- b. Gun violence?**

Response: As a pending judicial nominee and a sitting federal judge, it would be inappropriate under the Code of Conduct for United States Judges, to answer these policy questions about public health emergencies.

**84. Do you think the Supreme Court should be expanded?**

Response: As a sitting federal judge, I am bound by the Supreme Court's precedents, regardless of the Court's size or composition. As a pending judicial nominee and a sitting federal judge, it would be inappropriate under the Code of Conduct for United States Judges, to answer this question.

**85. If the Justice Department determines that a 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 ability to dismiss a prosecution is a determination that is left to the discretion of the Executive Branch. The Court must observe the separation of powers doctrine and cannot step into the executive's role.

**86. Did you discuss your views regarding the political status of Puerto Rico with anyone in the White House or the Justice Department during your candidacy for this judgeship?**

Response: No.

**87. Did you discuss your interest in this judgeship with Governor Pierluisi or former Governors Vázquez or Rosselló? If so, what was the nature of these discussions?**

Response: I did discuss my interest in the judgeship with Governor Pierluisi. I expressed to him that I would be honored if considered. I never discussed this matter with former Governors Wanda Vázquez and Ricardo Rosselló.

**88. Did you discuss your interest in this judgeship with Gretchen Sierra-Zorita? If so, what was the substance of those conversations?**

Response: No.

**89. Have you discussed the legality of the PROMESA oversight board with anyone involved in the judicial-nomination process prior to your selection for this position? If so, please provide a summary of such conversations.**

Response: No.

**90. What efforts, if any, did you undertake to be selected for this seat during the previous Congress?**

Response: The late Judge Juan R. Torruella passed away on October 26, 2020 and, shortly thereafter on November 13, 2020, the President nominated a candidate to his seat.

**91. Have you had any conversations with individuals associated with the group Demand Justice, including but not limited to Brian Fallon or Chris Kang, in connection with this or any other potential judicial nomination? If so, please explain the nature of those conversations.**

Response: No.

**92. Have you had any conversations with individuals associated with the American Constitution Society, including but not limited to Russ Feingold, in connection with this or any other potential judicial nomination? If so, please explain the nature of those conversations.**

Response: No

- 93. Have you had any conversations with individuals associated with the Lawyers Committee for Civil and Human Rights, including but not limited to Vanita Gupta, in connection with this or any other potential judicial nomination? If so, please explain the nature of those conversations.**

Response: No

- 94. You mention in your SJQ that you met with President Biden before being nominated. Please describe 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 an appellate judge. The President did not ask me to make any commitments on any matter nor likewise did I offer to make any commitments.

- 95. Please explain with particularity the process by which you answered these questions.**

Response: On June 30, 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 academic 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.

- 96. Do these answers reflect your true and personal views?**

Response: Yes.

**Nomination of Gustavo A. Gelpi  
to be United States Circuit Judge for the First Circuit  
Questions for the Record  
Submitted June 30, 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*, the Supreme Court held that the Second Amendment protects an individual's right to possess a firearm unconnected with service in a militia and to use said firearm for traditionally lawful purposes, such as self-defense within the home. *District of Columbia v. Heller* constitutes a binding Supreme Court precedent and if confirmed as a Circuit Judge, I must continue to follow it whenever applicable to a case that comes before the First Circuit. As a pending judicial nominee and a sitting federal judge, it would be generally inappropriate under the Code of Conduct for United States Judges, to comment on the merits of said Supreme Court decision.

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*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment protects an individual's right to possess a firearm unconnected with service in a militia and to use said firearm for traditionally lawful purposes, such as self-defense within the home. *See also McDonald v. City of Chicago*, 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: In *Greer v. United States*, 141 S. Ct. 2090 (2021), the Supreme Court held that the standard of appellate review for a felon-in-possession of a firearm conviction is that of plain error. Previously in *Rehaif v. United States*, 139 S. Ct. 2191 (2019), the Supreme

Court held that in any such prosecution the Government must prove not only that a defendant knew he possessed a firearm, but also that he knew he was a felon at the time he possessed the same.

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 the Fair Sentencing Act of 2010, made retroactive by the First Step Act of 2018, did not modify the statutory penalties for crack cocaine offenses under 21 U.S.C. § 841(b)(1)(C). As a result, persons convicted under said section are not eligible for resentencing under the First Step Act below any congressional imposed mandatory minimum sentence.

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*, 141 S. Ct. 1307 (2021), the Supreme Court held that the Eighth Amendment does not require a finding that a minor is permanently incorrigible as a prerequisite to sentencing that minor to life-without-parole, so long as the sentence results 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 *Tandon v. Newsom*, while in the context of granting an emergency injunction pending appeal, the Supreme Court held that a government regulation which is neither neutral nor generally applicable triggers strict scrutiny review under the Free Exercise Clause whenever the same treats any comparable secular activity more favorably than the exercise of religious activity.

9. **Please describe what you believe to be the Supreme Court's holding in *Sanchez v. Mayorkas*, 593 U.S.\_\_(2021).**

Response: In *Sánchez v. Mayorkas* the Supreme Court held 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 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: The Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* provides for private judicial dispute resolution by way of arbitration. The Supreme Court in *Southland Corp. v. Keating*, 465 U.S. 1 (1984) held that it was the clear intent of Congress in enacting the Federal Arbitration Act (FAA) to encourage arbitration as much as possible. As a federal district judge, my experience is that arbitration clauses are common in both employment

and commercial contracts. I have, thus, enforced over the years multiple arbitration clauses following Supreme Court and First Circuit precedent. *See, e.g. Eazy Elecs. & Tech., LLC v. LG Elecs., Inc.*, 226 F. Supp. 3d 68 (D.P.R. 2016); *Dialysis Access Ctr., LLC v. RMS Lifeline, Inc.*, 638 F.3d 367 (1st Cir. 2011) (affirming a ruling I issued).

**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 30, 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 academic 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 Gustavo Antonio Gelpi, Nominee for the First 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: Pursuant to Article II, Section 3 of the Constitution, the executive branch of our government has a duty to ensure that the laws are “faithfully executed.” Whether the refusal to enforce a particular law is appropriate or not, will ultimately depend on the particular facts of a given case and the arguments brought by the parties. If confirmed, and if presented with such an issue, I will apply Supreme Court and First Circuit precedent.

2. **Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice’s philosophy from Warren, Burger, Rehnquist, or Robert’s Courts is most analogous with yours.**

Response: As I stated in my 2006 confirmation hearing as District Court Judge nominee, and reiterated during my confirmation hearing this past June 23, 2021, my philosophy is to work as hard as I can and to apply the Constitution and laws of the United States to cases that come before me. My role is not to make new laws, nor rewrite the Constitution. If confirmed to the Court of Appeals, I will continue to follow Supreme Court and First Circuit precedent. The functions of a Supreme Court Justice are distinct from those of a district or circuit judge. As such, I cannot compare any Justice’s particular judicial philosophy to mine.

3. **Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

Response: As a district judge, and as a Circuit Judge if confirmed, I am bound to apply Supreme Court precedent on methods of constitutional interpretation.

4. **Did Canon 3A(6) of the Code of Conduct for Federal Judges apply to you when you wrote *The Constitutional Evolution of Puerto Rico and Other U.S. Territories*, which opined that the *Insular Cases* represented “a doctrine of pure judicial invention, with absolutely no basis in the Constitution and one that is contrary to all judicial precedent and territorial practice?”**

Response: The Code of Conduct for United States Judges applies to all sitting federal judges. Hence, yes, Canon 3A(6) applied to me when I wrote *THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT)*. My book was written as a “scholarly presentation[] made for purposes of legal education” as provided in Canon 3A(6).

5. **Did you violate Canon 3A(6) of the Code of Conduct for Federal Judges when you wrote *The Constitutional Evolution of Puerto Rico and Other U.S. Territories*?**

Response: Canon 3A(6) contains the following prohibition “[a] judge should not make public comment on the merits of a matter pending or impending in any court.” However, this prohibition “does not extend . . . to scholarly presentations made for purposes of legal education.” By authoring the book *THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT)*, I did not violate Canon 3A(6) because it



constitutes a “scholarly presentation[] made for purposes of legal education.” Moreover, Canon 4(A) allows for federal judges to “speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.” The Commentary on Canon 4 provides that “as a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute to the law, the legal system, and the administration of justice[.]” The Commentary also explains that “[t]o the extent that the judge’s time permits and impartiality is not compromised, the judge is encouraged to do so[.]” See also Committee on Codes of Conduct Advisory Opinion, No. 55: Extrajudicial Writings and Publications (June 2009); Committee on Codes of Conduct Advisory Opinion, No. 93: Extrajudicial Activities Related to the Law (June 2009) (“The evolution and exposition of the law is at the core of a judge’s role. Judges, therefore, have the ability to make a unique contribution to academic activities such as teaching and scholarly writing, which similarly serve to advance the law.”)

For the past 20 years, as sitting federal judge, I have faithfully observed the Code of Conduct for United States Judges, its Commentary, and Advisory Opinions such as those referenced above. When engaging in “scholarly presentations made for purposes of legal education,” I have always upheld the independence of the judiciary, the dignity of the judge’s office, and my impartiality has never been compromised. I have also been careful to not comment on the merits of matters pending before any court. My scholarly writings also have not interfered with the performance of my official duties. I would additionally note that as a sitting federal judge I have followed binding Supreme Court and First Circuit precedent with respect to every case that came before me, including cases where the parties made arguments related to the status of Puerto Rico. See, e.g. *Consejo de Salud de Puerto Rico, Inc. v. United States*, 450 F. Supp. 3d 103 (D.P.R. 2020), *reconsideration denied*, Civil No. 18-1045, 2020 WL 1934447 (D.P.R. Apr. 22, 2020); *United States v. Pedro-Vidal*, 371 F. Supp. 3d 57 (D.P.R. 2019), *aff’d* 991 F.3d 1 (1st Cir. 2021).

6. **Before publishing *The Constitutional Evolution of Puerto Rico and Other U.S. Territories*, did you consult with anyone to determine whether any aspects of that work violated Canon 3A(6)? If so, who did you consult and what advice did they provide?**

Response: No, I did not consult with anyone. I reviewed and was exclusively guided by the Code of Conduct for United States Judges, its Commentary, and the Committee on Codes of Conduct Advisory Opinions, notably advisory opinions No. 55 and 93.

7. **Have you ever consulted anyone to determine whether any aspects of *The Constitutional Evolution of Puerto Rico and Other U.S. Territories* violated Canon 3A(6)? If so, who did you consult and what advice did they provide?**

Response: No, I did not consult with anyone. I reviewed and was exclusively guided by the Code of Conduct for United States Judges, its Commentary, and the Committee on Codes of Conduct Advisory Opinions, notably advisory opinions No. 55 and 93.

8. **Did Canon 3A(6) of the Code of Conduct for Federal Judges apply to you in 2011 when you concluded a Spanish-language academic article on the *Insular Cases* by saying, “It is now the hour—and indeed it has already grown late—for the Supreme Court to re-examine and remedy this offensive and obsolete judicial dilemma which have had to be tolerate for more than a hundred years**

**by over five million American citizens who live in Puerto Rico and other territories of the United States.”**

Response: The quote in Question 8 is found in the Spanish-language law review article titled *Los Casos Insulares: Un Estudio Histórico Comparativo de Puerto Rico, Hawai'i y las Islas Filipinas*, 45 Rev. Jur. UIPR 215 (2011), which was simultaneously published in the English language. See *The Insular Cases: A Comparative Historical Study of Puerto Rico, Hawai'i, and the Philippines*, 58 Fed. Law. 22 (Mar./Apr. 2011). The Code of Conduct for United States Judges applies to all sitting federal judges. Hence, yes, Canon 3A(6) applied to me when I wrote *Los Casos Insulares: Un Estudio Histórico Comparativo de Puerto Rico, Hawai'i y las Islas Filipinas*, 45 Rev. Jur. UIPR 215 (2011). This Spanish-language law review article was written as a “scholarly presentation[] made for purposes of legal education” as provided in Canon 3A(6).

**9. Did the statement quoted in question 9 violate Canon 3A(6) of the Code of Conduct for Federal Judges?**

Response: I understand the question is referencing to the quote in Question 8, not Question 9.

Canon 3A(6) contains the following prohibition “[a] judge should not make public comment on the merits of a matter pending or impending in any court.” However, this prohibition “does not extend . . . to scholarly presentations made for purposes of legal education.” The Spanish-language law review article I authored, *Los Casos Insulares: Un Estudio Histórico Comparativo de Puerto Rico, Hawai'i y las Islas Filipinas*, 45 Rev. Jur. UIPR 215 (2011) did not violate Canon 3A(6) because it constitutes a “scholarly presentations made for purposes of legal education.” Moreover, Canon 4(A) allows for federal judges to “speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.” The Commentary on Canon 4 states that “as a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute to the law, the legal system, and the administration of justice[.]” The Commentary also explains that “[t]o the extent that the judge’s time permits and impartiality is not compromised, the judge is encouraged to do so[.]” See also Committee on Codes of Conduct Advisory Opinion, No. 55: Extrajudicial Writings and Publications (June 2009); Committee on Codes of Conduct Advisory Opinion, No. 93: Extrajudicial Activities Related to the Law (June 2009) (“The evolution and exposition of the law is at the core of a judge’s role. Judges, therefore, have the ability to make a unique contribution to academic activities such as teaching and scholarly writing, which similarly serve to advance the law.”)

For the past 20 years, as sitting federal judge, I have faithfully observed the Code of Conduct for United States Judges, its Commentary, and Advisory Opinions such as those referenced above. When engaging in “scholarly presentations made for purposes of legal education,” I have always upheld the independence of the judiciary, the dignity of the judge’s office, and my impartiality has never been compromised. I have also been careful to not comment on the merits of matters pending before any court. My scholarly writings also have not interfered with the performance of my official duties. I would additionally note that as a sitting federal judge I have followed binding Supreme Court and First Circuit precedent with respect to every case that came before me, including cases where the parties made arguments related to the status of Puerto Rico. See, e.g. *Consejo de Salud de Puerto*

*Rico, Inc. v. United States*, 450 F. Supp. 3d 103 (D.P.R. 2020), *reconsideration denied*, Civil No. 18-1045, 2020 WL 1934447 (D.P.R. Apr. 22, 2020); *United States v. Pedro-Vidal*, 371 F. Supp. 3d 57 (D.P.R. 2019), *aff'd* 991 F.3d 1 (1st Cir. 2021).

10. **Before publishing the article referenced in question 9, did you consult with anyone to determine whether any aspects of that work violated Canon 3A(6)? If so, who did you consult and what advice did they provide?**

Response: No, I did not consult with anyone. I reviewed and was exclusively guided by the Code of Conduct for United States Judges, its Commentary, and the Committee on Codes of Conduct Advisory Opinions, notably advisory opinions No. 55 and 93.

11. **Have you ever consulted anyone to determine whether any aspects of the work referenced in question 9 violated Canon 3A(6)? If so, who did you consult and what advice did they provide?**

Response: No, I did not consult with anyone. I reviewed and was exclusively guided by the Code of Conduct for United States Judges, its Commentary, and the Committee on Codes of Conduct Advisory Opinions, notably advisory opinions No. 55 and 93.

12. **You have stated that the *Insular Cases* represent “a doctrine of pure judicial invention, with absolutely no basis in the Constitution and one that is contrary to all judicial precedent and territorial practice.” At your hearing, you stated that you were speaking as a matter of history. In response to my questioning, you also stated that you were able to opine on cases as a matter of history, and stated that *Brown* was decided correctly as a matter of history.**

- a. **As a matter of history, and understanding that as a lower court judge you are bound to follow Supreme Court precedent, was *Roe v. Wade* “pure judicial invention, with absolutely no basis in the Constitution”?**

Response: *Roe v. Wade* constitutes a binding Supreme Court precedent and if confirmed as a Circuit Judge, I must continue to follow it whenever applicable to a case that comes before the First Circuit. As a pending judicial nominee and a sitting federal judge, it would be generally inappropriate under the Code of Conduct for United States Judges, to comment on the merits of said Supreme Court decision.

The direct quote in Question 12 comes from the book *THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT)*, which I authored and was written as a “scholarly presentations made for purposes of legal education” pursuant to Canon 3A(6). In my book, I stated: “Over the years, various Supreme Court Justices, as well as appellate and district court judges, have voiced concerns about the continued validity of the *Insular Cases* doctrine.” *THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT)* 94 (2007). I then proceed to summarize and discuss those concerns voiced by Justice John Marshall Harlan, Justice William J. Brennan Jr., and Judge Juan R. Torruella, who himself has used similar language. *See, e.g. JUAN R. TORRUELLA, THE SUPREME COURT AND PUERTO RICO: THE DOCTRINE OF SEPARATE AND UNEQUAL* 267-268 (1985); *see also Igartia v. United States*, 626 F.3d 592, 612 (1st Cir. 2010) (Torruella, J., concurring in part and dissenting in part) (citations omitted) (“As in the case of racial segregation, it is the courts that are

responsible for the creation of this inequality.”). Notwithstanding my academic criticism, the *Insular Cases* doctrine constitutes binding Supreme Court precedent. I am bound by it as a district judge and if confirmed as a Circuit Judge, I would continue to adhere to it whenever applicable to a case that comes before the First Circuit. *See Boumediene v. Bush*, 553 U.S. 723 (2008) (applying the *Insular Cases* doctrine).

- b. **As a matter of history, and understanding that as a lower court judge you are bound to follow Supreme Court precedent, was *Citizens United* “pure judicial invention, with absolutely no basis in the Constitution”? If not, what was the basis in the Constitution for the Court’s decision?**

Response: In *Citizens United*, the Supreme Court held that the government may not, under the First Amendment, suppress political speech on the basis of the speaker’s corporate identity. *Citizens United* constitutes binding Supreme Court precedent and if confirmed as a Circuit Judge, I must continue to follow it whenever applicable to a case that comes before the First Circuit. As a pending judicial nominee and a sitting federal judge, it would be generally inappropriate under the Code of Conduct for United States Judges, to comment on the merits of said Supreme Court decision.

The direct quote in Question 12 comes from the book *THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT)*, which I authored and was written as a “scholarly presentations made for purposes of legal education” pursuant to Canon 3A(6). In my book, I stated: “Over the years, various Supreme Court Justices, as well as appellate and district court judges, have voiced concerns about the continued validity of the *Insular Cases* doctrine.” *THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT)* 94 (2007). I then proceed to summarize and discuss those concerns voiced by Justice John Marshall Harlan, Justice William J. Brennan Jr., and Judge Juan R. Torruella, who himself has used similar language. *See, e.g. JUAN R. TORRUELLA, THE SUPREME COURT AND PUERTO RICO: THE DOCTRINE OF SEPARATE AND UNEQUAL* 267-268 (1985); *see also Igartúa v. United States*, 626 F.3d 592, 612 (1st Cir. 2010) (Torruella, J., concurring in part and dissenting in part) (citations omitted) (“As in the case of racial segregation, it is the courts that are responsible for the creation of this inequality.”). Notwithstanding my academic criticism, the *Insular Cases* doctrine constitutes binding Supreme Court precedent. I am bound by it as a district judge and if confirmed as a Circuit Judge, I would continue to adhere to it whenever applicable to a case that comes before the First Circuit. *See Boumediene v. Bush*, 553 U.S. 723 (2008) (applying the *Insular Cases* doctrine).

- c. **As a matter of history, and understanding that as a lower court judge you are bound to follow Supreme Court precedent, was *District of Columbia v. Heller* “pure judicial invention, with absolutely no basis in the Constitution”? If not, what was the basis in the Constitution for the Court’s decision?**

Response: In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment protects an individual’s right to possess a firearm unconnected with service in a militia and to use said firearm for traditionally lawful purposes, such as self-defense within the home. *District of Columbia v. Heller* constitutes a binding Supreme Court precedent and if confirmed as a Circuit Judge, I must continue to follow it whenever applicable to a case that comes before the First Circuit. As a pending judicial nominee and a sitting federal judge, it would be generally inappropriate under the Code of

Conduct for United States Judges, to comment on the merits of said Supreme Court decision.

The direct quote in Question 12 comes from the book *THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898 - PRESENT)*, which I authored and was written as a “scholarly presentations made for purposes of legal education” pursuant to Canon 3A(6). In my book, I stated: “Over the years, various Supreme Court Justices, as well as appellate and district court judges, have voiced concerns about the continued validity of the *Insular Cases* doctrine.” *The Constitutional Evolution of Puerto Rico and Other U.S. Territories (1898 - Present)* 94 (2007). I then proceed to summarize and discuss those concerns voiced by Justice John Marshall Harlan, Justice William J. Brennan Jr., and Judge Juan R. Torruella, who himself has used similar language. *See, e.g. Juan R. Torruella, The Supreme Court and Puerto Rico: The Doctrine of Separate and Unequal* 267-268 (1985); *see also Igartúa v. United States*, 626 F.3d 592, 612 (1st Cir. 2010) (Torruella, J., concurring in part and dissenting in part) (citations omitted) (“As in the case of racial segregation, it is the courts that are responsible for the creation of this inequality.”). Notwithstanding my academic criticism, the *Insular Cases* doctrine constitutes binding Supreme Court precedent. I am bound by it as a district judge and if confirmed as a Circuit Judge, I would continue to adhere to it whenever applicable to a case that comes before the First Circuit. *See Boumediene v. Bush*, 553 U.S. 723 (2008) (applying the *Insular Cases* doctrine).

13. **In response to a question from Senator Lee, you said that originalism is “one of the ways” to interpret the Constitution. Are there legitimate methods of interpretation that do not require determining the original meaning of the Constitution? If so, please name them.**

Response: In my response to Senator Lee, I stated that I would apply originalism as a “test” or methodology of constitutional interpretation in those areas where the Supreme Court has applied it. Similarly, I must follow any other “test” or methodology of interpretation that the Supreme Court applies to a particular constitutional provision. During my confirmation hearing on June 23, 2021, I noted the Supreme Court’s methodology for analyzing the Fourth Amendment when applied in the context of cellular phones. *See Carpenter v. United States*, 138 S. Ct. 2206, 2213-14 (2018) (“Although no single rubric definitively resolves which expectations of privacy are entitled to protection, the analysis is informed by historical understandings of what was deemed an unreasonable search and seizure when the Fourth Amendment was adopted.”) (internal quotation marks, citations, and corrections omitted).

14. **In response to a question from Senator Lee, you stated that the Supreme Court has departed from originalism in the context of the Fourth Amendment when it held that the Fourth Amendment applies to cellular phones.**
- a. **Do you believe that an originalist interpretation of the First Amendment would exclude photographs because photographs were not invented until the 19th century?**

Response: As a pending judicial nominee and a sitting federal judge, it would be inappropriate under the Code of Conduct for United States Judges for me to opine as to

the hypothetical legal question of whether “an originalist interpretation of the First Amendment would exclude photographs because photographs were not invented until the 19th century.” I am bound to follow all binding Supreme Court and First Circuit precedent regarding the First Amendment.

- b. **Do you believe that an originalist interpretation of the Second Amendment would exclude revolvers?**

Response: As a pending judicial nominee and a sitting federal judge, it would be inappropriate under the Code of Conduct for United States Judges for me to opine as to the hypothetical legal question of whether “an originalist interpretation of the Second Amendment would exclude revolvers.” I am bound to follow all binding Supreme Court and First Circuit precedent regarding the Second Amendment.

15. **In response to a question from Senator Lee, you suggested that you would follow originalism where the Supreme Court has applied originalism, and you cited the Second Amendment and the Confrontation Clause as examples. You also suggested you would follow other methods of interpretation when the Supreme Court departs from originalism, and you cited the Fourth Amendment as an example.**

- a. **Will you apply originalism when addressing open issues in areas, like the Second Amendment, where the Supreme Court has applied originalism?**

Response: If confirmed as a Circuit Judge, I must continue to apply binding Supreme Court precedent involving Second Amendment issues, to wit, *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), whenever applicable to a case that comes before the First Circuit. As a pending judicial nominee and a sitting federal judge, it would be inappropriate under Code of Conduct for United States Judges for me to provide any view regarding hypothetical “open issues.”

- b. **Is a lower court judge required to follow the methodology applied by the Supreme Court?**

Response: As a federal judge for 20 years, I have faithfully followed the methodology used by the Supreme Court and First Circuit.

- c. **Is a lower court judge required to follow the reasoning of the Supreme Court?**

Response: As a federal judge for 20 years, I have faithfully followed the reasoning used by the Supreme Court and First Circuit.

- d. **Is anything other than the judgment in a case binding precedent? If so, what other than the judgment is binding?**

Response: No.

16. **If you were to be faced with a novel constitutional claim under the 14th Amendment’s Equal Protection and Due Process Clauses in which *Obergefell* would be a relevant precedent, would you be bound to follow Justice Kennedy’s methodology from**

***Obergefell*? Why or why not?**

Response: *Obergefell v. Hodges*, 576 U.S. 644 (2015) constitutes binding Supreme Court precedent and if confirmed as a Circuit Judge, I must continue to follow it, including any methodology laid out by the Court, whenever applicable to a case that comes before the First Circuit. As a pending judicial nominee and as a sitting federal judge, it would be inappropriate under the Code of Conduct for United States Judges, to provide any view regarding a hypothetical situation where “novel constitutional claim under the 14th Amendment’s Equal Protection and Due Process Clauses in which *Obergefell* would be a relevant precedent.”

- a. **Regardless whether you would be required to follow Justice Kennedy’s methodology from *Obergefell*, please describe Justice Kennedy’s methodology in that case?**

Response: In *Obergefell*, the Supreme Court held that there is a fundamental right to marry, inherent in the liberty of the person, under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and that same-sex couples may not be deprived of said right. To arrive at this holding, the Supreme Court analyzed the text of the Constitution (Due Process and Equal Protection Clauses), the Court’s precedent regarding the fundamental right to marry (*see, e.g. Loving v. Virginia*, 388 U.S. 1 (1967)), and equality of same-sex marriage (*see, e.g. United States v. Windsor*, 570 U.S. 744 (2013)) as well as the history and tradition of the institution of marriage and the LGBTQ community’s historical stigmatization.

17. **The Supreme Court in *Washington v. Glucksberg* (1997) held that to determine whether a liberty is fundamental, the Court must look to whether the liberty (a) is deeply rooted in the nation’s history and tradition, and (b) is implicit in the concept of ordered liberty. Are lower court judges bound to follow this test? Why or why not.**

Response: Yes.

18. **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. In *McDonald v. City of Chicago*, the Court further held that the right that the Second Amendment guarantees is a fundamental right extended to the States. These cases are binding Supreme Court precedent and if confirmed as a Circuit Judge, I must adhere to them whenever applicable to a case that comes before the First Circuit.

19. **Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?**

Response: To my knowledge, neither the Supreme Court nor the First Circuit has concluded that the right to own a firearm receives less protection than the other individual rights that are specifically enumerated in the Constitution. If confirmed, I must adhere to *Heller*, *McDonald*, and any other Supreme Court and First Circuit precedent that defines the scope of protections that the Second Amendment guarantees.

20. **Does the right to own a firearm receive less protection than the right to vote under the**

**Constitution?**

Response: To my knowledge, neither the Supreme Court nor the First Circuit has concluded that the right to own a firearm receives less protection than the right to vote in the Constitution. If confirmed, I must adhere to *Heller*, *McDonald*, and any other Supreme Court and First Circuit precedent that defines the scope of protections that the Second Amendment guarantees.

21. **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: Constitutional protections, such as the Free Exercise Clause of the First Amendment limit what the government can impose on, or require of, private persons and organizations. *See, e.g., Tandon v. Newsom*, 141 S. Ct. 1294, 1296-97 (2021); *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 66-68 (2020).

22. **Do Americans have the right to their religious beliefs outside the walls of their houses of worship and homes?**

Response: Supreme Court precedent does not limit the rights secured by the Free Exercise Clause and the Religious Freedom Restoration Act to only religious practices in the home or in houses of worship.

23. **If you are to join the federal bench, and supervise along with your colleagues the court's human resources programs, will it be appropriate for the court to provide its employees trainings which include the following:**

- a. **One race or sex is inherently superior to another race or sex;**
- b. **An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;**
- c. **An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or**
- d. **Meritocracy or related values such as work ethic are racist or sexist.**

Response: No. All judiciary branch training programs must comply with the Constitution and other applicable laws.

24. **Is the criminal justice system systemically racist?**

Response: I am aware that policymakers in the federal, state, and local governments have expressed views about “systemic racism.” As I stated during my confirmation hearing on June 23, 2021, as a pending judicial nominee and a sitting federal judge, it would be inappropriate for me to answer this question. If confirmed, I will adjudicate all cases raising issues of racial discrimination or disparity on a case-by-case basis, applying binding Supreme Court and First Circuit precedent.

25. **Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?**



Response: As a pending judicial nominee and sitting federal judge, the Code of Conduct for United States Judges prevent me from commenting on the constitutionality of any particular set of factors that the Executive Branch may or does consider when making political appointments.

26. **Does the President have the authority to abolish the death penalty?**

Response: The federal death penalty statute, 18 U.S.C. § 3591 *et seq.*, is an act of Congress and the death penalty has been held to be constitutional under many circumstances by the Supreme Court. Under our constitutional framework the President alone cannot abolish any law.

**Senator Mike Lee**  
**Questions for the Record**  
**Gustavo Gelpi, First Circuit Court of Appeals**

1. **How would you describe your judicial philosophy?**

Response: As I stated in my 2006 confirmation hearing as District Court Judge nominee, and reiterated during my confirmation hearing this past June 23, 2021, my philosophy is to work as hard as I can and to apply the Constitution and laws of the United States to cases that come before me. My role is not to make new laws, nor rewrite the Constitution. If confirmed to the Court of Appeals, I will continue to follow Supreme Court and First Circuit precedent.

2. **What sources would you consult when deciding a case that turned on the interpretation of a federal statute?**

Response: Foremost, I must begin with the statute's text and give it its plain and ordinary meaning. *See Stornaway Fin. Corp. v. Hill (In re Hill)*, 562 F.3d 29, 32 (1st Cir. 2009) ("When Congress uses a term in a statute and does not define it, we generally assume that the term carries its plain and ordinary meaning"). If the statute has been previously interpreted by the Supreme Court or First Circuit, I must apply said precedent. Absent controlling precedent, and, should the text of the statute be ambiguous, when warranted, I will look to the canons of statutory construction and other interpretive tools, including its legislative history. *See City of Providence v. Barr*, 954 F.3d 23, 31-32 (1st Cir. 2020) ("Other tools of statutory interpretation, such as legislative history, customarily carry significant weight only when the text is ambiguous or its plain meaning leads to an absurd result.")

3. **What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?**

Response: I must interpret any constitutional provision applying precedent from the Supreme Court and First Circuit. If the particular provision has never been interpreted, I would look to the most analogous precedent.

4. **What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?**

Response: In a response to a similar question during my confirmation hearing on June 23, 2021, I stated that I would apply originalism as a "test" or methodology of constitutional interpretation in those areas where the Supreme Court has applied it. Similarly, I must follow any other "test" or methodology of interpretation that the Supreme Court applies to a particular constitutional provision. During my confirmation hearing, I noted the Supreme Court's methodology for analyzing the Fourth Amendment when applied in the context of cellular phones. *See Carpenter v.*

*United States*, 138 S. Ct. 2206, 2213-14 (2018) (“Although no single rubric definitively resolves which expectations of privacy are entitled to protection, the analysis is informed by historical understandings of what was deemed an unreasonable search and seizure when the Fourth Amendment was adopted.”) (internal quotation marks, citations, and corrections omitted).

5. **How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?**

Response: See answer to Question 2.

- a. **Does the “plain meaning” of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?**

Response: When interpreting the Constitution, I would apply originalism as a “test” or methodology of constitutional interpretation in those areas where the Supreme Court has applied it, including if the precedent’s analysis involved considering “the public understanding of the relevant language at the time of enactment.” See, e.g. *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

6. **What are the constitutional requirements for standing?**

Response: To establish the constitutional requirements for standing, a plaintiff must establish an injury-in-fact that is concrete, particularized, and actual or imminent, traceable to the challenged action of the defendant, and redressable by a favorable ruling. See *Lujan v. Defs. of Wildlife*, 504 U.S. 555 (1992).

7. **Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?**

Response: 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.” Const. Art. I, § 8, cl. 18. In *McCullough v. Maryland*, 17 U.S. 316 (1819), the Supreme Court held that said clause of the Constitution provides Congress with implied powers that are necessary and proper to execute its enumerated powers accordingly.

8. **Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?**

Response: I must foremost focus my analysis on the particular constitutional provision under which the statute is challenged. Next, I must apply Supreme Court and First Circuit precedent.

9. **Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?**

Response: The Supreme Court has held that the Constitution protects certain rights that are not specifically enumerated in the Constitution, in cases such as *Griswold v. Connecticut*, 381 U.S. 479 (1965) (right to privacy) and *Roe v. Wade*, 410 U.S. 113 (1973) (right to terminate a pregnancy before viability). According to the Supreme Court, the Due Process Clauses of the Fifth and Fourteenth Amendments are the primary sources for the recognition of unenumerated rights. If confirmed as a Circuit Judge, I must continue to follow these binding Supreme Court precedents.

10. **What rights are protected under substantive due process?**

Response: Substantive due process rights recognized by the Supreme Court include: the right to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); the right to educate and upbringing one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); the right to privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Eisenstadt v. Baird*, 405 U.S. 438 (1972); the right to bodily integrity, *Rochin v. California*, 342 U.S. 165 (1952); the right to terminate a pregnancy before viability, *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992); and, the right to same-sex marriage, *Obergefell v. Hodges*, 576 U.S. 644 (2015).

11. **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: *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of S.E. Pennsylvania v. Casey*, 505 U.S. 833 (1992), constitute binding Supreme Court precedent regarding the constitutional protection of a woman's decision to terminate her pregnancy. The Supreme Court has not afforded an equal level of protection to economic rights. See *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937). As a sitting judge, and if confirmed as a Circuit Judge, I must apply binding Supreme Court precedent regarding abortion and economic rights.

12. **What are the limits on Congress's power under the Commerce Clause?**

Response: The Supreme Court has held that Congress has the authority to regulate channels and instrumentalities of interstate commerce and any activity that has a substantial effect on interstate commerce. See *United States v. Morrison*, 529 U.S. 598 (2000); *United States v. López*, 514 U.S. 549 (1995); see also *Club Gallistico de*

*Puerto Rico Inc. v. United States*, 414 F. Supp. 3d 191 (D.P.R. 2019), *aff'd sub nom. Hernández-Gotay v. United States*, 985 F.3d 71 (1st Cir. 2021) (applying the Commerce Clause).

13. **What qualifies a particular group as a “suspect class,” such that laws affecting that group must survive strict scrutiny?**

Response: The Supreme Court has identified four suspect classifications: race, alienage, national origin, and religion.

14. **How would you describe the role that checks and balances and separation of powers play in the Constitution’s structure?**

Response: Our Founding Fathers established this democratic concept in the Constitution to avoid concentration of power in order to secure liberty.

15. **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 foremost focus my analysis in the particular action in question and then apply Supreme Court and First Circuit precedent to decide whether the action taken overstepped constitutional limits. *See, e.g. Hamdi v. Rumsfeld*, 542 U.S. 507 (2004).

16. **What role should empathy play in a judge’s consideration of a case?**

Response: Empathy should play no role in interpreting the law.

17. **What’s worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?**

Response: All laws enacted by Congress are presumed to be constitutional until proven otherwise. Both courses of action are equally improper for a judge whose oath is to apply the Constitution and laws of the United States.

18. **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: In *Marbury v. Madison*, 5 U.S. 137, 177 (1803), the Supreme Court set forth the principle of judicial review holding that, under the Constitution, “[i]t is emphatically the province and duty of the judicial department to say what the law is.” *See* Federalist No. 78 (Alexander Hamilton) (“The interpretation of the laws is the

proper and peculiar province of the courts.”). As a pending judicial nominee and a sitting federal judge, it would be inappropriate under the Code of Conduct for United States Judges, to answer this hypothetical question regarding the “downsides to the aggressive exercise of judicial review” and the “downsides to judicial passivity”

19. **How would you explain the difference between judicial review and judicial supremacy?**

Response: In *Marbury v. Madison*, 5 U.S. 137, 177 (1803), the Supreme Court set forth the principle of judicial review holding that, under the Constitution, “[i]t is emphatically the province and duty of the judicial department to say what the law is.” See Federalist No. 78 (Alexander Hamilton) (“The interpretation of the laws is the proper and peculiar province of the courts.”). Judicial supremacy has been explained as the power of the judiciary to determine the legal validity of actions taken by the two other branches of government.

20. **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, § 3. As a pending judicial nominee and a sitting federal judge, it would be inappropriate under the Code of Conduct for United States Judges, to answer this hypothetical question regarding whether “elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions.”

21. **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: As a federal judge for 20 years I have been bound by the Constitution and Supreme Court precedent to resolve cases and controversies that are adequately brought to the court and as to which the parties have standing.

22. **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 Circuit Judge, if confirmed, I must apply applicable Supreme Court and First Circuit precedent, unless the same can be distinguished to the case before me.

23. **Do you believe it is ever appropriate to look past jurisdictional issues if they prevent the court from correcting a serious injustice?**

Response: No.

24. **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: Absolutely none. When sentencing an individual, I have always applied the factors set forth in 18 U.S.C. § 3553(a).

25. **The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you define equity?**

Response: As a pending judicial nominee and a sitting federal judge, it would be inappropriate for me to answer this policy question about whether I agree with the Executive Branch's definition of "equity."

26. **Is there a difference between "equity" and "equality?" If so, what is it?**

Response: See answer to Question 24.

27. **Does the 14th Amendment's equal protection clause refer to "equity" or "equality?"**

Response: The Fourteenth Amendment provides that no person shall be denied "the equal protection of the laws." U.S. Const. amend. XIV, § 2.

28. **How do you define "systemic racism?"**

Response: I am aware that policymakers in the federal, state, and local governments as well as academics have expressed views about “systemic racism.” To the best of my understanding, “systemic racism” is a term developed in academia for explaining that racism has been institutionalized within society through, for example, implicit racial bias. As I stated during my confirmation hearing on June 23, 2021, as a pending judicial nominee and a sitting federal judge, it would be inappropriate for me to answer whether the criminal justice system is “systemically racist.” If confirmed, my understanding, about this academic term would have no bearing on my decision-making. I will adjudicate all cases raising issues of racial discrimination or disparity on a case-by-case basis, applying binding Supreme Court and First Circuit precedent.

29. **How do you define “critical race theory?”**

Response: I am aware that policymakers in the federal, state, and local governments as well as academics, have expressed views about “critical race theory.” To the best of my understanding, “critical race theory” is a conceptual framework developed in academia through which to study history, particularly race relations. If confirmed, my understanding of academic legal theories, would have no bearing on my decision-making. I will adjudicate all cases raising issues of racial discrimination or disparity on a case-by-case basis, applying binding Supreme Court and First Circuit precedent.

30. **Do you distinguish “critical race theory” from “systemic racism,” and if so, how?**

Response: See answer to Questions 27 and 28.

31. **Once again, for the record, what would Puerto Rico’s status be, vis-à-vis the United States, if the *Insular Cases* were overturned?**

Response: As I stated during my confirmation hearing on June 23, 2021, U.S. territories, like Puerto Rico, continue to be such under the Territorial Clause. U.S. Const. Art. IV, § 3, cl. 2.



**Senator Ben Sasse**  
**Questions for the Record**  
**U.S. Senate Committee on the Judiciary**  
**Hearing: “Nominations”**  
**June 23, 2021**

For Judge Gustavo Gelpi:

**1. Why did you choose to work for the Federal Public Defender’s Office?**

Response: As I stated during my confirmation hearing on June 23, 2021 in response to Senator Padilla’s question, I recognized the importance of the constitutional role of representing criminal defendants -- regardless of who they are or what did -- to the fullest, thus, guaranteeing them all constitutional and statutory rights they enjoy. Further, I saw my role as an important component of our larger justice system.

**2. Were you ever concerned that your work for the Federal Public Defender’s Office would result in more violent criminals—including gun criminals and sex criminals—being put back on the streets?**

Response: No. As an Assistant Federal Public Defender, almost 25 years ago, I had an ethical and constitutional duty to advocate for each of my former clients, regardless of personal views about them, the offense, or public opinion. All my clients were indigent and, pursuant to the Criminal Justice Act of 1964, 18 U.S.C. §3006A, the Court appointed the Federal Public Defender to represent them. Since my days as federal defender, and up to the present, the plea and conviction rate of defendants in my District has been one of the highest in the nation. For example, in fiscal year 2019 it was 99.3%. *See United States Sentencing Commission 2019 Annual Report and 2019 Sourcebook of Federal Sentencing Statistics* 42 (2019). As such, the role of federal public defenders consists of advising clients of their rights, negotiating pleas (which may include cooperation), guaranteeing that they are afforded all statutory and constitutional rights, and advocating so that they receive a sentence sufficient but not greater than necessary as per 18 U.S.C. §3553(a), which takes into account all sentencing factors. In those cases where a defendant opts to stand trial, the federal defender likewise must zealously represent the client and guarantee him or her an adequate representation under the Sixth Amendment.

**3. 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 judge for 20 years, my “personal policy preferences or personal sense of justice” have no bearing on my decision-making process. If confirmed as a Circuit Judge, I will continue with this practice and adhere to binding Supreme Court and First Circuit precedent whenever applicable to all cases that comes before the Court of Appeals.

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.

For all judicial nominees:

1. **How would you describe your judicial philosophy?**

Response: As I stated in my 2006 confirmation hearing as District Court Judge nominee, and reiterated during my confirmation hearing this past June 23, 2021, my philosophy is to work as hard as I can and to apply the Constitution and laws of the United States to cases that come before me. My role is not to make new laws, nor rewrite the Constitution. If confirmed to the Court of Appeals, I will continue to follow Supreme Court and First Circuit precedent.

2. **Would you describe yourself as an originalist?**

Response: I do not ascribe to any method of constitutional interpretation. As I stated during my confirmation hearing on June 23, 2021, I would apply originalism as a “test” or methodology of constitutional interpretation in those areas where the Supreme Court has applied it. Similarly, I must follow any other “test” or methodology of interpretation that the Supreme Court applies to a particular constitutional provision.

3. **Would you describe yourself as a textualist?**

Response: I do not ascribe to any method of statutory interpretation. I must follow any “test” or methodology of interpretation that the Supreme Court applies to a particular statutory provision. Generally, when interpreting a statute, I must begin with the statute’s text and give it its plain and ordinary meaning. *See Stornawaye Fin. Corp. v. Hill (In re Hill)*, 562 F.3d 29, 32 (1st Cir. 2009) (“When Congress uses a term in a statute and does not define it, we generally assume that the term carries its plain and ordinary meaning”). If the statute has been precisely interpreted by the Supreme Court or First Circuit, I must apply said precedent. Absent precedent, and, should the text of the statute be ambiguous, when warranted, I will look to the canons of statutory construction and other interpretive tools, including its legislative history. *See City of Providence v. Barr*, 954 F.3d 23, 31-32 (1st Cir. 2020) (“Other tools of statutory interpretation, such as

legislative history, customarily carry significant weight only when the text is ambiguous or its plain meaning leads to an absurd result.”)

**4. Do you believe the Constitution is a “living” document? Why or why not?**

Response: The Constitution is an enduring document.

**5. Please name the Supreme Court Justice or Justices appointed since January 20, 1953 whose jurisprudence you admire the most and explain why.**

Response: There is not a particular Justice whose jurisprudence I admire the most. Individual Justices have authored important opinions interpreting our Constitution and laws, which as a judge I have applied in both the civil and criminal context for 20 years. I admire greatly Justices who write opinions in a collegial style and manner that are easy to understand by any reader and thus, impart trust in our judicial institutions and system of government.

- 6. Was Marbury v. Madison correctly decided?**
- 7. Was Lochner v. New York correctly decided?**
- 8. Was Brown v. Board of Education correctly decided?**
- 9. Was Bolling v. Sharpe correctly decided?**
- 10. Was Cooper v. Aaron correctly decided?**
- 11. Was Mapp v. Ohio correctly decided?**
- 12. Was Gideon v. Wainwright correctly decided?**
- 13. Was Griswold v. Connecticut correctly decided?**
- 14. Was South Carolina v. Katzenbach correctly decided?**
- 15. Was Miranda v. Arizona correctly decided?**
- 16. Was Katzenbach v. Morgan correctly decided?**
- 17. Was Loving v. Virginia correctly decided?**
- 18. Was Katz v. United States correctly decided?**
- 19. Was Roe v. Wade correctly decided?**
- 20. Was Romer v. Evans correctly decided?**
- 21. Was United States v. Virginia correctly decided?**
- 22. Was Bush v. Gore correctly decided?**
- 23. Was District of Columbia v. Heller correctly decided?**
- 24. Was Crawford v. Marion County Election Board correctly decided?**
- 25. Was Boumediene v. Bush correctly decided?**
- 26. Was Citizens United v. Federal Election Commission correctly decided?**
- 27. Was Shelby County v. Holder correctly decided?**
- 28. Was United States v. Windsor correctly decided?**
- 29. Was Obergefell v. Hodges correctly decided?**

Response to Questions 6-29: All the cases asked about in these questions constitute binding Supreme Court precedent. If confirmed as a Circuit Judge, I must continue to follow the same whenever applicable to a case that comes before the First Circuit. As a pending judicial nominee and a sitting federal judge, it would be generally inappropriate under the

Code of Conduct for United States Judges, to comment on the merits of these Supreme Court decisions. Prior judicial nominees over the years have made a few exceptions to the practice of avoiding comments on the merits of Supreme Court decisions which are referenced in Questions 6-29. 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.

**30. 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: In the First Circuit, the “law of the circuit doctrine” is that “newly constituted panels in a multi-panel circuit court are bound by prior panel decisions that are closely on point.” *United States v. Lewis*, 963 F.3d 16, 23 (1st Cir. 2020), *cert. denied* 2021 WL 2519339 (U.S. June 21, 2021) (citations omitted). Two exceptions exist as to the “law of the circuit doctrine.” First, when “an existing panel decision is undermined by controlling authority, subsequently announced, such as an opinion of the Supreme Court, an *en banc* opinion of the circuit court, or a statutory overruling.” *Id.* (internal quotation marks, modifications and citations omitted). Second, another exception applies “in those rare instances in which authority that postdates the original decision, although not directly controlling, nevertheless offers a sound reason for believing that the former panel, in light of fresh developments, would change its collective mind.” *Id.* (internal quotation marks and citations omitted). If confirmed as Circuit Judge, I must follow the “law of the circuit doctrine.”

**31. 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: See answer to Question 30.

**32. 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. When sentencing an individual, I have always applied the factors set forth in 18 U.S.C. § 3553(a), which include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense, (B) to afford adequate deterrence to criminal conduct, (C) to protect the public from further crimes of the defendant, and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (3) the kinds of sentences available; (4) the kinds of sentence and the sentencing range established for (A) the applicable category of offense committee or (B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission; (5) any pertinent policy statement (A) issued by the Sentencing

Commission; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct, and (7) the need to provide restitution to any victims of the offense. Conversely, to treat similarly situated defendants differently in order to correct systemic sentencing disparities is not a factor Congress has instructed courts to consider.

**Questions for Gustavo Gelpi**

- 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 occurs when a judge inappropriately and contrary to the oath of office is unwilling or unable to rule as the law requires and instead inappropriately resolves cases consistent with his or her personal views.

- 3. Do you believe impartiality is an aspiration or an expectation for a judge?**

Response: The Code of Conduct for United States Judges applies to all sitting federal judges. Canon 3 of the Code of Conduct for United States Judges states that "a judge should perform the duties of the office fairly, impartially, and diligently."

- 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: In my 20 years as a federal judge, I have faithfully applied the Constitutions and laws of the United States. If confirmed, my personal views or opinions on a given matter would have no bearing on my decision-making process.

- 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: In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment protects an individual's right to possess a firearm unconnected with service in a militia and to use said firearm for traditionally lawful purposes, such as self-defense within the home. *District of Columbia v. Heller* constitutes a binding Supreme Court precedent and if confirmed as a Circuit Judge, I must continue to follow it whenever applicable to a case that comes before the First Circuit.

- 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 Circuit Judge, I must adhere to all binding Supreme Court and First Circuit precedent to any case that comes before the me. As a pending judicial nominee, a sitting federal judge, and because 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, under the Code of Conduct for United States Judges for me to opine as to this hypothetical scenario without any factual context.

- 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: As a federal judge for 20 years, I have considered whether qualified immunity shields government officials from liability for alleged constitutional violations on numerous occasions. Each time, I have carefully considered the particular facts of each case and followed Supreme Court and First Circuit precedent. *See, e.g. López-Erquicia v. Weyne-Roig*, 106 F. Supp. 3d 279 (D.P.R. 2015); *García-Díaz v. Cintrón-Suárez*, 120 F. Supp. 3d 68 (D.P.R. 2015); *Dávila-Torres v. Feliciano-Torres*, 924 F. Supp. 2d 359 (D.P.R. 2013); *Burgos-Yantín v. Municipality of Juana Díaz*, 669 F. Supp. 2d 191 (D.P.R. 2009); *Reyes Cañada v. Rey Hernández*, 286 F. Supp. 2d 174 (D.P.R. 2003).

- 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 sitting federal district court judge, and if confirmed as a Circuit Judge, I must apply all binding Supreme Court and First Circuit precedent regarding qualified immunity with respect to any case that comes before me where it is at issue. As a pending judicial nominee and a sitting federal judge, it would be inappropriate under the Code of Conduct for United States Judges for me to opine as to this hypothetical legal question without any factual context.

- 11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?**

Response: See answer to Question 10.

**Senator Chuck Grassley, Ranking Member**  
**Questions for the Record**  
**Helaine Greenfeld**  
**Nominee to be Assistant Attorney General, Office of Legislative Affairs**

1. Since May 11, 2021, Senator Johnson and I have asked to speak with Attorney General Garland to discuss outstanding oversight requests. At a June 17, 2021, Judiciary Committee Executive Business meeting, other members raised concerns about the Justice Department's failure to respond to member oversight requests. Since then, a committee-wide call has been scheduled with the Attorney General. This call does not supplant my personal request to speak with the Attorney General. To date, he has failed to schedule anything with me and you have been in charge of the Office of Legislative Affairs during this time. What steps have you taken to schedule the call? Please explain in detail.

**RESPONSE: Although I have not been in charge of the Office of Legislative Affairs during the pendency of my nomination, I am aware that you requested a meeting with the Attorney General. As I understand, you and the Attorney General have recently spoken, and if more phone calls are necessary, OLA will work with you and the Attorney General's office to arrange.**

2. On March 25, 2021, Senator Johnson and I wrote to the ATF requesting records relating to the October 2018 Hunter Biden firearm incident.<sup>1</sup> According to reports, Hunter Biden's firearm was discarded in a trash can near a school. Reports also indicate that the ATF was later on scene. The ATF has refused to provide records citing the Freedom of Information Act. Can the Freedom of Information Act be used as a justification to not produce records to Congress? Please explain in detail.

**RESPONSE: The Freedom of Information Act (FOIA) governs disclosure of records to the public by the executive branch. Disclosures of federal records to Congress are governed by different practices and judicial precedents, although sometimes the analysis conducted by the executive branch in response to a congressional request can be similar to the analysis conducted under FOIA.**

3. As a general matter, all government employees must avoid situations that create even the appearance of impropriety and impartiality so as to not affect the public perception of the integrity of an investigation. Do you agree? Please explain in detail.

**RESPONSE: The Department of Justice has in place recusal rules that reflect applicable federal ethics statutes, regulations, and policies. In addition, President Biden's Executive Order No. 13989 requires political appointees to sign a pledge**

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<sup>1</sup> Press Release, Senator Grassley (March 26, 2021) <https://www.grassley.senate.gov/news/news-releases/grassley-johnson-seek-information-about-secret-service-involvement-in-hunter-biden-firearm-incident>



**imposing additional recusal obligations. The Office of Legislative Affairs does not have a role in the Department's investigations.**

4. On February 3, 2021, and March 9, 2021, I sent Attorney General Garland a letter requesting information about Nicholas McQuaid's access to the Hunter Biden criminal case.<sup>2</sup> Specifically, potential conflicts of interest exist in light of the fact that McQuaid was employed at Latham & Watkins until January 20, 2021, and worked with Christopher Clark, who Hunter Biden reportedly hired to work on his federal criminal case. Because of that apparent conflict, I've asked whether he's been recused from the Hunter Biden case and whether a recusal memo exists.
  - a. Is McQuaid recused from the Hunter Biden case? If so, when? If not, why not?
  - b. If so, please provide all records relating to his recusal, including his recusal memo, any other guidance from career ethics officials regarding his recusal, or any guidance from McQuaid himself to component attorneys regarding his recusal.
  - c. Does a recusal memo exist? If not, why not?

**RESPONSE:** The Department responded to your letters in letters dated February 19, 2021 and March 22, 2021. The Department stated that "the Acting Assistant Attorney General is screened and recused from matters in which he has a financial interest or a personal business relationship, including matters involving his former law firm." With respect to the disclosure of additional information related to your inquiry, the Department has also stated that "it has long been the Department's policy to protect the confidentiality interests in internal pre-decisional deliberations including non-public information related to such matters, including seeking ethics advice. To disclose any ethics communications would have a chilling effect on Department employees' willingness to speak openly and candidly with ethics officials on ethics matters." The Department can say, however, that for those serving as heads of components or as acting head of components of the Department, including Mr. McQuaid, memos are typically issued to advise others in the Department concerning matters in which those individuals are recused.

5. In January 2021, then-President Trump issued a directive declassifying records relating to Crossfire Hurricane. Which records were declassified and when will they be produced to Congress and the public?

**RESPONSE:** I am not personally aware of what Crossfire Hurricane records, if any, were declassified by President Trump in January 2021, nor am I aware of any decision by this Administration or the prior Administration to make certain records public.

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<sup>2</sup> Press Release, Senator Grassley (June 7, 2021) <https://www.grassley.senate.gov/news/news-releases/following-garland-proclamations-grassley-seeks-follow-through-on-commitments-to-respect-oversight-authority-of-congress>

6. On May 3, 2021, Senator Johnson and I wrote to Director Wray about an August 2020 briefing the contents of which were eventually leaked to damage our investigation into the Biden family's financial dealings overseas.<sup>3</sup> The letter requested records and a meeting with Director Wray. The FBI provided an unresponsive letter and failed to produce any records. Director Wray has ignored my request that he meet with me and Senator Johnson about this matter. What steps have you taken to make sure the FBI provides responsive records and Director Wray appears for the requested meeting? Please explain in detail.

**RESPONSE: I am aware that the FBI responded to your letter with an offer of a briefing by a subject matter expert regarding the Defensive Notification Framework.**

7. On March 31, 2021, I wrote a letter to the Department requesting intelligence and FISA records relating to three individuals connected to the communist Chinese government that did business with the Biden family.<sup>4</sup> According to a federal government filing, the federal government obtained at least one FISA warrant relating to one individual, Patrick Ho. The Department has failed to respond. What steps have you taken to produce the requested records to me? Please explain in detail.

**RESPONSE: The Department appreciates the opportunity to respond to your concerns. The Department responded to your letter of March 31, 2021 on July 12, 2021.**

8. Recently, the Department hired Susan Hennessey, who has made partisan comments about the Justice Department Inspector General's Crossfire Hurricane investigation and Special Counsel Durham's inquiry. Hennessey stated, about the Inspector General's inquiry,

This is extremely irregular. There are growing signs that there are serious problems with the IG report and questions as to whether this is designed to be an honest accounting of the views of the IG or a political document driven by Barr's conspiracy theories.<sup>5</sup>

Hennessey stated the following about the Durham inquiry,

Durham has made abundantly clear that in a year and a half, he hasn't come up with anything. I guess this kind of partisan silliness

<sup>3</sup> Floor Statement, Senator Charles Grassley (May 11, 2021) <https://www.grassley.senate.gov/news/remarks/the-media-again-takes-liberal-disinformation-bait-on-biden-family-oversight>

<sup>4</sup> Press Release, Senator Grassley (March 31, 2021) <https://www.grassley.senate.gov/news/news-releases/grassley-johnson-seek-intel-records-related-to-hunter-bidens-foreign-financial-activities>

<sup>5</sup> Ashe Schow, *As Expected, Media Move to Discredit IG Report Regarding Origins of the Russian Collusion Narrative*, The Daily Wire (Nov. 16, 2019) <https://www.dailywire.com/news/as-expected-media-move-to-discredit-ig-report-regarding-origins-of-the-russian-collusion-narrative>.

has become characteristic of Barr's legacy, but unclear to me why Durham would want to go along with it.<sup>6</sup>

Hennessey's partisan comments show a clear political bias that undercuts her ability to impartially work on some matters within the NSD's purview, including the Durham inquiry.

- a. Does Ms. Hennessey have any role in the Durham inquiry? If so, please describe that role.
- b. Does Ms. Hennessey have authorization to access any aspect of the Durham inquiry, including records? If so, has she used that authorization? If so, for what?
- c. Has Ms. Hennessey been recused from all matters relating to the Durham inquiry? If not, why not? If so, please provide all records relating to her recusal obligations, including a recusal memo.
- d. Please describe the extent to which DOJ officials were aware of Ms. Hennessey's previous partisan statements when considering hiring her to work at DOJ.

**RESPONSE: I am aware you asked this question in a letter dated June 29, 2021. The Department is working diligently on a response.**

9. What is the status of the Durham inquiry? When will it be completed?

**RESPONSE: I am aware you asked this question in a letter dated June 29, 2021. The Department is working diligently on a response.**

10. Former Attorney General Barr's October 19, 2020, memo, cited 28 C.F.R § 600.8, which requires Durham to submit interim reports and a final report to you. Barr's memo also directed Durham to submit the reports "to the maximum extent possible...in a form that will permit public dissemination."<sup>7</sup>

- i. Do you agree with former Attorney General Barr that interim reports and a final report should be drafted "to the maximum extent possible...in a form that will permit public dissemination"? If not, why not? If so, what steps have you taken to ensure that they will be produced in that manner?
- ii. Will Ms. Hennessey have access to any of Durham's draft and final reports?

<sup>6</sup> Chuck Ross, *DOJ's Top National Security Lawyer Slammed Investigation Into Government Wrongdoing in Surveillance of Trump Aide*, WASHINGTON FREE BEACON (May 10, 2021), <https://freebeacon.com/biden-administration/dojs-top-national-security-lawyer-slammed-investigation-into-government-wrongdoing-in-surveillance-of-trump-aide/>.

<sup>7</sup> Charlie Savage, *Barr Makes Durham a Special Counsel in a Bid to Entrench Scrutiny of the Russia Inquiry*, The New York Times (Dec. 1, 2020), <https://www.nytimes.com/2020/12/01/us/politics/john-durham-special-counsel-russia-investigation.html>. See also, <https://www.politico.com/f/?id=00000176-2008-d692-a977-3c7afcd50000> (copy of then-Attorney General Barr's order appointing Durham as a special counsel.).

- iii. Please provide a list of all DOJ employees who will be able to review draft and final versions of the Durham report.

**RESPONSE: I am aware you asked this question in a letter dated June 29, 2021. The Department is working diligently on a response.**

- 11. Will you commit to working with me and other members of Congress as we attempt to receive updates from DOJ and DEA to work on permanent solutions to schedule fentanyl analogues?

**RESPONSE: Yes. The Department is actively engaged in interagency discussions led by the Office of National Drug Control Policy (ONDCP) to develop a comprehensive approach that addresses the complicated issues surrounding the scheduling of fentanyl-related substances. As I understand, the Department and ONDCP briefed your office on June 24 regarding the status of the interagency discussions.**

- 12. You have worked for both a Chairman and a down-dais member of the Judiciary Committee, and have been in both the Senate Majority and Minority, so you're acutely aware of the disparity members of the Committee can experience when attempting to provide oversight. Can you commit, if confirmed, to being responsive to oversight requests from members of the Judiciary Committee of both parties in an equal manner, regardless of seniority?

**RESPONSE: Having served as a Senate staffer for eight years, I understand the important role of Congressional oversight. Individual Members of Congress are Constitutional officers and, as such, are authorized to seek information from the Executive Branch. If I am confirmed, I will work to ensure that the Department makes every effort to accommodate the oversight needs of this Committee, consistent with the Department's law enforcement responsibilities.**

- 13. What is the difference between equity and equality?

**RESPONSE: In his Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, President Biden defined "equity" as "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment."**

- 14. The Federalist Society is an organization of conservatives and libertarians dedicated to the rule of law and legal reform.
  - a. Do you agree with Attorney General Garland, Lisa Monaco, and Vanita Gupta that a member of the Federalist Society should be allowed to serve on front-office staff within the Justice Department?

**RESPONSE: Yes.**

- b. If so, does that mean you would allow a member of the Federalist Society to serve on the Legislative Affairs front-office staff?

**RESPONSE: Yes.**

- c. Do you agree with Attorney General Garland, Lisa Monaco, and Vanita Gupta that a member of the Federalist Society should be allowed to be promoted to chief, assistant chief, section head, or any other career supervisory position in the Justice Department?

**RESPONSE: Yes.**

- 15. Do you believe potential voter fraud or other elections abnormalities are concerns that the Justice Department should take seriously?

**RESPONSE: The Department of Justice plays a pivotal role in protecting the right to vote and ensuring that elections are not influenced by fraud. The Office of Legislative Affairs does not have a role in the Department's enforcement of federal election laws.**

- 16. Please describe the selection process that led to your nomination to be Assistant Attorney General, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

**RESPONSE: I was approached in mid-February 2021 by the White House Office of Presidential Personnel about being nominated to serve as Assistant Attorney General for Legislative Affairs. I participated in a vetting and screening process, and sometime in March I received a formal notification that the President would nominate me, which he did in April 2021.**

- 17. 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?

**RESPONSE: No.**

- 18. 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?

**RESPONSE: No.**

19. 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.

**RESPONSE: No.**

20. 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?

**RESPONSE: No.**

21. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.

**RESPONSE: While I do not have a record of those precise dates, the conversations I had took place between mid-February and mid-March of 2021.**

22. Please explain, with particularity, the process whereby you answered these questions.

**RESPONSE: The Department of Justice received these questions on June 30, 2021. I worked with Department attorneys, conducted research, and answered the questions. I finalized answers to the questions and authorized their transmission to the Committee on July 12, 2021.**

**Nomination of Helaine Ann Greenfeld  
to be Assistant Attorney General for the Office of Legislative Affairs  
Questions for the Record  
Submitted June 30, 2021**

**QUESTIONS FROM SENATOR COTTON**

1. Since becoming a legal adult, have you ever been arrested for or accused of committing a hate crime against any person?

**RESPONSE: No.**

2. Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?

**RESPONSE: No.**

3. Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.

**RESPONSE: The Department of Justice received these questions on June 30, 2021. I worked with Department attorneys, conducted research, and answered the questions. I finalized answers to the questions and authorized their transmission to the Committee on July 12, 2021.**

4. Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. If government officials assisted with writing or drafting your answers, please also identify the department or agency with which those officials are employed.

**RESPONSE: No.**

**Senator Mike Lee**  
**Questions for the Record**  
**Helaine Greenfeld, AAG, Office of Legislative Affairs**

1. The Religious Freedom Restoration Act is the leading federal civil rights law that protects all Americans' religious freedom. It was championed by Senator Ted Kennedy and Senator Orrin Hatch to pass the Senate by a vote of 97-3 and to pass the House by a unanimous voice vote. President Bill Clinton proudly signed it into law in 1993. For nearly three decades, it has protected the religious freedom of all Americans of all faiths. If confirmed, will you commit to oppose any legislative or executive action that would alter in any way the Religious Freedom Restoration Act's protection for Americans of all faiths?

**RESPONSE: Religious freedom is a hallmark of the First Amendment, and important to me. If I am confirmed, any Department evaluation of a legislative or executive action would be undertaken by multiple components and leadership offices of DOJ, guided by a careful review of the facts and law. The Office of Legislative Affairs would undertake to communicate any position to Congress.**

2. Do you believe that hateful speech alone, without any attendant conduct, should be a crime?

**RESPONSE: No. The Supreme Court has repeatedly held that the First Amendment bars viewpoint discrimination. *Matal v. Tam*, 528 U.S. \_\_ (2017).**

3. What are your thoughts on the Department of Justice's ("DOJ") policy concerning civil asset forfeiture?

**RESPONSE: I have not had the occasion to study the topic of civil asset forfeiture in detail, but if confirmed, I commit to facilitating communication between Congress and the Department about it.**

4. Do you think this incentive for law enforcement agencies to participate in equitable sharing is a problem? If so, is it something you will work to address?

**RESPONSE: I have not had the occasion to study the topic of civil asset forfeiture in detail, but if confirmed, I commit to facilitating communication between Congress and the Department about it.**

5. We've seen disturbing reports recently of websites posting obscene content involving minors and parents unable to convince or force websites to remove obscene content involving their minor children. Will you commit to prioritize enforcement of our anti-trafficking and child pornography laws against these heinous online actors?

**RESPONSE: Sexual exploitation of children is a heinous crime. Although the Office of Legislative Affairs does not enforce anti-trafficking or child**



**pornography laws, if confirmed I commit to facilitating communication between Congress and the Department on the topic.**

6. As an Assistant Attorney General, what will you do if the President takes a position that is contrary to the law or not in the interests of the United States?

**RESPONSE:** Because I know the President respects the law and acts in the best interests of the United States, I do not expect this to happen. But if it did, I would argue against that course of action, and if my advice were not heeded, I would resign.

7. As a nominee for a position in the Executive branch, do you think there are any limits on the President's use of prosecutorial discretion?

**RESPONSE:** The Office of Legislative Affairs has no role the Department's enforcement of federal laws. As Attorney General Garland testified at his confirmation hearing, prosecutors and other government agencies may exercise discretion about how to allocate their limited enforcement resources. However, the Executive Branch cannot simply decide, based on a policy disagreement, that it will not enforce a law at all.

8. Please state for the record your thoughts on the Second Amendment?

**RESPONSE:** My view of the Second Amendment is guided by the *Heller* and *McDonald* decisions. In *Heller*, 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 Court also stated that, "[l]ike most rights, the right secured by the Second Amendment is not unlimited." *Id.* at 626. In *McDonald*, the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government.

9. A number of states have enacted so-called "red flag laws" that authorize judges to issue orders for the seizure of otherwise lawfully owned firearms when the owner is found to be a danger to self or others. Do you support the use of red flag orders to seize lawfully-owned firearms? If so, what due process protections should apply to the issuance of these orders? Should a judge be able to order firearm seizures in *ex parte* proceedings, before the respondent has had a chance to answer the allegations in the petition?

**RESPONSE:** President Biden and Attorney General Garland are strong supporters of gun safety measures. The role of the Department is to advance the policy program of the President and the administration, including about "red flag" statutes, as long as it is consistent with the law, and the role of the Office of Legislative Affairs is to facilitate communication between the branches on this and other matters of concern to Congress and the administration.

10. Do you support banning specific types of firearms?

**RESPONSE:** President Biden and Attorney General Garland are strong supporters of gun safety measures. The role of the Department is to advance the policy program of the President and the administration, including about gun safety, as long as it is consistent with the law, and the role of the Office of Legislative Affairs is to facilitate communication between the branches on this and other matters of concern to Congress and the administration.

11. Do you support banning large magazines?

**RESPONSE:** President Biden and Attorney General Garland are strong supporter of gun safety measures. The role of the Department is to advance the policy program of the President and the administration, including about gun safety, as long as it is consistent with the law, and the role of the Office of Legislative Affairs is to facilitate communication between the branches on this and other matters of concern to Congress and the administration.

12. Do you support holding firearms manufacturers liable for damage caused by people using their firearms to commit a crime?

**RESPONSE:** President Biden and Attorney General Garland are strong supporters of gun safety measures. The role of the Department is to advance the policy program of the President and the administration, including about gun safety, as long as it is consistent with the law, and the role of the Office of Legislative Affairs is to facilitate communication between the branches on this and other matters of concern to Congress and the administration.

13. You've tweeted that you disagreed with a school's decision to suspend a 9-year-old simply for having a toy B.B. gun in the background of his video feed while participating in virtual schooling. Do you believe that law abiding Americans without a criminal history should be allowed to own firearms?

**RESPONSE:** I did not tweet this.

14. The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition?

- a. What is the difference between "equity" and "equality?"

- b. In order to achieve “equity,” is it ever necessary to discriminate *against* members of some groups in favor of others?
- c. If treating people equally before the law results in disparate outcomes, is it acceptable to discriminate against those with favorable outcomes before the law in order to correct that disparity?

**RESPONSE:** In his Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, President Biden defined “equity” as “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment.” As Attorney General Garland has observed, that definition aligns with bedrock legal principles.

- 15. How do you define “systemic racism?”

**RESPONSE:** As Attorney General Garland explored with Senator Kennedy at his confirmation hearing, the concept of structural racism gives us a language to acknowledge—and do something about—the structural barriers and disparate outcomes that communities of color experience in our society, separate and apart from any individuals’ views or intentions.

- 16. How do you define “critical race theory?”

**RESPONSE:** I understand that critical race theory is the subject of public discourse. However, I am not a legal academic and I do not have a definition.

- 17. Do you distinguish “critical race theory” from “systemic racism,” and if so, how?

**RESPONSE:** See response to Question 16.

- 18. Do you think America’s criminal justice system, including the federal courts, U.S. Attorney’s offices, and the Department of Justice are “systemically racist?”

**RESPONSE:** Acknowledging the existence of systemic racism in society does not mean that any particular institution or individual is systemically racist.

- 19. Congresswoman Ayanna Presley has said, in relation to criminal justice policy: “[w]e must now be every bit as intentional in legislating justice and equity, and that starts with embracing anti-racism as a central tenet of the policymaking process.” Do you plan to institute “anti-racist” policies in the Office of Legislative Affairs at the Justice Department? If so, which policies do you plan to institute?

**RESPONSE:** “Equal justice under law” is a foundational principle of our legal system and the Department of Justice’s mission is to ensure fair and impartial administration of justice for all Americans. If confirmed, I would seek to ensure

**that the Office of Legislative Affairs maintains policies and practices that are aligned with this mission.**

20. Do you believe that members of historically oppressed minority groups should be treated more favorably than those of other races in prosecutions and sentencing decisions to correct for the effects of systemic racism?

**RESPONSE: The Department of Justice’s mission is to ensure fair and impartial administration of justice for all Americans.**

21. Do you believe, if confirmed as an Assistant Attorney General, that you would have a duty to act in line with your moral code? If so, would you agree that it is part of your duty to ensure that the division under your care does not violate that code?

**RESPONSE: If confirmed it would be my duty to act in accordance with the law and all ethical guidelines that Department of Justice attorneys must follow, which I consider to be the moral way to behave.**

22. Along the same lines, let’s assume that someone acting as an agent of the Department of Justice under your control takes actions which contradict your moral code. What responsibility do you feel you would owe for those actions?

**RESPONSE: If people whom I supervise were to act in an illegal or unethical way I would consider it a failure of my management responsibilities, however it intersected with my personal moral beliefs.**

23. For purposes of federal law, when does life begin?

**RESPONSE: In *Roe v. Wade*, 410 U.S. 113 (1973), the Supreme Court stated that the court “need not resolve” the question of when life begins. *Id.* at 159**

24. Does the definition of when human life begins for purposes of federal law differ from the scientific definition of when human life begins?

**RESPONSE: In *Roe v. Wade*, 410 U.S. 113 (1973), the Supreme Court stated that the court “need not resolve” the question of when life begins. *Id.* at 159**

25. At what point in human development does the United States have a compelling interest in protecting a human life?

**RESPONSE: In *Casey*, the Supreme Court held that states may regulate abortion prior to viability based on the state’s interest in maternal health and potential life, provided those regulations did not impose and do not have “the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.” *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 877 (1992).**

26. Do you support laws penalizing fetal homicide?

**RESPONSE: The mandate of the Department of Justice is to enforce the Constitution and other federal laws consistent with Supreme Court precedent. The Office of Legislative Affairs does not have a role in the Department's enforcement of federal law.**

27. Do you support the Unborn Victims of Violence Act of 2004, which provides that a person guilty of killing a child in utero may be punished to the same extent as if they had killed the child's mother, and that a person who intentionally kills a child in utero may be charged as a homicide (i.e., murder or manslaughter)?

**RESPONSE: See response to Question 26.**

28. Given that "homicide" requires the killing of an innocent human being, do you agree that in order to punish someone for violating this statute, the child in utero would have to be a human being?

**RESPONSE: See response to Question 26.**

29. Are there any circumstances which justify the killing of an innocent human being?

**RESPONSE: See response to Question 26.**

30. Do you support the Born Alive Infants Protection Act?

**RESPONSE: See response to Question 26.**

31. Relatedly, would you support any policy that would prohibit the killing of children who survive failed abortions outside the womb?

**RESPONSE: See response to Question 26.**

32. Will you commit that the Office of Legislative Affairs of the Department of Justice will not rely upon data or information compiled by the Southern Poverty Law Center considering the serious allegations of systemic sexual harassment, racial discrimination and their ties to domestic terrorism cases?

**RESPONSE: The Office of Legislative Affairs does not currently rely upon data or information collected by outside organizations. I am not familiar with the facts of these allegations.**

33. There's been a lot of rhetoric over the last year from critics of our criminal justice system suggesting that we should "defund" the police. Do you agree with those critics?

**RESPONSE: I do not support defunding the police.**

34. Do you believe our federal criminal justice system requires reforms, and if so, what reforms?

**RESPONSE: As Attorney General Garland testified, guaranteeing the promise of fair and impartial enforcement of the law, and addressing the disparate results for communities of color in our justice system, are among the most important issues we face.**

**Senator Ben Sasse**  
**Questions for the Record**  
**U.S. Senate Committee on the Judiciary**  
**Hearing: "Nominations"**  
**June 23, 2021**

For Ms. Helaine Greenfeld:

1. Will you commit to providing members of the Senate Judiciary Committee with a substantive update on any of their oversight requests within 15 days of receiving such requests?

**RESPONSE:** I worked in the Senate for eight years and my experience as a Senate staffer taught me the importance of transparency to public confidence and accountability. The Office of Legislative Affairs tries hard to be transparent and respond quickly and well to all Congressional inquiries. If I am confirmed, I will work to ensure that the Department makes every effort to accommodate the needs of Congress, consistent with the Department's law enforcement responsibilities. I commit to always being available to discuss the status of inquiries and work to facilitate better communication between the branches.

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.

**Questions for Helaine Greenfeld**

1. If confirmed, what actions will you take to maintain and improve responsiveness by the Department to our inquiries, and how will you improve transparency to Congress?

**RESPONSE: I worked in the Senate for eight years and my experience as a Senate staffer taught me the importance of transparency to public confidence and accountability. The Office of Legislative Affairs tries hard to be transparent and respond quickly and well to all Congressional inquiries. If I am confirmed, I will work to ensure that the Department makes every effort to accommodate the needs of Congress, consistent with the Department's law enforcement responsibilities. I commit to always being available to discuss the status of inquiries and work to facilitate better communication between the branches.**

2. I have two outstanding letters to the Attorney General which were not answered by the deadline set by my office. They are:
  - a. A letter dated May 20 with a requested response by June 21 regarding the misguided decision to reverse DOJ policy and permit federal funding for sanctuary jurisdictions. Ranking Member Grassley joined this letter with me.
  - b. A letter dated May 19 with a requested response by June 19 regarding the Attorney General's efforts to fight International Parental Child Abduction. Senator Feinstein joined this letter.

When can we expect a response from the Attorney General on these letters?

**RESPONSE: The Department appreciates the opportunity to respond to your concerns. The Department sent a response to your letter of May 19, 2021 on July 8, 2021. The Department sent a response to your letter of May 20, 2021 on July 12, 2021.**



**Senator Chuck Grassley, Ranking Member**

**Questions for the Record**

**Angel Kelley**

**Judicial Nominee to the U.S. District Court for the District of Massachusetts**

1. **Several weeks ago, 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 familiar with the statement. Flying the American flag is one of many ways to demonstrate one’s pride and patriotism.

2. **In the context of federal case law, what is super precedent? Which cases, if any, count as super precedent?**

Response: The term is used in different ways by different people. Based on my understanding of the term super precedent, it refers to Supreme Court cases that become institutionalized in our society and are embedded in our lives and law. There is some debate about which cases have the status of super precedent. As a result, it is not appropriate for me to answer this question, as a sitting state court judge and federal judicial nominee. However, I can commit if confirmed, I will faithfully apply all binding precedent of the Supreme Court and First Circuit, regardless of whether any particular case might be described as “super precedent.”

3. **Is it legal for police to stop and frisk someone based on a reasonable suspicion of involvement in criminal activity?**

Response: In *Terry v. Ohio*, the Supreme Court held that the Fourth Amendment requires the police to have reasonable suspicion that (1) the suspect is involved in the commission of a crime and (2) is armed and dangerous to justify a stop and frisk of the suspect. 392 U.S. 1 (1968).

4. **Is the federal judicial system systemically racist?**

Response: There are several studies that document the disparate impact on communities of color at various stages in the federal criminal legal process. The 100-to-1 powder cocaine to crack cocaine sentencing disparity is one example of how communities of color have been disadvantaged by the criminal legal system. Over the years, the federal government has engaged in significant work to address these sentencing disparities, through the U.S. Sentencing Commission’s revisions to the sentencing guidelines and legislation, such as Fair Sentencing Act and First Step Act. If confirmed as a U.S. District Court judge, I would apply the statutory sentencing factors and the laws passed by

Congress.

**5. Is the Massachusetts Commonwealth judicial system systemically racist?**

Response: Racial disparities exist in many systems. For example, in Massachusetts various studies on racial disparities have been conducted, including a recent study that was conducted by Harvard Law School, Criminal Justice Policy Program. Harvard Law School's research team issued a report on September 9, 2020, documenting racial disparities in the Massachusetts criminal system. Racial disparities in the Massachusetts criminal system (2020), <https://hls.harvard.edu/content/uploads/2020/11/Massachusetts-Racial-Disparity-Report-FINAL.pdf>. As a sitting judge in the Commonwealth of Massachusetts, it is my responsibility to ensure every litigant that comes before me is treated fairly and impartially regardless of their race, socio-economic status, or any other characteristic. That would continue to be my responsibility if confirmed as a U.S. District Court judge.

**6. Please describe the circumstances when it is appropriate for a judge not to credit the testimony of a law enforcement officer.**

Response: The reasons why any fact-finder might choose not to credit the testimony of a particular witness, regardless of occupation, include but are not limited to the appearance that the witness' testimony is untruthful or if it conflicts with other evidence and reasonable inferences drawn from the evidence.

**7. Do you believe that we should defund the police?**

Response: There is significant public debate on this topic. As a sitting state court judge and federal judicial nominee, it is not appropriate for me to respond to this question.

**8. Do you believe that local governments should reallocate funds away from police departments to other support services?**

Response: Same answer as Question 7.

**9. When is the last time you handled a firearm?**

Response: Last week.

**10. Should a defendant's personal characteristics influence the punishment he or she receives?**

Response: Sentencing is an individualized process. If confirmed, I would follow 18 U.S.C. §3553 and rigorously calculate the sentencing guideline range and apply the

sentencing factors to impose a sentence “sufficient, but not greater than necessary.” In determining the proper sentence to impose, I would consider “the nature of the offense and the history and characteristics of the defendant,” as required by 18 U.S.C. §3553(a)(1).

- 11. Should violent illegal aliens be permitted to remain in the United States just because they married a United States citizen?**

Response: As a sitting state court judge, I am not familiar with the specific immigration laws that apply to federal defendants convicted of violent crimes and who are also undocumented and married to U.S. citizens. If I am confirmed and a case came before me presenting these issues, I commit to apply federal law to the facts of these cases, just as if they were any other case.

- 12. What is more important during the COVID-19 pandemic: ensuring the safety of the community by keeping violent, repeat gun offenders incarcerated or protecting convicts from the coronavirus?**

Response: Public safety is always a significant consideration when making bail and sentencing decisions. Motions for release due to the coronavirus require case-by-case analysis and determination.

- 13. During your confirmation hearing to be an Associate Judge for the Superior Court, you noted that within the criminal context there are cases that you do not personally agree with. What types of cases earn your personal disapproval?**

Response: I don’t recall the context of the comment, but I suspect that any such comment was intended to convey that there are occasions when my personal views on legal issues differ from the ultimate legal determination in the case. If confirmed, I will continue to decide cases based on my legal analysis of the facts and the law, not my personal views. I am confident any such statement was not intended to convey that there are types of cases, where I would not follow the law or cases that I would be unwilling to handle. I have never refused to handle any type of cases that appeared on my docket and I have no intention to start such a practice.

- 14. Do you intend to let your personal disapproval of the aforementioned cases influence your opinions, if confirmed?**

Response: See answer to Question 13.

- 15. 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: In my 12 years as a state court judge, I have not had the occasion to encounter this. If confirmed, I will follow the interpretative method dictated by direct or analogous precedent.

**16. What role should empathy play in interpreting the law?**

Response: Judges are required to adjudicate every case fairly and impartially. Empathy should not dictate the legal determination of any case. However, empathy may play a role in how a judge communicates with the parties in the case in open court, with the understanding that all communications should be delivered with respect and even-handedness, and in compliance with judicial code of conduct.

**17. What is the purpose of criminal sentencing under the law?**

Response: The purpose of sentencing is to hold a person accountable for unlawful conduct. Sentencing is an individualized process that achieves one or more sentencing goals of punishment, deterrence, public safety, and rehabilitation.

**18. What is the purpose of criminal sentencing from a moral perspective?**

Response: The purpose is the same: to hold a person accountable for unlawful conduct.

**19. What, if anything, do you think is the relationship between morality and the law when it comes to punishing criminals?**

Response: Please see answers to Questions 17 and 18.

**20. What is the relationship between morality and the law generally?**

Response: They are aligned in the sense that laws are based on the collective morality of a society.

**21. Should law firms undertake the pro bono prosecution of crimes?**

Response: Prosecutors enjoy the privilege of representing a state or the United States in the pursuit of justice in the prosecution of criminal matters. Prosecutors also carry the unique responsibilities and burdens of such a high honor. I am not aware if pro bono prosecution of crimes is a practice in some locations, but if it is, I would expect those burdens and responsibilities are well understood by anyone assuming the duties of a prosecutor.

22. **Do you agree with Judge Ketanji Brown Jackson in 2013 when she said she did not believe in a “living constitution”?**

Response: I am not familiar with Judge Ketanji Brown Jackson’s comment, nor the context. Additionally, as a sitting state court judge and federal judicial nominee, it is not appropriate for me to comment on Judge Ketanji Brown Jackson’s statement.

23. **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: I am not aware of any authority for such a process.

24. **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: Membership in the Federalist Society would not bar a candidate from consideration for a clerkship position.

25. **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: Those decisions are best left to the law firms.

26. **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.

27. **Do you agree with the proposition that some clients do not deserve representation on account of their:**

- a. **Heinous Crime?**

Response: No.

- b. **Political beliefs?**

Response: No.

- c. **Religious beliefs?**

Response: No.

**28. Should judicial decisions take into consideration principles of social “equity”?**

Response: Judicial decision-making should be confined to deciding the legal claims in the case, based on the legal arguments of parties, the evidence presented or determined at an evidentiary hearing and with fidelity to the law.

**29. Is climate change real?**

Response: I understand there is scientific research and public debate on this topic. As a sitting state court judge and federal judicial nominee, it is not appropriate for me to answer this question.

**30. 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 *Gideon v. Wainwright* correctly decided?**
- l. **Was *Rust v. Sullivan* correctly decided?**

Response: As a sitting state court judge and federal judicial nominee, generally it is not appropriate for me to answer these questions. However, I will state *Brown* and *Loving* were correctly decided, because the issues presented in these cases are not likely to be re-litigated. If confirmed, I will follow Supreme Court precedent.

**31. Is threatening Supreme Court Justices right or wrong?**

Response: Threatening any person may constitute a crime. Likewise, threatening a Supreme Court Justice may constitute a crime.

**32. Do you think the Supreme Court should be expanded?**

Response: I understand there is much public debate on this topic. As a sitting state court judge and federal judicial nominee, it is not appropriate for me to answer this question.

**33. Do the following qualify as public health emergencies? Please explain why or why not?**

- a. **Racism?**
- b. **Gun violence?**
- c. **Drug addiction / abuse?**

Response: Racism, gun violence and substance use disorders are significant social challenges to be addressed by policymakers.

34. **If the Justice Department determines that a 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: As a sitting state court judge and federal judicial nominee, it is not appropriate for me to answer this question.

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: An injunction is an equitable remedy, governed by Federal Rule of Civil Procedure 65. A plaintiff seeking a preliminary injunction must establish: (1) likelihood of success on the merits; (2) likelihood 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. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). There has been a notable rise in the issuance of nationwide injunctions in the private and public law context. There is significant legal debate about the use of nationwide injunctions, particularly those that restrict the federal government from enforcing a statute or regulation. If confirmed, I would decide each case after careful consideration of the legal arguments and the facts presented, guided by Supreme Court and First Circuit precedent.

36. **Does illegal immigration impose costs on border communities?**

Response: Whether illegal immigration imposes costs on border communities is an issue that should be addressed by policymakers.

37. **When was the last time you visited the U.S.-Mexico border?**

Response: I visited Laredo, Texas in December 2019 and the U.S.-Mexico border was visible.

38. **When was the last time you visited the U.S.-Mexico border outside of a port of entry?**

Response: I do not recall if I have been in the vicinity of U.S.-Mexico border outside of a port of entry.

**39. Do Blaine Amendments violate the Constitution?**

Response: The Blaine Amendments refer to regulations that restrict the use of public funds for religious schools. If confirmed, should I encounter a case involving Blaine Amendments and the Free Exercise Clause of the First Amendment, I will follow Supreme Court and First Circuit precedent, such as *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020).

**40. 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: In 2017, I submitted my application to the bipartisan Advisory Committee on Massachusetts Judicial Nominations and interviewed with both U.S. Senators and then the White House in 2018. The White House took no action on my application. In 2019, new members were appointed to the bipartisan advisory committee. I applied again, interviewed with the bipartisan advisory committee and my application was advanced again to the senators. No action was taken on my application.

On January 1, 2021, Senators Elizabeth Warren and Edward Markey announced new committee members to the bipartisan Advisory Committee on Massachusetts Judicial Nominations to consider applications for federal judicial vacancies in the United States District Court for the District of Massachusetts. On January 18, 2021, I submitted my application for consideration. I interviewed with the advisory committee on February 4, 2021 and advanced through the due diligence process. I interviewed with Senators Warren and Markey on February 17, 2021. I interviewed with members of the White House Counsel's Office on February 23, 2021. On May 12, 2021, my nomination was submitted to the Senate.

**41. 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?**

Response: No.

**42. 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?**

Response: No.



43. **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.**

Response: No.

44. **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?**

Response: No.

45. **List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.**

Response: I interviewed with White House staff on February 23, 2021. Shortly thereafter, I was informed that my application was advanced to the vetting process. On or about May 12, 2021, I was informed of my nomination.

46. **Please explain, with particularity, the process whereby you answered these questions.**

Response: Upon receipt of these questions, I carefully reviewed each question, drafted responses, conducted research when necessary and submitted them to the Department of Justice, Office of Legal Policy for review and transmittal to the Senate Judiciary Committee. The answers contained herein are my own.

**Nomination of Angel Kelley  
to be United States District Judge for the District of Massachusetts  
Questions for the Record  
Submitted June 30, 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: If confirmed, I will follow all binding Supreme Court precedent. My personal views are not relevant to the inquiry whether I would follow Supreme Court precedent. As a sitting state court judge and federal judicial nominee, it would be inappropriate for me to answer otherwise.

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 *Heller* decision informs us that the Second Amendment guarantees an individual's right to keep and bear arms.

5. **Please describe what you believe to be the Supreme Court's holding in *Greer v. United States*, 593 U.S. \_\_ (2021).**

Response: In *Rehaif v. United States*, the Supreme Court held that in the prosecution of a felon-in-possession case, the prosecution 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. 139 S. Ct. 2191 (2019). Relying on *Rehaif*, defendants in *Greer v. United States* challenged their convictions under 18 U.S.C. §922(g)(1) (the statute prohibiting felons from possessing firearms), because (1) the jury was not instructed of the *mens rea* requirement defined in *Rehaif*, and (2) the defendant was not informed during a plea colloquy that the prosecution was required to prove the element of *mens rea*. No. 19-8709, 2021 WL 2405146 (S. Ct. June 14, 2021). The Supreme Court held in *Greer*

that a *Rehaif* error shall not be the basis for vacating the conviction “unless the defendant makes a sufficient argument or representation on appeal that he would have presented evidence at trial that he did not know he was a felon” and there exists a “reasonable probability” that the outcome 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*, defendant sought reduction of his sentence under the First Step Act of 2018. The First Step Act adopted sentencing reforms that permitted the reduction of sentences for certain crack cocaine offenses. In *Terry*, the Supreme Court held that Section 2(a) of the Fair Sentencing Act modified the statutory penalties for only offenses that triggered a mandatory minimum sentence, not other crack cocaine offenses, such as the one defendant was convicted. No. 20-5904, 2021 WL 2405145 (S. Ct. 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 sentencing judge is not required to make a “separate factual finding of permanent incorrigibility” when sentencing a defendant to life without parole, when the defendant is under the age of 18 and convicted of murder. 141 S. Ct. 1307 (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 plaintiffs were entitled to injunctive relief pending appeal in their challenge to California’s COVID-19 regulation restricting residential religious gatherings. The Supreme Court held that government regulations that “treat *any* comparable secular activity more favorably than religious exercise” are subject to strict scrutiny review under the Free Exercise Clause. 141 S. Ct. 1294 (2021).

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 a person who enters the country unlawfully and obtains Temporary Protected Status (TPS) is ineligible to become a lawful permanent resident, due to the unlawful entry. No. 20-315, 2021 WL 2301964 (S. Ct. June 7, 2021). Persons afforded TPS are deemed foreign nationals with nonimmigrant status, but it does not grant “admission,” here defined as a lawful entry.

10. **What is your view of arbitration as a litigation alternative in civil cases?**

Response: Arbitration is a widely used alternative in civil cases. I don't have a personal view of arbitration. I am confident many are pleased with this alternative, otherwise it would not be as popular as it is.

**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: Upon receipt of these questions, I carefully reviewed each question, drafted responses, conducted research when necessary and submitted them to the Department of Justice, Office of Legal Policy for review and transmittal to the Senate Judiciary Committee. The answers contained herein are my own.

**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 Angel Kelley, Nominee for the United States  
District Court for the District of Massachusetts**

**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: As a sitting state court judge and federal judicial nominee, it is not appropriate for me to respond to this question.

2. **Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's philosophy from Warren, Burger, Rehnquist, or Robert's Courts is most analogous with yours.**

Response: As a state court judge, it is my responsibility to be fair and impartial. Over my 12 years as a state court judge I have made it my practice to treat everyone with respect and to give the parties an opportunity to be heard, when appropriate. This practice is an important feature of the judicial process. My decisions are guided by and confined to a careful consideration of the legal arguments, facts presented in the specific case, and application of the governing law. Fidelity to this process, independent of any outside or personal influences, preserves the integrity of the judicial decision-making process. This is my judicial philosophy. I have not studied sufficiently the judicial philosophies of U.S. Supreme Court Justices from the Warren, Burger, Rehnquist, and Roberts Courts to make a comparison.

3. **Does the Constitution's meaning evolve and adapt to new circumstances even if the document is not formally amended? If so, when?**

Response: The Constitution is an enduring document. It has guided our nation through the most challenging periods of our history and brought us to our proudest moments. The U.S. Constitution is a model for other nations.

4. **Please briefly describe the interpretative method known as originalism.**

Response: As I understand the term originalism, it refers to an interpretative methodology of the Constitution that requires giving constitutional text its original public meaning, as understood by an ordinary person at that time.

5. **Please briefly describe the interpretive method often referred to as living constitutionalism.**

Response: As I understand the term living constitutionalism, it refers to an interpretative methodology that interprets the Constitution as adaptable, with the capacity to change its application and meaning over time.

6. **If you were to be presented with a constitutional issue of first impression— that is, an issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by**

**that meaning?**

Response: In my 12 years as a state court judge, I have not encountered such a situation. If confirmed, I will follow the interpretative method dictated by direct or analogous precedent of the Supreme Court or First Circuit.

7. **Is the public's current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?**

Response: In my 12 years as a state court judge, I have not had an occasion to apply different methodologies of interpretation of the Constitution. If confirmed, I will follow the interpretative method dictated by direct or analogous precedent of the Supreme Court or First Circuit.

8. **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 possess a firearm. 554 U.S. 570 (2008). The Supreme Court also held that the Second Amendment right to keep and bear arms is a fundamental right that applies to the states, as well as the federal government. *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

9. **Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?**

Response: See answer to Question 11. I am unaware of any Supreme Court precedent indicating that the right to bear arms receives less protection than other individual rights.

10. **Does the right to own a firearm receive less protection than the right to vote under the Constitution?**

Response: Both are fundamental rights.

11. **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. If confirmed, I will follow Supreme Court precedent in all cases, including those involving religious liberties. See, e.g., *Burwell v. Hobby Lobby*, 573 U.S. 682 (2014).

12. **Do Americans have the right to their religious beliefs outside the walls of their houses of worship and homes?**

Response: Yes.

13. **In February of this year, in a video presentation with Voice of Reason Boston, you said that “there is systemic racism in almost all systems, particularly the court system.” Is the federal court system infected with systemic racism?**

Response: Racial disparities exist in many systems. For example, in Massachusetts various studies on racial disparities have been conducted, including a recent study that was conducted by Harvard Law School, Criminal Justice Policy Program. Harvard Law School’s research team issued a report on September 9, 2020, documenting racial disparities in the Massachusetts criminal system. Racial disparities in the Massachusetts criminal system (2020), <https://hls.harvard.edu/content/uploads/2020/11/Massachusetts-Racial-Disparity-Report-FINAL.pdf>. As a sitting judge in the Commonwealth of Massachusetts, it is my responsibility to ensure every litigant that comes before me is treated fairly and impartially regardless of their race, socio-economic status, or any other characteristic. That would continue to be my responsibility, if confirmed as a U.S. District Court judge.

14. **Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?**

Response: If confirmed as a U.S. District Court judge and a case came before me with allegations of employment discrimination, I would apply binding Supreme Court and First Circuit precedent.

15. **Does the President have the authority to abolish the death penalty?**

Response: Congress has authorized the death penalty as an appropriate punishment for certain crimes and the Supreme Court has held the death penalty is constitutional in certain circumstances. I am not aware of any authority for the President to unilaterally abolish the death penalty.



**Senator Mike Lee**  
**Questions for the Record**  
**Angel Kelley, D. Mass.**

1. **How would you describe your judicial philosophy?**

Response: As a state court judge, it is my responsibility to be fair and impartial. Over my 12 years as a state court judge, I have made it my practice to treat everyone with respect and to give the parties an opportunity to be heard, when appropriate. This practice is an important feature of the judicial process. My decisions are guided by and confined to a careful consideration of the legal arguments, facts presented in the specific case and application of the governing law. Fidelity to this process, independent of any outside or personal influences, preserves the integrity of the judicial decision-making process. This is my judicial philosophy.

2. **What sources would you consult when deciding a case that turned on the interpretation of a federal statute?**

Response: First, I will consider the text of the statute, potentially referring to canons of statutory construction, if needed. I would review the arguments made by counsel and the cases cited by the parties and I would consult Supreme Court and First Circuit precedent in evaluating this statute and follow this binding precedent. If direct precedent does not exist, I would look for analogous precedent on related statutory provisions. If the case presented an issue of first impression in my circuit, I would look to other circuits for persuasive precedent. In the end, legislative history might be consulted, if necessary.

3. **What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?**

Response: In addition to reviewing the arguments made by counsel and cases cited by the parties, I would consult the Supreme Court or First Circuit precedent and follow this binding precedent. If the case presented an issue of first impression in my circuit, I would consult precedent from other circuits.

4. **What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?**

Response: If confirmed, I will be obligated to follow Supreme Court and First Circuit precedent to determine how text and original meaning apply in the interpretation of a constitutional provision.

5. **How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?**

Response: If the meaning is plain on the face of the statute, then the interpretation process stops there.

- a. **Does the “plain meaning” of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?**

Response: If confirmed, I will be obligated to follow Supreme Court and First Circuit precedent to determine the interpretative methodology employed in the interpretation of the statute or constitutional provision.

6. **What are the constitutional requirements for standing?**

Response: A plaintiff must have suffered (1) an “injury in fact,” (2) causation of an injury that is “fairly traceable” to the conduct subject of the suit; (3) and a favorable result will likely redress the harm. *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 560-61 (1992) (citations and internal quotation marks omitted).

7. **Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?**

Response: Under Article I of the Constitution, Congress is granted the power “to make all Laws which shall be necessary and proper.” The Necessary and Proper Clause confers upon Congress implied powers, which are not explicitly enumerated in the Constitution. *McCullough v. Maryland*, 17 U.S. 316 (1819).

8. **Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?**

Response: In addition to reviewing the arguments made by counsel and cases cited by the parties, I would determine whether the Supreme Court or First Circuit had previously interpreted that law and follow this binding precedent.

9. **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) (the Supreme Court established the right to marital privacy). Following *Griswold*, the Supreme Court recognized other unenumerated rights related to marriage, such as the right to marry. *See, Loving v. Virginia*, 388 U.S. 1 (1967) (interracial marriages); *Obergefell v. Hodges*, 576 U.S. 644 (2015) (same-sex marriages).

10. **What rights are protected under substantive due process?**

Response: In *Washington v. Glucksberg*, the Supreme Court held that the substantive-due-process analysis begins with the observation 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.” 521 U.S. 702, 720-721 (1997). (citations and internal quotation marks omitted). Some rights protected under substantive due process are listed above in Question 9.

11. **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: Any personal beliefs I have regarding substantive due process rights versus economic rights are irrelevant to how I would decide cases as a judge. If confirmed, I would faithfully follow Supreme Court and First Circuit precedent.

12. **What are the limits on Congress’s power under the Commerce Clause?**

Response: In *United States v. Lopez*, the Supreme Court held that Congress’s power under the Commerce Clause extended to three categories: (1) regulation of channels of commerce; (2) regulation of instrumentalities of commerce; and (3) regulation of economic activities that affect commerce. 514 U.S. 549, 558-59 (1995).

13. **What qualifies a particular group as a “suspect class,” such that laws affecting that group must survive strict scrutiny?**

Response: In *City of Cleburne v. Cleburne Living Center*, the Supreme Court held that classifications based on race, alienage or national origin 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 warrant strict scrutiny review. 473 U.S. 432, 440 (1995).

14. **How would you describe the role that checks and balances and separation of powers play in the Constitution’s structure?**

Response: The concept of checks and balances is central to our democracy. The Constitution in Article I, II, and III, divides and defines the powers and limitations of the three branches of government as they relate to each other. As such, our system of checks and balances prevent the concentration of power in any one branch to preserve constitutional liberties.

15. **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: In addition to reviewing the arguments made by counsel and cases cited by the parties, I would determine whether the Supreme Court or First Circuit had previously addressed this scenario, if so then I would follow this binding precedent.

16. **What role should empathy play in a judge's consideration of a case?**

Response: Judges are required to adjudicate every case fairly and impartially. Empathy does not dictate the legal determination of any case. However, empathy may play a role in how a judge communicates with the parties in the case in open court, with the understanding that all communications should be delivered with respect and even-handedness.

17. **What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?**

Response: Both alternatives are unacceptable. Judges are obligated to uphold the Constitution and preserve the rule of law.

18. **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 engaged in scholarly research on the occasions when the Supreme Court has declared federal statutes as unconstitutional to have an opinion on the topic. If confirmed, my responsibilities as a U.S. District Court Judge will be to follow Supreme Court precedent.

19. **How would you explain the difference between judicial review and judicial supremacy?**

Response: Judiciary review was established in *Marbury v. Madison*, when the Supreme Court held that the federal courts have the power to declare statutes unconstitutional. 5 U.S. (1 Cranch) 137 (1803). As I understand the term, judicial supremacy refers to the Constitution as the supreme law of the land and the Supreme Court as the ultimate arbiter of its interpretation.

20. **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: As government officials, elected officials take an oath to support and defend the Constitution.

21. **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: Federalist 78 as described here is a commentary on the role of the Legislative Branch to effectuate the will of the people and the power of the Executive Branch to enforce laws. The role of the courts is limited to judicial review.

22. **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: As stated in the question, a district court judge is duty bound to follow Supreme Court and circuit court precedent (in my case it would be First Circuit precedent). It is not the duty of a district court judge to question the wisdom of any Supreme Court and circuit court precedent. It is the duty of the district court judge to be faithful to the rule of law. The question poses a scenario when the available precedent does not speak directly to the issue raised by the litigants. It is difficult to imagine a scenario when a case would present an issue without some direct precedent to follow. However, if presented with such as case, I would do my best to seek analogous precedent to guide my interpretation. Such scenarios would require case-by-case analysis. Careful review of the arguments made by counsel, the cases cited by the parties, along with a rigorous reading of the text and statutory context, along with application of the plain meaning of text would be necessary to resolve such matters.

23. **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 were created to have limited jurisdiction.

24. **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: If confirmed, I would follow 18 U.S.C. §3553 and rigorously calculate the sentencing guideline range and apply the sentencing factors to impose a sentence "sufficient, but not greater than necessary." In determining the proper sentence to impose, I shall consider "the nature of the offense and the history and characteristics of the defendant, as required by 18 U.S.C. §3553(a)(1). Race, gender, nationality, sexual orientation, or gender identity are not defined sentencing factors.

25. **Nan Aaron, the President for Alliance for Justice, praised President Biden's decision to nominate you (and others) due to "a demonstrated commitment to equal justice, a refreshing change from the litany of Trump judges with records of turning the clock back on our rights."**

- a. **Leaving aside what Nan Aaron might mean, how would you define "equal justice?"**

Response: The promise of equal justice is the bedrock of our judicial system and one of the ideals that our country was founded upon. Equal justice is when people come before the court and are treated with the same dignity and respect and are afforded the same protections of the law, regardless of race, gender, religion, national origin, sexual orientation, political affiliation, and socio-economic status. Equal justice ensures no person is above the law.

- b. **Is there a difference between "equality" and "equity?" If so, what is it?**

Response: Equality refers to two things being equal. Equity refers to the understanding that two things are not equal and are handled differently to create an equal result.

- c. **Do you believe a judge should use their position to advance equity, equality, or both?**

Response: Judges should afford every person equal justice, without fear or favor. In order to ensure all litigants receive due process, it may be necessary for judges

to take different procedural steps to ensure that the process is equal for different litigants. For example, if a non-English speaking person is before the court and the judge has the authority and capability to order an interpreter for the litigant, this would be an acceptable situation.

d. **Do you believe “Trump judges” have a record of “turning the clock back on our rights?”**

Response: I am not familiar with this statement and do not adopt it. If I was nominated and confirmed to be a U.S. District Court Judge in 2018, when I first interviewed with the White House Counsel’s office, I would have served proudly as a judge appointed by President Trump. The duties and responsibilities of an Article III judge are the same regardless of the President who makes the nomination.

26. **Does the 14<sup>th</sup> Amendment’s equal protection clause refer to “equity” or “equality?”**

Response: The 14<sup>th</sup> Amendment mandates that no state “deny any person within its jurisdiction the equal protection of the laws.” Premised in this amendment is the ideal of equal justice under law.

27. **How do you define “systemic racism?”**

Response: I define “systemic racism” as an historical pattern of discriminatory beliefs and practices that originated centuries ago with the broad acceptance that one race is superior to others and how those beliefs and practices are embedded into many systems that continue to disadvantage other racial groups.

28. **You reportedly stated in a February 12, 2021 presentation that “there is systemic racism in almost all systems, particularly the court system.” Please explain how the court system (specifically, the federal court system) is systemically racist.**

Response: I defined systemic racism in response to Question 27. Racial disparities exist in many systems. For example, in Massachusetts various studies on racial disparities have been conducted, including a recent study that was conducted by Harvard Law School, Criminal Justice Policy Program. Harvard Law School’s research team issued a report on September 9, 2020, documenting racial disparities in the Massachusetts criminal system. Racial disparities in the Massachusetts criminal system (2020), <https://hls.harvard.edu/content/uploads/2020/11/Massachusetts-Racial-Disparity-Report-FINAL.pdf>. As a sitting judge in the Commonwealth of Massachusetts, it is my responsibility to ensure every litigant that comes before me is treated fairly and impartially regardless of their race, socio-economic status, or any

other characteristic. That would continue to be my responsibility if I confirmed as a U.S. District Court judge.

29. **If the federal court system is systemically racist, would participating in that system make you responsible for systemic racism?**

Response: The Constitution guarantees to all the equal protection of the law. The judicial system is responsible for upholding the Constitution and ensuring equal justice. As a sitting judge in the Commonwealth of Massachusetts, it is my responsibility to ensure that every litigant is treated fairly and impartially, regardless of race, socio-economic status, or any other characteristic. That will continue to be my responsibility, if confirmed as a U.S. District Court Judge.

30. **If confirmed, how do you intend to eliminate systemic racism from the criminal justice system?**

Response: The role of a judicial officer is separate and distinct from that of a policymaker. As a state court judge for the last 12 years, I fully understand my duty to adjudicate individual claims, including legal claims based on race. When presented with cases involving legal claims of race discrimination, I handle them in the same way I handle every other case, with an open mind, neutrality, fair-mindedness, and with a faithful commitment to the law. My responsibility as a judge is to decide the case before me and to not provide an avenue of redress for broader systemic claims. I am very proud of the Massachusetts State Court System's deep commitment to building public trust and confidence in the judiciary and achieving equal justice for all court users.

31. **How do you define "critical race theory?"**

Response: My understanding of the term "critical race theory" is that it refers to a type of scholarship and philosophy that critically examines race and its intersectionality with social power. Courses and scholarship in critical race theory are far more common today than when I attended school.

32. **Do you distinguish "critical race theory" from "systemic racism," and if so, how?**

Response: As indicated in responses to Questions 27 and 31, my understanding is that critical race theory is a type of scholarship and philosophy, while systemic racism is defined concept. Both focus on race but are not interchangeable.

33. **Do you believe members of the judiciary should be required to attend trainings on Critical Race Theory?**



Response: I have no opinion on whether members of the judiciary should be required to attend trainings on critical race theory. In general, I believe that judges are public servants, who serve diverse populations and are responsible for learning many areas of law.

34. **Do you believe members of the judiciary should be required to take implicit bias assessments or tests?**

Response: Through court-sponsored trainings on implicit bias, I have come to appreciate the value of these trainings. I have no opinion on whether members of the judiciary should be required to take implicit bias assessments or tests.

**Senator Ben Sasse**  
**Questions for the Record**  
**U.S. Senate Committee on the Judiciary**  
**Hearing: "Nominations"**  
**June 23, 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.

For all judicial nominees:

- 1. How would you describe your judicial philosophy?**

Response: As a state court judge, it is my responsibility to be fair and impartial. Over my 12 years as a state court judge, I have made it my practice to treat everyone with respect and to give everyone an opportunity to be heard, when appropriate. This practice is an important feature of the judicial process. My decisions are guided by and confined to a careful consideration of the legal arguments and facts presented in the specific case and application of the governing law. Fidelity to this process, independent of any outside or personal influences, preserves the integrity of judicial decision-making process. This is my judicial philosophy.

- 2. Would you describe yourself as an originalist?**

Response: I have not adopted any label for my method of interpretation. If confirmed, I would be required to follow Supreme Court and First Circuit precedent and follow the interpretative method dictated by such precedent.

- 3. Would you describe yourself as a textualist?**

Response: I have not adopted any label for my method of interpretation. If confirmed, I would be required to follow Supreme Court and First Circuit precedent. I will follow the interpretative method dictated by such precedent.

**4. Do you believe the Constitution is a “living” document? Why or why not?**

Response: The Constitution is an enduring document. It is an enduring document, because it has guided our country through some of the most difficult periods of history and our proudest moments. The U.S. Constitution is a model for other nations.

**5. Please name the Supreme Court Justice or Justices appointed since January 20, 1953 whose jurisprudence you admire the most and explain why.**

Response: I respect all Supreme Court Justices. I have not studied the jurisprudence of the Supreme Court Justices to identify one that I admire most.

- 6. Was *Marbury v. Madison* correctly decided?**
- 7. Was *Lochner v. New York* correctly decided?**
- 8. Was *Brown v. Board of Education* correctly decided?**
- 9. Was *Bolling v. Sharpe* correctly decided?**
- 10. Was *Cooper v. Aaron* correctly decided?**
- 11. Was *Mapp v. Ohio* correctly decided?**
- 12. Was *Gideon v. Wainwright* correctly decided?**
- 13. Was *Griswold v. Connecticut* correctly decided?**
- 14. Was *South Carolina v. Katzenbach* correctly decided?**
- 15. Was *Miranda v. Arizona* correctly decided?**
- 16. Was *Katzenbach v. Morgan* correctly decided?**
- 17. Was *Loving v. Virginia* correctly decided?**
- 18. Was *Katz v. United States* correctly decided?**
- 19. Was *Roe v. Wade* correctly decided?**
- 20. Was *Romer v. Evans* correctly decided?**
- 21. Was *United States v. Virginia* correctly decided?**
- 22. Was *Bush v. Gore* correctly decided?**
- 23. Was *District of Columbia v. Heller* correctly decided?**
- 24. Was *Crawford v. Marion County Election Board* correctly decided?**
- 25. Was *Boumediene v. Bush* correctly decided?**
- 26. Was *Citizens United v. Federal Election Commission* correctly decided?**
- 27. Was *Shelby County v. Holder* correctly decided?**
- 28. Was *United States v. Windsor* correctly decided?**
- 29. Was *Obergefell v. Hodges* correctly decided?**

Response: Questions 6-29 asks for my personal beliefs about Supreme Court decisions. If confirmed, I will follow all prevailing Supreme Court precedent. As a sitting state court judge and federal judicial nominee, it is generally not appropriate for me to respond to questions of this nature. However, I will state *Brown*, *Loving*, and *Marbury* were correctly decided, because the issues presented in these cases are not likely to be re-litigated.

**30. 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: In my 12 years as a state court judge, I have not had the occasion to study this issue. If confirmed as a U.S. District Court judge, I will not be required to address this issue.

**31. 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: In my 12 years as a state court judge, I have not had the occasion to study this issue. If confirmed as a U.S. District Court judge, I will not be required to address this issue.

**32. 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 sentencing of a defendant is an individualized process defined in 18 U.S.C. §3553. It begins with the calculation of the sentencing guideline range and continues with an evaluation of the sentencing factors that lead to a sentence that is “sufficient but not greater than necessary” to meet the statutory goal of sentencing. 18 U.S.C. §3553(a). Generally, issues related to disparities are not a part of the individualized sentencing of a defendant. If confirmed as a U.S. District Court Judge, I would follow the factors defined by Congress, in 18 U.S.C. §3553(a).

**Questions for Angel Kelley**

- 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: My understanding of the term judicial activism is when a judge decides a case based upon personal views or opinions. Judges take an oath to follow the rule of law, not their personal views. Therefore, judicial activism is not appropriate.

- 3. Do you believe impartiality is an aspiration or an expectation for a judge?**

Response: Impartiality is an expectation and required under the code of judicial conduct.

- 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 the desirable outcome. There is nothing to reconcile.

- 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 Supreme Court and First Circuit precedent in all cases, including those involving the Second Amendment. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008); *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 and presented with a case such as the hypothetical described, I would begin with a careful consideration of the arguments of the parties, researching and reviewing all relevant case law and evaluating the facts as presented or determined at any evidentiary hearing. I would apply the law to the facts of this case, confined to the issues raised by the parties.

**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?**

As a state court judge, I have not had the occasion to preside over a case involving qualified immunity. If confirmed, I would employ the same practice of carefully reviewing the arguments of the parties, researching and reviewing all relevant case law, and applying the law to the facts as presented or determined at an evidentiary hearing. Qualified immunity is a legal doctrine that shields government officials from liability when his/her 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 (1982). I will faithfully follow the law as defined by the Supreme Court and First Circuit.

**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 sitting state court judge and federal judicial nominee, it would be inappropriate for me to respond to this question. As a state court judge, I have not had the occasion to preside over a case involving qualified immunity. As a civil practitioner, while representing Port Authority of New York and New Jersey police officers, I handled several cases alleging police misconduct and asserted the qualified immunity defense on their behalf.

**11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?**

Response: Questions involving the relevant scope of qualified immunity protections are better left to policymakers to decide.

**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 12 years as a state court judge and nearly 18 years as a trial attorney, I have not had the occasion to handle a patent case. If I am confirmed and presented with a patent case, I will employ the same decision-making process that I would employ with other cases, to carefully consider the arguments of the parties, research and review all relevant case

law and evaluate the facts as presented, then confine my decision to the legal claims in the case and with fidelity to the law. Additionally, I would carefully review all relevant Supreme Court precedent, including *Alice Corp. Pty. Ltd. V. CLS Bank Int'l*, 573 U.S. 208 (2014).

- 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**  
**Christine O’Hearn**  
**Judicial Nominee to the U.S. District Court for the District of New Jersey**

1. **Have you ever defended a client in a criminal matter?**

Response: No.

- a. **Approximately how many clients have you represented in criminal matters?**

Response: None.

2. **In the context of federal case law, what is super precedent? Which cases, if any, count as super precedent?**

Response: The Supreme Court has not used or defined the term “super precedent.” If confirmed, my role as a district court judge would be to faithfully apply all binding precedents decided by the Supreme Court and the Third Circuit.

3. **Is it legal for police to stop and frisk someone based on a reasonable suspicion of involvement in criminal activity?**

Response: In *Terry v. Ohio*, 392 U.S. 1 (1968), the Supreme Court held that “an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.” *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). “While ‘reasonable suspicion’ is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop.” *Id.* “[I]n determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or ‘hunch,’ but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.” *Terry*, 392 U.S. at 27. The totality of the circumstances must be considered in evaluating reasonable suspicion. *U.S. v. Sokolow*, 490 U.S. 1, 8 (1989).

4. **You have represented a number of counties and municipalities in cases alleging sexual harassment and in many of those cases, you prevailed over the accuser.**

- a. **Should courts fully embrace the “believe all women” mindset? Please explain why or why not.**

Response: Courts should be open and accessible for all persons, including women who allege they are victims of sexual harassment. Fact finders must weight disputed issues of fact and questions as to the credibility of such claims and



defenses. I would also like to note that as a litigator for twenty-eight (28) years, I have represented both plaintiffs and defendants in civil litigation and I discharged my ethical obligations to zealously represent my clients in all circumstances. However, I understand the role of a judge is fundamentally different. If confirmed as a district court judge, I will decide all legal issues in such cases fairly and impartially.

- b. **By successfully defending municipalities and local governments against claims of sexual harassment, do you believe that you impeded the mission of the “me too” movement?**

Response: Plaintiffs in sexual harassment cases are required to prove their case under the law just like plaintiffs in all other cases. In every case where I was successful as an attorney in defending municipalities and local governments against claims of sexual harassment, it was because (1) a court determined the plaintiff failed to establish a claim as a matter of law upon a motion to dismiss and/or a motion for summary judgment; or (2) after a full trial, a jury decided that the plaintiff had not proven her claims under the law. I would also like to note that in my role as an advocate, I also facilitated the settlement of many cases when appropriate. In general, I believe that I discharged my ethical obligations as a lawyer to zealously represent my clients in all circumstances whether I represented the plaintiff or defendant in civil litigation.

5. **Should every individual accused of a crime receive due process? Why or why not?**

Response: The Fifth and Fourteenth Amendments provide that no person shall be deprived of life, liberty, or property, without due process of law. The Supreme Court has recognized that “[t]he Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment.” *Faretta v. California*, 422 U.S. 806, 807 (1975). The Sixth Amendment states that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy . . . trial . . . to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him . . . and to have Assistance of Counsel for his defence.” The Supreme Court has held that “these rights are basic to our adversary system of criminal justice [and] they are a part of the ‘due process of law’ that is guaranteed by the Fourteenth Amendment to defendants in the criminal courts of the States.” *Faretta*, 422 U.S. at 818. If confirmed, I would follow Supreme Court and Third Circuit precedent interpreting these due process rights.

6. **Should law firms undertake the pro bono prosecution of crimes?**

Response: The question of whether law firms should undertake the pro bono prosecution of crimes is a question for individual law firms guided by what is permissible under relevant state or federal law. I do not have an opinion on this question.

7. **Do you agree with Judge Ketanji Brown Jackson in 2013 when she said she did not believe in a “living constitution”?**

Response: The Constitution is an enduring document. If confirmed, I would follow all Supreme Court and Third Circuit precedent about the meaning of the Constitution.

8. **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: I have not practiced criminal law. I am not aware of any authority that would allow private parties to prosecute federal criminals in the absence of charges being actively pursued by federal authorities. The “Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case.” *U.S. v. Nixon*, 418 U.S. 683, 693 (1974).

9. **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 would hire law clerks based upon ability and without regard to any other matter.

10. **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: Decisions about what clients a private law firm should accept and under what terms or conditions are decisions left to the private law firm to make.

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: I do not agree with the proposition that some civil clients don’t deserve representation on account of their identity.

12. **Do you agree with the proposition that some clients do not deserve representation on account of their:**

- a. **Heinous Crime?**

Response: No.

- b. **Political beliefs?**

Response: No.

c. **Religious beliefs?**

Response: No.

13. **Should judicial decisions take into consideration principles of social “equity”?**

Response: Judicial decisions should only take into consideration those factors as set forth in the applicable statute or case law governing the issues in the case.

14. **Is climate change real?**

Response: Questions as to the existence and extent of climate change are the subject of extensive and ongoing debate and litigation. As a nominee, it would be inappropriate for me to comment on such matters.

15. **You can answer the following questions yes or no:**

a. **Was *Griswold v. Connecticut* correctly decided?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

b. **Was *Roe v. Wade* correctly decided?**

Response: See Response to 15(a).

c. **Was *Planned Parenthood v. Casey* correctly decided?**

Response: See Response to 15(a).

d. **Was *Gonzales v. Carhart* correctly decided?**

Response: See Response to 15(a).

e. **Was *District of Columbia v. Heller* correctly decided?**

Response: See Response to 15(a).

f. **Was *McDonald v. City of Chicago* correctly decided?**

Response: See Response to 15(a).

g. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**

Response: See Response to 15(a).

h. **Was *Sturgeon v. Frost* correctly decided?**

Response: See Response to 15(a).

i. **Was *Rust v. Sullivan* correctly decided?**

Response: See Response to 15(a).

16. **Is threatening Supreme Court Justices right or wrong?**

Response: Threatening Supreme Court Justices is wrong.

17. **Do you think the Supreme Court should be expanded?**

Response: As a nominee, it would be inappropriate for me to comment on the current structure of the Supreme Court or ongoing public discussion about expansion of the Supreme Court. This is a matter reserved for the legislative and executive branches.

18. **If the Justice Department determines that a 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 Constitution places the power to prosecute in the Executive Branch. Under Federal Rule of Criminal Procedure 48(a), the government may dismiss an indictment, information or complaint "with leave of the court." In *Rinaldi v. United States*, 434 U.S. 22 (1977), the Supreme Court applied an abuse of discretion standard in reviewing the district court's denial of a Rule 48(a) motion to dismiss. In *Re Richards*, 213 F.3d 773 (2000) sets forth the Third Circuit's standard for when a court may refuse to dismiss an indictment under Rule 48(a). A court should grant a government Rule 48(a) motion to dismiss unless such dismissal is "clearly contrary to manifest public interest." *Id.* at 787. Courts have acknowledged "that refusal to dismiss is appropriate only in the rarest of cases." *Id.* at 786. This standard is to prevent a court from routinely substituting its judgment for that of the prosecutor. *Id.* at 788. As a nominee, it would be inappropriate for me to comment on the specific question posed.

19. **Do Blaine Amendments violate the Constitution?**

Response: My understanding is that the term "Blaine Amendments" refers to laws enacted by states that preclude government entities from appropriating funds to religious institutions in order to avoid violations of the Establishment Clause. The Supreme Court has considered such state laws in several cases including *Espinoza v. Montana Dept. of Revenue*, 140 S.Ct. 2246 (2020) and *Trinity Lutheran Church of Columbia, Inc. v.*

*Comer*, 137 S.Ct. 2012 (2017) and in both cases found the state laws to violate the First Amendment. I would apply all Supreme Court and Third Circuit precedent in this regard.

20. **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: I interviewed with Senator Menendez on February 17, 2021, regarding my interest in the position. I interviewed with Senator Booker on February 25, 2021, regarding my interest in the position. I interviewed with attorneys from the White House Counsel's Office on March 1, 2021. Since March 4, 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.

21. **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?**

Response: No.

22. **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?**

Response: No.

23. **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.**

Response: No.

24. **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?**

Response: No.

25. **List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.**

Response: See Response to Question No. 20.

26. **Please explain, with particularity, the process whereby you answered these questions.**

Response: On June 30, 2021, these questions were provided to me by the Office of Legal Policy at the Department of Justice. I reviewed the questions and prepared answers to each of the questions. I researched any relevant case law as needed to prepare my answers. I provided by answers to attorneys from the Office of Legal Policy who reviewed my answers and provided me with feedback. The final answers are my own.

**Nomination of Christine P. O'Hearn  
to be United States District Judge for the District of New Jersey  
Questions for the Record  
Submitted June 30, 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 nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

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*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment protects an individual's rights to keep and bear arms and that such right is not limited to groups such as a militia. The Supreme Court thereafter held that the Second Amendment right to keep and bear arms is applicable to the states. *See McDonald v. City of Chicago, Illinois*, 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: *Greer* held that in felon-in-possession cases, a *Rehaif* error, *Rehaif v. U.S.*, 139 S. Ct. 2191(2019), 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. Under Rule 51(b) of the Federal Rules of Criminal Procedure, a defendant can preserve a claim of error "by informing the court" of the claimed error when the relevant "court ruling or order is made or sought." If a

defendant has “an opportunity to object” and fails to do so, he forfeits the claim of error. If a defendant later raises the forfeited claim on appeal, the Rule 52(b) plain-error standard applies. Unpreserved *Rehaif* claims are subject to plain-error review under Rule 52(b).

6. **Please describe what you believe to be the Supreme Court’s holding in *Terry v. United States*, 593 U.S.\_\_(2021).**

Response: 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 defined by the Act as “a violation of a Federal criminal statute, the statutory penalties for which were modified by” certain provisions of the Fair Sentencing Act. Section 2(a) of the Fair Sentencing Act modified the statutory penalties for subparagraph (A) and (B) crack offenses—that is, the offenses that triggered mandatory-minimum penalties. Therefore, *Terry* held that a crack offender is eligible for a sentence reduction under the First Step Act only if the offender’s conviction triggered a mandatory minimum sentence.

7. **Please describe what you believe to be the Supreme Court’s holding in *Jones v. Mississippi*, 593 U.S.\_\_(2021).**

Response: *Jones* held that in cases involving a defendant who committed a homicide when he or she was under the age of 18, the Supreme Court’s prior precedent, *Miller v. Alabama*, 567 U.S. 460 (2012) and *Montgomery v. Louisiana*, 577 U.S. 190 (2016), do not require that the sentencing judge make a separate factual finding of permanent incorrigibility before imposing a life-without-parole sentence on a murderer under age 18.

8. **Please describe what you believe to be the Supreme Court’s holding in *Tandon v. Newsom*, 593 U.S.\_\_(2021).**

Response: *Tandon* held that government regulations are not neutral and generally applicable, and they therefore trigger strict scrutiny under the Free Exercise Clause, whenever the regulations treat any comparable secular activity more favorably than religious exercise. Comparability is concerned with the risks various activities pose, not the reasons why people gather. The government has the burden of establishing that the challenged law satisfies strict scrutiny, which requires more than asserting that certain risk factors are always present in worship, or always absent from the other secular activities the government may allow. Rather, narrow tailoring requires the government to show that measures less restrictive of the First Amendment activity could not address its interest in reducing the spread of COVID.

9. **Please describe what you believe to be the Supreme Court’s holding in *Sanchez v. Mayorkas*, 593 U.S.\_\_(2021).**

Response: Section 1255 allows a “nonimmigrant”—a foreign national lawfully present in the United States on a designated, temporary basis—to obtain an “adjustment of status”



making him a Lawful Permanent Resident (LPR). A nonimmigrant's eligibility for such an adjustment to permanent status depends on an "admission" into the United States, which is defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." The conferral of Temporary Protected Status (TPS) does not make an unlawful entrant into the United States eligible under Section 1255 for adjustment to LPR status. The statute does not constructively admit a TPS recipient—that is, consider him as having entered the country after inspection and authorization." The TPS does not eliminate the disqualifying effect of an unlawful entry.

10. **What is your view of arbitration as a litigation alternative in civil cases?**

Response: When chosen by the parties, arbitration of disputes can be a helpful tool to assist parties in resolving disputes in a timely and cost-effective manner and avoiding protracted and expensive litigation.

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 30, 2021, these questions were provided to me by the Office of Legal Policy at the Department of Justice. I reviewed the questions and prepared answers to each of the questions. I researched any relevant case law as needed to prepare my answers. I provided by answers to attorneys from the Office of Legal Policy who reviewed my answers and provided me with feedback. The final answers are my own.

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 Christine P. O'Hearn, Nominee for the United States District Court for the District of New Jersey**

**I. Directions**

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

## II. Questions

1. **Is it appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns? Please explain.**

Response: Article II, Section 3 of the Constitution requires that the President “take Care that the laws be faithfully executed.”

2. **Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice’s philosophy from Warren, Burger, Rehnquist, or Robert’s Courts is most analogous with yours.**

Response: As an attorney practicing primarily in state and federal trial courts, I have not ascribed to or developed a particular judicial philosophy. I have not studied the various philosophies of the Justices referenced. If confirmed as a district court judge, I would approach all cases with the same rigorous analysis. Specifically, I would consider the arguments of the parties, all precedent, and if there was no precedent directly on point, any analogous case law, and meticulously review the record to fairly and impartially arrive at the outcome compelled by the law.

3. **Does the Constitution’s meaning evolve and adapt to new circumstances even if the document is not formally amended? If so, when?**

Response: The Constitution is an enduring document. If confirmed, I would follow all Supreme Court and Third Circuit precedent as to the meaning of the Constitution.

4. **Please briefly describe the interpretative method known as originalism.**

Response: Originalism is the doctrine that words of a legal instrument are to be given the meanings they had when they were adopted; specifically, the canon that a legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect. *Black’s Law Dictionary* 1275 (10th ed. 2014).

5. **Please briefly describe the interpretive method often referred to as living constitutionalism.**

Response: Living Constitutionalism is the doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values. *Black’s Law Dictionary* 1076 (10th ed. 2014).

6. **If you were to be presented with a constitutional issue of first impression— that is, an issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by that meaning?**

Response: If confirmed as a District Court Judge, I would be bound by Supreme Court and Third Circuit precedent both as to the substance of the particular cases and the interpretative method the courts used. The Supreme Court has looked to original public meaning in interpreting certain constitutional provisions such as the Second Amendment. I would be bound by Supreme Court precedent as to the specific constitutional provisions whether or not based on the original public meaning.

7. **Is the public's current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?**

Response: The Supreme Court has stated that “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. 670, 605 (2008) (emphasis in original). See also *Binderup v. United States of America*, 836 F.3d 336, 362 (3d Cir. 2016).

8. **Is the ability to own a firearm a personal civil right?**

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment protects an individual's rights to keep and bear arms and that such right is not limited to groups such as a militia. The Supreme Court thereafter held that the Second Amendment right to keep and bear arms is applicable to the states. See *McDonald v. City of Chicago, Illinois*, 561 U.S. 742 (2010).

9. **Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?**

Response: To the best of my knowledge, the Supreme Court has not ranked or compared the right to own a firearm under the Second Amendment to other individual rights specifically enumerated in the Constitution.

10. **Does the right to own a firearm receive less protection than the right to vote under the Constitution?**

Response: See Response to No. 12.

11. **Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be an religious organization like Little Sisters of the Poor or small businesses operated by observant owners?**

Response: The Supreme Court has held there are limits under the First Amendment to what the government may impose or require of private institutions such as religious organizations or small businesses operated by observant owners. Recent cases in that

regard include *Tandon v. Newsom*, 141 S.Ct. 1294 (2021); *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S.Ct. 63 (2020); and *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

12. **Do Americans have the right to their religious beliefs outside the walls of their houses of worship and homes?**

Response: Yes.

13. **Is the criminal justice system systemically racist?**

Response: My practice has focused on civil litigation. I have not practiced criminal law. If confirmed, I would faithfully apply all laws, including criminal laws, to the specific parties and facts of the case before the Court to ensure all persons who may appear before me are treated equally.

14. **Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?**

Response: Political appointments are within the discretion of the Executive Branch. As a nominee, it would be inappropriate for me to comment on the constitutionality of any particular set of facts or to indicate how I might rule in a case including one involving the constitutionality of factors considered in making political appointments.

15. **Does the President have the authority to abolish the death penalty?**

Response: Congress determines the applicable penalties for conduct it has declared unlawful. The President's duty under the "take Care that the Laws be faithfully executed" clause in Article II, Section 3 of the Constitution requires the President execute all laws Congress enacts including penalties for violations of federal criminal laws. The President does not have the power to unilaterally change the laws that Congress has enacted.

**Questions for the Record for Christine O'Hearn  
From Senator Mazie Hirono**

1. **In 2008, you wrote an article headlined, *Assumption Refuted: No Duty to Provide Pregnant Employees with Light Duty*.**

- a. **What led you to write this article?**

Response: I wrote the referenced article approximately thirteen (13) years ago to bring attention to a then-recently decided New Jersey Appellate Division decision, *Larsen v. Township of Branchburg*, 2007 WL 135706 (N.J. App.Div., Jan. 22, 2007). In that case, the New Jersey court held that the employer police department was not required to provide a pregnant police officer with a light duty assignment under the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12-1 et seq. because the employer did not provide any employees with light duty and because a pregnancy was not a "disability" under the statute. At the time the article was written, several state and federal courts had held that an employer must provide accommodations to pregnant employees the same as provided to non-pregnant employees. However, this case presented a narrow and different issue - whether an employer who does not provide light duty for *any* employees must accommodate a pregnant woman by providing light duty. The New Jersey court answered that question "no." The decision highlighted a gap in New Jersey law in not requiring accommodations for a pregnant woman if the employer did not provide other employees with accommodations. I wrote the article because I thought it was important to discuss this gap in protections for pregnant women and the article was not intended to be a statement of my personal opinion regarding this case but to accurately report on this decision. It should be noted that I did not write the title for the article.

- b. **Does this article still reflect your understanding of current law?**

Response: No. The *Larsen* case is no longer the law in New Jersey because on January 20, 2014, the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12-1 et seq. was amended to include pregnancy as a protected class and to require employers to provide reasonable accommodations for all pregnant women. Additionally, the Supreme Court's decision in *Young v. United Parcel Service, Inc.*, 575 U.S. 206 (2015) sets forth the current federal law on the issues of an employer's duty to accommodate a pregnant woman.

2. **In your Senate Judiciary Committee Questionnaire, you noted that in the early 2000s your legal practice "centered on representing employees as plaintiffs in employment discrimination matters," but in the last 15 years your practice "has concentrated on defense of private and public employers."**

- a. **Since your practice in recent years has concentrated on the defense of employers, what assurances would you give to plaintiffs in employment matters that you can be impartial and give them a fair hearing?**

Response: For the first 10-15 years of my practice, I represented plaintiffs in employment discrimination and other matters. My practice thereafter transitioned to representing defendants, primarily in employment discrimination matters. I have tried nearly as many cases representing employees as I have representing employers. Thus, my representation of employees and employers has been balanced over the course of my career. My record shows that I have been an equally zealous advocate for employees and employers. I believe my experience representing both employees and employers has made me a better lawyer and, if confirmed, will make me a better district court judge. My experiences in representing both employees and employers has given me the ability to appreciate and understand the interests, equities and concerns of both sides in these disputes. If confirmed, I will be fair and impartial to all parties with respect to all matters, including employment discrimination cases.

**Written Questions for Christine P. O'Hearn  
Submitted by Senator Patrick Leahy  
June 30, 2021**

1. **Medical and societal understanding of HIV and the risk of infection has greatly advanced in recent years. This has coincided with a growing appreciation for the societal contributions of Americans with disabilities and chronic medical conditions. In 2006, you wrote that healthcare employees with conditions such as depression, attention deficit disorder, and hearing impairments may not qualify for accommodations under the Americans with Disabilities Act (ADA) if said conditions presented a “reasonable risk to patient safety” and noted that the Third Circuit construed this exemption to the ADA “rather liberally.” In particular, you noted that HIV-positive healthcare workers pose an “obvious patient risk” and for that reason were typically not deemed qualified employees under the ADA.**
  - (a) **Given the advances in societal understanding since then, do these statements reflect your position today with respect to healthcare workers with HIV and other chronic medical conditions?**

Response: The statements in the referenced article, which is now fifteen (15) years old, were not intended to be statements of my personal opinions but rather to summarize decisions made by various courts analyzing the duty of an employer to accommodate a healthcare employee with a serious health condition when the employer reasonably believed the employee posed a direct threat to patient safety. See, e.g. *Waddell v. Valley Forge Dental Assoc.*, 276 F.3d 1275 (11<sup>th</sup> Cir. 2001) (granting summary judgment to employer and holding HIV-positive dental associate posed direct threat to patient safety); *Mauro v. Borgess Medical Center*, 137 F.3d 398 (6<sup>th</sup> Cir. 1998) (affirming summary judgment and holding an HIV-positive surgical technician posed direct threat to patient safety). The analysis in cases presenting these questions has been and continues to be very fact-specific to the employee, the underlying medical condition, and the job at issue. Key to those decisions was the Court's finding that at the time HIV was almost always a fatal disease. However, changes in societal understanding of different medical conditions, as well as advances in medical science and treatment, cases involving the question of whether an employee poses a direct threat to patient safety, may result in different outcomes if decided today. As discussed below, the relevant federal regulations on this topic contemplate that this determination will be based on the “most current medical knowledge and/or on the best available objective evidence.” Today, being HIV-positive is not a fatal disease. The fact that my research revealed no federal case addressing the direct threat defense in the context of an HIV-positive employee since the publication of the article, suggests employer have in fact recognized this fact and have changed the way they treat HIV-positive employees.



**(b) Do you believe that this evaluation of ADA precedent reflects current law in the Third Circuit?**

Response: The standards regarding the “direct threat” defense remain current law. Specifically, 29 C.F.R. 1630.2(r) provides:

(r) Direct Threat means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a “direct threat” shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job. This assessment shall be based on a reasonable medical judgment that *relies on the most current medical knowledge and/or on the best available objective evidence*. In determining whether an individual would pose a direct threat, the factors to be considered include:

- (1) The duration of the risk;
- (2) The nature and severity of the potential harm;
- (3) The likelihood that the potential harm will occur; and
- (4) The imminence of the potential harm.

(emphasis added). *See also* 42 USCA § 12113(b).

The Third Circuit’s most recent interpretation of the direct threat defense is *Coleman v. Pennsylvania State Police*, 561 Fed.Appx. 138 (3d Cir. 2014) (holding that an employer established the direct threat defense with respect to its termination of a law enforcement officer with post-traumatic epilepsy as he posed a direct threat to others).

In summary, the federal regulations to be applied to these cases remains the same, however, the outcome of any case is very fact-specific and dependent upon the employee’s specific medical condition and the particular job at issue. Thus, there are no broad or sweeping rules in this area of the law. Advances in medical science and treatment will continue to affect the outcomes of such cases in the future. If confirmed as a district court judge, I would faithfully apply relevant Third Circuit precedent and federal law if a case presently these issues came before me.

**Senator Mike Lee Questions for  
the Record Christine O'Hearn,  
D.N.J.**

1. **How would you describe your judicial philosophy?**

Response: As a practicing attorney, I have not ascribed to or developed a particular judicial philosophy. If confirmed as a district court judge, I would approach all cases with the same rigorous analysis. Specifically, I would consider the arguments of the parties, all precedent, and if there was no precedent directly on point, any analogous case law, and meticulously review the record to fairly and impartially arrive at the outcome compelled by the law.

2. **What sources would you consult when deciding a case that turned on the interpretation of a federal statute?**

Response: I would first consider any Supreme Court or Third Circuit cases that addressed the statute at issue. If so, I would be bound by such precedent. If there was no controlling precedent, I would follow Third Circuit precedent on statutory interpretation. *See Ki Se Lee v. Ashcroft*, 368 F.3d 218, 222 (3d Cir. 2004). I would look to the text of the statute and plain meaning at the time it was enacted. If the plain meaning is clear and unambiguous, I would then apply the plain language of the statute. If there is no precedent and the statute was ambiguous, I would look to the canons of statutory construction, any persuasive authority analyzing the meaning of the statute, or the same or similar language in analogous statutes, as well as available legislative history.

3. **What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?**

Response: I think it would be unusual for a district court judge to be faced with a question of first impression under the Constitution. I would thus first look to Supreme Court and Third Circuit precedent. If there was no controlling precedent, I would look to Supreme Court and Third Circuit precedent for the interpretative method to be applied to the particular constitutional provision at issue and apply that methodology to the case. I would also review and consider persuasive authority from other Circuits if available.

4. **What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?**

Response: The Supreme Court has said that text and original meaning of a constitutional provision play an important role in interpreting the Constitution. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008).

5. **How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?**

Response: See Response to No. 2.

- a. **Does the “plain meaning” of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?**

Response: I believe that the plain meaning of a statute or constitutional provision refers to the meaning of the language used at the time it was enacted.

6. **What are the constitutional requirements for standing?**

Response: Article III limits federal court jurisdiction to cases or controversies. The Supreme Court recently affirmed in *California, et al. v. Texas, et al.*, 593 U.S. \_\_\_\_ (2021) that a plaintiff has standing only if they can “allege a personal injury fairly traceable to the defendant’s allegedly unlawful conduct and likely to be redressed by the requested relief.” *Id.* at 4. Stated differently, a plaintiff must demonstrate (1) that they have suffered an injury in fact; (2) that the injury is fairly traceable to the defendant’s conduct; and (3) that a favorable decision will redress the injury. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 563 (1992).

7. **Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?**

Response: The Supreme Court has held that Congress has powers beyond those enumerated in the Constitution by virtue of the Necessary and Proper Clause. *See McCulloch v. Maryland*, 17 U.S. 316, 411-12 (1819). The Supreme Court has stated that the scope of the Necessary and Proper Clause is “broad” and “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) (citations and quotations omitted).

8. **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 follow Third Circuit and Supreme Court precedent in evaluating the constitutionality of a law enacted without specific reference to a specific constitutional enumerated power. For example, I would look to *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000) to evaluate whether Congress had the authority to enact the specific law at issue under the Commerce Clause.

9. **Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?**

Response: The Supreme Court has held that the Constitution protects rights that are not expressly enumerated in the Constitution such as the right to privacy. *See, e.g., Griswold v. Connecticut*, 381 U.S. 479 (1965).

10. **What rights are protected under substantive due process?**

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997), the Supreme Court set forth the analysis to determine whether a right is fundamental within the meaning of substantive due process. First, the Court has 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.” *Id.* at 720-21. Second, the Court stated that it has “required in substantive-due-process cases a careful description of the asserted fundamental liberty interest.” *Id.* at 721. The Court, as noted in *Glucksberg*, has held that “liberty” as protected by the Due Process Clause includes, among others, the rights to marry and have children. *Id.* at 720. Thus, fundamental rights and liberties “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” are protected under substantive due process. *Id.* at 720-21.

11. **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, any personal beliefs regarding substantive due process rights or economic rights would be of no relevance. I would apply binding Supreme Court and Third Circuit precedent on substantive due process (for example, *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997)).

12. **What are the limits on Congress’s power under the Commerce Clause?**

Response: The Supreme Court has broadly construed Congress’s power under the Commerce Clause but has noted that it is not unlimited. The Supreme Court has held that Congress may regulate the channels of interstate commerce, the instrumentalities of interstate commerce, and activities that substantially affect interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558-59 (1995).

13. **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 when government makes distinctions between groups of people based upon “traditional indicia of suspectness” including those that pertain to “an immutable characteristic determined solely by accident of birth,” and those that pertain to those who are “saddled with such disabilities or subjected to 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). The Supreme Court has determined that race, religion, national origin and alienage are suspect classes that warrant strict scrutiny.

14. **How would you describe the role that checks and balances and separation of powers play in the Constitution’s structure?**

Response: The Constitution provides for three branches of government - Legislative, Executive and Judicial. The duties of each branch are articulated in the Constitution and are designed to prevent the concentration of power in any one branch and to provide that each branch can check and limit the powers of the others.

15. **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 presented with a case in which one branch of government assumed an authority not granted to it by the text of the Constitution, I would review Supreme Court and Third Circuit precedent on the issue and apply the law to the facts of the case to determine whether the exercise of the authority was constitutional.

16. **What role should empathy play in a judge’s consideration of a case?**

Response: Empathy should not play any role in a judge’s consideration of a case. The role of a judge is to faithfully apply the law to the facts of the case without injecting his or her personal views.

17. **What’s worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?**

Response: Both invalidating a law that is constitutional and upholding a law that is unconstitutional are undesirable outcomes.

18. **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 reviewed or analyzed the trend or change described and have not formed any opinions as to what if any reasons there may be for the trend or change.

19. **How would you explain the difference between judicial review and judicial supremacy?**

Response: Judicial supremacy refers to the principle that the Supreme Court is the final interpreter of the meaning of the constitution and the law. Judicial review refers to the power of the judiciary to review the actions of the legislative and executive branches and to determine whether such actions are consistent with the Constitution.

20. **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: All elected officials take an oath to uphold the Constitution.

21. **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: It is important for a judge to be cognizant at all times when deciding cases that judges do not have the will of the legislators to enact laws or the force of the executive branch to execute laws. The role of the Judiciary is to determine “what the law is” as set forth in the seminal case of *Marbury v. Madison*, 5 U.S. 137, 177 (1803). The judiciary does not have the power to make policy decisions as to what the law should be or to enforce the laws that are enacted.

22. **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: As a district court judge, I would be bound to apply all applicable binding Supreme Court and Third Circuit precedent regardless of any views I may have as to its constitutional underpinnings.

23. **Do you believe it is ever appropriate to look past jurisdictional issues if they prevent the court from correcting a serious injustice?**

Response: No. Courts must have jurisdiction to take any action.

24. **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. §1335(a) identifies the factors that a judge shall consider and does not include race, gender, nationality, sexual orientation or gender identity as a factor to be considered.

25. **The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you define equity?**

Response: I am not aware of the above stated definition or quotation. Black's Law Dictionary (11<sup>th</sup> ed. 2019) defines "equity" as "fairness; impartiality; evenhanded dealing" and "the body of principles constituting what is fair and right."

26. **Is there a difference between "equity" and "equality?" If so, what is it?**

Response: With respect to "equity," see Response to No. 25. Black's Law Dictionary (11<sup>th</sup> ed. 2019) defines "Equality" as "the quality, state, or condition of being equal; esp., likeness in power or political status."

27. **Does the 14th Amendment's equal protection clause refer to "equity" or "equality?"**

Response: The 14<sup>th</sup> Amendment's equal protection clause does not use the words "equity" or "equality."

28. **How do you define "systemic racism?"**

Response: I have not studied systemic racism. However, I understand systemic racism to be synonymous with the terms institutional or structural racism and to refer to theories that institutions have practices and/or policies that cause disproportionate effects on certain groups of individuals. *See, e.g., Challenging Systemic Racism with Human Connection*, The American Bar Association (Feb. 26, 2021). If confirmed as a

district court judge, I would decide all cases as described in my Response to Questions No. 1 and 16.

29. **How do you define “critical race theory?”**

Response: I have not studied critical race theory. I understand there are different tenets of critical race theory. The basic tenets of critical race theory include that racism and disparate racial outcomes are the result of social and institutional dynamics rather than explicit and intentional prejudices on the part of individuals. *See, e.g., Lessons in Critical Race Theory, The American Bar Association (Jan. 12, 2021)*. If confirmed as a district court judge, I would decide all cases as described in my Response to Questions No. 1 and 16.

30. **Do you distinguish “critical race theory” from “systemic racism,” and if so, how?**

Response: I have not studied the differences, if any, between the terms or theories systemic racism and critical race theory.



**Senator Ben Sasse**  
**Questions for the Record**  
**U.S. Senate Committee on the Judiciary**  
**Hearing: “Nominations”**  
**June 23, 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.

For all judicial nominees:

1. **How would you describe your judicial philosophy?**

Response: As a practicing attorney, I have not ascribed to or developed a particular judicial philosophy. If confirmed as a district court judge, I would approach all cases with the same rigorous analysis. Specifically, I would consider the arguments of the parties, all precedent, and if there was no precedent directly on point, any analogous case law, and meticulously review the record to fairly and impartially arrive at the outcome compelled by the law.

2. **Would you describe yourself as an originalist?**

Response: I have never used the term “originalist” to describe myself. I believe that the text of any statute must be construed by its plain meaning at the time it was enacted. I will follow Supreme Court and Third Circuit precedent in interpreting the text of the Constitution or any statutes.

3. **Would you describe yourself as a textualist?**

Response: I have never used the term “textualist” to describe myself. I believe that the text of any statute must be construed by its plain meaning at the time it was enacted. I will follow Supreme Court and Third Circuit precedent in interpreting the text of the Constitution or any statutes.

4. **Do you believe the Constitution is a “living” document? Why or why not?**

Response: The Constitution is an enduring document. If confirmed, I would follow all Supreme Court and Third Circuit precedent about the meaning of the Constitution.

5. **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 jurisprudence of any particular justices appointed since January 20, 1953. As a young girl, I greatly admired Justice Sandra Day O'Connor when she was the first woman appointed to the Supreme Court. Years later as a young lawyer, I admired Justice Ruth Bader Ginsburg as the second woman appointed to the Supreme Court.

6. **Was *Marbury v. Madison* correctly decided?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. However, there are a few exceptions to this general rule for longstanding and well-accepted precedent unlikely to be challenged in the future. *Marbury v. Madison* is one of those exceptions. I agree this case was correctly decided.

7. **Was *Lochner v. New York* correctly decided?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

8. **Was *Brown v. Board of Education* correctly decided?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed. However, there are a few exceptions to this general rule for longstanding and well-accepted precedent unlikely to be challenged in the future. *Brown v. Board of Education* is one of those exceptions. I agree that this case was correctly decided.

9. **Was *Bolling v. Sharpe* correctly decided?**

Response: See Response to No. 7.

10. **Was *Cooper v. Aaron* correctly decided?**

Response: See Response to No. 7.

11. **Was *Mapp v. Ohio* correctly decided?**

Response: See Response to No. 7.

**12. Was *Gideon v. Wainwright* correctly decided?**

Response: See Response to No. 7.

**13. Was *Griswold v. Connecticut* correctly decided?**

Response: See Response to No. 7.

**14. Was *South Carolina v. Katzenbach* correctly decided?**

Response: See Response to No. 7.

**15. Was *Miranda v. Arizona* correctly decided?**

Response: See Response to No. 7.

**16. Was *Katzenbach v. Morgan* correctly decided?**

Response: See Response to No. 7.

**17. Was *Loving v. Virginia* correctly decided?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed. However, there are a few exceptions to this general rule for longstanding and well-accepted precedent unlikely to be challenged in the future. *Loving v. Virginia* is one of those exceptions. I agree that this case was correctly decided.

**18. Was *Katz v. United States* correctly decided?**

Response: See Response to No. 7.

**19. Was *Roe v. Wade* correctly decided?**

Response: See Response to No. 7.

**20. Was *Romer v. Evans* correctly decided?**

Response: See Response to No. 7.

**21. Was *United States v. Virginia* correctly decided?**

Response: See Response to No. 7.

22. **Was *Bush v. Gore* correctly decided?**

Response: See Response to No. 7.

23. **Was *District of Columbia v. Heller* correctly decided?**

Response: See Response to No. 7.

24. **Was *Crawford v. Marion County Election Board* correctly decided?**

Response: See Response to No. 7.

25. **Was *Boumediene v. Bush* correctly decided?**

Response: See Response to No. 7.

26. **Was *Citizens United v. Federal Election Commission* correctly decided?**

Response: See Response to No. 7.

27. **Was *Shelby County v. Holder* correctly decided?**

Response: See Response to No. 7.

28. **Was *United States v. Windsor* correctly decided?**

Response: See Response to No. 7.

29. **Was *Obergefell v. Hodges* correctly decided?**

Response: See Response to No. 7.

30. **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: Section 9.1 of the Third Circuit's Internal Operating Procedures provides: "It is the tradition of this court that the holding of a panel in a reported opinion is binding on subsequent panels. Thus, no subsequent panel overrules the holding in a precedential opinion of a previous panel. Court in banc consideration is required to do so." The Third Circuit has stated that "Although a panel of this court is bound by, and lacks authority to overrule, a published decision of a prior panel... a panel may reevaluate a precedent in light of intervening authority and amendments to statutes or regulations." *See United States v. Joshua*, 976 F.2d 844, 853 (3d Cir.1992). If confirmed as a district court judge, I will be bound to apply all precedents of the Supreme Court and Third Circuit and will not

be in a position to make determinations as to whether an appellate court should reaffirm its own precedent under the stated circumstances.

31. **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: See Response to No. 30.

32. **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.

**Nomination of Christine P. O'Hearn  
to be United States District Judge for the District of New Jersey**

**QUESTIONS FROM SENATOR TILLIS**

- 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 is defined in *Black's Law Dictionary* as "a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions." A judge must consider only the facts in the record and faithfully apply the law to those facts to derive the outcome compelled by the rule of law. Judicial activism may also be used to describe instances where a court decides or discusses issues that are not necessary to decide the case before the court. In either scenario, judicial activism is inappropriate. If confirmed, I will follow precedent of the Supreme Court and Third Circuit and decide the necessary issues before the court without consideration of my personal views.

- 3. Do you believe impartiality is an aspiration or an expectation for a judge?**

Response: Impartiality is an expectation and necessary requirement of a judge. Judicial Canon 3 is titled "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: Faithfully interpreting the law may sometimes result in an undesirable outcome. However, consistent with my response to Question No. 2, a judge must apply the law to the facts of the case without regard to any personal belief or preference as to a desired outcome.

- 6. Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

Response: Consistent with my response to Question No. 2, a judge must apply the law to the facts of the case without regard to any personal policy or political preferences.

**7. What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment “protects an individual right to possess a firearm unconnected to service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home.” *Id.* at 595. In *McDonald v. City of Chicago*, 561 U.S. 742, 749-50 (2010), the Supreme Court held the right guaranteed by the Second Amendment applies to the states. If confirmed, I will faithfully apply Supreme Court and Third Circuit precedent when deciding any cases involving the Second 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: I would begin by researching Supreme Court and Third Circuit precedent, including the Supreme Court’s recent decisions related to constitutional rights and the Covid-19 crisis, *Tandon v. Newsom*, 141 S. Ct. 1294 (2021) and *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020). I would then apply the law to the specific facts of the case before me.

**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 faithfully apply Supreme Court and Third Circuit precedent when considering qualified immunity cases. Specifically, I would follow *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018) which holds that 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. *See also Sauer v. Borough of Nesquehoning*, 905 F.3d 711, 717 (3d Cir. 2014) (“Qualified immunity protects government officials from civil damages for conduct that does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Thus, courts assessing a claim of qualified immunity must answer two questions. One is whether the defendant’s conduct violated a statutory or constitutional right. The other is whether the right at issue was clearly established when the conduct took place.”) (*citations and quotations omitted*).

**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 current qualified immunity jurisprudence provides sufficient protection for law enforcement officers is a policy question for legislature and not the judiciary. As a

nominee, it would be inappropriate for me to comment as to this issue. If confirmed, I will follow all Supreme Court and Third Circuit precedent regarding 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 question for the legislature and not the judiciary. As a nominee, it would be inappropriate for me to comment as to this issue. If confirmed, I will follow all Supreme Court and Third Circuit precedent regarding 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 have not practiced in the area of patent law. If presented with a case involving these issues, I would thoroughly research patent eligibility jurisprudence particularly, Supreme Court and Third Circuit precedent, including *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014) and *Mayo Collaborative Servs. v. Prometheus Lab'ys, Inc.*, 566 U.S. 66 (2012) and apply the law to the facts of any case.

**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: See Response to No. 12. While I have not practiced in the area of patent law, I am well aware of how important these cases are to the litigants who bring or defend them and I would endeavor to carefully and thoughtfully apply federal law and binding precedent in any case that came before me.



**Senator Dick Durbin**  
**Chair, Senate Judiciary Committee**  
**Written Questions for Christopher Schroeder**  
**Nominee to the Office of Legal Counsel**  
**June 30, 2021**

1. When the Intelligence Community Inspector General (ICIG) determines that a whistleblower complaint involves an “urgent concern,” the law requires the Director of National Intelligence to send that complaint to Congress. The Trump Administration did not follow this directive on several occasions. Notably, it withheld the initial whistleblower complaint regarding President Trump’s July 25, 2019, phone call with Ukrainian President Volodymyr Zelensky, despite the fact that the ICIG concluded the complaint addressed an “urgent concern.” These events led to President Trump’s first impeachment trial.

It appears that the Trump Administration relied on a September 3, 2019, Office of Legal Counsel Memorandum Opinion titled “‘Urgent Concern’ Determination by the Inspector General of the Intelligence Community” in deciding to withhold the Ukraine whistleblower complaint. This opinion disagreed with the ICIG’s finding that the complaint addressed an “urgent concern.”

On October 22, 2019, the Council of the Inspectors General on Integrity and Efficiency (CIGIE) sent a letter to then-Assistant Attorney General Steven Engel expressing concern about OLC’s opinion. Their letter stated that the OLC opinion was “wrong as a matter of law and policy” and warned that, if not withdrawn or modified, it could “seriously undermine the critical role whistleblowers play in coming forward to report waste, fraud, abuse, and misconduct across the federal government.”

- a. Do you agree that whistleblowers play a “critical role” in reporting government waste, fraud, and abuse?

**RESPONSE: Yes.**

- b. Do you support maintaining IG independence across the federal government?

**RESPONSE: Yes.**

- c. Will you commit that, if confirmed, you will review the September 3, 2019, Office of Legal Counsel (OLC) Memorandum Opinion titled “‘Urgent Concern’ Determination by the Inspector General of the Intelligence Community?” to determine if it is consistent with the law and whether it should be withdrawn or modified?

**RESPONSE: It is longstanding OLC practice not to announce what questions the Office is considering. Should a question of interpreting the statute addressed in the**

September 3, 2019, Memorandum come to the Office, the Memorandum will be thoroughly reviewed in the course of determining what the best view of the statute and relevant law is.

**Senator Chuck Grassley, Ranking Member  
Questions for the Record  
Christopher H. Schroeder**

**Nominee to be Assistant Attorney General for the Office of Legal Counsel**

1. In a 2008 book chapter, you described the law of preemption as “importantly influenced by the policy preferences of the administration in office,” because the preemption positions taken by federal agencies “could be reversed by an administration that thought greater deference to state law was appropriate.”<sup>1</sup> Based on your extensive environmental-policy scholarship, I also understand your support for cities, counties, and states pursuing environmental policies that may differ from federal goals.
  - a. What principles do you apply in determining whether a presidential administration should defer to state policies or preempt state policies?
  - b. If a presidential administration has the legal authority to preempt state laws—specifically where state laws do not align with the administration’s preferences—would you ever counsel the administration against preemption? If you would counsel against preemption in situations, please provide some examples.

**RESPONSE:** The question whether federal law should preempt state law is a question for Congress in the first instance. In order for the executive branch to have the authority to preempt state law that authority must be supplied by Congress. A federal decision to preempt will typically be dependent on the context. Federal law can address a nationwide problem with a consistent approach, such as safety standards for automobiles; it can protect rights that all citizens enjoy, such as civil rights; and it can avoid inefficiencies that can attend conflicting state laws on the same subject. Local or state laws can be tailored for local conditions and they can be responsive to local or state values and needs. Decision makers ought to evaluate these values, which can sometimes be in tension, in making a preemption decision. At times, these values can be accommodated by federal law establishing a floor or ceiling while respecting federalism values by permitting local variation above or below the federal standard.

The core responsibility of the Office of Legal Counsel is to provide legal advice, not policy advice. The Office could be asked whether the law authorizes or prohibits federal preemption in a certain circumstance, and in that case it would be the role of OLC to provide its best view of what the law requires.

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<sup>1</sup> Christopher H. Schroeder, *Supreme Court Preemption Doctrine*, in *Preemption Choice: The Theory, Law, and Reality of Federalism’s Core Question* 119, 143 (William Buzbee ed., 2009) (SJQ Attachments Folder 12(a)).

2. In 1996, you authored an OLC opinion advising that the National Park Service's denial of a commercial climbing license at a Native American sacred site, during a religiously important month, was not a violation of the Establishment Clause.<sup>2</sup> As the OLC head, will you continue to counsel that the Establishment Clause does not ban all government regulation that happens to coincide with religion?

**RESPONSE: The Establishment Clause is a hallmark of the First Amendment, and along with the Free Exercise Clause, provides important protections for religious freedom. The question of whether a federal law or regulation violates the Establishment Clause depends on facts and circumstances of the particular situation. If confirmed, and if called upon to provide a legal opinion on the Establishment Clause, I would endeavor to provide the best view of what the law, including judicial precedents, requires as applied to those facts and circumstances.**

3. My understanding is that, in 2012, you helped the Obama administration develop a series of gun-control recommendations. These recommendations included administrative options that you called "certainly a less involved process" than going through Congress.
- a. Do you expect to work on gun-control issues in this current administration?

**RESPONSE: The Office of Legal Counsel could be asked to interpret an aspect of the Gun Control Act, or another federal law bearing on permissible gun regulation under statutes that Congress has enacted. It could also be asked to review related regulations. The Office does not typically offer policy advice on gun regulation issues.**

- b. If so, what are the top four or five priorities in the area of gun regulation?

**RESPONSE: The Office of Legal Counsel does not formulate policy advice on possible gun regulations, and I would come to the Office, should I be confirmed, with no agenda on this or any other departmental policy.**

4. Does the Second Amendment include the right to carry a personal firearm? Why or why not?

**RESPONSE: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment protects "an individual right to keep and bear arms." *Id.* at 595. Under that ruling, there is, then, a right to "bear" arms in at least some circumstances. If confirmed and presented with a question related to the Second Amendment, I would work to ensure any OLC opinion offers the best view of the law consistent with *Heller* and other relevant precedents.**

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<sup>2</sup> Permissible Accommodation of Sacred Sites, 20 Op. O.L.C. 331 (1996) (SJQ Attachments Folder 12(c)).

5. Does the Twenty-Third Amendment prevent Congress from statutorily admitting the District of Columbia as a state? Why or why not?

**RESPONSE:** This is an issue raised by legislation currently under consideration by Congress and as I stated at my confirmation hearing, this is also an issue under review by the Office of Legal Counsel. The review is still under deliberation and not yet complete.

6. You have spoken critically in the past about the unitary view of presidential power, going as far as to say that the Bush administration's theories of executive power were not faithful to the Constitution. Will you please describe the view of presidential power that you advocate?

**RESPONSE:** This is a complex subject and my views vary depending on the particular situation. I believe the remarks you reference were made in connection with the President's war powers, the extent of which has raised an issue called the "Commander-in-Chief override." Early in the George W. Bush administration, this override was asserted as one basis for the President's constitutional authority to disregard lawfully enacted statutes prohibiting torture, as well as a defense for the Bush administration's warrantless wiretapping program, which was prohibited by the Foreign Intelligence Surveillance Act. The best view of the Constitution's grant of the Commander in Chief power does not authorize the President to disregard such laws.

7. As you stated in your hearing, the Office of Legal Counsel's job is to interpret the law and offer impartial legal advice, not to make policy. You gave an example of a time when your legal counsel differed from the then-current administration's policy preferences.
  - a. If the law conflicts with your personal policy preferences—on an issue that requires your legal counsel—what analytical process do you follow to ensure that your counsel conforms with the law?
  - b. If the law conflicts with the policy preferences of the presidential administration—on an issue that requires your legal counsel—what process do you follow to ensure that your counsel conforms with the law?

**RESPONSE:** Should I be confirmed, I will adhere to the best practices of the Office that are designed to promote answers that reflect the best view of the law and that avoid bias toward personal policy preferences, the policy

**preferences of the administration, or any other improper biases. Most prominent of these practices are ensuring that opinions are thoroughly discussed with all the participating attorneys in the office, soliciting expert advice from other components and offices in the Department when appropriate, and guaranteeing that the final opinion is carefully reviewed by at least two deputies in the Office.**

8. In June 2017, I wrote to President Trump to raise concerns about an erroneous opinion issued by the Office of Legal Counsel which claimed that individual members of Congress are not constitutionally authorized to request information from the Executive Branch. The opinion created a false distinction between oversight and what it called “non-oversight” requests. It relegated requests from non-chairmen and individual members of Congress to the same status as Freedom of Information Act requests. I believe this position was inconsistent with the Constitution, which does not even mention committee chairmen. Each member of Congress is a duly elected constitutional officer with the authority to conduct oversight and request information from the Executive Branch. Before his confirmation to the position you are seeking, Steve Engel agreed, saying, “In my view, the Executive Branch should seek to satisfy the legislative interests reflected in the information requests of individual Members ....”

- a. Do you agree with me that every member of Congress is a constitutional officer with the authority to conduct oversight?

**RESPONSE: Individual Members of Congress are constitutional officers and, as such, are authorized to seek information from the executive branch. The Department should respond to requests for information made by any member of Congress as fully as possible, consistent with the law and the Department’s litigation, law enforcement, and national security responsibilities.**

- b. Do you agree that it is the responsibility of the executive branch to answer all congressional inquiries, regardless of whether the member making the request is a committee chairman or not?

**RESPONSE: The Attorney General has stated that members of Congress are entitled to responses to their letters and that the Department should be as responsive as possible consistent with longstanding Department policies and practices. I agree with the Attorney General.**

9. *The Hill* reports that some former Trump appointees now hold career positions in the federal government. Various liberal activist groups are trying to purge these career employees from the federal payroll. These employees potentially include four individuals in national security positions, nine individuals in environmental regulation positions, and

three Justice Department officials.<sup>3</sup> What is your view on removing federal employees who joined the government during the last presidential administration—whether as appointees and career employees—and now hold career positions?

**RESPONSE: Personnel decisions at the Department of Justice should be made consistent with civil service laws and Department policies. Prohibited considerations, including political affiliation, in hiring for career positions should play no part in such decisions.**

10. As a Justice Department veteran, you are likely familiar with the murals created for the Department's main building. When the Justice Department building was created during the Great Depression, the Treasury Section of Fine Arts commissioned artists to create 68 murals for its halls, depicting scenes, figures and subjects "cover[ing] everything from Rome and the Bible to medieval Europe to English common law and the U.S. Constitution."<sup>4</sup> In a January 5, 2009, NPR article, a Justice Department tour guide explained that "we drip symbolism in this building. This building is a sermon, a hymn to justice."<sup>5</sup> The article described the murals as "real art on the walls, showing America at its worst, and the redemptive power of law and justice."<sup>6</sup> Do you agree that this public art is important and ought to be maintained and displayed where it is?

**RESPONSE: I greatly support and personally value the display of public art, including that currently on display in the headquarters of the Department of Justice.**

11. Please explain, with detail, the process by which you became a nominee for the Assistant Attorney General for the Office of Legal Counsel.

**RESPONSE: I was contacted on or about February 25, 2021, by the Presidential Personnel Office, and asked if I would consider a position at the Department of Justice. The President announced his intent to nominate me on April 12, 2021.**

12. Have you had any conversations with individuals associated with any outside group in connection with this nomination? If so, please explain the nature of the conversations.

**RESPONSE: I have had no conversations with individuals associated with any outside group in connection with this nomination.**

<sup>3</sup> Brett Samuels, *Dozens of Trump appointees 'burrow' into Biden government*, The Hill (Mar. 9, 2021), <https://thehill.com/homenews/administration/542324-dozens-of-trump-appointees-burrow-into-biden-government>.

<sup>4</sup> The Living New Deal, *Kennedy Department of Justice: Robinson Murals – Washington D.C.*, <https://livingnewdeal.org/projects/department-justice-boardman-robinson-murals-washington-dc/>.

<sup>5</sup> Ari Shapiro, *Murals Depict Power of Law and Justice*, NPR (Jan. 5, 2009), <https://www.npr.org/templates/story/story.php?storyId=98783331>.

<sup>6</sup> *Id.*

13. Please explain with particularity the process by which you answered these questions.

**RESPONSE:** The Department of Justice received these questions on June 30, 2021. I worked with Department attorneys, conducted research, and answered the questions. I finalized answers to the questions and authorized their transmission to the Committee on July 12, 2021

14. Do these answers reflect your true and personal views?

**RESPONSE:** Yes.



**Nomination of Christopher H. Schroeder  
to be an Assistant Attorney General, Office of Legal Counsel  
Questions for the Record  
Submitted June 30, 2021**

**QUESTIONS FROM SENATOR WHITEHOUSE**

1. In recent years, opinions from the Office of Legal Counsel have been highly criticized by Article III judges. In *CREW v. DOJ*, Judge Amy Berman Jackson found “the declarations and the justifications in the agency’s pleadings for invoking Exemption 5 to be misleading.”<sup>1</sup> In *Committee on the Judiciary v. McGahn*, Judge Ketanji Brown Jackson wrote that OLC opinions “do not themselves constitute legal precedents and are manifestly inconsistent with the constitutional jurisprudence of the Supreme Court and the D.C. Circuit in many respects.”<sup>2</sup> In *Trump v. Vance*, Judge Victor Marrero was “not persuaded that [the Court] should accord the weight and legal force the President ascribes to the DOJ Memos, or accept as controlling the far-reaching proposition for which they are cited.”<sup>3</sup> The opinions in both *McGahn* and *Vance* relied on a 2008 case, *Committee on the Judiciary v. Miers*,<sup>4</sup> which held that the former White House counsel was not entitled to absolute or qualified immunity and needed to comply with a subpoena to testify before the House Judiciary Committee. It does not appear that OLC took the court’s repudiation in *Miers* seriously, as it made substantially similar arguments ten years later in *McGahn* and *Vance*. Judge Ketanji Brown Jackson noted that the United States District Court for the District of Columbia has seen “these same facts and these same legal arguments before, and DOJ has done little to persuade this Court that the case should turn out differently in the end.”<sup>5</sup> Suffice it to say OLC’s credibility with the courts and with this committee has been called into question.
  - a. What steps, if any, did OLC take between that date of the decision in *CREW v. DOJ* and the date of your hearing to reconsider its opinion in light of the court’s criticism?
  - b. In *McGahn*?
  - c. In *Vance*?

<sup>1</sup> *CREW v. DOJ*, No. 18-5116 (D.D.C. 2021) (Judge Amy Berman Jackson) (ordering DOJ’s production of the 2019 OLC Memo concluding that Trump’s conduct did not meet the elements of obstruction of justice, and criticizing DOJ for its “misleading” characterization of that memo).

<sup>2</sup> *Comm. on the Judiciary v. McGahn*, 415 F. Supp. 3d 148, 155 (D.D.C. 2019) (Judge Ketanji Brown Jackson) (holding that a president’s senior-level aide is not a president’s “alter ego,” as asserted by OLC, and did not qualify for absolute immunity from Congressional subpoenas seeking testimony).

<sup>3</sup> *Trump v. Vance*, 395 F. Supp. 3d 283, 305 (S.D.N.Y. 2019) (Judge Victor Marrero) (finding OLC’s assertion of the president’s absolute immunity from criminal process of any kind could be “far-reaching” and “potentially enable[] both the President and any accomplices to escape being brought to justice”).

<sup>4</sup> *Comm. on the Judiciary v. Miers*, 558 F. Supp. 2d 53 (D.D.C. 2008) (Judge John Bates) (holding that former White House counsel was not entitled to absolute or qualified immunity and must comply with subpoena to testify before House Judiciary Committee).

<sup>5</sup> 415 F. Supp. 3d 148, 155.

d. In *Miers*?

**RESPONSE:** Should I be confirmed, the Office under my leadership will engage with every question presented to us with the intention of providing the best view of the law. In this process, we review the prior work of the Office on or related to the subject. At the same time, OLC should not be hidebound in following the prior opinions of the Office, and should deviate from them when they do not reflect that best view. Whenever an OLC opinion has been the subject of a judicial decision, that decision and its reasoning should inform and will be acknowledged in the Office's subsequent analysis of the topic.

With respect to the specific instances into which you have inquired, I am not aware of any steps prior administrations may have taken, and it has been a longstanding practice of the Office not to announce in advance issues or questions upon which the Office is working. That said, I can make the following comments on the specific instances:

- a. The memorandum at issue in *CREW v. DOJ* is not an OLC opinion and would not be treated as such with respect to any future decision rendered by OLC. To the best of my knowledge, it was written for the Attorney General by the then-Assistant Attorney General for OLC and the Principal Associate Deputy Attorney General, on subjects that would not ordinarily be ones upon which the Office worked.
  - b. and d. If and when the Office is presented with the legal question raised in each of these cases — whether a former close advisor to the President is categorically immune from appearing before Congress for questioning — it would be incumbent on OLC to consider and address the criticisms of OLC's views raised by Judges Bates, Jackson and Henderson in the *Miers* and *McGahn* decisions. Under my leadership, OLC will do that.
  - c. In the *Vance* decision, Judge Marrero questioned the Department of Justice's longstanding interpretation of the Constitution that a sitting President enjoys immunity from criminal prosecution. Once again, if and when I am presented with that legal question, I will consider it anew, taking account of Judge Marrero's views as well as the considerable commentary about the Department's position, in the course of that reconsideration.
2. Recently, the American Constitution Society coordinated a statement that declared the Justice Department's "Office of Legal Counsel has been in crisis for some time."<sup>6</sup> The authors state that OLC has issued tenuous legal opinions justifying torture, provided cover for presidential activities that exceeded the law's limits, and distorted our system of separation of powers. They say that OLC failed to recognize Congress's prerogatives as a co-equal branch of government in politically charged disputes. These are serious concerns.

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<sup>6</sup> American Constitution Society, *The Office of Legal Counsel and the Rule of Law*, <https://www.acslaw.org/wp-content/uploads/2020/10/OLC-ROL-Doc-103020.pdf>.

Contributors to the statement, which included legal scholars and former OLC attorneys, have a specific recommendation: transparency. “OLC should maintain a strong presumption in favor of publishing its final opinions within a reasonable period of time after they have been issued.” In rare instances where OLC withholds its opinions from the public, the opinions should be provided to Congress, and OLC should publish an index listing those memos individually and describing their contents. Twenty civil society organizations endorsed this approach in a May 26th letter to you.<sup>7</sup> You also endorsed this framework in 2004, in a letter that declared “OLC should follow a presumption in favor of timely publication of its written legal opinions.”<sup>8</sup>

- a. Currently only a subset of OLC opinions become publicly available, and OLC policy appears to lean towards nondisclosure. Should you be confirmed, will you agree to revisit the policies concerning disclosure of OLC opinions and consult with the Committee regarding the implementation of automatic, timely, and proactive disclosure of all final OLC legal opinions?
- b. Neither Congress nor the public knows how many OLC opinions exist as controlling law. Will you revisit OLC policies and consider providing to Congress the full text of all final OLC opinions that an agency relies upon to justify a major policy decision or executive action?
- c. Will you consider updating OLC policies in consultation with the Judiciary Committee to address the issue of automatically making publicly available an index of all final OLC opinions without exception?

**RESPONSE: Transparency is important. The presumption in the Office under my leadership, should I be confirmed, will be in favor of publication of the Office’s formal opinions. I intend to follow the 2010 OLC memorandum titled “Best Practices for OLC Legal Advice and Written Opinions” which states that “the Office operates from the presumption that it should make significant opinions fully and promptly available to the public.” If confirmed, I would be pleased to continue to discuss with you and other members of the Judiciary Committee ways by which OLC can improve transparency of its work.**

3. What do you see as the benchmarks that will give you and others comfort that OLC has restored its integrity and credibility? What do you see as policies or constraints that will tend to prevent the failings that have blemished OLC?

**RESPONSE: Holding OLC to the highest standards of quality and impartiality, conducting thorough and thoughtful analysis of every question presented to OLC, and ensuring OLC opinions represent the best view of the law are all essential to the**

<sup>7</sup> Letter from Demand Progress et al. to Christopher Schroeder, Assistant Attorney General for the Office of Legal Counsel (May 26, 2021),

[https://s3.amazonaws.com/demandprogress/letters/Letter\\_Assistant\\_Attorney\\_General\\_OLC\\_2021-05-26.pdf](https://s3.amazonaws.com/demandprogress/letters/Letter_Assistant_Attorney_General_OLC_2021-05-26.pdf).

<sup>8</sup> Walter E. Dellinger et al., *Principles to Guide the Office of Legal Counsel*, (Dec. 21, 2004),

[https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2927&context=faculty\\_scholarship](https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2927&context=faculty_scholarship).

integrity and credibility of the Office. Making the Office's significant opinions publicly available, thereby permitting scrutiny and evaluation by others, is also an important ingredient in demonstrating that integrity and credibility.

**Nomination of Christopher H. Schroeder**  
**to be Assistant Attorney General for the Office of Legal Counsel**  
**Submitted June 30, 2021**

**QUESTIONS FROM SENATOR COTTON**

1. Since becoming a legal adult, have you ever been arrested for or accused of committing a hate crime against any person?

**RESPONSE: No.**

2. Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?

**RESPONSE: No.**

3. Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.

**RESPONSE: The Department of Justice received these questions on June 30, 2021. I worked with Department attorneys, conducted research, and answered the questions. I finalized answers to the questions and authorized their transmission to the Committee on July 12, 2021.**

4. Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. If government officials assisted with writing or drafting your answers, please also identify the department or agency with which those officials are employed.

**RESPONSE: No person outside the federal government wrote or drafted answers to these questions. I did consult with attorneys at the Department of Justice in preparing these answers.**

**SENATOR TED CRUZ**  
**U.S. Senate Committee on the Judiciary**

**Questions for the Record for Christopher Henry Schroeder, Nominee to be Assistant Attorney General for the Office of Legal Counsel, Department of Justice.**

**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.

1. What, if any, are the limitations on a President's prosecutorial discretion?

**RESPONSE:** As Attorney General Garland testified at his confirmation hearing, prosecutors and other government agencies may exercise discretion about how to allocate their limited enforcement resources. However, the Executive Branch cannot simply decide, based on a policy disagreement, that it will not enforce a law at all. The decision – or the exercise of discretion – to start an enforcement action, as the Supreme Court has articulated, requires an agency to “balanc[e] ... a number of factors which are peculiarly within its expertise.” *Heckler v. Chaney*, 470 U.S. 821, 831 (1985). These factors include “whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency’s overall policies, and . . . whether the agency has enough resources to undertake the action at all.” *Id.* An officer also must abide by any limits on prosecutorial discretion enacted by the Congress.

2. In a 2014 article on the DACA program, you described immigration as a “very poor field” for challenging the constitutionality of presidential authority and action. Please explain the basis for this statement.

**RESPONSE:** The legal actions taken to establish the program were taken by the Secretary of Homeland Security based upon statutory authority. As a result, challenges to the action are challenges to the exercise of that statutory authority and provided no occasion to examine what constitutional authority the President might have or what the limits of that authority might be.

3. What limits, if any, does the Take Care Clause of the Constitution place on Presidential prosecutorial discretion?

**RESPONSE:** The President rarely exercises prosecutorial discretion. With respect to a department's exercise of prosecutorial discretion, a Secretary must abide by the limits on prosecutorial discretion enacted by the Congress and, to the extent available, exercise discretion by considering the complex of values identified by the Supreme Court in *Heckler v. Chaney*. As for the President, he or she must “take care that the laws be faithfully exercised,” and this applies to all executive branch exercise of federal authority, including the exercise of prosecutorial discretion. This requires that the officer assigned by law performs his or her “duty faithfully - that is, honestly: not with perfect correctness of judgment, but honestly.” *The President and Accounting Offices*, 1 U.S. Op. Att’y Gen. 624, 626 (1823).

4. Other than the Take Care Clause, are there any Constitutional limits on the president's prosecutorial discretion? If so, what are they?

**RESPONSE:** Prosecutorial discretion is primarily exercised by agencies and departments. Their actions are cabined by numerous constitutional limits. For

example, such discretion may not be exercised to discriminate on the basis of race, sex, or religion, or to favor political supporters or punish political enemies.

5. Do you believe that prosecutorial discretion must be exercised on a case-by-case basis?

**RESPONSE:** Earlier this year, the Acting Attorney General issued a memorandum underscoring that, “[f]or decades, consistent with the Principles of Federal Prosecution, the Department of Justice has provided guidance to federal prosecutors underscoring the importance of making careful, case-specific assessments as to what matters to investigate, which charges to bring, when to enter into plea agreements, and how to advocate at sentencing.” An Attorney General or other officials may set more categorical enforcement priorities, but that is not the same as announcing that certain categories of unlawful conduct will never be prosecuted.

6. Would it be unlawful for a president to create a program in which he declines to enforce income tax laws? Why or why not.

**RESPONSE:** The IRS, like any government agency, can set enforcement priorities, but that is different from declining to enforce the income tax laws.

7. Could the IRS lawfully exempt a defined group of people from paying taxes by announcing that it will not pursue any action against members of this group as a matter of prosecutorial discretion?

**RESPONSE:** Exercising prosecutorial discretion does not entail “exempting” anyone from an obligation to comply with the law. The individuals remain subject to the law and they can be punished for violating it at any time.

8. I understand that you believe the President has the authority to decline to deport categories of individuals, and that this aspect of DACA was lawful. But DACA also made recipients eligible for a work permit. Do you believe this affirmative grant of benefits was lawful? If so, please explain in detail your reasoning.

**RESPONSE:** The eligibility for a work permit for individuals covered by DACA is not an exercise of prosecutorial discretion. Deferred action is a longstanding classification that is recognized by statute. Regulations promulgated in the Reagan administration provide that employers may lawfully hire many categories of persons who are not lawfully entitled to remain in the United States but whose removal has been deferred for different reasons. *See* 8 C.F.R. 274a.12(c)(14); *see also* 8 C.F.R. 274a.12(a)(11). The authority to establish such categories of work eligibility is recognized in federal statute. *See* 8 U.S.C. 1324a(h)(3)(B).

9. Can a President create an immigration status that was never authorized by Congress?

**RESPONSE:** No. The President has certain authorities relating to foreign affairs



**and military affairs that may authorize him/her to admit to the United States certain persons, such as an ambassador, in spite of the absence of congressional authorization. Otherwise, the President and the executive branch cannot create an immigration status.**

10. Does the President have the power to return to the United States an individual who was deported from the United States pursuant to a lawful order of removal absent that individual qualifying for and being awarded a visa? If so, under what circumstances and under what authority?

**RESPONSE: I am unaware of any such power, with the possible exception noted in Response to Question 9 of a foreign affairs or military affairs authority.**

**Senator Mike Lee**  
**Questions for the Record**  
**Christopher Schroeder, AAG, Office of Legal Counsel**

1. The Religious Freedom Restoration Act is the leading federal civil rights law that protects all Americans' religious freedom. It was championed by Senator Ted Kennedy and Senator Orrin Hatch to pass the Senate by a vote of 97-3 and to pass the House by a unanimous voice vote. President Bill Clinton proudly signed it into law in 1993. For nearly three decades, it has protected the religious freedom of all Americans of all faiths. If confirmed, will you commit to oppose any legislative or executive action that would alter in any way the Religious Freedom Restoration Act's protection for Americans of all faiths?

**RESPONSE: Religious freedom is a founding principle of the United States. If confirmed, I will seek to ensure that all Department of Justice guidance, including any guidance on this subject, is consistent with relevant constitutional and statutory provisions and with applicable precedent. The primary role of the Office of Legal Counsel is to provide legal advice, not policy advice.**

2. Do you believe that hateful speech alone, without any attendant conduct, should be a crime?

**RESPONSE: The government must respect the rights enshrined in the Constitution, including the right to freedom of speech, which extends to what some call hate speech. The Supreme Court has repeatedly held that the First Amendment presumptively bars viewpoint discrimination. *See, e.g., Matel v. Tam*, 582 U.S. \_\_\_\_ (2017). If confirmed, I will seek to ensure that all Department of Justice guidance, including any guidance on this subject, is consistent with any relevant constitutional and statutory provisions and with applicable precedent.**

3. What are your thoughts on the Department of Justice's ("DOJ") policy concerning civil asset forfeiture?

**RESPONSE: Civil asset forfeiture is authorized under federal law, including 18 U.S.C. § 981. If confirmed, whenever I am requested to review Department of Justice guidance, including any guidance on this subject, I will seek to ensure that it is consistent with the Constitution and federal laws, including applicable precedent.**

4. Do you think this incentive for law enforcement agencies to participate in equitable sharing is a problem? If so, is it something you will work to address?

**RESPONSE: I have not considered this question. If confirmed and then asked to provide a legal opinion on this subject, I will provide guidance based on the law, Constitution, and applicable judicial precedent.**

5. We've seen disturbing reports recently of websites posting obscene content involving minors and parents unable to convince or force websites to remove obscene content involving their minor children. Will you commit to prioritize enforcement of our anti-trafficking and child pornography laws against these heinous online actors?

**RESPONSE:** If confirmed as Assistant Attorney General for the Office of Legal Counsel, I would not have responsibility for enforcing laws. As a general matter, I support enforcement of statutes that criminalize the trafficking and exploitation of children.

6. As an Assistant Attorney General, what will you do if the President takes a position that is contrary to the law or not in the interests of the United States?

**RESPONSE:** A core function of OLC is to help the President follow his constitutional duties to preserve, protect, and defend the Constitution, and to "take Care that the Laws be faithfully executed." Under my leadership if I am confirmed, the Office will assist the President by providing its best view of what the law, the Constitution, and precedents require. OLC opinions should never be written merely to justify the policy preferences of the President or other officials. If OLC concludes that an Executive Branch proposal is unlawful, where possible and appropriate, OLC will seek to propose lawful alternatives.

7. As a nominee for a position in the Executive branch, do you think there are any limits on the President's use of prosecutorial discretion?

**RESPONSE:** As Attorney General Garland testified at his confirmation hearing, prosecutors and other government agencies may exercise discretion about how to allocate their limited enforcement resources. However, the Executive Branch cannot simply decide, based on a policy disagreement, that it will not enforce a law at all. The decision – or the exercise of discretion – to start an enforcement action, as the Supreme Court has articulated, requires an agency to "balanc[e] ... a number of factors which are peculiarly within its expertise." *Heckler v. Chaney*, 470 U.S. 821, 831 (1985). These factors include "whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency's overall policies, and . . . whether the agency has enough resources to undertake the action at all." *Id.* An officer also must abide by any limits on prosecutorial discretion enacted by the Congress.

8. Please state for the record your thoughts on the Second Amendment?

**RESPONSE:** In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment protects "an individual right to keep and bear arms." *Id.* at 595. Under that ruling, there is, then, a right to "bear" arms in at least some circumstances. If confirmed and presented with a question related to the Second Amendment, I would work to ensure any OLC opinion offers the best view of the law consistent with *Heller* and other relevant precedents.

9. A number of states have enacted so-called “red flag laws” that authorize judges to issue orders for the seizure of otherwise lawfully owned firearms when the owner is found to be a danger to self or others. Do you support the use of red flag orders to seize lawfully-owned firearms? If so, what due process protections should apply to the issuance of these orders? Should a judge be able to order firearm seizures in *ex parte* proceedings, before the respondent has had a chance to answer the allegations in the petition?

**RESPONSE: While I am not familiar with this category of laws, if confirmed and if I am asked to advise about this or any legislation, I will consider all relevant constitutional principles, including due process, in providing a legal opinion.**

10. Do you support banning specific types of firearms?

**RESPONSE: If confirmed as Assistant Attorney General for the Office of Legal Counsel, I will not have a policy making role concerning firearms. Any legal advice I provide would be based on the law and Constitution as interpreted by the courts. The primary role of the Office of Legal Counsel is to provide legal advice, not policy advice.**

11. Do you support banning large magazines?

**RESPONSE: If confirmed as Assistant Attorney General for the Office of Legal Counsel, I will not have a policy making role concerning firearms. Any legal advice I provide would be based on the law and Constitution as interpreted by the courts. The primary role of the Office of Legal Counsel is to provide legal advice, not policy advice.**

12. Do you support holding firearms manufacturers liable for damage caused by people using their firearms to commit a crime?

**RESPONSE: If confirmed as Assistant Attorney General for the Office of Legal Counsel, I will not have a policy making role concerning firearms. Any legal advice I provide would be based on the law and Constitution as interpreted by the courts. The primary role of the Office of Legal Counsel is to provide legal advice, not policy advice.**

13. You’ve tweeted that you disagreed with a school’s decision to suspend a 9 year-old simply for having a toy B.B. gun in the background of his video feed while participating in virtual schooling. Do you believe that law abiding Americans without a criminal history should be allowed to own firearms?

**RESPONSE: I did not write or publish any such tweet.**

14. The Biden Administration has defined “equity” as: “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to

underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.” Do you agree with that definition?

**RESPONSE: Yes.**

- a. What is the difference between “equity” and “equality?”

**RESPONSE: Although I am not an expert in this area, my understanding is that some distinguish between these two terms—which do not have one simple universal meaning—taking equality to mean treating everyone who is similarly situated the same, and taking equity to mean fairness and understanding that there are communities that may face particular historical and present-day barriers. Equity requires accounting for the fact that not everyone starts from the same footing, and works to address more longstanding barriers. In Executive Order 13985, President Biden defined “equity” as “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment.”**

- b. In order to achieve “equity,” is it ever necessary to discriminate *against* members of some groups in favor of others?

**RESPONSE: Please see response to subpart a.**

- c. If treating people equally before the law results in disparate outcomes, is it acceptable to discriminate against those with favorable outcomes before the law in order to correct that disparity?

**RESPONSE: Please see response to subpart a.**

15. How do you define “systemic racism?”

**RESPONSE: Attorney General Garland testified that “there is discrimination and widespread disparate treatment of communities of color and other ethnic minorities in this country.” I agree with his view.**

16. How do you define “critical race theory?”

**RESPONSE: Critical race theory has no single definition. For me, it is an inquiry into whether there are institutions or practices that contribute to “systemic racism” as defined in my response to the prior question.**

17. Do you distinguish “critical race theory” from “systemic racism,” and if so, how?

**RESPONSE: Please see response to Question 16.**

18. Do you think America’s criminal justice system, including the federal courts, U.S. Attorney’s offices, and the Department of Justice are “systemically racist?”

**RESPONSE: I do not consider any of these institutions racist. Acknowledging the existence of systemic racism in society does not mean that any particular institution or individual is systemically racist.**

19. Congresswoman Ayanna Presley has said, in relation to criminal justice policy: “[w]e must now be every bit as intentional in legislating justice and equity, and that starts with embracing anti-racism as a central tenet of the policymaking process.” Do you plan to institute “anti-racist” policies in the Office of Legal Counsel at the Justice Department? If so, which policies do you plan to institute?

**RESPONSE: If confirmed, I would abide by the policies of the President and the instructions of the Attorney General to ensure fair and impartial administration of justice for all Americans. Any policies that I may adopt in the Office of Legal Counsel will be consistent with the overall Department-wide policies determined by Attorney General Garland, and will be consistent with the law, regulations, and applicable court precedents.**

20. Do you believe that members of historically oppressed minority groups should be treated more favorably than those of other races in prosecutions and sentencing decisions to correct for the effects of systemic racism?

**RESPONSE: If confirmed, I would abide by the policies of the President and the instructions of the Attorney General to ensure fair and impartial administration of justice for all Americans.**

21. Do you believe, if confirmed as an Assistant Attorney General, that you would have a duty to act in line with your moral code? If so, would you agree that it is part of your duty to ensure that the division under your care does not violate that code?

**RESPONSE: If confirmed, any legal opinions offered by me or of the Office of Legal Counsel would be based on the law and not on my own personal preferences.**

22. Along the same lines, let’s assume that someone acting as an agent of the Department of Justice under your control takes actions which contradict your moral code. What responsibility do you feel you would owe for those actions?

**RESPONSE: If confirmed, any legal opinions offered by me or of the Office of Legal Counsel would be based on the law and not on my own personal preferences.**

23. For purposes of federal law, when does life begin?

**RESPONSE:** If confirmed and asked to render a legal opinion, I would follow the law, including Supreme Court precedent. I note that in *Roe v. Wade*, 410 U.S. 113 (1973), the Supreme Court stated that the court “need not resolve” the question of when life begins. *Id.* at 159.

24. Does the definition of when human life begins for purposes of federal law differ from the scientific definition of when human life begins?

**RESPONSE:** If confirmed and asked to render a legal opinion, I would follow the law, including Supreme Court precedent. I note that in *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 777 (1992), the Supreme Court held that states may regulate abortion prior to viability based on the state’s interest in maternal health and potential life, provided those regulations do not have “the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.”

25. At what point in human development does the United States have a compelling interest in protecting a human life?

**RESPONSE:** Please see the response to question 24.

26. Do you support laws penalizing fetal homicide?

**RESPONSE:** I am not familiar with the laws referenced in this question and do not have an opinion about them.

27. Do you support the Unborn Victims of Violence Act of 2004, which provides that a person guilty of killing a child in utero may be punished to the same extent as if they had killed the child’s mother, and that a person who intentionally kills a child in utero may be charged as a homicide (i.e., murder or manslaughter)?

**RESPONSE:** I have never studied this law. If confirmed and asked to provide a legal opinion about this law, I would study carefully the text of the law, the Constitution, and all relevant judicial precedent. The primary role of the Office of Legal Counsel is to provide legal advice, not policy advice.

28. Given that “homicide” requires the killing of an innocent human being, do you agree that in order to punish someone for violating this statute, the child in utero would have to be a human being?

**RESPONSE:** If confirmed and asked to provide an opinion regarding the applicability of federal law, I would look to the statute, the Constitution, and judicial precedent.

29. Are there any circumstances which justify the killing of an innocent human being?

**RESPONSE: I am not aware of what circumstances you may be referring to in your question. If confirmed and asked to provide an opinion regarding the applicability of federal law, I would look to the statute, the Constitution, and judicial precedent.**

30. Do you support the Born Alive Infants Protection Act?

**RESPONSE: I have not closely studied this law. If confirmed and asked to provide a legal opinion about this law, I would look to the statute itself and any relevant judicial precedent. The primary role of the Office of Legal Counsel is to provide legal advice, not policy advice.**

31. Relatedly, would you support any policy that would prohibit the killing of children who survive failed abortions outside the womb?

**RESPONSE: If confirmed, I would render legal opinions based on the law, the Constitution, and judicial precedent. The primary role of the Office of Legal Counsel is to provide legal advice, not policy advice**

32. Will you commit that the Office of Legal Counsel of the Department of Justice will not rely upon data or information compiled by the Southern Poverty Law Center considering the serious allegations of systemic sexual harassment, racial discrimination and their ties to domestic terrorism cases?

**RESPONSE: I do not know the extent, if any, to which the Department of Justice relies on or receives information from this source. If confirmed, I will evaluate legal questions based on the law, Constitution, and judicial precedent.**

33. There's been a lot of rhetoric over the last year from critics of our criminal justice system suggesting that we should "defund" the police. Do you agree with those critics?

**RESPONSE: Like Attorney General Garland, I personally do not support defunding police. That said, the primary role of the Office of Legal Counsel is to provide legal advice, not policy advice.**

34. Do you believe our federal criminal justice system requires reforms, and if so, what reforms?

**RESPONSE: The primary role of the Office of Legal Counsel is to provide legal advice, not policy advice. If I am confirmed as Assistant Attorney General for the Office of Legal Counsel, and asked to provide a legal opinion as to specific policies, I would do so based on the law, Constitution, and judicial precedents.**

35. In 2007, you wrote that "[b]y serving its role of connecting law with evolving social values, the Court often makes 'substantial changes in previously governing law.'"



- a. What provision of the United States Constitution endows the Supreme Court with the “role of connecting law with evolving social values?”

**RESPONSE: No provision of the Constitution articulates how federal judges perform their task of judicial review and constitutional analysis. The language you quote above was an attempt to encapsulate part of the thinking of Professor Paul Mishkin, who was himself trying to describe as a matter of historical fact what judges do when applying an over 200-year-old Constitution to a society that the Framers did not experience or contemplate.**

- b. Relatedly, what Constitutional provision empowers the Court (specifically, 5 or more justices on the Court) to change a Constitutional provision ratified by the people’s duly elected representatives or the people themselves?

**RESPONSE: No provision of the Constitution empowers the Supreme Court to change a Constitutional provision.**

- c. If a judge can, as you’ve suggested, constructively amend the Constitution in response to evolving social values, what’s to guarantee that those changes result in desirable (e.g., *Brown v. Board of Education*) rather than unjust (e.g., *Korematsu v. United States*) outcomes?

**RESPONSE: The passage you quote is my articulation of Professor Mishkin’s thinking. Justice Scalia articulated one facet of applying constitutional protections to evolving conditions when he wrote for the Court that the Fourth Amendment prevented use of thermal imaging technology to acquire information from the inside of a house, even though law enforcement did not enter the house to acquire it, which older cases had required in order for the Fourth Amendment to apply. “This assures preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted.” *Kyllo v. United States*, 533 U.S. 27, 34 (2001). “To withdraw protection of this minimum expectation would be to permit police technology to erode the privacy guaranteed by the Fourth Amendment.” *Id.* As the Constitution ages, Justices often attempt to prevent similar erosions of constitutional guarantees by recognizing the significance of social evolution.**

36. In 2009, you wrote: “If the weasel words [used to carve-out discretion for the President’s executive authority] are not carefully defined—and their slippery nature is why we call them weasel words—then it is not clear whether a president will later drive a truck through them or thread a needle.” In your capacity as AAG for the Office of Legal Counsel, what steps will you take to ensure that the words outlining the scope of executive power favor actions that “thread a needle” rather than “drive a truck” through these “weasel words?”

**RESPONSE: If I am confirmed, in examining all questions of executive power – as**

well as any other legal question I may be asked -- I will adhere to the best practices of the Office that are designed to promote answers that reflect the best view of the law, without regard to my personal policy preferences, the policy preferences of the administration, or any other improper biases. Most prominent of these best practices are ensuring that opinions are thoroughly discussed with all the participating attorneys in the office, soliciting expert advice from outside the Office when appropriate, and guaranteeing that the final opinion is carefully reviewed by at least two deputies in the Office.

**Senator Ben Sasse  
Questions for the Record  
U.S. Senate Committee on the Judiciary  
Hearing: “Nominations”  
June 23, 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.**

June 18, 2021

Senator Richard Durbin  
United States Senate  
711 Hart Senate Office Building  
Washington, D.C. 20510

Senator Charles Grassley  
United States Senate  
135 Hart Senate Office Building  
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley:

The former law clerks to the Honorable Gustavo A. Gelpi, Chief Judge of the United States District Court for the District of Puerto Rico, write to enthusiastically and proudly support his nomination to the United States Court of Appeals for the First Circuit. Chief Judge Gelpi has demonstrated unparalleled service and dedication to the federal judiciary and the rule of law for twenty years, first as a United States Magistrate Judge for five years, and a United States District Court Judge for the past fifteen years. His continued service on the United States Court of Appeals for the First Circuit will be of extraordinary benefit to the nation.

Serving as law clerks to Chief Judge Gelpi provided each of us a unique yet consistent perspective into his measured demeanor, tempered and impartial judicial approach, devotion to faithful application of the law, and consistently balanced and fair treatment of each and every party and attorney to appear before him. His approach to cases and litigants alike is a model of excellence: every complaint and action before him receives the same impartial attention to detail that any litigant would hope to receive, regardless of the issue or outcome. He exercises judicial discretion to ensure a balanced playing field while staying true to the laws that Congress has passed and their corresponding regulations promulgated by the executive branch.

Chief Judge Gelpi is responsible for the betterment of the legal profession in numerous ways outside of his service on the bench. He has taught hundreds of law students in federal criminal practice and procedure at several law schools. He has served as the national president, among many other roles, of the Federal Bar Association, an apolitical organization whose primary mission is to promote an independent and fair federal judicial system.

Our most valuable contribution to the Committee's consideration of Chief Judge Gelpi is perhaps in assisting its understanding of Chief Judge Gelpi as a person. Even in his individual capacity, he loves the law—its historical development and application, and the opportunity it presents to engage in meaningful discussions. He is a dedicated father who prizes his children's joy and happiness immeasurably. He treated each of us as equals and friends, mentoring us to value each submission, devote our full attention to filings, and address every contention, regardless of its merits. This instruction and level of dedication exemplify the type of judge he will be on the United States Court of Appeals for the First Circuit. We are immensely proud of his decades of service, grateful for his mentorship and friendship, and excited by the prospect of the United States Court of Appeals adding an exceptionally well-qualified jurist.

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June 17, 2021

**Senator Dick Durbin**  
United States Senate  
711 Hart Senate Office Building  
Washington, D.C. 20510

**Senator Chuck Grassley**  
United States Senate  
711 Hart Senate Office Building  
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley:

As Presidents of the First Circuit Chapters<sup>1</sup> (Massachusetts, Rhode Island, and Puerto Rico), we have had the opportunity to meet the Honorable Gustavo A. Gelpí, Chief Judge of the United States District Court for the District of Puerto Rico.

The Federal Bar Association (FBA) is a tax-exempt 501(c)(6) organization founded in 1920. Its purpose is to serve as the national representative of the Federal legal profession; promote the sound administration of justice; enhance the professional growth and development of members of the Federal legal profession; promote high standards of professional competence and ethical conduct in the Federal legal profession; promote the welfare of attorneys and judges employed by the Government of the United States; provide quality education programs to the Federal legal profession and the public; keep members informed of developments in their respective fields of interest; and, promote diversity throughout the legal profession and the Federal Bar Association.

The FBA supports full and equal access to and participation by all individuals in the Association, the legal profession, and the justice system regardless of race, gender, ethnicity, national origin, religion, age, sexual orientation, gender identity, disability, or any other unique attribute. The FBA recognizes that achieving diversity in the legal profession requires the Association's continued effort and commitment. The FBA is committed to diversity throughout the Association.

Today we jointly write, in our personal capacities, supporting President Biden's nomination of the Honorable. Gustavo A. Gelpí, Chief Judge of the United States District Court for the District of Puerto Rico.

Chief Judge Gelpí's illustrious career in public service spans three decades. He commenced as a law clerk to U.S. District Judge Juan M. Perez Gimenez. He then served as Assistant Public Defender. He represented clients before both the U.S. District Court for the District of Puerto Rico and the U.S. Court of Appeals for the First Circuit and served a detail as Special Counsel to the United States Sentencing Commission. Chief Judge Gelpí next was appointed Solicitor General of Puerto Rico. He further enriched his appellate experience, representing the government before federal and state courts of appeal, including the U.S. Court of Appeals for the First Circuit. Following a brief period in private practice, he was appointed to serve as a United States Magistrate

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<sup>1</sup> The chapter presidents' endorsement does not necessarily reflect the chapter's endorsement. The chapter presidents are endorsing the nomination in their personal capacity.

Judge in the District of Puerto Rico. Five years later, he was nominated by President Bush. The Senate unanimously confirmed him to a position as United States District Judge for the District of Puerto Rico, wherein since 2018, he has served as its Chief Judge.

During his tenure on the federal bench, Chief Judge Gelpi has always managed a voluminous and diverse criminal and civil docket, characteristic in the District of Puerto Rico. As Chief Judge, he has maintained the same intense caseload while at the same time excellently managed the Court before and throughout the Covid 19 pandemic, including the continued dispensing of justice. In addition, Chief Judge Gelpi also presides over the Nation's most comprehensive police reform consent decree between the U.S. Department of Justice and Puerto Rico Police Bureau. His tireless dedication to enforcing the same has resulted in implementing constitutional police practices and officer accountability in Puerto Rico.

Chief Judge Gelpi's accomplishments are not limited to the District of Puerto Rico. The Chief Judge of the U.S. Court of Appeals for the First Circuit has over the years invited Chief Judge Gelpi to sit by designation on said Court, wherein he has authored several appellate opinions. Chief Justice John Roberts also appointed him to serve on the Judicial Conference Committee on Audits and Accountability. He continues to serve as a Judicial Conference member, representing the five judicial districts within the First Circuit.

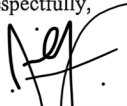
Chief Judge Gelpi is also an academic and published author. Over the years, he has taught one-week Intercession seminars about federal criminal practice, judicial writing, and the history of U.S. territories at law schools in Massachusetts, New Hampshire, Puerto Rico, and Hawaii.

As a member and officer of the FBA for over thirty years, Chief Judge Gelpi notably served as its national president from 2013 to 2014. His term marked the first occasion in the one-hundred-year history of the organization in which a federal judge served as its president and the second such time for a Hispanic. Given that his presidency coincided with the fiftieth anniversary of the Civil Rights and Criminal Justice Acts, Chief Judge made it a priority that each FBA Chapter across the Nation hold a public event to commemorate the same and educate the bar and public. This goal was achieved, and Chief Judge Gelpi personally participated in several of these activities.

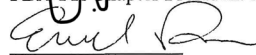
Over the years as an FBA national officer Chief Judge Gelpi was instrumental in strengthening the existing chapters in Massachusetts, Rhode Island, and Puerto Rico. During his year as FBA President, he prioritized establishing chapters in the remaining First Circuit jurisdictions of Maine and New Hampshire, at the time part of the very few districts without a chapter. Today, lawyers and judges within the First Circuit and elsewhere enjoy enhanced professional and educational opportunities within the FBA.

Chief Judge Gelpi is a genuine, authentic, and proven public servant on and off the bench. He is recognized at the Puerto Rico, First Circuit, and national levels as a fair, honest, respectful, and impartial judge. He embodies the ideal candidate's requirements to serve on the U.S. Court of Appeals for the First Circuit: a top-caliber judicial acumen and temperament and an unquestionable and proven record of equal access to justice to all who come before him.

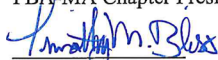
Respectfully,



Joseph G. Feldstein  
FBA-PR Chapter President in his Personal Capacity



Erika Reis  
FBA-MA Chapter President in her Personal Capacity



Timothy M. Bliss  
FBA-RI Chapter President in his Personal Capacity





June 18, 2021

Mr. Phillip Brest, Esq.  
Chief Nominations Counsel  
Senate Judiciary Committee  
Chair Richard J. Durbin  
[Phillip\\_brest@judiciary-dem.senate.gov](mailto:Phillip_brest@judiciary-dem.senate.gov)

Mr. Michael Fragoso, Esq.  
Chief Nomination Counsel  
Senate Judiciary Committee  
Ranking Member Charles E. Grassley  
[Michael\\_fragoso@judiciary-rep.senate.gov](mailto:Michael_fragoso@judiciary-rep.senate.gov)

Dear Sirs:

I write to you in my capacity as President of the *Colegio de Abogados y Abogadas de Puerto Rico*, known in English as the Puerto Rico Bar Association (hereinafter referred to as the PRBA). We are one of the oldest bar associations in the America's, having been established over 180 years ago, with the purpose of the defending the civil rights of all members of Society while seeking to improve the quality of the practice of law for all its members.

After the untimely death of Hon. Judge Juan R. Torruella of the U.S. Federal Court of Appeals for the First Circuit, President Joseph Biden has designated Hon. Judge Gustavo Gelpí as his successor, and the United States Senate will now pass judgment on this designation. We wholeheartedly and enthusiastically support the designation of Judge Gelpí to the First Circuit Court vacancy.

Judge Torruella's shoes are extremely difficult to fill, given his 36 years of admirable and exceptional service, which raises the bar for anybody seeking to follow in his footsteps. Judge Gelpí is, in our opinion, the ideal candidate to continue Judge Torruella's tradition of hard work, profound analysis and compassion for those less fortunate.

June 18, 2021

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Honorable Gustavo Gelpí, who is at present Chief Judge of the United States District Court for the District for Puerto Rico (USDCPR), would bring to the Court of Appeals vast experience in practically all aspects of the law, an extraordinary achievement given Judge Gelpí's age. Most of Judge Gelpí's professional experience has been in public service, starting as law clerk to Hon. Judge Juan M. Pérez Giménez of the USDCPR, moving on to work at the Office of the Federal Public Defender. He served as assistant to the Attorney General of Puerto Rico and was later promoted to Solicitor General, where he argued cases before the US Court of Appeals for the First, Second and District of Columbia Circuits. He joined the US District Court in Puerto Rico first as Magistrate Judge and later as District Judge, where he has served with distinction since 2006, holding today the position of Chief Judge of the Court. Those who have come in contact with Judge Gelpí during his long and varied career all agree that he is respectful, knowledgeable on the law and its nuances, balanced and willing to consider diverse positions before choosing a course of action.

In addition to authoring hundreds of opinions throughout his judicial career in wide ranging topics, Judge Gelpí found time to write a book titled *The Constitutional Evolution of Puerto Rico and Other U.S. Territories 1898–Present*, which provides an objective look into the ramifications of the territorial status of Puerto Rico and other U.S. territories, a well-researched treatise on the Territorial Clause of the Constitution and the rights of U.S. citizens living in the U.S. Territories.

Judge Gelpí has remained active in other endeavors such as the Federal Bar Association, where he rose to the National Presidency of the organization, and the Puerto Rico Bar Association with whom he has cooperated tirelessly throughout his career. Judge Gelpí graciously and constantly lectures on diverse topics to attorneys and to the general public alike, seeking to instill in the audience respect and understanding for the Rule of Law.

Never one to shy away from controversial topics, Judge Gelpí has been an active spokesperson for human rights, equality, diversity and inclusion, ideas that have found their ways into his many of his opinions.

Judge Gelpí would bring to the Circuit Court his broad experience and his unlimited energy and enthusiasm, complemented by his sensibility and compassion for those seeking justice. It is for these reasons that we support, without any reservation, Judge Gelpí's nomination to the US Court of Appeals for the First Circuit.

Cordially,



Daisy Calcaño Lopez  
President



June 10, 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

Dear Chairman Durbin and Ranking Member Grassley,

As President and on behalf of the Puerto Rican Bar Association of Florida ("PRBAF"), I write to express the support of PRBAF for the nomination of the Honorable Gustavo A. Gelpi, Jr., Chief Judge of the United States District Court for the District of Puerto Rico, to serve as a judge on the Court of Appeals for the First Circuit. PRBAF is a non-profit organization headquartered in Orlando, Florida, dedicated to advancing the interests of legal professionals with ties to Puerto Rico throughout the state of Florida.

Chief Judge Gelpi has served as an exemplary public servant for three decades. After earning an undergraduate degree from Brandeis University and juris doctor degree from Suffolk University Law School, he began his legal career as a judicial clerk to U.S. District Judge Juan M. Pérez-Gimenez in Puerto Rico. After his clerkship, Chief Judge Gelpi worked as Assistant Public Defender, and served a detail as Special Counsel to the United States Sentencing Commission. As Assistant Public Defender, Chief Judge Gelpi tried defended numerous cases before the U.S. District Court for the District of Puerto Rico and U.S. Court of Appeals for the First Circuit.

Chief Judge Gelpi was then appointed Solicitor General of Puerto Rico, which deepened his appellate experience, as he represented the government of Puerto Rico before federal and state courts of appeal, including the U.S. Court of Appeals for the First Circuit. After a brief period in private practice, he was appointed to serve as a United States Magistrate Judge in the District of Puerto Rico in 2001. In 2006, President Bush nominated, and the Senate unanimously confirmed, him for a position as United States District Judge for the District of Puerto Rico. Since 2018, he has served as the District Court's Chief Judge.

Chief Judge Gelpi is well-regarded by his peers and the legal community in Puerto Rico, has an excellent reputation as a fair and balanced judge, and is recognized for his academic works, particularly on the topic of the constitutional relationship between the United States and Puerto Rico and other U.S. territories. Over the years, he has taught one-week seminars about federal criminal practice, judicial writing, and the history of U.S. territories at law schools in Massachusetts, New Hampshire, Puerto Rico and Hawaii. In addition, he has a stellar reputation for efficiently managing his voluminous and diverse criminal and civil docket, as well as for his effective administration of the Court before and during the Covid-19 pandemic, ensuring the

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continued dispensation of justice in the most challenging of time. Among his many important responsibilities, Chief Judge Gelpi also presides over the most comprehensive police reform consent decree between the U.S. Department of Justice and the Puerto Rico Police Department. His oversight work has led to better constitutional police practices and officer accountability in Puerto Rico.

Beyond Puerto Rico, Chief Judge Gelpi has had the opportunity to sit by designation on the First Circuit Court of Appeals. Several First Circuit appellate opinions bear his authorship. Supreme Court Chief Justice John Roberts appointed him to serve on the Judicial Conference Committee on Audits and Accountability, and he continues to serve as a member of the Judicial Conference representing the five judicial districts within the First Circuit. Notably, Chief Judge Gelpi served as national president of the Federal Bar Association from 2013 to 2014.

Chief Judge Gelpi is an ideal nominee to fill the vacancy left by the late Judge Juan R. Torruella, the first and only judge of Puerto Rican, and more broadly Hispanic, descent to serve on the First Circuit. Chief Judge Gelpi would follow in Judge Torruella's footsteps as the second and only judge of Puerto Rican and Hispanic descent on the First Circuit, and continue his legacy as an equally staunch defender of the constitutional rights of Puerto Ricans residing on the island. If confirmed by the Senate, Chief Judge Gelpi would fill a critical gap as the only judge from the District of Puerto Rico to oversee appeals from that District, which has one of the busiest dockets of all the lower courts in the First Circuit.

From the perspective of the Puerto Rican legal community in Florida, Chief Judge Gelpi is the most highly qualified and ideal candidate for this First Circuit vacancy. PRBAF therefore strongly urges the Senate to swiftly confirm Chief Judge Gelpi to the First Circuit.

Respectfully,



**Edwin J. Prado-Galarza**  
*President of PRBAF*

Cc:  
Senator Marco Rubio  
284 Russell Senate Office Building  
Washington, DC 20510

Senator Rick Scott  
716 Hart Senate Office Building  
Washington, DC 20510

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June 21, 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 Gustavo A. Gelpi, Jr. to the United States Court of Appeals for the First Circuit*

Dear Chairman Durbin and Ranking Member Grassley:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Judge Gustavo Gelpi, who has been nominated by the President to the United States Court of Appeals for the First Circuit. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Judge Gelpi is **"Well Qualified"** to serve on the United States Court of Appeals for the First Circuit.

Very truly yours,

Randall D. Noel  
 Chair, Standing Committee  
 On the Federal Judiciary

cc: Dana Remus, White House Counsel (*via email*)  
 Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy,  
 U.S. Department of Justice (*via email*)  
 The Honorable Gustavo A. Gelpi, Jr. (*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*)

59951334.v1

National Council of Jewish Women  
2055 L St NW Suite 650  
Washington, DC 20036

T: 202.296.2588



National Council of Jewish Women

June 21, 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 Chief Judge Gustavo A. Gelpi, Jr. to the United States Court of Appeals for the First Circuit.**

Chief Judge Gelpi has heard over 1,600 cases since his unanimous confirmation to the US District Court for the District of Puerto Rico in 2006, where he still sits today as Chief Judge. As a Puerto Rican jurist, Chief Judge Gelpi brings a much-needed perspective to the federal judiciary. In fact, his confirmation would make him the second judge from Puerto Rico to ever sit on the First Circuit.

Chief Judge Gelpi has demonstrated his dedication to ensuring US citizens residing in Puerto Rico have the same rights as other Americans, including the right to vote in presidential elections, receive Social Security when eligible, and marry whomever they choose. In *United States v. Vaello-Madero*, he held that excluding residents of Puerto Rico from receiving Supplemental Security Income is a constitutional violation, a decision that was later affirmed by the First Circuit and recently granted certiorari by the US Supreme Court.

For over 20 years, NCJW has advocated for judicial nominees who are fair, independent, qualified, and reflect the communities they serve. Deeply qualified and committed to upholding constitutional rights for all, Chief Judge Gelpi meets our criteria. **NCJW urges you to support the nomination of Chief Judge Gustavo A. Gelpi, Jr. to the United States Court of Appeals for the First Circuit.**

Sincerely,

A handwritten signature in blue ink, appearing to read "Jody Rabhan".

Jody Rabhan  
Chief Policy Officer  
National Council of Jewish Women



PRESIDENT  
NAN ARON

CHAIR  
PAULETTE MEYER

June 23, 2021

The Honorable Richard Durbin  
Chairman  
Senate Judiciary Committee

Dear Chairman Durbin:

On behalf of the Alliance for Justice (AFJ), a national association representing over 120 public interest and civil rights organizations, I write to strongly support the confirmation of Judge Gustavo A. Gelpí, Jr. to the United States Court of Appeals for the First Circuit. The Senate unanimously confirmed Judge Gelpí to the United States District Court for the District of Puerto Rico in 2006 and his long legal career both on and off the bench is a testament to his commitment to equal justice for all and safeguarding our constitutional rights, especially for the people of Puerto Rico.

Judge Gelpí was born in San Juan and has spent his life in Puerto Rico, except for his education at Brandeis University where he earned his B.A. and Suffolk University Law School where he earned his J.D. in 1991. After graduating from law school, Judge Gelpí returned home to clerk for Judge Juan M. Perez-Gimenez on the United States District Court for the District of Puerto Rico.

Judge Gelpí's record of public service is extensive. Following his federal clerkship, he represented low-income criminal defendants before the First Circuit Court of Appeals as an Assistant Federal Public Defender for the District of Puerto Rico. And at the Puerto Rico Department of Justice, he served as special aide to the Attorney General, Assistant Attorney General at the Office of Legal Counsel, and ultimately, as Solicitor General of Puerto Rico. Judge Gelpí also worked as special litigation counsel at McConnell Valdes, one of the largest Hispanic-owned law firms in the world.

Judge Gelpí was appointed as a Magistrate Judge for the District of Puerto Rico in 2001 and served in that role until he was nominated to be a District Court judge in 2006. His 20 years on the federal bench demonstrate his commitment to our constitutional values and consistent application of the law. Judge Gelpí's wealth of experience as lawyer working for the public interest, especially as a public defender, will make him an excellent addition to the First Circuit.

Eleven Dupont Circle NW, Suite 500 | Washington, DC 20036 | [www.afj.org](http://www.afj.org) | t:202-822-6070

*Field Offices*

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Alliance for Justice  
Letter in Support of Judge Gustavo Gelpi  
Page 2

Judge Gelpi is eminently qualified, and the Senate should unanimously confirm him to the United States Court of Appeals for the First Circuit Court.

Sincerely,



Nan Aron  
President



**Roland D. Hughes, Esquire**  
Attorney at Law

14 Norwood Street  
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Email: [rdh@rolandhughes.legal](mailto:rdh@rolandhughes.legal)

June 28, 2021

To: Senator Elizabeth Ann Warren  
Senator Edward John Markey  
Co-Chair, Richard M. Durbin ([phillip\\_brest@judiciary-dem.senate.gov](mailto:phillip_brest@judiciary-dem.senate.gov))  
Co-Chair, Charles Earnest Grassley ([michael\\_fragoso@judiciary-dem.senate.gov](mailto:michael_fragoso@judiciary-dem.senate.gov))

RE: The Honorable Gustavo A. Gelpi

Dear Senator,

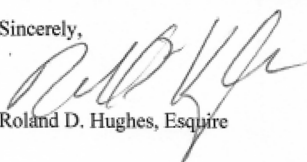
My name is Attorney Roland D. Hughes. I was born and raised in Boston, MA. I am a long-standing sole practitioner in Everett, MA and I am a member and past president of the Massachusetts Association of Hispanic Attorneys (MAHA).

I write to strongly endorse the nomination of Judge, Gustavo A. Gelpi to be the next Federal Appeals Court Judge of the First Circuit. I have gotten to know Judge Gustavo A. Gelpi through the years, based on his good deeds within our community. During his recurring visits the Boston area, he makes sure to contact local leaders like me to get together and involved in the community. As one example, several years ago when he was in Boston, we asked Judge Gelpi to speak with the Chelsea High School seniors. Chelsea has a large Hispanic population that is striving and growing, and he spoke to the students in English and Spanish, answering all their questions, as a role model for what they can achieve through learning. Judge Gelpi has also attended MAHA events, such as the MAHA/Chelsea Community Leaders Forum.

When in town, the judge has provided opportunities to meet him, including through his kind invitations us to dinner. He has lectured on Federal Procedures to law students at Suffolk Law School for a number of years. His dedication to the Hispanic community, legal professionals and law students has shown that he is an amazing and dedicated person.

Judge Gustavo A. Gelpi is the right person for all the people.

Sincerely,



Roland D. Hughes, Esquire

Justice Harry J. Elam Judicial Conference  
Boston, MA 02133

February 5, 2021

Honorable Nancy Gertner, Chair  
Advisory Committee on Massachusetts Judicial Nominations  
Boston, MA

Dear Judge Gertner:

On behalf of the Justice Harry J. Elam Judicial Conference, I write to advise you of our support for Judge Angel Kelley's application for nomination to the United States District Court for the District of Massachusetts. By way of introduction, the Justice Harry J. Elam Judicial Conference is an organization of Massachusetts judges of color appointed to both federal and state courts. Since the organization's founding in 1977, known then as the Massachusetts Black Judges Conference, it has been committed to vigorous advocacy for a diverse judiciary. Consistent with that purpose, we urge the Advisory Committee to include Judge Kelley on the slate of names to be recommended to Senators Elizabeth Warren and Edward Markey. While we emphasize our concern for diversity within the judiciary, we do so with confidence that Judge Kelley is worthy of the honor of being nominated to sit as a judge on the federal district court. Without question, she is exceptionally qualified for the position, having been previously recommended for this nomination in 2018. Nonetheless, we feel compelled to urge your affirmation of her candidacy given the transformation of the federal judiciary that has occurred over the last four years.

As a practitioner and jurist, Judge Kelley has distinguished herself as a person with a deep and abiding commitment to our country's aspiration to equal justice under the law. One example of her dedication to equal justice under the law is her sustained and productive affiliation with the many affinity bar groups that owe their very existence to the struggle for equal justice. As judges of color who were practitioners before we became judges, we appreciate the importance of this advocacy both to the profession and to the communities we all represent. Since her appointment to the Superior Court, Judge Kelley has been a leader in urging the court to recognize and act on the imperative of equal justice and fairness for all litigants, especially litigants of color. In this regard, we commend to you Judge Kelley's work in organizing a judicial trip to the Equal Justice Institute in Montgomery, Alabama where judges from every court department embarked on this

Honorable Nancy Gertner  
Page 2

February 5, 2021

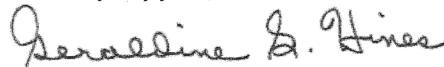
journey as a way to come to terms with the country's history of lynching and racism. Her work in organizing this trip is important because many of these judges returned with a renewed determination to engage collectively to mitigate the continuing effects of this history in our courts.

Last, we highlight Judge Kelley's judicial committee work which demonstrates her commitment to the court as an institution. She has been a member of the Committee on Judicial Ethics since 2016, serving during the major overhaul of the Code of Judicial Conduct. As Chair of the Massachusetts Trial Court Public Outreach Committee, Judge Kelley was instrumental in developing "listening sessions" to bring judges to communities all across the Commonwealth to hear the people express their views and concerns about the role of the courts. For the first time ever in 2019, judges from every court department participated in these "listening sessions," doing their part to promote public confidence in the judiciary.

We recognize that the federal courts may organize themselves differently than state courts, and perhaps prioritize the purely judicial aspects of the job. Even if that is the case, such an emphasis would not detract from Judge Kelley's qualifications. She has distinguished herself as a capable and highly competent trial judge, so we take that as a given. We highlight instead her background and experience because, as judges, we know that the kind of energy, vision and commitment to equal justice that Judge Kelley will bring to the responsibility of being a trial judge in the federal court are just as important.

We appreciate the opportunity to bring our views to your attention and we trust that the Advisory Committee will act favorably on Judge Kelley's application.

Very truly yours,



Geraldine S. Hines, President  
Justice Harry J. Elam Judicial Conference



April 14, 2021

Breanisha Amaya  
President

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John Lozada

Senator Elizabeth Warren  
2400 JFK Federal Building  
15 New Sudbury Street  
Boston, MA 02203  
Via Email: Maylin\_Heuchling@warren.senate.gov

**RE: Endorsement of the Honorable Angel Kelley for appointment to the US District Court of Massachusetts**

Senator Warren,

The Massachusetts Association of Hispanic Attorneys is the Commonwealth's Latinx/Hispanic bar organization. It is with great enthusiasm that the Massachusetts Association of Hispanic Attorneys conveys its strong endorsement for the appointment of the Honorable Judge Angel Kelley to the federal bench. Judge Kelley has been a member of the Massachusetts bar for sixteen years, including eleven as a jurist of distinction. As MAHA is confident that your review of her exemplary record will reveal, Judge Kelley has the qualifications, experience, and judicial philosophy to be an outstanding addition to the federal bar at a historic time in our nation's history when judicial excellence is needed more than ever.

Judge Kelley has served in many positions in her career that have prepared her for elevation to the federal judiciary. Prior to her appointment to the Massachusetts Superior Court bench in 2013, Judge Kelley served on the Commonwealth's District Court for three and a half years. Before her judicial career, Judge Kelley spent 17 years as a trial attorney and teacher. She served as an Assistant United States Attorney in Boston and a clinical instructor at Harvard Law School and Suffolk University Law School. Judge Kelley spent much of her legal career in New York as an effective trial attorney engaged in critical public interest work in the practice areas of civil and criminal defense. Judge Kelley also brings her experience in government law from her time as the Assistant Chief of the New York Litigation division and senior trial attorney for the fast-paced and demanding Port Authority of New York and New Jersey. She also served as trial attorney for the dynamic Legal Aid Society in Brooklyn, New York.



**Breanishea Amaya**  
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John Lozada

Judge Kelley continues to be a source of inspiration and pride for our members and our organization. Those of our members who encountered Judge Kelley in the courtroom found a jurist committed to providing a fair and impartial forum, a tradition that garnered Judge Kelley the 2019 American Bar Association Judicial Division Lawyers Conference's Burnham "Hod" Greeley Award. Judge Kelley's former students fondly remember the high expectations demanded of them and the insightful instruction she provided.

The Massachusetts Association of Hispanic Attorneys is committed to increasing diversity of the judiciary. Our organization is alarmingly aware that a mere 3.85% (or nine individuals) of President Trump's Article III confirmed judges identified as Black. The appointment of Judge Kelley must be one of many appointments that represent an effort to continue to diversify the federal bench, particularly with Black and Latinx candidates. We are also keenly aware that there have not been any appointments of Latinx federal judges, or magistrate judges, in the entire history of Article III judges in Massachusetts.

Judge Kelley is well respected by all who have worked with her whether as co-counsel, opposing counsel, or litigants before her as a judge in the Commonwealth of Massachusetts. She maintains the deportment required of trial judges in arriving at fair and equitable decisions. Though no doubt a reflection of her intellect and compassion as a jurist, it perhaps serves most as a testament to her character and approach to the law that Judge Kelley has earned the respect and adoration of students, peers, and practitioners alike. Her writing skills are excellent, and she presents logical and cogent explanations for the legal conclusions that she reaches. Her ethics are beyond reproach, her commitment to the legal profession is demonstrable, and her diligence to duty is outstanding.

Sincerely,

Breanishea Amaya, President

C.c. Honorable Nancy Gertner  
Senator Edward Markey

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June 21, 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 Angel Kelley to the United States District Court for the District of Massachusetts*

Dear Chairman Durbin and Ranking Member Grassley:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Judge Angel Kelley, who has been nominated by the President to the United States District Court for the District of Massachusetts. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Judge Kelley is **"Well Qualified"** to serve on the United States District Court for the District of Massachusetts.

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 Angel Kelley (*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*)



**Joel B. Rosen**  
Admitted in New Jersey and  
Pennsylvania

457 Haddonfield Road  
LibertyView, Suite 600  
Cherry Hill, NJ 08002-2220

856-488-7700  
Fax 856-488-7720  
jrosen@mmwr.com

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: *Nomination of Christine P. O'Hearn, Esquire to the District Court of New Jersey***

Dear Chairman Durbin and Ranking Member Grassley:

I write in enthusiastic support of President Biden's nomination of Ms. O'Hearn to be a U.S. District Court Judge for the District of New Jersey.

I served for almost twenty years as a U. S. Magistrate Judge in the District of New Jersey. Many years ago, Ms. O'Hearn had her first jury trial before me. Even then, she demonstrated qualities of intellect, professional demeanor, and a commitment to the rule of law that has followed her throughout her career as a trial attorney.

Ms. O'Hearn has no agenda other than to administer justice fairly and impartially for all. She has demonstrated this on numerous occasions in the many matters that she has had in both federal and state courts. It is also important to note that as an experienced trial lawyer she has earned the respect of judges and adversaries alike. Further, she has been recognized on numerous occasions for her skills as a trial attorney. Additionally, she has been a featured speaker at many events.

Based on my interactions with her over the years, together with her other credentials as noted above, I am confident that if confirmed she will be an extraordinary addition to the U.S. District Court of New Jersey.

Respectfully yours,

/s/ Joel B. Rosen

Joel B. Rosen, Esquire

**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, D.C. 20510**

June 1, 2021

Re: Nomination of Christine P. O'Hearn to the District Court for the United States  
District of New Jersey

Dear Chairman Durbin and Ranking Member Grassley:

We write in support of the nomination of Christine P. O'Hearn to serve as a judge on the United States District Court for the District of New Jersey. We urge the Committee and full Senate to promptly review and confirm her nomination.

We are a cross-section of lawyers who are representative of the diversity of the bar that practices in the District of New Jersey. Ms. O'Hearn has spent her entire career as an attorney based in Camden County, New Jersey. She has represented plaintiffs and defendants, individuals, corporations and governmental entities. She has handled matters in nearly all areas of civil practice – personal injury, product liability, commercial and employment. She is a Certified Civil Trial Attorney by the New Jersey Supreme Court and a Fellow of the American College of Trial Lawyers.

Due to vacancies, the New Jersey federal bench has been operating in a state of emergency for several years and her nomination will help members of the public resolve their disputes in a timely fashion. Further, Ms. O'Hearn's confirmation will continue to ensure the diversity of the federal bench.

We respectfully submit our strong support for Ms. O'Hearn and request the Committee and full Senate promptly review and confirm her nomination.

Sincerely,

\*References to law firms, corporations or other institutions are for identification purposes only and do not constitute endorsements by those entities.

**James J. Madden, Esquire**  
Madden & Madden, P.A.

**Michael P. Madden, Esquire**  
Madden & Madden, P.A.



**Patrick J. Madden, Esquire**  
Madden & Madden, P.A.

**Matthew P. Madden, Esquire**  
Madden & Madden, P.A.

**Timothy R. Bieg, Esquire**  
Madden & Madden, P.A.

**Mark W. Strasle, Esquire**  
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**Christopher F. Long, Esquire**  
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**Walter J. Klekotka, Esquire**  
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**Susan Saint-Antoine, Esquire**  
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**Regina Philipps, Esquire**  
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**Jeremy J. Zacharias, Esquire**  
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**ATTORNEYS**

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May 29, 2021

The Honorable Richard Durbin, Chair  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Charles Grassley, Ranking Member  
Committee on the Judiciary  
United States Senate  
152 Dirksen Senate Office Building  
Washington, D.C. 20510

Re: Nomination of Christine P. O'Hearn to the  
District Court for the District of New Jersey

Dear Chairman Durbin and Ranking Member Grassley:

The following New Jersey Fellows of the American College of Trial Lawyers commend the nomination of Christine P. O'Hearn to serve on the United States District Court for the District of New Jersey. Due to vacancies, the New Jersey federal bench has been operating in a state of emergency for several years and her nomination will help members of the public resolve their disputes in a timely fashion. Further, her confirmation will continue to ensure the diversity of the federal bench.

Ms. O'Hearn has been a Fellow of the American College of Trial Lawyers since 2013. She has served on several committees including the New Jersey State Committee, the Emil Gumpert Award Committee, the Griffin Bell Courageous Advocacy Committee, and the Federal Civil Procedure Committee.

We express our strong support for Ms. O'Hearn and request the Committee and full Senate promptly review and confirm her nomination.

Respectfully,



HENRY E. KLINGEMAN  
Chair, New Jersey State Committee  
Fellow, American College of Trial Lawyers



EDWARD T. KOLE  
Vice Chair, New Jersey State Committee  
Fellow, American College of Trial Lawyers

CATHERINE M. RECKER  
 Fellow, American College of Trial Lawyers – Pennsylvania  
 Regent for Region 13 (Third Circuit states)

New Jersey Fellows of the American College of Trial Lawyers:

FRANK D. ALLEN	LAWRENCE S. LUSTBERG
KENNETH ANDRES	BRIAN MOLLOY
DONALD BELSOLE	KEVIN H. MARINO
MICHAEL BERGER	JAMES MARTIN
JAY BLUMBERG	PAUL NITTOLY
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**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, D.C. 20510**

June 1, 2021

Re: Nomination of Christine P. O'Hearn to the District Court for the United States  
District of New Jersey

Dear Chairman Durbin and Ranking Member Grassley:

We write in support of the nomination of Christine P. O'Hearn for the District Court for the District of New Jersey. We urge the Committee and full Senate to promptly review and confirm her nomination.

We are a cross-section of women attorneys in New Jersey who practice in many different areas of the law. We are also committed to the goal of having our federal courts reflect the diversity of lawyers in New Jersey and in particular women.

Ms. O'Hearn has spent her entire career as an attorney based in Camden County, New Jersey. She has represented plaintiffs and defendants, individuals, corporations and governmental entities. She has handled matters in nearly all areas of civil practice – personal injury, product liability, commercial and employment. She is a Certified Civil Trial Attorney by the New Jersey Supreme Court and a Fellow of the American College of Trial Lawyers. We strongly support her nomination to the federal bench.

Sincerely,

\*References to law firms, corporations or other institutions are for identification purposes only and do not constitute the endorsements by those entities.

**Susan M. Leming, Esquire**  
Brown & Connery, LLP

**Alyssa I. Lott, Esquire**  
Brown & Connery, LLP

**Gina M. Roswell, Esquire**  
Brown & Connery, LLP

**Kathleen E. Dohn, Esquire**  
Brown & Connery, LLP

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**Janine M Leicht, Esquire**  
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**Jennifer A. Harris, Esquire**  
Brown & Connery, LLP

**Kathie L. Renner, Esquire**  
Brown & Connery, LLP

**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, D.C. 20510**

June 1, 2021

Re: Nomination of Christine P. O'Hearn to the District Court for the United States  
District of New Jersey

Dear Chairman Durbin and Ranking Member Grassley:

We write in support of the nomination of Christine P. O'Hearn for the District Court for the District of New Jersey. We urge the Committee and full Senate to promptly review and confirm her nomination.

We are a cross-section of women attorneys in New Jersey who practice in many different areas of the law. We are also committed to the goal of having our federal courts reflect the diversity of lawyers in New Jersey and in particular women.

Ms. O'Hearn has spent her entire career as an attorney based in Camden County, New Jersey. She has represented plaintiffs and defendants, individuals, corporations and governmental entities. She has handled matters in nearly all areas of civil practice – personal injury, product liability, commercial and employment. She is a Certified Civil Trial Attorney by the New Jersey Supreme Court and a Fellow of the American College of Trial Lawyers. We strongly support her nomination to the federal bench.

Sincerely,

\*References to law firms, corporations or other institutions are for identification purposes only and do not constitute the endorsements by those entities.

**Lisa J. Rodriguez, Esquire**  
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The Cooper Health System, Deputy General Counsel

**Catherine Binowski, Esquire**  
Camden County Human Resources

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**Emeshe Arzon, Esquire**  
Cherry Hill Township, Solicitor

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Attorney based in Camden County

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Cherry Hill Township, Business Administrator

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Camden County Counsel

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Rowan University Office of General Counsel

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**Rebecca Berger, Esquire**  
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**Arykah A. Trabosh, Esquire**  
Trabosh Law Firm

**Sadyhe T. Bradley, Esquire**  
Housing Authority City of Camden General Counsel

**Lisa Richardson, Esquire**  
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**Laura J. Paffenroth**  
Assistant County Counsel for Camden County



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June 2, 2021

Philip Brest, JD  
Chief Counsel, Nominations  
Senate Judiciary Committee Office  
Democratic Majority Staff  
152 Dirksen Senate Office Building  
Washington, DC 20510

**Re: Nomination of Christine P. O'Hearn to the U.S. District Court of the District of New Jersey**

Dear Mr. Brest:

The Camden County Bar Association commends the nomination of Christine P. O'Hearn, Esquire to serve on the United States District Court for the District of New Jersey. Ms. O'Hearn is a well-respected partner with her firm, a distinguished member of the bar association, an asset to the South Jersey legal community and highly accomplished trial attorney. She has earned a reputation for her knowledge, skill and professionalism. She will be an asset to the Court and the people of the State of New Jersey. The association highly recommends the nomination of Ms. O'Hearn to the bench.

Sincerely,

Michelle H. Badolato, Esquire  
President

cc: Alice Lugo, Esquire and Shelby Boxenbaum, Esquire, Counsel for Sen. Bob Menendez (D-NJ)

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Please reply to:  
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[Randy.Noel@butlersnow.com](mailto: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 Christine P. O'Hearn to the United States District Court for the District of New Jersey*

Dear Chairman Durbin and Ranking Member Grassley:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Christine O'Hearn, who has been nominated by the President to the United States District Court for the District of New Jersey. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Ms. O'Hearn is **"Well Qualified"** to serve on the United States District Court for the District of New Jersey.

Very truly yours,

Randall D. Noel  
Chair, Standing Committee  
On the Federal Judiciary

cc: Dana Remus, White House Counsel (*via email*)  
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy,  
U.S. Department of Justice (*via email*)  
Christine P. O'Hearn (*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*)



## IRON WORKERS LOCAL 399

26 E. FLEMING PIKE, HAMMONTON, NJ 08037  
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 ironworkers399@gmail.com

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

May 25, 2021

Re: Nomination of Christine P. O'Hearn to the District Court for the United States District of New Jersey

Dear Chairman Durbin and Ranking Member Grassley:

On behalf of the Ironworkers Local Union #399, we would like to express our support for President Biden's nomination of Christine P. O'Hearn, Esq. to the District Court for the District of New Jersey.

Local #399 is a mixed local providing skilled craftsmen in every discipline of the Iron working trade. We strive to promote a positive and safe work site environment.

Ms. O'Hearn is a lifelong New Jersey resident and she and her firm have been supportive of Local Union #399 and its members for many years. She understands and has supported workers' rights and civil rights. Confirming Ms. O'Hearn's appointment to the District Court would further the efforts to diversify the Federal Bench and ensure that the life experiences of all people in New Jersey are better represented on New Jersey's federal court.

We respectfully submit our strong support for Ms. O'Hearn and request the Committee and full Senate promptly review and confirm her nomination.

Sincerely,

Richard M. Sweeney

President and Business Manager



NEW JERSEY STATE BAR ASSOCIATION

DOMENICK CARMAGNOLA, PRESIDENT  
Carmagnola & Ritardi, LLC  
60 Washington Street  
Morristown, NJ 07960-6859  
973-267-4445 • FAX: 973-267-4456  
dcarmagnola@cr-law.net

May 25, 2021

Philip Brest, JD  
Chief Counsel, Nominations  
Senate Judiciary Committee Office  
Democratic Majority Staff  
152 Dirksen Senate Office Building  
Washington, DC 20510


Re: Nomination of Christine P. O'Hearn to the U.S. District Court of the District of New Jersey

Dear Mr. Brest:

The New Jersey State Bar Association commends the nomination of Christine P. O'Hearn to serve on the U. S. District Court of the District of New Jersey. Due to vacancies, the New Jersey federal bench has been operating in a state of emergency for several years and the recent slate of nominees will help members of the public resolve their disputes in a timely fashion. Further, their confirmations will continue to ensure that our bench reflects the rich and diverse backgrounds of the people of this state.

Ms. O'Hearn has been a distinguished member of the New Jersey legal community and has cultivated a reputation for her knowledge, skill and professionalism. She has frequently been recognized for her achievements and has given back to the legal community through articles about current issues and trends, serving as a lecturer, and volunteering on a district ethics committee. She will certainly also be an asset to the U.S. District Court and people of our state.

Respectfully yours,

  
Domenick Carmagnola, Esq.  
President

C: Alice Lugo, Esq., Sen. Bob Menendez (D-NJ) Counsel  
Shelby Boxenbaum, Esq. Sen. Bob Menendez (D-NJ) Counsel

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, D.C. 20510

May 26, 2021

**Re: Nomination of Christine P. O'Hearn to the District Court for the United States District of New Jersey**

Dear Chairman Durbin and Ranking Member Grassley:

I write in support of the nomination of Christine P. O'Hearn to serve as a judge on the United States District Court for the District of New Jersey. I urge the Committee and full Senate to promptly review and confirm her nomination.

I have known Ms. O'Hearn as a practicing member of the bar for many years, and closely collaborated with her as co-counsel on various litigation matters. Ms. O'Hearn has spent her entire career as an attorney based in Camden County, New Jersey. She has represented plaintiffs and defendants, individuals, corporations, and governmental entities. She has handled matters in nearly all areas of civil practice – personal injury, product liability, commercial, and employment. She is a Certified Civil Trial Attorney by the New Jersey Supreme Court and a Fellow of the American College of Trial Lawyers. She is a source of genuine pride and admiration by our local Bench and Bar.

Due to vacancies, the New Jersey federal bench has been operating in a state of emergency for several years and her nomination will help members of the public resolve their disputes in a timely fashion. Further, her confirmation will continue to ensure the diversity of the federal bench.

I respectfully submit my strong support for Ms. O'Hearn and request the Committee and full Senate promptly review and confirm her nomination.

Note: References to law firms, corporations or other institutions are for identification purposes only and do not constitute endorsements by those entities.

Yours truly,

*John C. Connell*

John C. Connell, Esq.  
Shareholder/Partner  
Archer & Greiner, P.C.

221230611v1



**Joel Schneider**  
Of Counsel  
Admitted in New Jersey  
and Pennsylvania

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Email: jschneider@mmwr.com

May 26, 2021

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

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

**Re: *Nomination of Christine P. O'Hearn, Esquire to the District Court of New Jersey***

Dear Chairman Durbin and Ranking Member Grassley:

I am writing to support the nomination of Christine O'Hearn to be a United States District Judge in the District of New Jersey. As of January 15, 2021, I retired from the Federal Bench in New Jersey where I served as a United States Magistrate Judge for 14 years.

While on the Bench Ms. O'Hearn frequently appeared before me at conferences and court proceedings. Ms. O'Hearn is an excellent lawyer and at all times exhibited the highest standards of her profession. She was always thoroughly prepared and professional. Due to her ability and intelligence, she is widely respected by all members of the Bar, including lawyers representing plaintiffs and defendants. I have no hesitation supporting Ms. O'Hearn's nomination and am confident she will be a welcome addition to the federal bench.

Please feel free to contact me if you need any additional information.

Respectfully yours,

Joel Schneider, Esquire (Ret.'d)

JS/dlm

May 27, 2021

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

**Re: Nomination of Christine P. O'Hearn to the District Court  
for the United States District of New Jersey**

Dear Chairman Durbin and Ranking Member Grassley:

I write in support of the nomination of Christine P. O'Hearn to serve as a judge on the United States District Court for the District of New Jersey. I urge the Committee and full Senate to promptly review and confirm her nomination.

Ms. O'Hearn has spent her entire career as an attorney based in Camden County, New Jersey as have I. She has represented plaintiffs and defendants, individuals, corporations and governmental entities. She has handled matters in nearly all areas of civil practice – personal injury, product liability, commercial and employment. She is a Certified Civil Trial Attorney by the New Jersey Supreme Court and a Fellow of the American College of Trial Lawyers.

Due to vacancies, the New Jersey federal bench has been operating in a state of emergency for several years and her nomination will help members of the public resolve their disputes in a timely fashion. Further, her confirmation will continue to ensure the diversity of the federal bench.

I respectfully submit my strong support for Ms. O'Hearn and request the Committee and full Senate promptly review and confirm her nomination.

Sincerely,

  
Sean T. O'Meara, Esq.

May 28, 2021

**Via email**

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, D.C. 20510

Re: **Nomination of Christine P. O'Hearn to the District Court for the  
United States District of New Jersey**

Dear Chairman Durbin and Ranking Member Grassley:

I write in support of the nomination of Christine P. O'Hearn to serve as a judge on the United States District Court for the District of New Jersey. I urge the Committee and full Senate to promptly review and confirm her nomination.

I am an attorney at Archer<sup>1</sup> that practices in the District of New Jersey, and have litigated at least one matter alongside Ms. O'Hearn. Ms. O'Hearn has spent her entire career as an attorney based Camden County, New Jersey. She has represented plaintiffs and defendants, individuals, corporations and governmental entities. She has handled matters in nearly all areas of civil practice – personal injury, product liability, commercial and employment. She is a Certified Civil Trial Attorney by the New Jersey Supreme Court and a Fellow of the American College of Trial Lawyers.

Due to vacancies, the New Jersey federal bench has been operating in a state of emergency for several years and her nomination will help members of the public resolve their disputes in a timely fashion. Further, her confirmation will continue to ensure the diversity of the federal bench.

I respectfully submit my strong support for Ms. O'Hearn and request the Committee and full Senate promptly review and confirm her nomination.

Respectfully submitted,

/s/ Daniel J. DeFiglio  
Daniel J. DeFiglio  
(N.J. Att. ID 117842014)

221242026v1

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<sup>1</sup> Reference to Archer is for identification purposes only and does not constitute an endorsement by the firm.



June 16, 2021

The Honorable Richard J. Durbin  
Chairman, Committee on the Judiciary  
United States Senate  
711 Hart Senate Office Building  
Washington, DC 20510

The Honorable Charles E. Grassley  
Ranking Member, Committee on the Judiciary  
United States Senate  
135 Hart Senate Office Building  
Washington, DC 20510

Dear Senators Durbin and Grassley:

We write to attest that Christopher H. Schroeder is extremely well-qualified to be Assistant Attorney General for the Office of Legal Counsel, and we urge his speedy confirmation. We are a diverse group that includes academics and practitioners who know Chris from a variety of settings, including academic and professional collaborations, time together working at the Department of Justice and experience together in the United State Senate. We recognize and value the important role that the Office of Legal Counsel plays in upholding the rule of law within the executive branch.

Chris Schroeder, the Charles S. Murphy Professor Emeritus at Duke University School of Law, is an accomplished and leading legal scholar. He is an academic in the best sense. He is not a rigid, dogmatic ideologue. Rather, he has always engaged with and learned from a wide range of views. Over the years, he has run academic programs, such as Duke's Program in Public Law, and convened innumerable conferences, which consistently were inclusive of a diversity of academic and ideological perspectives. Moreover, these programs have sought to engage the academy with practical, real-world issues of law and government.

He is also a dedicated public servant. If confirmed, he would be returning to lead an office in which he worked from 1993-97, as counselor, deputy assistant attorney general and acting assistant attorney general. Subsequently he served as Assistant Attorney General for the Office of Legal Policy in the Department of Justice, and prior to that as chief counsel for the Senate Committee on the Judiciary.

As set forth in the Office's 2010 Memorandum, "Best Practices for OLC Legal Advice and Written Opinions," the function of the Office of Legal Counsel is to provide "candid, independent, and principled advice" to the Attorney General and the President, "even when that advice is inconsistent with the aims of policymakers." There can be no doubt that Chris Schroeder is eminently qualified to do the often complex and difficult legal analysis that the job requires.

A recurring concern regarding OLC is whether it can live up to its commitment to providing principled advice or whether it will end up crafting fig-leaf rationalizations for the President's political objectives. We believe that Professor Schroeder's academic career, which is committed to inquiry over ideology, offers a solid foundation for concluding that he would uphold the best traditions of the office. But there is no need for speculation. Many of us worked with him during his earlier period of service in the Office of Legal Counsel and we can attest that he never

lost sight of, or commitment to, the rule of law. At every turn, he was guided by the law and not by the political or policy preferences of the Administration. None of us is aware of any OLC opinion or other work product that would undermine our view of how Chris Schroeder would lead the Office.

We urge the Senate to confirm Christopher H. Schroeder as expeditiously as possible.

Sincerely,\*

Matthew Adler

Richard A. Horvitz Professor of Law and Professor of Economics, Philosophy and Public Policy  
Duke University School of Law

Stuart M. Benjamin

Douglas B. Maggs Professor of Law  
Duke University School of Law  
Attorney Advisor, Office of Legal Counsel, 1992-1995

Joseph Blocher

Lanty L. Smith '67 Professor, Duke University School of Law

Curtis A. Bradley

William Van Alstyne Professor of Law and Professor of Public Policy Studies  
Duke University School of Law

Guy-Uriel Charles

Edward and Ellen Schwarzman Professor of Law  
Duke University School of Law

Walter E. Dellinger III

Douglas B. Maggs Professor Emeritus, Duke University School of Law  
Acting Solicitor General, 1996-1997  
Assistant Attorney General, Office of Legal Counsel, 1993-1996

Michael R. Dreeben

Assistant to the Solicitor General, 1988-1995  
Deputy Solicitor General, 1995-2019

Daniel A. Farber

Sho Sato Professor of Law, University of California, Berkeley School of Law

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\* Please note that institutional affiliations are listed for identification purposes only and nothing in this letter is meant to express the views of any institution or person other than the individual signatories.

Paul J. Fishman  
Associate Deputy Attorney General, 1995-1997  
United States Attorney for the District of New Jersey, 2009-2017

Michael J. Gerhardt  
Burton Craige Distinguished Professor of Jurisprudence  
University of North Carolina School of Law

Jamie Gorelick  
Deputy Attorney General, 1994-1997

Neil Kinkopf  
Professor, Georgia State University College of Law  
Special Assistant, Office of Legal Counsel, 1993-1997  
Senior Counselor, Office of Legal Policy, 2009-2010

Margaret H. Lemos  
Robert G. Seaks LL.B. '34 Professor of Law  
Senior Associate Dean for Faculty & Research  
Duke University School of Law

Marin K. Levy  
Professor, Duke University School of Law

William P. Marshall  
William Rand Kenan Distinguished Professor of Law  
University of North Carolina School of Law

Thomas O. McGarity  
William Powers, Jr. and Kim L. Heilbrun Chair in Tort Law  
University of Texas School of Law

Barbara L. McQuade  
Professor, University of Michigan Law School  
United States Attorney for the Eastern District of Michigan, 2010-2017

Darrell A.H. Miller  
Melvin G. Shimm Professor, Duke University School of Law

Martha Minow  
300<sup>th</sup> Anniversary University Professor, Harvard Law School

H. Jefferson Powell  
Professor, Duke University School of Law  
Deputy Assistant Attorney General, Office of Legal Counsel, 1993-2000; 2011-2012  
Principal Deputy Solicitor General 1996

Richard L. Revesz  
AnBryce Professor of Law  
New York University Law School

Teresa Wynn Roseborough  
Deputy Assistant Attorney General, Office of Legal Counsel, 1994-1996

Virginia A. Seitz  
Assistant Attorney General, Office of Legal Counsel, 2011-2013

Peter M. Shane  
Jacob E. Davis and Jacob E. Davis II Chair in Law,  
Ohio State University, Moritz College of Law

Neil Siegel  
David W. Ichel Professor of Law and Professor of Political Science  
Duke University School of Law

David A. Strauss  
Gerald Ratner Distinguished Service Professor  
University of Chicago Law School

Laurence H. Tribe  
Carl M. Loeb University Professor Emeritus, Harvard Law School

Donald B. Verrilli, Jr.  
Solicitor General, 2011-2016

Seth P. Waxman  
Solicitor General, 1997-2001

Keith E. Whittington  
William Nelson Cromwell Professor of Politics  
Princeton University

Sally Q. Yates  
Acting Attorney general 2017  
Deputy Attorney General, 2015-2017

Ernest A. Young  
Alston & Bird Professor, Duke University School of Law

The Honorable Richard J. Durbin  
Chairman, Committee on the Judiciary  
United States Senate  
711 Hart Senate Office Building  
Washington, DC 20510

The Honorable Charles E. Grassley  
Ranking Member, Committee on the Judiciary  
United States Senate  
135 Hart Senate Office Building  
Washington, DC 20510

June 22, 2021

Dear Senators Durbin and Grassley:

We are former heads of the Office of Legal Counsel at the Department of Justice. We write to express our belief in the critical importance of having that office led at all possible times by an Assistant Attorney General who has been confirmed for that position by the United States Senate. We therefore urge that the Senate act expeditiously on the nomination of Christopher H. Schroeder to head OLC.

OLC is charged with the extraordinarily important role of insuring that the executive branch of the government act at all times in accordance with the Constitution and laws passed by Congress. Inevitably, in every administration, the office will be confronted with proposed executive actions that are not consistent with the office's best, fair reading of the law. In those circumstances the difficult task of rejecting a proposed course of executive action will fall to the head of OLC. This is never a comfortable position for an officer of the government. In those circumstances it is highly desirable that the officer who must say "no" to the White House or other executive agencies be a person who has the stature and imprimatur that comes with confirmation by the Senate.

Those outside the executive branch who may be critical of its proposed actions should also desire that there be an accountable officer who takes responsibility for the legality of actions by executives of the government. Having a Senate confirmed Assistant Attorney General heading OLC means that members of the Senate, as well as members of the House and all other citizens can identify the officer who has both the authority and responsibility -- subject to review by the Attorney General and the President -- of being answerable for the lawfulness of actions by the government.

You will hear from others who know him and have worked with him about the qualities and reputation of Chris Schroeder, the Charles S. Murphy Emeritus Professor of Law at Duke University who has previously served as an officer of OLC and as the Assistant Attorney General for Legal Policy. The point we wish to make is that prompt consideration of Chris Schroeder's nomination by the Senate will best serve the vital interest in having in place a Senate confirmed officer who is fully accountable for the lawfulness of the government's actions.

Respectfully,

Theodore B. Olson  
Assistant Attorney General for the Office of Legal Counsel  
Administration of President Ronald Reagan

Charles J. Cooper  
Assistant Attorney General for the Office of Legal Counsel  
Administration of President Ronald Reagan

Douglas W. Kmiec  
Assistant Attorney General for the Office of Legal Counsel  
Administration of President Ronald Reagan

J. Michael Luttig  
Assistant Attorney General for the Office of Legal Counsel  
Administration of President George H. W. Bush

Timothy E. Flanigan  
Assistant Attorney General for the Office of Legal Counsel  
Administration of President George H. W. Bush

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

**Christopher Henry Schroeder**

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

**Assistant Attorney General, Office of Legal Counsel, Department of Justice**

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:**  
**Office of Legal Counsel,**  
**United States Department of Justice**  
**950 Pennsylvania Ave., N.W.**  
**Washington, D.C. 2006**

**Residence:**  
**114 Spring Blossom Lane**  
**Durham, NC 27705**

4. Birthplace: State date and place of birth.

**1948; Springfield, Ohio**

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

**University of California, Berkeley, School of Law, 9/1971 to 6/1974**  
**JD degree received 6/1974**

**Yale Divinity School, 9/1968 to 6/1971**  
**MDiv degree received 6/1971**

**Princeton University, 9/1964 to 6/1968**  
**BA degree received 6/1968**

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.

**April 2021 - present**  
**Deputy Assistant Attorney General**  
**Office of Legal Counsel**  
**United States Department of Justice**  
**950 Pennsylvania Ave., N.W.**  
**Washington, D.C. 20530**

**January 2021 – April 2021**  
**Principal Deputy Assistant Attorney General (and Acting AAG)**  
**Office of Legal Counsel**  
**United States Department of Justice**  
**950 Pennsylvania Ave., N.W.**  
**Washington, D.C. 20530**

**September 2020 – January 2021**  
**Lead, Department of Justice Agency Review Team**  
**Biden-Harris Transition**  
**1200 Pennsylvania Ave NW #399, Washington, DC 20044**

**July 1979 – July 2020**  
**Professor of Law**  
**Professor of Public Policy Studies**  
**Director, Program in Public Law at Duke Law School**  
**Duke University School of Law**  
**210 Science Drive**  
**Durham, NC 27708-0360**  
**(periods of unpaid leave when working at the Department of Justice and the Senate Judiciary Committee)**  
**In July 2020, I took emeritus status at the Law School**

**June 2010 – December 2012**  
**Assistant Attorney General, Office of Legal Policy**  
**United States Department of Justice**  
**950 Pennsylvania Avenue, NW**  
**Washington, DC 20530**

**August 2005 – April 2009**  
**Of Counsel**  
**O'Melveny & Myers**



1625 Eye Street, Washington DC 20005

February 2002 – June 2008  
 Vice President Center for Progressive Reform  
 455 Massachusetts Ave., NW #150-513  
 Washington, DC 20001

January 2002 – August 2005  
 Consultant  
 O'Melveny & Myers  
 1625 Eye Street, Washington DC 20005

January 1999 – February 1999  
 Impeachment Trial Counsel  
 Senator Joseph R. Biden, Jr., Impeachment Trial Counsel  
 221 Russell Senate Office Building  
 Washington, DC 20510

April 1995 – January 1997  
 Deputy Assistant Attorney General  
 Office of Legal Counsel  
 United States Department of Justice  
 950 Pennsylvania Avenue, NW  
 Washington, DC 20530

April 1993 – January 1994  
 Counselor to the Assistant Attorney General  
 Office of Legal Counsel  
 United States Department of Justice  
 950 Pennsylvania Avenue, NW  
 Washington, DC 20530

July 1992 – February 1993  
 Chief Counsel  
 United States Senate Committee on the Judiciary  
 224 Dirksen Senate Office Building  
 Washington, DC 20510

July 1987 – January 1988  
 February 1989 – June 1990  
 July 1991 – October 1991  
 Special Nominations Counsel  
 United States Senate Committee on the Judiciary  
 224 Dirksen Senate Office Building  
 Washington, DC 20510

**June 1977 – June 1979**

**Partner**

**Armour, Schroeder, St. John Wilcox and Goodin**  
**505 Sansome Street, San Francisco, CA 94111**

**June 1976 – June 1977**

**Research Assistant**

**Earl Warren Legal Institute, University of California, Berkeley**  
**415 Boalt Hall, Berkeley, CA 94720**

**June 1974 – June 1976**

**Associate**

**McCutchen, Doyle, Brown and Enersen**  
**Three Embarcadero Center, San Francisco, CA 94111**

**June 1973 – September 1973**

**Summer Associate**

**McCutchen, Doyle, Brown and Enersen**  
**Three Embarcadero Center, San Francisco, CA 94111**

**June 1972 – September 1972**

**Research Assistant**

**Professor John Hetland**  
**University of California, Berkeley**  
**467 Boalt Hall, Berkeley, CA 94720**

**June 1970 – September 1970**

**Research Associate**

**New York City Bureau of the Budget**  
**1 Centre Street, NY, NY 10007**

**June 1969 – September 1969**

**Summer Intern**

**Dwight Hall**  
**Yale University**  
**67 High Street, New Haven, CT 06511**

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 registered for selective service. I did not serve.**

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.

**Rockefeller Fellowship, 1969-1971**  
**Member, American Law Institute, 2018-**

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.

**California Bar Association**  
**American Bar Association**  
**District of Columbia 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.

**California Bar, December 18, 1974**

**United States Supreme Court Bar, August 10, 2000**

**United States Court of Appeals for the D.C. Circuit, February 7, 2003**

**District of Columbia Bar, September 15, 2006**

**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.

**Supreme Court of the United States, August 2000**

**United States Court of Appeals for the Ninth Circuit, July 1975**

**United States Court of Appeals for the District of Columbia Circuit, February 2003**

**United States District Court, Northern District of California, January 1975**

**District of Columbia Courts, September 2006**

**California State Courts, December 1974**

**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.

**American Law Institute 2018 –**

**Privacy and Civil Liberties Advisory Panel, National Security Agency Advisory Board 2013 to 2020**

**Center for Progressive Reform 2002 – 2009**

**Founding Vice-president February 2002 - July 2008**

**American Constitution Society, co-chair of Separation of Powers and Federalism issue group, September 2002 - 2008**

**National Research Council of the National Academies, Committee on the Use of Third Party Toxicity Research with Human Research Participants, member 2003 - 2004**

**Institute of Medicine, National Academies, Committee on the Assessment of the U.S. Drug Safety System, 2005 - 2007**

**Sierra Club (in the 1990s. I have no records showing dates)**

**Natural Resources Defense Council (in the 1990s. I have no records showing dates)**

**YMCA, 1993 -**

**Pilgrim United Church of Christ September 1979 -**

**Park Boulevard Presbyterian Church June 1975 to June 1979**

- b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

**None of the above organizations currently discriminates or has formerly discriminated on the basis of race, sex, religion or national origin.**

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.

**I have done my best to identify all books, articles, letters to the editor, editorial pieces and other published material, including through a review of my personal files and searches of publicly available electronic databases. I previously**

completed a Senate Judiciary Committee questionnaire in conjunction with my 2009 nomination to be Assistant Attorney General for the Office of Legal Policy, and I have endeavored to produce the materials I submitted then again here. Despite my searches, some of those materials are no longer in my possession, and there may be other materials that I have been unable to identify, find, or remember. A list of the materials I have located is attached as Attachment A.

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

**I have done my best to identify all items called for in this question, including a thorough review of my personal files and searches of publicly available electronic databases. I previously completed a Senate Judiciary Committee questionnaire in conjunction with my 2009 nomination to be Assistant Attorney General for the Office of Legal Policy, and I have endeavored to produce the materials I submitted then again here. Despite my searches, some of those materials are no longer in my possession, and there may be other materials that I have been unable to identify, find, or remember. A list of the materials I have located is attached as Attachment B.**

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

**I have done my best to identify all items called for in this question, including a thorough review of my personal files and searches of publicly available electronic databases. I previously completed a Senate Judiciary Committee questionnaire in conjunction with my 2009 nomination to be Assistant Attorney General for the Office of Legal Policy, and I have endeavored to produce the materials I submitted then again here. Despite my searches, some of those materials are no longer in my possession, and there may be other materials that I have been unable to identify, find, or remember. A list of the materials I have located is attached as Attachment C.**

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

If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

**I have done my best to identify all items called for in this question, including a thorough review of my personal files and searches of publicly available electronic databases. I previously completed a Senate Judiciary Committee questionnaire in conjunction with my 2009 nomination to be Assistant Attorney General for the Office of Legal Policy, and I have endeavored to produce the materials I submitted then again here. Despite my searches, some of those materials are no longer in my possession, and there may be other materials that I have been unable to identify, find, or remember. A list of the materials I have located is attached as Attachment D.**

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

**I have done my best to identify all items called for in this question, including a thorough review of my personal files and searches of publicly available electronic databases. I previously completed a Senate Judiciary Committee questionnaire in conjunction with my 2009 nomination to be Assistant Attorney General for the Office of Legal Policy, and I have endeavored to produce the materials I submitted then again here. Despite my searches, some of those materials are no longer in my possession, and there may be other materials that I have been unable to identify, find, or remember. A list of the materials I have located is attached as Attachment E.**

13. **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 public office, though as listed in my response to Q6, I have held various positions in the executive and legislative branches. I have never been unsuccessfully nominated for appointed office.**

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

None.

14. **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 clerked for a judge.**

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

**I have not practiced law alone.**

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

**Duke University, Professor of Law (July 1979 to July 2020) and Professor of Public Policy Studies (1999 to July 2020) and Director, Program in Public Law at Duke Law School (2000 to 2015)**  
**Duke University School of Law**  
**210 Science Drive**  
**Durham, NC 27708-0360**

**O'Melveny & Myers, of Counsel (August 2005 to present)**  
**1625 Eye Street, Washington DC 20005**

**O'Melveny & Myers, consultant (Jan 2002 to August 2005)**  
**1625 Eye Street, Washington DC 20005**

**Center for Progressive Reform, Vice President February 2002 - June 2008**  
**455 Massachusetts Ave., NW #150-513**  
**Washington, DC 20001**

**United States Department of Justice, Counselor to the Assistant Attorney General, Office of Legal Counsel (April 1993 to January 1994)**  
**950 Pennsylvania Avenue, NW**  
**Washington, DC 20530**

**United States Department of Justice, Deputy Assistant Attorney General (April 1995 to January 1997)**  
**950 Pennsylvania Avenue, NW**  
**Washington, DC 20530**

**Senator Joseph R. Biden, Jr., Impeachment Trial Counsel January 1999 - February 1999)**

**221 Russell Senate Office Building  
Washington, DC 20510**

**United States Senate Judiciary Committee, Chief Counsel (July 1992 - February 1993) 224 Dirksen Senate Office Building**

**Washington, DC 20510**

**United States Senate Judiciary Committee, Special Nominations Counsel (July 1987- January 1988; February 1988 - June 1990; July 1991 - October 1991)**

**224 Dirksen Senate Office Building  
Washington, DC 20510**

**Armour, Schroeder, St. John Wilcox and Goodin, Partner (June 1977- June 1979)  
505 Sansome Street, San Francisco, CA 94111**

**Earl Warren Legal Institute, University of California, Berkeley, research associate (June 1976- June 1977)**

**415 Boalt Hall, Berkeley, CA 94720**

**McCutchen, Doyle, Brown and Enersen, associate (June 1974 - June 1976)**

**Three Embarcadero Center, San Francisco, CA 94111**

**McCutchen, Doyle, Brown and Enersen, summer associate ( summer 1973)**

**Three Embarcadero Center, San Francisco, CA 94111**

**Research Assistant to Professor John Hetland, University of California, Berkeley (summer 1972)**

**467 Boalt Hall, Berkeley, CA 94720**

**New York City Bureau of the Budget, research associate (summer 1970)**

**1 Centre Street, NY, NY 10007**

**Dwight Hall, Yale University, summer intern (summer 1969)**

**67 High Street, New Haven, CT 06511**

- 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.

**None.**



## b. Describe:

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

Between 1974 and 1979, I practiced law in San Francisco. Initially I was an associate with the firm of McCutchen, Doyle, Brown and Enersen. I was associated with the general federal and state litigation group. Assignments included work on a consumer class action case brought against Chevron Corporation for alleged defects in one line of gasoline sold in California; work on several employment discrimination actions; work on appellate briefs in several land use cases in the Lake Tahoe area.

After two years at McCutchen, I started a small firm with four colleagues. For the next two years most of my time consisted of two types of work. Our firm represented the receiver in bankruptcy of a real estate investment trust and involved efforts to recoup assets for the trust, which had been the general partner in a number of limited real estate partnerships in California and neighboring states. I also assisted the Environmental Defense Fund (EDF) in intervening in rate cases of California public utilities before the California Public Utility Commission (PUC). The nature of EDF's intervention was to encourage the PUC to require the utilities to investigate opportunities for saving energy through conservation measures and for investing in renewable resources as alternatives to approvals of new coal-fired power plant capacity.

Between 1979 and the present, I have been a law professor at Duke Law School, a position that I continue to hold. While I worked as a law professor during this period, I did not practice law, except for my part time association with O'Melveny and Myers and writing several amicus curiae briefs for the Clean Air Trust, described in my answer to Q16. In the 1990s, I took several leaves of absence to work in the Office of Legal Counsel of the Department of Justice. In that capacity I provided legal advice to the President, the White House and other agencies and departments of government on a wide variety of legal subjects. In the 1980s and 1990s, I also took leaves of absence from the law school to work on the United States Senate Judiciary Committee and as impeachment trial counsel for Senator Joe Biden.

In 2002, I was a consultant to the firm of O'Melveny and Myers in Washington D.C. From 2005 - 2009, I have held an of counsel position with O'Melveny and Myers in Washington DC. I averaged approximately a day a week in this relationship. I was affiliated with the appellate practice group. I provided advice and legal analysis to Bank of America on a patent reform amendment, to ExxonMobil on litigation filed against the company in federal district court in the District of Columbia involving its affiliate in Indonesia,

to Morgan Stanley in perfecting an appeal to the United States Supreme Court from a lawsuit challenging the legality of long-term energy contracts.

In 2010, I returned to the Department of Justice as the Assistant Attorney General for the Office of Legal Policy. In that capacity, I had overall responsibility for overseeing the professional evaluation of potential Presidential nomination for the federal bench. I also supervised a number of policy planning processes for the Attorney General, was charged with evaluating existing statutes and regulations and, where appropriate, recommending possible revisions.

After leaving the Department of Justice, from 2013 to 2021, I was not involved in law practice. In 2021, I returned to the Department in the Office of Legal Counsel, once again helping provide legal advice to the President, the White House, the Attorney General, other components of the Department of Justice, and to other departments and agencies of the federal government.

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

**1974 to 1979:**

General federal litigation, including class action defense, employment discrimination defense, land use and real estate litigation and public utility commission representation  
Chevron Corporation  
California Cannery and Growers  
National Real Estate Fund  
Environmental Defense Fund

**1979 to 2002:**

Administrative law, constitutional law, Clean Air Act administrative proceedings and representation  
The Government of the United States of America  
The Clean Air Trust

**2002 to 2009:**

General federal litigation, including alien tort claims act and related tort defense  
Exxon Mobil  
Bank of America

**2010 – 2012; 2021**

The Government of the United States of America

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

- i. Indicate the percentage of your practice in:

1. federal courts;
2. state courts of record;
3. other courts;
4. administrative agencies

**1974 - 1979: I appeared in court infrequently during this period.**

Federal courts	65%
State courts of record	30%
Other courts	0%
Administrative Agencies	5%

**1979-2005: I never appeared in court during this period.**

Federal courts	95%
Administrative Agencies	5%

**2005 – present: I never appeared in court during this period.**

Federal courts	100%
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**During the periods in which I have practiced law my practice has concentrated on litigation. I have not appeared in court on behalf of a client since 1979. During my time as a professor of law, I have filed comments in rulemakings by the Environmental Protection Agency on behalf of the Clean Air Trust, but have not appeared before any administrative agency.**

- ii. Indicate the percentage of your practice in:

1. civil proceedings;
2. criminal proceedings.

**Civil proceedings: 100%**

**Criminal proceedings: 0%**

- 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.

**None.**

- 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 authored one amicus brief, representing the Clean Air Trust in *Whitman v. American Trucking Association*, 531 U.S. 457 (2001).**

**I participated in writing a petition for certiorari on behalf of Exxon Mobil in *Exxon Mobil Corp v. John Doe*, 07-81 (2007).**

15. **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.

**None.**

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

**During the 1980s and early 1990s, I worked for the Senate Judiciary Committee in several different capacities, including as its chief counsel. In that position I was responsible for supervising the staff that worked on the Committee's full legislative agenda as well as its nominations work. After these experiences, I had the privilege of working for the Office of Legal Counsel in the Department of Justice, including a period in which I was the acting AAG for the office. Here I worked on a wide variety issues of constitutional law and statutory interpretation, advising both the President and other departments and agencies in the executive branch.**

From 1999 to 2005 I provided legal advice on various occasions for the Clean Air Trust, a nonprofit organization devoted to supporting full implementation of the Clean Air Act. In that capacity, I wrote an amicus brief to the United States Supreme Court in the case of *Whitman v. American Trucking Association* (2001). The brief focused on the issue of how best to interpret the provision of the Clean Air Act requiring the Environmental Protection Agency to set air quality standards at a level “requisite to protect the public health.” In a unanimous opinion, the Supreme Court adopted the interpretation advanced in the amicus brief.

I also prepared on behalf of the Clean Air Trust a submission to the EPA in a rulemaking proceeding in which the EPA was proposing to revise rules governing the approval of new sources of air pollution. I also wrote and filed on the behalf of the Clean Air Trust an amicus brief to the federal Circuit Court of Appeals for the District of Columbia Circuit in support of a challenge brought against the final rule issued by the EPA.

From 2002 – 2009 I was associated on a part time basis with the law firm of O’Melveny and Myers, first as a consultant and later in an of counsel relationship. I was affiliated with their appellate practice and in that capacity I have provided legal advice in a number of matters involving clients of the firm. The two most substantial matters upon which I have worked are:

1. O’Melveny provided advice to Exxon Mobil with regard to litigation pending in the federal district court in the District of Columbia. I have provided legal advice concerning jurisdictional and choice of law issues in that litigation.
2. O’Melveny provided legal advice to Bank of America with respect to a possible amendment to the Patent Reform Act pending in the last Congress. The advice concerned the constitutionality of the proposed amendment as well as whether the amendment would expose the United States Treasury to potential liability. In addition to preparing memoranda memorializing this analysis, I attended a meeting with Senator Leahy to discuss the amendment, a meeting with Senator Leahy’s staff and a meeting with the staff of the Congressional Budget Office. In all cases, the purpose of my attendance was to discuss the constitutional issues and any other legal issues raised by the proposed amendment, should they arise.

The preceding paragraphs describe legal activities I have undertaken while on leaves of absence from my main career as a professor of law, or, in the case of my association with O’Melveny, as an adjunct to my work at my law school. When not engaged in the above pursuits, by far my most significant legal activities involve my law teaching and legal scholarship. In addition, I have worked on a variety of legal policy matters related to environmental law, one of my main fields of research and writing. I have served on two expert panels of the National Academies, one advising the EPA on how to regulate its use of experimental data developed from studies that intentional dose human beings with a toxic substance, the other advising the FDA on means to improve its regulation

of drug safety. This second report played a constructive role in the Congress's most recent consideration of revisions to FDA's enabling legislation.

My government service with the Department of Justice is summarized in responses to Question 14(b), above.

17. **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 Environmental Law at Columbia in spring, 2008. I taught Property and Environmental Law at UCLA in 1986-1987. I have taught the following courses at Duke University:

Environmental Law 1979 to present

Major topics: the History of Environmental Regulation, the Clean Air and Water Acts, Superfund and the Regulation of Toxic Substances

Constitutional Law, 1997 to present

Major topics: Separation of Powers, the Commerce Clause, Justiciability, Procedural Due Process and Equal Protection

Comparative Constitutional Law, 2002-2003

Major topics: Separation of Powers and Due Process.

Administrative Law, 1993-1998

Major topics: The Administrative Procedure Act, Justiciability

Congress (cross-registered with Public Policy) 1993 to present

Major topics: The legislative process, media coverage of the Congress, the role of staff, leadership, and the president in a legislator's decision making; the electoral connection, constituency service.

Toxic Substances Regulation 1988

Major topics: Common law approaches to toxics litigation; the Toxic Substances Control Act, the Resource Conservation and Recovery Act, the Superfund statute. Property, 1990-1999

Estates in land, the Rule Against Perpetuities; Recording statutes; Covenants and Easements; Landlord/tenant.

Civil Procedure, 1979-1990

The Federal Rules of Civil Procedure, personal jurisdiction.

I have searched my files for syllabi and have included copies of those that I have found.

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

**I anticipate receiving approximately three thousand dollars per year from book royalties for the environmental law casebook that I co-author.**

**I took emeritus status from Duke University on June 30, 2020 and have no financial relationship with the University. It no longer contributes to my retirement account. The law school continues to provide me with the use of an office, which it can discontinue at any time. I also continue to have approximately \$10,000 in a faculty discretionary account, against which I can continue to charge expenses related to professional activities, such as bar dues, maintenance or replacement of University-supplied computer, laptop and Ipad.**

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

**No.**

20. **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).

**Please see SF-278.**

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

**See attached net worth statement.**

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors 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.

**In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Should the Senate consent to my nomination, I will divest myself of the individual stocks in my (and my spouse's) joint investment account with Fidelity, replacing them with diversified investment funds. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.**

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

**In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.**

23. **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. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

**I have spoken often to groups in North Carolina, Durham and Duke University on legal issues of concern to the public. My response to question 12(d) includes many of these speaking engagements. I have testified before Congressional committees in my private capacity. I have given advice on legal matters pending before the Congress to members of both the House and the Senate. I have spent considerable time working without compensation on projects addressing problems of environmental quality and human health. Much of that work has been through the Center for Progressive Reform. In my Of Counsel capacity at O'Melveny and Myers, I have supervised associates who are handling pro bono criminal appeals for the Maryland Office of the Public Defender.**



UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Gustavo Antonio Gelpí

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

United States Circuit Judge for the First 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.

Clemente Ruiz Nazario United States Courthouse  
150 Carlos Chardón Avenue, CH-151  
San Juan, Puerto Rico 00918

José V. Toledo Federal Courthouse  
300 Recinto Sur Street, CH-126  
San Juan, Puerto Rico 00901

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

1965; San Juan, Puerto Rico

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, Suffolk University Law School; J.D., 1991

1987, Arizona State University Law School (no degree received)

1983 – 1987, Brandeis 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.

2006 – present

United States District Court for the District of Puerto Rico  
Clemente Ruiz Nazario United States Courthouse  
150 Carlos Chardón Avenue, CH-151  
San Juan, Puerto Rico 00918  
Chief United States District Judge (2018 – present)  
United States District Judge (2006 – present)

2001 – 2006

United States District Court for the District of Puerto Rico  
Clemente Ruiz Nazario United States Courthouse  
150 Carlos Chardón Avenue, CH-483  
San Juan, Puerto Rico 00918  
United States Magistrate Judge

January – June 2001

McConnell Valdés LLC  
270 Muñoz Rivera Avenue  
San Juan, Puerto Rico 00918  
Special Litigation Counsel

1999 – 2000

Commonwealth of Puerto Rico Department of Justice, Office of the Solicitor General  
2 Olimpo Street  
San Juan, Puerto Rico 00907  
Solicitor General

November 1997 – September 1999

Commonwealth of Puerto Rico Department of Justice, Office of Legal Counsel  
2 Olimpo Street  
San Juan, Puerto Rico 00907  
Assistant Attorney General

January – November 1997

Commonwealth of Puerto Rico Department of Justice, Office of Legal Counsel  
2 Olimpo Street  
San Juan, Puerto Rico 00907  
Special Counsel to the Attorney General

July – December 1996

United States Sentencing Commission  
One Columbus Circle, Northeast, Suite 2-500  
Washington, District of Columbia 20002  
Special Counsel (on detail assignment from the Federal Public Defender's Office)

1993 – 1997

Federal Public Defender's Office, District of Puerto Rico  
500 Tanca Street  
San Juan, Puerto Rico 00901  
Assistant Federal Public Defender

1991 – 1993

United States District Court for the District of Puerto Rico  
José V. Toledo Federal Courthouse  
300 Recinto Sur Street  
San Juan, Puerto Rico 00901  
Law Clerk for the Honorable Juan M. Pérez-Giménez

Summer 1991

United States District Court for the District of Massachusetts  
John W. McCormack U.S. Post Office and Courthouse  
5 Post Office Square 1150  
Boston, Massachusetts 02109  
Judicial Intern for the Honorable Joyce L. Alexander

Summer 1990

Fiddler González & Rodríguez P.S.C.  
254 Muñoz Rivera Avenue  
San Juan, Puerto Rico 00918  
(The law firm is defunct)  
Summer Associate

Summer 1989

United States District Court for the District of Puerto Rico  
José V. Toledo Federal Courthouse  
300 Recinto Sur Street  
San Juan, Puerto Rico 00901  
Judicial Intern for the Honorable Juan M. Pérez-Giménez

Winter, Spring, and Summer 1988

Rosie's Bakery & Café  
243 Hampshire Street  
Cambridge, Massachusetts 02139  
Salesperson

Teaching Affiliations:

2018 – present

Tarleton State University  
School of Criminology, Criminal Justice, and Strategic Studies  
1333 West Washington Street

Stephenville, Texas 76402  
Adjunct Professor

2018; 2020 – present  
University of Hawai‘i, Mānoa William S. Richardson School of Law  
2515 Dole Street  
Honolulu, Hawai‘i 96822  
Adjunct Professor of Law (uncompensated)

2014 – present  
Pontifical Catholic University of Puerto Rico School of Law  
2250 Las Américas Avenue, Suite 543  
Ponce, Puerto Rico 00717  
Adjunct Professor of Law

2012 – present  
Suffolk University Law School  
120 Tremont Street  
Boston, Massachusetts 02108  
Adjunct Professor of Law

2011  
University of New Hampshire School of Law  
2 White Street  
Concord, New Hampshire 03301  
Adjunct Professor of Law

2009 – present  
University of Puerto Rico School of Law  
7 Avenida Universidad 701  
San Juan, Puerto Rico 00925  
Adjunct Professor of Law

2008 – present  
Inter American University of Puerto Rico School of Law  
170 Federico Costas Street  
San Juan, Puerto Rico 00918  
Adjunct Professor of Law

Other affiliations (uncompensated):

2017 – present  
Academia Puertorriqueña de Jurisprudencia y Legislación (Puerto Rico Academy  
of Jurisprudence and Legislation)  
Vice-President (2021 – present)

2006 – present  
Federal Judges Association  
First Circuit Representative (2015 – 2018)

1992 – present  
Federal Bar Association  
1220 North Fillmore Street, Suite 444  
Arlington, Virginia 22201  
National President (2014)  
National President Elect (2013)  
National Treasurer (2012)  
National Director (2007 – 2010)  
Vice President for the First Circuit (2002 – 2006)  
Secretary to the Vice Presidents (2005 – 2006)  
President Puerto Rico Chapter (2000)  
Vice President Puerto Rico Chapter (1999)  
Treasurer Puerto Rico Chapter (1997 – 1998)  
Director Puerto Rico Chapter (1994 – 1996)

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.

Sustaining Life Fellow, Foundation of the Federal Bar Association (2003 – present)

Academic of Number, Academia Puertorriqueña de Jurisprudencia y Legislación  
(Inducted, 2017)

Outstanding Alumni Achievement Award, Suffolk University Law School (2016)

Honorary Chair, Hispanic National Bar Association Convention (2007)

Honorary Doctor of Law, Suffolk University Law School (May 2006)

Dean's List, Suffolk University Law School (1990 – 1991)

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.

Colegio de Abogados y Abogadas de Puerto Rico (Puerto Rico Bar Association)  
(1999 – 2006; 2021)

Federal Bar Association, (1992 – present)

National President (2014)  
National President Elect (2013)  
National Treasurer (2012)  
National Director (2007 – 2010)  
Vice President for the First Circuit (2002 – 2006)  
Secretary to the Vice Presidents (2005 – 2006)  
President Puerto Rico Chapter (2000)  
Vice President Puerto Rico Chapter (1999)  
Treasurer Puerto Rico Chapter (1997 – 1998)  
Director Puerto Rico Chapter (1994 – 1996)

Member, Bench/Bar Committee (2018 – 2021)  
Member, Civics Essay Selection Committee (2017)  
Chairman Professional Ethics Committee (2001)  
Special Committee on Law School Outreach (2009 – 2011)  
Chair, Audit Committee (2007 – 2011)

Chair, Judiciary Division Section/Division (2014 – 2017)  
Special Advisor, Inter American Law School Student Division (2010 – 2011)  
National Council Appointed Members (2009 – 2011)  
Task Force on Recruiting Judges for Membership (2010 – 2011)  
Editorial Board Member and Contributor, From the Bar, (1993 – 2000)

Federal Judges Association (2006 – present)

First Circuit Representative (2015 – 2018)  
Chair, International Rule of Law Committee (2016 – 2017)

Hispanic National Bar Association (2010 – 2018; 2020 – present)

Judicial Conference of the United States

First Circuit District Judge Representative (2020 – present)  
Member, Committee on Audits and Accountability (2013 – 2019)

Judicial Council First Circuit (2009 – 2011)

Massachusetts Bar Association (2015 – present)

Puerto Rico Supreme Court Judicial Conference Advisory Committee on Rules of  
Criminal Procedure (2017 – 2020)

United States Department of Justice Office of Overseas Prosecutorial

Development, Assistance and Training (OPDAT), Programs for South and Central American Judges and Prosecutors, Working Group on Sentencing Guidelines (2019 – present)

United States District Court for the District of Puerto Rico  
Member, Criminal Justice Act Committee (2002 – 2007)

Virgin Islands Bar Association (1994 – 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.

Massachusetts, 1991  
Puerto Rico, 1992  
New York, 1992  
Colorado, 1992  
United States Virgin Islands, 1994

There have been no lapses in membership to the bars of these jurisdictions. As a judge I am not required to pay annual dues, except in Colorado and the same is current.

- 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, 1996  
United States Court of Appeals for the First Circuit, 1992  
United States Court of Appeals for the Second Circuit, 2000  
United States Court of Appeals for the Third Circuit, 1996  
United States Court of Appeals for the Ninth Circuit, 2012  
United States Court of Appeals for the Tenth Circuit, 2009  
United States Court of Appeals for the Eleventh Circuit, 1993  
United States Court of Appeals for the District of Columbia Circuit, 1998  
United States Court of Appeals for the Armed Forces, 1995  
United States District Court for the District of Massachusetts, 1993  
United States District Court for the Southern District of New York, 1993  
United States District Court for the District of Puerto Rico, 1992  
District Court of Virgin Islands, 1994  
United States Court of Federal Claims, 1993

There have been no lapses in membership.

11. **Memberships:**

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

Caribe Hilton Swimming and Tennis Club, Member (1992 – 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, the listed organization does not and did not 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.

“El legado de Rafael Hernández Colón a un juez federal” in *HOMBRE SIN FINAL: TESTIMONIOS SOBRE RAFAEL HERNÁNDEZ COLÓN*, (Fundación Biblioteca Rafael Hernández Colón, 2019). Copy supplied.

PEDRO ALBIZU CAMPOS, *EL ABOGADO FEDERAL Y EL NOTORIO CASO DE VELÁZQUEZ VS. PEOPLE OF PUERTO RICO*, (Independently Published, 2018). Copy supplied.

*Comment on Blocher & Gulati's “Puerto Rico and the Right of Accession,”* Yale Journal of International Law (May 19, 2018). Copy supplied.

CANGREJEROS 2003: LA RECONQUISTA, (Independently Published, 2018). Copy supplied.



With Valeria M. Pelet del Toro, *Trial by Google: Juror Misconduct in the Age of Social Media*, 65 Fed. Law. 32 (Jan./Feb. 2018). Copy supplied.

THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES: (1898-PRESENT), (Inter American University of Puerto Rico, Metropolitan Campus Ed., 2017). Copy supplied.

*The First Circuit and the District of Puerto Rico: A Century of Judicial History*, 64 Fed. Law. 66 (Sept. 2017). Copy supplied.

*Cuba: A Legal Guide to Business* Edited by José R. Cot and Rolando Anillo Thomson Reuters, Eagan, Mn, 2016, 64 Fed. Law. 89 (Aug. 2017) (Book Review). Copy supplied.

*Police Reform as Seen Through the Eyes of a District Judge*, 63 Fed. Law. 58 (Sept. 2016). Copy supplied.

*A Legislative History of the District of Puerto Rico Article III Court*, FROM THE BAR, Federal Bar Association Puerto Rico Chapter Issue No. 57 (Summer 2016). Copy supplied.

*The 50th Anniversary of the District of Puerto Rico Article III Court*, Fed. Law. 18 (July 2016). Copy supplied.

*An Experiment in US Territorial Governance: The District of the Canal Zone and Its Federal Court (1904-1979)*, 63 Fed. Law. 40 (June 2016). Copy supplied.

With Dawn Sturdevant Baum, *Manifest Destiny: A Comparison of the Constitutional Status of Indian Tribes and U.S. Overseas Territories*, 63 Fed. Law. 38 (Apr. 2016). Copy supplied.

*Presidential Farewell*, 61 Fed. Law. 3 (Sept. 2014). Copy supplied.

*Special Courts in the Federal Family*, 61 Fed. Law. 3 (Aug. 2014). Copy supplied.

*First Hispanic Woman Chief Judge*, 61 Fed. Law. 3 (July 2014). Copy supplied.

*The Important Role of U.S. Magistrate Judges*, 61 Fed. Law. 3 (May/June 2014). Copy supplied.

*Indian Law and the FBA*, 61 Fed. Law. 3 (Apr. 2014). Copy supplied.

*The Changing Role of in-House Counsel*, 61 Fed. Law. 3 (Mar. 2014). Copy supplied.

*On Labor and Employment Law*, 61 Fed. Law. 3 (Jan./Feb. 2014). Copy supplied.

*The Federal Lawyer Provides Many Perspectives*, 60 Fed. Law. 3 (Dec. 2013). Copy supplied.

*The Federal Bar Association Is for All*, 60 Fed. Law. 3 (Oct./Nov. 2013). Copy supplied.

*Sponsor Your Son, Daughter or Spouse as an FBA Member*, FROM THE BAR, Federal Bar Association Puerto Rico Chapter Newsletter, Vol. I, No. 49 (Winter-Spring 2012 – 2013). Copy supplied.

*Los Casos Insulares: Un Estudio Histórico Comparativo de Puerto Rico, Hawai'i y las Islas Filipinas*, 45 Rev. Jur. UIPR 215 (2011). Copy supplied.

*The Insular Cases: A Comparative Historical Study of Puerto Rico, Hawai'i, and the Philippines*, 58 Fed. Law. 22 (Mar./Apr. 2011). Copy supplied.

*The Federal Judiciary of the Confederate States of America During the Civil War Period (1861-1865)*, 53 Fed. Law. 46 (Oct. 2006). Copy supplied.

*El Poder Judicial Federal de los Estados Confederados de América durante el periodo de la Guerra Civil (1861-1865)*, 46 Rev. D.P. 1 (2006). Copy supplied.

*Hon. Juan M. Pérez-Giménez U.S. District Judge for the District of Puerto Rico*, 52 Fed. Law. 18 (Mar./Apr. 2005). Copy supplied.

*A View from the Bench: Words of Advice to our Younger Members*, FROM THE BAR, Federal Bar Association Puerto Rico Chapter Newsletter, Vol. I, No. 34 (Winter 2002 – 2003). Copy supplied.

*Consideraciones Legales y Éticas al Representar Inmigrantes en Casos Criminales*, 39 Rev. D.P. 29 (2000). Copy Supplied.

*President's Message*, Chapter, FROM THE BAR, Federal Bar Association, Puerto Rico Chapter (Winter 2000 – 2001). Copy supplied.

*President's Message*, Chapter, FROM THE BAR, Federal Bar Association Puerto Rico Chapter (Autumn 2000). Copy supplied.

*President's Message*, Chapter, FROM THE BAR, Federal Bar Association Puerto Rico Chapter (Summer 2000). Copy supplied.

*President's Message*, Chapter, FROM THE BAR, Federal Bar Association Puerto Rico Chapter (Spring 2000). Copy supplied.

*Drug Courts*, FROM THE BAR, Federal Bar Association, Puerto Rico Chapter Newsletter, Vol. 1 No. 18 (Winter 1998). Copy supplied.

*The Maritime Law of Puerto Rico*, 28 J. Mar. L. & Com. 647 (1997). Copy supplied.

With José A. Fuentes-Agostini, *The Honorable Juan R. Torruella*, 44 Fed. Law. 20 (Aug. 1997). Copy supplied.

With Donald A. Purdy, Jr., *Federal Sentencing Advocacy: Tips for Beginning Practitioners*, 11 Crim. Just. 26 (Winter 1997). Copy supplied.

*Consecuencias Colaterales de una Convicción Criminal: Consideraciones Éticas y Profesionales al Representar a Inmigrantes Quienes Residen Legalmente en Puerto Rico*, 35 Rev. D.P. 133 (1996). Copy supplied.

"Blond Bomb," Letter, ABA JOURNAL (Mar. 1996). Copy supplied.

*La Sentencia Sumaria en Casos de Responsabilidad Civil por Actos Criminales de Terceros en Establecimientos Públicos*, 56 Rev. Col. Abog. PR 163 (1995). Copy supplied.

*Maritime Law in Puerto Rico: An Anomaly in A Sea of Federal Uniformity*, 26 Rev. Jur. UIPR 251 (1992). 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.

International Rule of Law Committee Report (May 2017). Copy supplied.

A Guide to the Federal Magistrate Judge System (Aug. 2014). 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.

July 10, 2009: Statement of United States District Judge Gustavo A. Gelpí before the United States Sentencing Commission on Occasion of the 25th Anniversary of the Sentencing Reform Act, New York Regional Public Hearing. Copy supplied.

June 15, 2006: United States Senate, Committee on the Judiciary, Confirmation

Hearing on Nomination to be a United States District Judge for the District of Puerto Rico. Transcript supplied.

August 1999: Commonwealth of Puerto Rico Senate, Nominations Committee, Confirmation Hearing on Nomination to be Solicitor General of the Commonwealth of Puerto Rico. I am unable to locate a transcript.

1997 – 1999: Statements before the Commonwealth of Puerto Rico House of Representatives and Senate on behalf of the Puerto Rico Attorney General. To the best of my recollection, I testified on approximately five occasions before the Puerto Rico Legislative Assembly to provide the Attorney General's position as to pending bills. To the best of my recollection, my testimony pertained to matters regarding the impact of federal law on local legislation. I am unable to locate any transcripts.

- 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 efforts to identify the speeches, talks, or remarks that I have delivered. To compile this list, I consulted my own files and internet sources. There may, however, have been speeches, talks, or remarks that I have been unable to recall or identify. I have occasionally spoken at informal events or ceremonies for which I did not retain any record.

May 19, 2021: Panelist, United States Department of Justice Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT), Programs for South and Central American Judges and Prosecutors. The panel covered public corruption cases, the role of the Rule of Law, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence in an adversarial legal system. I have no notes, transcript, or recording. The address for OPDAT is 950 Pennsylvania Avenue, Northwest, Washington, District of Columbia 20530.

May 13, 2021: Speaker, "Foro Federal: Conoce de primera mano cómo funciona el Tribunal de Distrito," Colegio de Abogados y Abogadas de Puerto Rico, San Juan, Puerto Rico. Video available at <https://fb.watch/5ueExpLn5>.

May 12, 2021: Panelist, United States Department of Justice Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT), Programs for South and Central American Judges and Prosecutors. The panel covered public

corruption cases, the role of the Rule of Law, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence in an adversarial legal system. I have no notes, transcript, or recording. The address for OPDAT is 950 Pennsylvania Avenue, Northwest, Washington, District of Columbia 20530.

May 12, 2021: Speaker, "Taking Your Case to Federal court: Habeas, Mandamus & Petitions for Review," [Virtual] Federal Bar Association Immigration Law Conference. I spoke about judicial review of immigration proceedings and federal court practice. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

March 29, 2021: Panelist, "Remembering Judge Torruella: Life and Legacy," Federal Bar Association University of Puerto Rico Student Chapter. Video available at [https://fb.watch/5ueXRI\\_RyC](https://fb.watch/5ueXRI_RyC).

March 18, 2021: Panelist, Book Presentation for LAS MEDIDAS CAUTELARES Y LA EJECUCIÓN DE LA SENTENCIA by Dr. José A. Cuevas Segarra, Colegio de Abogados y Abogadas de Puerto Rico, San Juan, Puerto Rico. Video available at [https://fb.watch/5ue\\_q5Qwsm](https://fb.watch/5ue_q5Qwsm).

February 16, 2021: Speaker, "Turning Point Workshop: Holding Virtual Court – A Conversation with Two Judges," USA500Clubs, LLC, New England Region. I discussed the challenges and benefits of holding court virtually during the Covid-19 pandemic. I have no notes, transcript, or recording. The address for the USA500Clubs, LLC is Post Office Box 812578, Wellesley, Massachusetts 02482.

February 11, 2021: Speaker, "Orador en el Tema: Retos y Logros del Tribunal Federal en Puerto Rico durante la pandemia," Club Rotario de Río Piedras, San Juan, Puerto Rico. Video available at [https://www.youtube.com/watch?v=mNpa\\_Z7IyhY](https://www.youtube.com/watch?v=mNpa_Z7IyhY).

December 18, 2020: Speaker, Farewell Ceremony of the Hon. Anabelle Rodríguez Rodríguez, Associate Justice of the Supreme Court of Puerto Rico, San Juan, Puerto Rico. Video available at <https://fb.watch/5uf0rCb8jI>.

November 18, 2020, "La Labor de los Juzgadores: Un Análisis desde la Perspectiva Internacional," Primer Congreso Internacional Virtual de Juzgadores, Instituto Nacional de Ciencias Penales, Mexico City, México. I spoke to Mexican Judges about the role of the federal judiciary. I have no notes, transcript, or recording. The address for the Instituto Nacional de Ciencias Penales is Magisterio Nacional 113, Col. Tlalpan, Mexico City, México 14000.

November 16, 2020: Speaker, "YLJ Forum Collection, The Insular Cases in Light of Aurelius," The Yale Law Journal and Federal Bar Association Puerto Rico Chapter. The panel was on the Insular Cases and the life and legacy of Judge Juan

R. Torruella. I made brief remarks regarding my professional and personal relationship with Judge Torruella. I have no notes, transcript, or recording. The address for the Yale Law Journal is 127 Wall Street, New Haven, Connecticut 06511.

October 22, 2020: Panelist, United States Department of Justice Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT), Programs for South and Central American Judges and Prosecutors. I discussed the challenges and benefits of holding court virtually during the Covid-19 pandemic. I have no notes, transcript, or recording. The address for OPDAT is 950 Pennsylvania Avenue, Northwest, Washington, District of Columbia 20530.

July 15, 2020: Speaker, "Practicum: Hurricanes, Earthquakes & Covid-19," USA500Clubs, LLC New England Region. I discussed lessons learned from conducting remote judicial proceedings during natural disasters and the Covid-19 pandemic. I have no notes, transcript, or recording. The address for the USA500Clubs, LLC is Post Office Box 812578, Wellesley, Massachusetts 02482.

May 15, 2020: Speaker, "Webinar: Judging in a Time of Crisis," Federal Bar Association. I discussed lessons learned from conducting remote judicial proceedings during natural disasters and the Covid-19 pandemic. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

March 6, 2020: Speaker, "Primer Encuentro de Territorios Ultramarinos," Ana G. Méndez University (UAGM), Carolina Campus, Carolina, Puerto Rico. Video available at <https://www.uagm.edu/node/2536>.

March 6, 2020: Panelist, "Panel de reacción - Desarrollo constitucional y jurisprudencial: casos recientes en la corte federal," Ana G. Méndez University (UAGM), Carolina Campus, Carolina, Puerto Rico. Video available at <https://www.youtube.com/watch?v=dP7ekn8YJNk>.

December 13, 2019: Panelist, "Constitutional Issues in U.S. Territories," U.S. Virgin Islands Bar Association Conference, St. Croix, U.S. Virgin Islands. The presentation was about current issues facing U.S. Territories. I have no notes, transcript, or recording. The address for the U.S. Virgin Islands Bar Association is Post Office Box 224108, Christiansted, Virgin Islands 00822.

November 4 – 9, 2019: Lecturer and Panelist, United States Department of Justice Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT), Programs for South and Central American Judges and Prosecutors, Mexico City, México. I participated in panels and lectures covering the role of the Rule of Law, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence in an adversarial legal system, which Mexico is transitioning to. I have no notes, transcript, or recording. The address for OPDAT is 950 Pennsylvania

Avenue, Northwest, Washington, District of Columbia 20530.

October 24, 2019, Speaker, Rafael Hernández Colón Foundation, Ponce, Puerto Rico. The remarks were made upon the first anniversary of Governor Hernández Colón's passing. I have no notes, transcript, or recording. The address for the Rafael Hernández Colón Foundation is 50 Esquina, Mayor Street, Ponce, Puerto Rico 00733.

August 16, 2019, Speaker, Investiture Ceremony of U.S. District Judge Raúl Arias-Marxuach, U.S. District Court for the District of Puerto Rico, San Juan, Puerto Rico. I made brief remarks regarding my professional and personal relationship with Judge Arias-Marxuach. I have no notes, transcript or recording. The address for the Clemente Ruiz Nazario United States Courthouse is 150 Carlos Chardón Avenue, San Juan, Puerto Rico 00918.

August 2, 2019: Speaker, Portrait Unveiling of U.S. District Judge John A. Woodcock, U.S. District Court for the District of Maine, Bangor, Maine. The speech was about the legacy of Judge Woodcock and his contributions as visiting judge to the District of Puerto Rico. I have no notes, transcript, or recording, but press coverage supplied. The address for the Margaret Chase Smith Federal Building and Courthouse is 202 Harlow Street, Bangor, Maine 0440.

May 17 – 18, 2019: Speaker, Federal Bar Association Immigration Law Section Annual Conference, Austin, Texas. I spoke about judicial review of immigration proceedings and federal court practice. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

March 22 – 26, 2019: Lecturer and Panelist, United States Department of Justice Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT), Programs for South and Central American Judges and Prosecutors, Mexico City, México. I participated in panels and lectures covering the role of the Rule of Law, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence in an adversarial legal system, which Mexico is transitioning to. I have no notes, transcript, or recording. The address for OPDAT is 950 Pennsylvania Avenue, Northwest, Washington, District of Columbia 20530.

February 21, 2019: Keynote Luncheon, "Ethics Presentation," Labor and Employment Law Conference, Federal Bar Association, San Juan, Puerto Rico. I discussed ethical considerations when litigating before the federal court. 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: Speaker, "Conversatorio con el Hon. Gustavo A. Gelpí," Colegio de Abogados y Abogadas de Puerto Rico, Young Lawyers and Federal Litigation Committees, San Juan, Puerto Rico. Video available at

<https://www.youtube.com/watch?v=ru3QaEvJTck&t=2329s>.

February 1, 2019: Panelist, Book Presentation for SEPARACIÓN DE PODERES EN PUERTO RICO: ENTRE LA TEORÍA Y LA PRÁCTICA by Hon. Aníbal Acevedo Vilá, former Governor of the Commonwealth of Puerto Rico, University of Puerto Rico School of Law, San Juan, Puerto Rico. Video available at <https://www.youtube.com/watch?v=2M4g4QvuEbg>.

December 6, 2018: Panelist, Book Presentation for COMPENDIO SOBRE EL SISTEMA ACUSATORIO: EXPERIENCIAS COMPARTIDAS by Hon. Edgardo Rivera García, Associate Justice to the Supreme Court of Puerto Rico, and other authors, University of Puerto Rico School of Law, San Juan, Puerto Rico. Video available at <https://www.youtube.com/watch?v=iAb2u21mjaA>.

November 29, 2018: Distinguished Speaker, “Pedro Albizu Campos, El Abogado Federal y el Notorio Caso de Velázquez vs. People of Puerto Rico,” Address given on the occasion of my installation as Academic of Number of the Academia Puertorriqueña de Jurisprudencia y Legislación, San Juan, Puerto Rico. Video available at <https://www.youtube.com/watch?v=c-lvSdCc-gA>.

November 7, 2018, Speaker, Commentaries on the book “Reflections on the Accusatory System: Shared Experiences,” United States Department of Justice Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT), Programs for South and Central American Judges and Prosecutors, Mexico City, México. I discussed the book about comparative criminal procedural law. I have no notes, transcript, or recording. The address for OPDAT is 950 Pennsylvania Avenue, Northwest, Washington, District of Columbia 20530.

November 5 – 7, 2018: Lecturer and Panelist, United States Department of Justice Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT), Programs for South and Central American Judges and Prosecutors, Mexico City, México. I participated in panels and lectures covering the role of the Rule of Law, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence in an adversarial legal system, which Mexico is transitioning to. I have no notes, transcript, or recording. The address for OPDAT is 950 Pennsylvania Avenue, Northwest, Washington, District of Columbia 20530.

October 12, 2018: Keynote Speaker, The State of Latinos in the Law Symposium Hispanic Lawyers Association of Illinois (HLAI), Hispanic National Bar Association Region IX (HNBA), Illinois Latino Judges Association (ILJA), and Puerto Rican Bar Association of Illinois (PRBA), Chicago, Illinois. The speech was about my book THE EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898-PRESENT), which provided the background for discussing Hurricane María relief efforts. I have no notes, transcript, or recording. The address for the Hispanic Lawyers Association of Illinois 27 North Wacker Drive, Suite 462, Chicago, Illinois 60606.



October 12, 2018: Panelist, “Through the Judiciary Pipeline,” The State of Latinos in the Law Symposium Hispanic Lawyers Association of Illinois (HLAI), Hispanic National Bar Association Region IX (HNBA), Illinois Latino Judges Association (ILJA), and Puerto Rican Bar Association of Illinois (PRBA), Chicago, Illinois. The panel discussion was about Latinos in the law and judiciary. I have no notes, transcript, or recording. The address for the Hispanic Lawyers Association of Illinois 27 North Wacker Drive, Suite 462, Chicago, Illinois 60606.

July 7, 2018: Speaker, “Constitutional Evolution of U.S. Territories, Saipan, Commonwealth of the Northern Mariana Islands.” The speech was about historical and legal issues common to U.S. territories, with emphasis on the Commonwealth of the Northern Mariana Islands. I have no notes, transcript or recording, but a substantially similar PowerPoint presentation used for a May 2021 law school course is supplied. Press coverage supplied.

July 3, 2018: Keynote Speaker, Naturalization Ceremony, United States District Court of Guam, Hagåtña, Guam. I spoke about the rights and responsibilities of becoming a United States citizen. I have no notes, transcript, or recording, but press coverage supplied. The address for U.S. Courthouse in Guam is 520 West Soledad Avenue, Hagåtña 96910.

July 2, 2018: Speaker, Continuing Legal Education (CLE) course on “U.S. Constitutional Rights in the Territories,” District Court of Guam and the Guam Bar Association, Hagåtña, Guam. The CLE was about legal issues common to U.S. territories, with emphasis in Guam. I have no notes, transcript, or recording, but the presentation would have been substantially similar to the one on July 7, 2018, for which the PowerPoint has been supplied. Press coverage supplied.

May 18, 2018: Speaker, Federal Bar Association Immigration Law Section Annual Conference, Memphis, Tennessee. I spoke about judicial review of immigration proceedings and federal court practice. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

May 9, 2018: Speaker, “Workshop on the Protection and Enforcement of Intellectual Property Rights,” United States Patent and Trademark Office (USPTO) Judicial, Computer Crime and Intellectual Property Section of the Department of Justice, Alexandria, Virginia. I spoke about the protection and enforcement of Intellectual Property rights. I have no notes, transcript, or recording. The address for the USPTO is 600 Dulany Street, Madison East, Concourse Level, Alexandria, Virginia 22314.

March 6 – 8, 2018: Lecturer and Panelist, United States Department of Justice Office of Overseas Prosecutorial Development, Assistance and Training

(OPDAT), Programs for South and Central American Judges and Prosecutors, Mexico City, México. I participated in panels and lectures covering the role of the Rule of Law, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence in an adversarial legal system, which the country is transitioning to. I have no notes, transcript, or recording. The address for OPDAT is 950 Pennsylvania Avenue, Northwest, Washington, District of Columbia 20530.

February 23, 2018: Speaker, Book Presentation for THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES: (1898-PRESENT), which I authored. Inter American University of Puerto Rico School of Law, San Juan, Puerto Rico. Press coverage supplied, and video available at <https://www.youtube.com/watch?v=XmSmLhuB32g>.

February 15 – 16, 2018: Moderator, “Overcoming Challenges During the Police Reform,” Annual Police Reform Consent Decree Conference, Tarleton State University, Stephenville, Texas. I served as moderator for a panel about the challenges faced by different police reform consent decrees. I also served as co-chair of the conference. I have no notes, transcript, or recording. The address for Tarleton State University is 1333 West Washington Street, Stephenville, Texas 76402.

January 18, 2018: Speaker, Book Presentation for THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES: (1898-PRESENT), Inter American University of Puerto Rico, Metropolitan Campus, San Juan Puerto Rico. I made remarks to statements about my book given by the Hon. Rafael Hernández Colón and Hon. Pedro J. Rosselló González, former Governors of the Commonwealth of Puerto Rico. I have no notes, transcript, or recording. The address for Inter American University of Puerto Rico, Metropolitan Campus is Highway # 1, Francisco Sefín Street, San Juan, Puerto Rico 00919.

February 1, 2018: Panelist, Book Presentation for PROCEDIMIENTO CRIMINAL Y LA CONSTITUCIÓN: ETAPA INVESTIGATIVA by Profesor Ernesto L. Chiesa Aponte, Academia Puertorriqueña de Jurisprudencia y Legislación, San Juan, Puerto Rico. Video available at <https://www.youtube.com/watch?v=Cume-7huBg8>.

December 5, 2017: Lecturer, “The Panamá Canal Zone, Puerto Rico, and other U.S. Territories (1898 – Present),” Panamá Canal Museum, Inter American University of Puerto Rico, and Federal Bar Association, Panamá, Panamá. The lecture was about the abolished Canal Zone and its federal court. I have no notes, transcript, or recording, but the presentation would have been substantially similar to the one on July 7, 2018, for which the PowerPoint has been supplied.

December 1, 2017: Panelist, “Constitutional Issues in U.S. Territories,” U.S. Virgin Islands Bar Association Conference, St. Croix, U.S. Virgin Islands. The panel was on legal aspects and constitutional issues common to U.S. Territories. I have no notes, transcript, or recording. The address of the University of the Virgin

Islands is Charlotte Amalie West, St. Croix 00840.

October 17, 2017: Presenter, Puerto Rico Police Reform, Tarleton State University, Stephenville, Texas. I discussed the challenges faced by different police reform consent decrees. I also served as co-chair of the conference. I have no notes, transcript, or recording. The address for Tarleton State University is 1333 West Washington Street, Stephenville, Texas 76402.

June 18, 2017: Speaker, Washington Workshops Program, American University. I discussed with high school students in the program issues about the concept of separation of powers and the role of the federal judiciary. I have no notes, transcript, or recording. The address for American University is 4400 Massachusetts Avenue, Northwest, Washington, District of Columbia 20016.

May 12, 2017: Speaker, "Habeas and Prolonged Detention: Federal Court Remedies for Prolonged Detention," Federal Bar Association Immigration Law Section Annual Conference, Denver, Colorado. I spoke about legal aspects concerning immigration habeas petitions before the federal district court. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

March 28 – 30, 2017: Lecturer and Panelist, United States Department of Justice Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT), Programs for South and Central American Judges and Prosecutors, Lima, Perú. The panels and lectures covered the role of the Rule of Law, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence in an adversarial legal system, which the country is transitioning to. I have no notes, transcript, or recording. The address for OPDAT is 950 Pennsylvania Avenue, Northwest Washington, District of Columbia 20530.

March 17, 2017: Moot Court Judge, Annual Thurgood A. Marshall Memorial Moot Court, Federal Bar Association's Younger Lawyers Division, Washington District of Columbia. I served as judge in the Final Round of the competition. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

March 15, 2017: Lecturer and Panelist, United States Department of Justice Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT), Programs for South and Central American Judges and Prosecutors, Panamá City, Panamá. I participated in a roundtable with judges and prosecutors on money laundering and terrorism. I have no notes, transcript, or recording. The address for OPDAT is 950 Pennsylvania Avenue, Northwest, Washington, District of Columbia 20530.

January 27, 2017: Panelist, Book Presentation for ACCESO A LA JUSTICIA: DERECHO HUMANO FUNDAMENTAL by Hon. Luis F. Estrella Martínez, Associate

Justice of the Supreme Court of Puerto Rico, University of Puerto Rico School of Law, San Juan, Puerto Rico. Video available at <https://www.youtube.com/watch?v=qzzXB52rxgA>.

January 2017 [exact date unknown]: Panelist, "Panel Discussion on Federal Civil and Criminal Procedures," Suffolk University Law School, Federal Bar Association Massachusetts Chapter Suffolk Law School, Boston, Massachusetts. I discussed recent amendments and developments regarding the Federal Rules of Civil and Criminal Procedure. I have no notes, transcript, or recording. The address for Suffolk University Law School is 120 Tremont Street, Boston, Massachusetts 02108.

December 9, 2016: Speaker, "Amendments to Federal Rules of Civil Procedure," Federal Bar Association Hawaii Chapter Annual Conference, Honolulu, Hawai'i. I discussed recent amendments to the Federal Rules of Civil Procedure. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

November 5, 2016: Panelist, Annual Police Reform Consent Decree Conference, Tarleton State University, Stephenville, Texas. I spoke about my experience presiding over the Puerto Rico Police Reform Consent Decree. I also served as co-chair of the conference. I have no notes, transcript, or recording, but press coverage supplied. The address for Tarleton State University is 1333 West Washington Street, Stephenville, Texas 76402.

September 20, 2016: Speaker and Distinguished Visiting Scholar, "Police Reform Though the Eyes of a United States District Judge," Delta State University Colloquia Distinguished Speakers Lecture Series. I spoke about my experience presiding over the Puerto Rico Police Reform Consent Decree. I have no notes, transcript, or recording, but press coverage supplied. The address for Delta State University is 1003 West Sunflower Road, Cleveland, Mississippi 38733.

September 8, 2016: Panelist, "Guideline Departures and Variances," United States Sentencing Commission Annual National Seminar on the Federal Sentencing Guidelines, Minneapolis, Minnesota. The panel discussed different practices around the country with respect to guideline departures and variances. I have no notes, transcript, or recording. The address for the United States Sentencing Commission is One Columbus Circle, Northeast, Suite 2-500, Washington, District of Columbia 20002.

May 12, 2016: Speaker, "Track 1: U.S. District Court Litigation," Federal Bar Association Immigration Law Section Annual Conference, New Orleans, Louisiana. I spoke about immigration law litigation before the federal district court. 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 8, 2016: Speaker, 11th Annual and Procurement Symposium, American Bar Association, Section of Public Contract Law Program Luncheon, San Juan, Puerto Rico. The speech was a welcome address during the luncheon. I have no notes, transcript, or recording. I do not recall or was unable to find the location of this event. The address for the American Bar Association is 1050 Connecticut Avenue, Northwest, Suite 400, Washington, District of Columbia 20036.

January 16, 2016: Panelist, "View from the Bench: Panel Discussion," Suffolk University Law School Chapter of the Federal Bar Association, Boston, Massachusetts. I discussed my career in the federal legal system, experiences of sitting on the federal bench, and provided general advice to future practitioners. I have no notes, transcript, or recording. The address for Suffolk University Law School is 120 Tremont Street Boston, Massachusetts 02108.

January 14, 2016: Panelist, "Panel Discussion on Federal Civil and Criminal Procedures," Suffolk University Law School, of the Federal Bar Association Massachusetts Chapter, Boston, Massachusetts. The panel was on recent developments in the Federal Rules of Civil and Criminal Procedure. I have no notes, transcript, or recording. The address for Suffolk University Law School is 120 Tremont Street Boston, Massachusetts 02108.

January 12, 2016: Panelist, "Civil Rights Act," Suffolk University Law School, of the Federal Bar Association Massachusetts, Boston, Massachusetts. I spoke about the importance of the Act and how it impacted the course of American history. I have no notes, transcript, or recording. The address for Suffolk University Law School is 120 Tremont Street Boston, Massachusetts 02108.

September 23, 2015: Lecturer and Panelist, United States Department of Justice Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT), Programs for South and Central American Judges and Prosecutors, Panamá City, Panamá. The panels and lectures covered the role of the Rule of Law, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence in an adversarial legal system, which the country is transitioning to. I have no notes, transcript, or recording. The address for OPDAT is 950 Pennsylvania Avenue, Northwest, Washington, District of Columbia 20530.

September 17, 2015: Panelist, "Role in the Offense Breakout," United States Sentencing Commission Annual National Seminar on the Federal Sentencing Guidelines, New Orleans, Louisiana. PowerPoint supplied.

August 27, 2015: Panelist, Puerto Rico Collective on Breastfeeding Promotion, Proyecto Lacta by Ashford Presbyterian Community Hospital, San Juan, Puerto Rico. In this event, along with two state judges, I discussed caselaw and statutes regarding rights of mothers who breastfeed. I have no notes, transcript, or recording. The address for the Ashford Presbyterian Community Hospital is 1451 Avenue Dr. Ashford, San Juan, Puerto Rico 00907.

August 2015: Speaker and Panelist, Second Federal Bar Association Alaska Chapter Annual Conference, Anchorage, Alaska. I participated on a judges' panel at the conference and also presented an updated historical overview about the development of constitutional law in current and former U.S. territories such as Alaska, Hawaii, and Puerto Rico. I have no notes, transcript, or recording, but the presentation would have been substantially similar to the one on July 7, 2018, for which the PowerPoint has been supplied.

May 16, 2015: Speaker, "Introduction to Crimmigration: Removability and Prosecution for Immigration Offenses," Federal Bar Association Immigration Law Section Annual Conference, Memphis, Tennessee. I spoke about removability and prosecution for immigration offenses. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

May 15, 2015: Speaker, "Ceremony in Remembrance of the Hon. Raymond L. Acosta," U.S. District Court for the District of Puerto Rico, San Juan, Puerto Rico. I made brief remarks regarding my professional and personal relationship with Judge Acosta. I have no notes, transcript or recording. The address for the Clemente Ruiz Nazario United States Courthouse is 150 Carlos Chardón Avenue, San Juan, Puerto Rico 00918.

April 23, 2015: Speaker, Book Presentation, EL ÚLTIMO ENCLAVE DEL COLONIALISMO by Hon. Pedro J. Rosselló González, former Governor of the Commonwealth of Puerto Rico, Museo de Arte de Puerto Rico, San Juan, Puerto Rico. Speech supplied.

March 3, 2015: Panelist, "Maritime Law in the United States and Puerto Rico," Federal Bar Association Chapter of Puerto Rico, San Juan, Puerto Rico. I addressed aspects maritime law aspects relating to Puerto Rico. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

January 13, 2015: Panelist, "Independence of the Judiciary and the Rule of Law," Federal Bar Association Massachusetts Chapter, Boston, Massachusetts. I discussed my duties and responsibilities as federal judge. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

January 13, 2015: Panelist, "Voting Rights Act and Voting Issues in U.S. Territories," Federal Bar Association Massachusetts Chapter, Boston, Massachusetts. I spoke about the importance of the Act and addressed the lack of federal voting rights of citizens residing in U.S. territories. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444 Arlington, Virginia 22201.

September 18, 2014: Panelist, “Role in The Offense & Other Chapter Three Adjustments,” United States Sentencing Commission Annual National Seminar on the Federal Sentencing Guidelines, Philadelphia, Pennsylvania. PowerPoint supplied.

September 8, 2014: Keynote Speaker, “The Civil Rights Act of 1964: Justice Then and Now,” Federal Bar Association Maine Chapter, Portland, Maine. I spoke about the importance of the Act and how it impacted the course of American history. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

August 22, 2014: Speaker and Panelist, First Federal Bar Association Alaska Chapter Annual Conference, Anchorage, Alaska. I moderated several panels at the conference and presented an historical overview on the development of constitutional law in current and former U.S. territories such as Alaska, Hawaii, and Puerto Rico. The panels were on topics such as federal sentencing and ethics. I have no notes, transcript, or recording, but the presentation would have been substantially similar to the one on July 7, 2018, for which the PowerPoint has been supplied.

August 14, 2014: Speaker, Book Presentation for ESTADO LIBRE ASOCIADO: NATURALEZA Y DESARROLLO by Hon. Rafael Hernández Colón, former Governor of the Commonwealth of Puerto Rico, Inter American University, Metropolitan Campus, San Juan, Puerto Rico. Remarks supplied.

June 5, 2014: Panelist, “Celebrating the 50th Anniversary of the Civil Rights Act and Criminal Justice Act,” Federal Bar Association New Orleans Chapter, New Orleans, Louisiana. I spoke about the importance both Acts and how they affected the course of American history. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

May 16, 2014: Panelist, “Complex Civil Litigation I: Plaintiff’s Perspective,” Puerto Rico Chapter, Federal Bar Association Young Lawyers Division, San Juan Puerto Rico. The panel discussed the case of *Hernández v. Esso Standard Oil Co.* I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

May 8, 2014: Panelist, “50th Anniversary of the Civil Rights Act of 1964,” Federal Bar Association Chicago Chapter, Chicago, Illinois. I spoke about the importance of the Act and how it affected the course of American history. 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 28, 2014: Panelist, “The Civil Rights Act of 1964 50th Anniversary: Then, Now and Moving Forward,” Federal Bar Association Massachusetts Chapter, Boston, Massachusetts. I spoke about the importance of the Act and how it affected the course of American history. 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 9, 2014: Speaker, Farewell Ceremony of the Hon. Federico Hernández Denton, Chief Justice of the Supreme Court of Puerto Rico, San Juan, Puerto Rico. I spoke about the legacy of the Chief Justice. I have no notes, transcript, or recording. The address for the Supreme Court of Puerto Rico is 8 Avenida de la Constitución, San Juan, Puerto Rico 00901.

March 27, 2014: Panelist, “The Constitutional Evolution of Overseas U.S. Territories,” American University, Washington, District of Columbia. I participated in a panel on historical and legal issues affecting overseas U.S. territories. I have no notes, transcript, or recording, but the presentation would have been substantially similar to the one on July 7, 2018, for which the PowerPoint has been supplied.

March 27 – 28, 2014: Moot Court Judge, Annual Thurgood A. Marshall Memorial Moot Court, Federal Bar Association Younger Lawyers Division, Washington, District of Columbia I served as judge in the Final Round of the competition. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

March 25, 2014: Speaker, “The Constitutional Evolution of Overseas U.S. Territories 1898 – Present,” Pontifical Catholic University of Puerto Rico School of Law, Ponce, Puerto Rico. I spoke about legal issues affecting U.S. territories. I have no notes, transcript, or recording, but the presentation would have been substantially similar to the one on July 7, 2018, for which the PowerPoint has been supplied.

February 24, 2014: Speaker, “La evolución constitucional de los territorios de ultramar de los Estados Unidos (1898-Presente),” University of Puerto Rico School of Law, Law Review and Federal Bar Association UPR Student Chapter, San Juan, Puerto Rico. Video available at <https://www.youtube.com/watch?v=GrQVB7opHdk>.

December 13, 2013: Speaker, “Do’s and Don’ts of Practice before Article III Judges,” Federal Bar Association Puerto Rico Chapter Younger Lawyers Division, San Juan, Puerto Rico. I advised young lawyers about effective motion practice in federal litigation. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.



December 5, 2013: Speaker, "The Constitutional Evolution of Overseas U.S. Territories," Fifth Annual FBA Hawai'i, Conference, Honolulu, Hawai'i. Video available at <https://vimeo.com/81657643>.

October 10 – 12, 2013: Speaker, Federal Sentencing and Criminal Practice Seminar, CLE Federal Bar Association Dayton Chapter, Dayton, Ohio. I lectured about federal criminal practice and procedure. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

September 26, 2013: Speaker, swearing-in ceremony as Federal Bar Association National President, Federal Bar Association Annual Convention, San Juan, Puerto Rico. I gave brief remarks about the importance of the FBA in my personal and professional life and my plans for the year. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

August 20, 2013: Speaker, "Statement of the Honorable Gustavo A. Gelpi on Occasion of the 50th Anniversary of the Criminal Justice Act," Statement on behalf of the Federal Bar Association, Library of Congress, Washington, District of Columbia. Video available at <https://www.c-span.org/video/?314655-1/public-defenders-program-budget-cuts>.

July 2013 [exact date unknown]: Panelist, "The Value of Expert Testimony in State and Federal Courts," Puerto Rico College of Chemists, Río Grande, Puerto Rico. The panel discussion was about expert testimony. I have no notes, transcript, or recording. The address for the Puerto Rico College of Chemists is 52 Hatillo Street, San Juan, Puerto Rico 00918.

July 1, 2013: Speaker, Investiture of Chief Judge, Honorable Ruben Castillo of the Northern District of Illinois, U.S. District Court, Northern District of Illinois, Chicago, Illinois. Remarks Supplied.

June 26 – 28, 2013: Panelist, United States Sentencing Commission Annual National Seminar on the Federal Sentencing Guidelines, Atlanta, Georgia. I do not recall the topics discussed in the panel. I have no notes, transcript, or recording. The address for the United States Sentencing Commission is One Columbus Circle, Northeast, Suite 2-500, Washington, District of Columbia 20002.

April 4 – 5, 2013: Moot Court Judge, Annual Thurgood A. Marshall Memorial Moot Court, Federal Bar Association Younger Lawyers Division, Washington District of Columbia I served as judge in the Final Round of the competition. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444 Arlington, Virginia 22201.

November 16, 2012: Panelist, “Federal Criminal Practice and Procedure Basics for Civil Practitioners - A Basic Overview: Bail/Detention, Discovery, Plea Negotiations and Sentencing,” Federal Bar Association Puerto Rico Chapter, San Juan, Puerto Rico. I participated in a panel on federal criminal practice and procedure. I have no notes, transcript or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

October 12, 2012: Speaker, Induction Ceremony Federal Bar Association Puerto Rico Chapter Student Divisions of the University of Puerto Rico School of Law, the Interamerican University of Puerto Rico School of Law, and the Pontifical Catholic University of Puerto Rico School of Law, San Juan, Puerto Rico. I gave remarks highlighting the benefits of belonging to the FBA as students and as attorneys. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

September 13, 2012: Moderator, “Conversatorium with Judge Silvia Carreño-Coll: Reflections on a career as a government attorney and life on the Federal Bench,” Federal Bar Association Puerto Rico Chapter, San Juan, Puerto Rico. The panel discussed Judge Carreño-Coll’s observations and experiences as a federal judge and as a litigator before the same court. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

September 2012: Panelist, “The Lost Art of Talking,” American College of Trial Lawyers, San Juan, Puerto Rico. I do not recall the topic covered in the talk. I have no notes, transcript, or recording. The address for the American College of Trial Lawyers is 1300 Dove Street, Suite 150, Newport Beach, California 92660.

August 28 – 29, 2012: Lecturer and Panelist, United States Department of Justice Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT), Programs for South and Central American Judges and Prosecutors, Mexico City, México. The panels and lectures covered the role of the Rule of Law, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence in an adversarial legal system, which Mexico is transitioning to. I have no notes, transcript, or recording. The address for OPDAT is 950 Pennsylvania Avenue, Northwest, Washington, District of Columbia 20530.

June 14, 2012: Panelist, “Role in The Offense & Other Chapter Three Adjustments,” United States Sentencing Commission Annual National Seminar on the Federal Sentencing Guidelines New Orleans, Louisiana. The panel discussed issues involving the guideline application and caselaw as to the federal sentencing manual. I have no notes, transcript, or recording. The address for the United States Sentencing Commission is One Columbus Circle, Northeast, Suite

2-500, Washington, District of Columbia 20002.

April 13, 2012: Speaker, Induction Ceremony, Federal Bar Association Puerto Rico Chapter Student Divisions of the University of Puerto Rico School of Law, the Interamerican University of Puerto Rico School of Law, and the Pontifical Catholic University of Puerto Rico School of Law, San Juan, Puerto Rico. I gave remarks highlighting the benefits of belonging to the FBA as students and as attorneys. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

2011 – 2019 [months & dates unknown]: Speaker, “Litigation of Criminal Cases in Federal Court and Comparison with Litigation in State Court,” Puerto Rico Department of Justice Annual Conference, San Juan, Puerto Rico. Each year I presented a CLE related to Federal Criminal Practice and Procedure. I have no notes, transcript, or recording. The address for the Puerto Rico Department of Justice is 685 Teniente César Luis González Street, San Juan, Puerto Rico 00918.

October 25, 2011: Speaker, “Federal Voting Rights of U.S. Citizens Residing in U.S. Territories,” San Juan Rotary Club, San Juan, Puerto Rico. The speech addressed the lack of federal voting rights of citizens residing in U.S. territories. I have no notes, transcript, or recording. The address for the Rotary Club of San Juan is 2 Cervantes Street, San Juan, Puerto Rico 00902.

October 13, 2011: Speaker, “How far does the Constitution Reach? The Insular Cases and the Territorial Clause in the United States Constitution (Puerto Rico and Overseas Territories 1898-Present),” Suffolk University Law School and Federal Bar Association Massachusetts. My presentation was about the constitutional evolution of U.S. territories. I have no notes, transcript, or recording, but the presentation would have been substantially similar to the one on July 7, 2018, for which the PowerPoint has been supplied.

September 8, 2011: Panelist, “Effective Advocacy in Federal Court and Judicial Clerkships,” Lewis & Clark Law School, Portland, Oregon. I participated in a panel encouraging law students to apply for federal clerkships. I have no notes, transcript, or recording. The address for Lewis & Clark Law School is 10015 Southwest Terwilliger Boulevard 7768, Portland, Oregon 97219.

May 23, 2011: Speaker, “How far does the Constitution Reach? The Insular Cases and the Territorial Clause in the United States Constitution (Puerto Rico and Overseas Territories 1898-Present),” Federal Bar Association Puerto Rico and Southern District of New York Chapters, New York, New York. My presentation was about the constitutional evolution of U.S. territories. I have no notes, transcript, or recording, but the presentation would have been substantially similar to the one on July 7, 2018, for which the PowerPoint has been supplied.

May 19, 2011, Panelist, United States Sentencing Commission Annual National Seminar on the Federal Sentencing Guidelines, San Diego, California. I do not recall the issues covered in the panel. I have no notes, transcript, or recording. The address for the United States Sentencing Commission is One Columbus Circle, Northeast, Suite 2-500, Washington, District of Columbia 20002.

March 16, 2011: Speaker, "The Insular Cases: A comparative historical Study of Puerto Rico and other Overseas U.S. Territories," Inter American University of Puerto Rico School of Law, San Juan, Puerto Rico. My presentation was about the constitutional evolution of U.S. territories. I have no notes, transcript, or recording, but the presentation would have been substantially similar to the one on July 7, 2018, for which the PowerPoint has been supplied.

February 25 – 26, 2011: Moot Court Judge, 2011 NALSA Moot Court Competition, Native American Law Students Association, Columbia Law School, New York, New York. I served as judge in the final round of the competition. I have no notes, transcript, or recording. The address for Columbia Law School is 435 West 116th Street, New York, New York 10027.

February 18, 2011: Speaker, "Hot Topics in the Tropics: Relevant Employment Law Issues for First Circuit and Puerto Rico Attorneys," 2011 Federal Bar Association Labor and Employment Law Conference, San Juan, Puerto Rico. I addressed recent federal employment law cases in the First Circuit. 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 10, 2011: Panelist, "*Booker, Gall, Kimbrough & Spears: A View from the District Court Bench*," Administrative Office of the U.S. Courts Office of Defender Services Training Branch, Winning Strategies Seminar, San Antonio, Texas. I gave my perspective as a District Court Judge about the sentencing process following the Supreme Court's rulings in the *Booker, Gall, Kimbrough*, and *Spears* cases. I have no notes, transcript, or recording. The address for the Administrative Office of the U.S. Courts Office of Defender Services Training Branch is One Columbus Circle, Northeast, Suite 4-200, Washington, District of Columbia 20544.

December 10, 2010: Speaker, "The Insular Cases: A Comparative Historical Analysis of Hawai'i and Puerto Rico," Federal Bar Association Hawaii Chapter Second Annual Conference, Honolulu, Hawai'i. My presentation was about the legal and historical issues impacting U.S. Territories. I have no notes, transcript, or recording, but the presentation would have been substantially similar to the one on July 7, 2018, for which the PowerPoint has been supplied.

November 17, 2010: Panelist, "Judging at Sentencing," Administrative Office of the U.S. Courts Advocacy Workshop, San Juan, Puerto Rico. I discussed aspects of sentencing in federal criminal cases. I have no notes, transcript, or recording.

The address for the Administrative Office of the U.S. Courts is 1 Columbus Circle, Northeast, Washington, District of Columbia 20002.

October 5, 2010: Talk, "A View from the Bench," Latin American Law Student Association, Suffolk University Law School, Boston, Massachusetts. I discussed my duties and responsibilities as a federal district judge. I have no notes, transcript, or recording. The address for Suffolk University Law School is 120 Tremont Street, Boston, Massachusetts 02108.

October 4, 2010: Panelist, Discussion on the Work of Federal Judges and Careers Path to the Federal Bench, University of New Hampshire Law School, Concord, New Hampshire. I participated in a panel encouraging law students to apply for federal clerkships. I have no notes, transcript, or recording. The address for the University of New Hampshire School of Law is 2 White Street, Concord, New Hampshire 03301.

June 17, 2010: Panelist, United States Sentencing Commission Annual National Seminar on the Federal Sentencing Guidelines, New Orleans, Louisiana. I do not recall the issues covered in the panel. I have no notes, transcript, or recording. The address for the United States Sentencing Commission is One Columbus Circle, Northeast, Suite 2-500, Washington, District of Columbia 20002.

March 26, 2010: Moot Court Judge, Annual Thurgood A. Marshall Memorial Moot Court, Federal Bar Association Younger Lawyers Division, Washington District of Columbia. I served as judge in the final round of the competition. 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 15, 2010: Keynote Speaker, Official President's Day Ceremony, Puerto Rico Senate, San Juan, Puerto Rico. Speech supplied.

January 29, 2010: Speaker, Faculty Forum on the Judiciary of the Confederate States of America, Barry University Dwayne O. Andreas School of Law, Orlando, Florida. I do not recall the topic of the lecture. I have no notes, transcript, or recording. The address for Barry University Dwayne O. Andreas School of Law is 6441 East Colonial Drive, Orlando, Florida 32807.

November 5, 2009, Speaker, "Separation of Church and State: The Constitutionality of the Use of the word "God" and Religious Symbols in Government Activities," Pontifical Catholic University, Federalist Society Student Chapter. Remarks supplied.

October 14, 2009: Speaker, "Judging and Advocacy in a U.S. District Court," Vermont Law School, South Royalton, Vermont. I spoke to the students about the duties and responsibilities of a federal district judge. I have no notes, transcript, or recording. The address for Vermont Law School is 164 Chelsea Street, South

Royalton, Vermont 05068.

October 7, 2009: Speaker, "Judging and Advocacy in a U.S. District Court & the Role of Law Clerks in the Chambers of a Federal Judge," Suffolk University Law School, Boston, Massachusetts. The talk encouraged law students to apply for federal clerkships. I have no notes, transcript, or recording, but press coverage supplied. The address for Suffolk University Law School is 120 Tremont Street, Boston, Massachusetts 02108.

September 10, 2009: Moderator, "Federal Court Assisted Recovery Efforts: Innovations to Reduce Post-Conviction Substance Abuse and Recidivism," Federal Bar Association Annual Convention, Oklahoma City, Oklahoma. I moderated a panel on legal issues about post-conviction initiatives. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

July 25, 2009: Keynote Speaker, "Commemoration Acts of the Fifty-Seventh Anniversary of the Commonwealth of Puerto Rico," Government of Puerto Rico, San Juan, Puerto Rico. Remarks Supplied.

June 12, 2009: Panelist, United States Sentencing Commission Annual National Seminar on the Federal Sentencing Guidelines, New Orleans, Louisiana. I do not recall the issues covered in the panel. I have no notes, transcript, or recording. The address for the United States Sentencing Commission is One Columbus Circle, Northeast, Suite 2-500, Washington, District of Columbia 20002.

February 13, 2009: Moderator, Federal Appellate Practice and Procedure CLE Seminar, U.S. District Court District of Puerto Rico and Federal Bar Association Puerto Rico Chapter, San Juan, Puerto Rico. The panel covered discussed federal appellate practice and procedure. I have no notes, transcript, or recording. The address for the Clemente Nazario U.S. Courthouse is 150 Chardón Avenue, San Juan, Puerto Rico 00918.

2009 (date unknown): Panelist, Federal Bar Association Labor and Employment Law Conference, Rio Grande, Puerto Rico. The panel discussed recent developments in federal employment law in the First Circuit. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

September 18, 2008: Panelist, "Professionalism and Bench-Bar Relations," Federal Bar Association Annual Convention, Huntsville, Alabama. I participated in a panel on attorney professionalism before federal courts. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

May 29, 2008: Speaker, Graduation Ceremony for Guayama, Puerto Rico Drug

Court Program, Guayama, Puerto Rico. Speech supplied.

May 16, 2008: Panelist, United States Sentencing Commission Annual National Seminar on the Federal Sentencing Guidelines, Orlando, Florida. I do not recall the issues covered in the panel. I have no notes, transcript, or recording. The address for the United States Sentencing Commission is One Columbus Circle, Northeast, Suite 2-500, Washington, District of Columbia 20002.

March 31, 2008: Keynote Speaker, "Mensaje del Orador Invitado, Hon. Gustavo A. Gelpí, Juez del Tribunal Federal para el Distrito de Puerto Rico, en ocasión de la semana de la Revista de Derecho Puertorriqueño," Pontifical Catholic University Law School, Ponce, Puerto Rico. Speech supplied.

March 28, 2008: Moot Court Judge, Annual Thurgood A. Marshall Memorial Moot Court, Federal Bar Association Younger Lawyers Division, Washington, District of Columbia. I served as judge in the final round of the competition. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

December 6, 2007: Guest speaker, Chelsea High School, Chelsea, Massachusetts. I spoke to juniors and seniors about the Constitution and the role of courts. I have no notes, transcript, or recording. The address for Chelsea High School is 299 Everett Avenue, Chelsea, Massachusetts 02150.

December 6, 2007: Presiding Judge, Naturalization Ceremony, United States District Court for the District of Massachusetts, Boston, Massachusetts. I offered welcoming remarks and administered the oath of citizenship. I have no notes, transcript or recording. The address for the United States District Court for the District of Massachusetts is 1 Courthouse Way, Boston, Massachusetts 02210.

October 27, 2007: Speaker, "History, Roles and Evolution of the United States District Court of Puerto Rico," The Military Order of the World Wars, Puerto Rico Chapter (121) San Juan, Puerto Rico. I spoke about the wartime history of the U.S. District Court in Puerto Rico. I have no notes, transcript, or recording. The address for The Military Order of the World Wars, Puerto Rico Chapter is 203 Presidente Ramírez Street, San Juan, Puerto Rico 00918.

October 5, 2007: Moderator and Panelist, "Advocating Effectively Before Any Court," Hispanic National Bar Association Annual Convention, San Juan, Puerto Rico. Remarks supplied.

June 19, 2007: Speaker, Massachusetts Association of Hispanic Attorneys, Boston, Massachusetts. I do not recall the topics discussed in my speech. I have no notes, transcript, or recording. The address for the Massachusetts Association of Hispanic Attorneys is 16 Beacon Street, Boston, Massachusetts 02108.

April 20, 2007: Keynote Address, Puerto Rican Student Association Banquet, Cornell University, Ithaca, New York. Speech supplied.

April 17, 2007: Speaker, Graduation Ceremony of Drug Court Program, San Juan, Puerto Rico. Speech supplied.

February 16, 2007: Panelist, "Litigating Labor and Employment Law Cases: View from the Bench," Federal Bar Association Labor and Employment Law Conference, San Juan, Puerto Rico. The panel discussed litigation best practices for employment law cases in federal court. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

October 6, 2006: Speaker, "Hispanic Heritage Month – Our Rich Culture Contributing to America's Future," Federal Bureau of Prisons, Metropolitan Detention Center, Guaynabo, Puerto Rico. I spoke about Hispanic contributions to American history. I have no notes, transcript, or recording. The address for the Guaynabo Metropolitan Detention Center is 652 PR-28, Guaynabo, Puerto Rico 00969.

October 4, 2006: Keynote Speaker, Federal Bar Association Student Division Initiation and Swearing-in Ceremony, Pontifical Catholic University Law School, Ponce, Puerto Rico. I do not recall the topics discussed in my speech. I have no notes, transcript, or recording. The address for Pontifical Catholic University of Puerto Rico School of Law is 2250 Las Américas Avenue, Suite 543, Ponce, Puerto Rico 00717.

October 4, 2006: Luncheon Co-Speaker, "Off the Record: A Candid Chat on Appearing Before Me," Federal Bar Association, Puerto Rico Chapter, San Juan, Puerto Rico. I spoke about litigation best practices before federal courts. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

September 28, 2006: Keynote Speaker, Pontifical Catholic University Law School, Law Review Editorial Board Initiation and Swearing-in Ceremony, Pontifical Catholic University Law School, Ponce, Puerto Rico. I do not recall the subject of my speech. I have no notes, transcript, or recording. The address for Pontifical Catholic University of Puerto Rico School of Law is 2250 Las Américas Avenue, Suite 543, Ponce, Puerto Rico 00717.

September 21, 2006: Keynote Speaker, Pontifical Catholic University Law School, Legal Aid Clinic Swearing-in Ceremony, Pontifical Catholic University Law School, Ponce, Puerto Rico. I do not recall the topics discussed in my speech. I have no notes, transcript, or recording. The address for Pontifical Catholic University of Puerto Rico School of Law is 2250 Las Américas Avenue, Suite 543, Ponce, Puerto Rico 00717.



August 31, 2006: Speaker, Investiture of Gustavo A. Gelpí as U.S. District Judge for the District of Puerto Rico, U.S. District Court District of Puerto Rico, San Juan, Puerto Rico. Speech and press coverage supplied.

2006 – present [months & dates unknown]: Presiding Judge, Naturalization Ceremonies. I have presided over 20 naturalization ceremonies in the District of Puerto Rico. I always offer welcoming remarks and administer the oath of citizenship. I have no notes, transcript, or recording. The address for the José V. Toledo United States Courthouse is Recinto Sur Street, San Juan, 00901.

July 22, 2005: Moderator, Federal Bar Association Labor and Employment Law Seminar, Río Grande, Puerto Rico. I spoke about recent developments in federal employment law. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444 Arlington, Virginia 22201.

October 15, 2004: Speaker, Portrait Unveiling for United States Magistrate Judge Joyce London Alexander, U.S. District Court for the District of Massachusetts, Boston, Massachusetts. Remarks supplied.

September 24, 2004: Panelist, Federal Public Defender Office Round Table Discussion with the U.S. Magistrate Judge for CJA Panel Attorneys, United States District Court for the District of Puerto Rico, San Juan, Puerto Rico. I do not recall the topic discussed in the panel. I have no notes, transcript, or recording. The address for the José V. Toledo United States Courthouse is Recinto Sur Street, San Juan, 00901.

September 24, 2004: Speaker, Basic Federal Drug Law Enforcement School, United States Department of Justice Drug Enforcement Administration Caribbean Division, Guaynabo, Puerto Rico. I do not recall the topics discussed in my speech. I have no notes, transcript, or recording. The address for the Drug Enforcement Administration Caribbean Division is Metro Office Park, Millennium Park Plaza, 15 Street 2 Suite 710, Guaynabo, Puerto Rico 00968-1743.

November 12, 2003: Panelist, Luncheon on Litigation Pointers from the Magistrate's Point of View, United States District Court for the District of Puerto Rico, San Juan, Puerto Rico. I discussed litigation best practices before federal courts. I have no notes, transcript, or recording. The address for the José V. Toledo United States Courthouse is Recinto Sur Street, San Juan, 00901.

October 28, 2002: Speaker, Maritime Law in Puerto Rico, Pontifical Catholic University School of Law, Law Review and Federal Bar Association Student Division, Ponce, Puerto Rico. I addressed aspects of maritime law relating to Puerto Rico. I have no notes, transcript, or recording. The address for Pontifical

Catholic University of Puerto Rico School of Law is 2250 Las Américas Avenue, Suite 543, Ponce, Puerto Rico 00717.

April 23, 2002: Speaker, "The Federal Bail Reform Act," University of Puerto Rico School of Law, Law Review and Federal Bar Association Student Division. I spoke about the Federal Bail Reform Act of 1984. I have no notes, transcript, or recording. The address for the University of Puerto Rico School of Law is 7 Avenida Universidad 701, San Juan, Puerto Rico 00925.

April 5, 2002: Panelist, First Symposium of the Law of Evidence, CLE Program at Inter American University of Puerto Rico School of Law, San Juan, Puerto Rico. The panels addressed the Federal Rules of Evidence. I have no notes, transcript, or recording. The address for Inter American University of Puerto Rico School of Law is 170 Federico Costas Street, San Juan, Puerto Rico.

November 7, 2001: Panelist, Federal Bar Association Appellate Practice Seminar, San Juan, Puerto Rico. The panel discussed appellate litigation best practices. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

October 26, 2001: Panelist, Federal Public Defender Skills Development Seminar, the Administrative Office of the U.S. Courts Office of Defender Services Training Branch, San Juan, Puerto Rico. The panel discussed effective criminal litigation practices. I have no notes, transcript, or recording. The address for the Administrative Office of the U.S. Courts Office of Defender Services Training Branch is One Columbus Circle, Northeast, Suite 4-200, Washington, District of Columbia 20544.

August 27, 2001: Speaker, Investiture of Gustavo A. Gelpi as U.S. Magistrate Judge for the District of Puerto Rico, U.S. District Court for the District of Puerto Rico, San Juan, Puerto Rico. Speech supplied.

August 31, 2000: Keynote Speaker, Investiture Ceremony of U.S. District Judge Jay A. García Gregory, U.S. District Court District of Puerto Rico, San Juan, Puerto Rico. Speech supplied.

June 9, 2000: Speaker, Federal Bar Association Immigration Practice Seminar, San Juan, Puerto Rico. I discussed recent developments in immigration law. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

March 4, 1999: Panelist, "The Right to Not Incriminate Oneself in Light of Freedom of the Press," Colegio de Abogados y Abogadas de Puerto Rico, Commissions on Criminal Law and Human Rights and the Association of Journalist Forum, San Juan, Puerto Rico. I spoke about legal and constitutional aspects about criminal law and the First Amendment. I have no notes, transcript,

or recording. The address for the Colegio de Abogados y Abogadas de Puerto Rico is 808 Avenida de la Constitución, San Juan, Puerto Rico 00907.

June 26, 1998: Panelist, Federal Public Defender Skills Development Seminar, Administrative Office of the U.S. Courts Office of Defender Services Training Branch, San Juan, Puerto Rico. The panel discussed effective criminal litigation practices. I have no notes, transcript, or recording. The address for the Administrative Office of the U.S. Courts Office of Defender Services Training Branch is One Columbus Circle, Northeast, Suite 4-200, Washington, District of Columbia 20544.

June 5, 1998: Panelist, National Association of Drug Court Professionals Annual Training Conference, Washington, District of Columbia. I do not recall the topics discussed in the panel. I have no notes, transcript, or recording. The address for the National Association of Drug Court Professionals is 625 North Washington Street, Suite 212, Alexandria, Virginia 22314.

June 27, 1997: Panelist, Federal Public Defender Skills Development Seminar, Administrative Office of the U.S. Courts Office of Defender Services Training Branch, San Juan, Puerto Rico. The panel discussed effective criminal litigation practices. I have no notes, transcript, or recording. The address for the Administrative Office of the U.S. Courts Office of Defender Services Training Branch is One Columbus Circle, Northeast, Suite 4-200, Washington, District of Columbia 20544.

November 11 – 15, 1996: Instructor, Federal Judicial Center Training Program for Assistant Federal Public Defenders, Administrative Office of the U.S. Courts Office of Defender Services Training Branch, Seattle, Washington. I discussed effective criminal litigation practices. I have no notes, transcript, or recording. The address for the Administrative Office of the U.S. Courts Office of Defender Services Training Branch is One Columbus Circle, Northeast, Suite 4-200, Washington, District of Columbia 20544.

June 8, 1995: Panelist, Federal Bar Association Criminal Law Seminar, San Juan, Puerto Rico. The panel discussed effective criminal litigation practices. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

1994 – 1995; 2001: Instructor, Federal Criminal Procedure and Federal Sentencing, Federal Bar Association Bar Examination Review Course, San Juan Puerto Rico. I reviewed federal criminal procedure. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

November 17, 1994: Panelist, Federal Bar Association Criminal-Civil Practice Seminar, San Juan, Puerto Rico. The panel discussed effective criminal and civil

litigation practices. I have no notes, transcript, or recording. The address for the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

- 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.

Frances Rosario, *Listo el tribunal federal para casos presenciales*, Primera Hora, Mar. 11, 2021. Copy supplied.

Melissa Correa Velázquez, *En turno la vacunación de los confinados federales*, El Vocero, Mar. 2, 2021. Copy supplied (reprinted in multiple outlets).

Melissa Correa Velázquez, *Fallece el juez federal Juan Pérez Giménez*, El Vocero, Dec. 10, 2020. Copy supplied.

Daniel Rivera Vargas, *Confirman el fallecimiento del juez Juan Pérez-Giménez*, Microjuris, Dec. 10, 2020. Copy supplied.

Daniel Rivera Vargas, *'Para mí siempre seguirá presente en espíritu y memoria', dice juez Gelpí de Torruella*, Microjuris, Oct. 26, 2020. Copy supplied.

Daniel Rivera Vargas, *Destacan aportaciones de Ginsburg a personas con diversidad funcional cognitiva*, Microjuris, Sept. 21, 2020. Copy supplied.

Bárbara Sepúlveda, *Gustavo Gelpí reacciona al aumento de jueces federales en la Isla*, El Vocero, Oct. 2, 2019. Copy supplied.

*Impresionado Gustavo Gelpí con los avances en la Academia de la Policía*, El Nuevo Día, July 3, 2019. Video available at <https://www.elnuevodia.com/noticias/seguridad/videos/impresionado-gustavo-gelpi-con-los-avances-en-la-academia-de-la-policia-256141>.

Alex Figueroa Cancel, *Favorecido el nombramiento de Stephen Muldrow*, El Nuevo Día, June 21, 2019. Copy supplied (reprinted in multiple outlets).

*Serie de entrevistas: La Ley en tu Vida | Hon. Gustavo Gelpí*, Microjuris, Feb. 13, 2019. Video available at <https://www.youtube.com/watch?v=gCDsOGS1ITg&t=18s>.

FedBarBlog, *Labor of Love: Chief Judge Gustavo A. Gelpí of the District Court of Puerto Rico Discusses Puerto Rico and the Labor and Employment Law Conference*, Federal Bar Association, Jan. 3, 2019. Copy supplied.

*Federal Bar Flashbacks*, Federal Bar Association, 2019. Copy supplied.

Melissa Correa Velázquez, *Continuidad a la misión de servicios en la corte federal*, El Vocero, Nov. 4, 2018. Copy supplied.

*Detrás de la Toga: Entrevista al Hon. Gustavo A. Gelpí*, Microjuris, July 24, 2018. Video available at <https://www.youtube.com/watch?v=qEVqCAa5ho>.

*Puerto Rico judge visits Guam*, KuamNews, July 6, 2018. Video available at <https://www.youtube.com/watch?v=fvYqt8l0VYs>.

*Puerto Rico: The Impact of No Federal Voting Rights (Life In The Law)*, ThinkTech Hawaii, June 28, 2018. Video available at <https://www.youtube.com/watch?v=lpCw55yJqgw>.

Rafael Lenin López, Interview at Noticentro TV station, Jan. 18, 2018. In this interview I discussed my book about the constitutional development of U.S. territories. Video not available.

Melissa Correa Velázquez, *Libro de juez recoge historia de los territorios de EE.UU.*, El Vocero, Dec. 27, 2017. Copy supplied.

*¿Es posible la justicia perfecta?*, Eco TV Panamá. Dec. 8, 2017. Video available at [https://www.ecotvpanama.com/actualidad/es-posible-la-justicia-perfecta\\_1\\_19155](https://www.ecotvpanama.com/actualidad/es-posible-la-justicia-perfecta_1_19155).

*De las designaciones y el amplio concepto de idoneidad*, Eco TV Panamá, Dec. 8, 2017. Video available at [https://www.ecotvpanama.com/actualidad/de-las-designaciones-y-el-amplio-concepto-de-idoneidad\\_1\\_19153](https://www.ecotvpanama.com/actualidad/de-las-designaciones-y-el-amplio-concepto-de-idoneidad_1_19153).

“Sobre la mesa” radio show with Aníbal Acevedo Vilá, Radio Isla 1320, Nov. 16, 2017. Videos available at <https://fb.watch/5ufkvyX4HT> (Part I) and <https://fb.watch/5ufIXlekp> (Part II).

“US District Judge Gustavo Gelpí,” ThinkTech Hawaii, Jan. 4, 2017. Video available at <https://www.youtube.com/watch?v=FDW8E3HXwas>.

Radio Interview with Jay Fonseca, WKAQ 580, Dec. 19, 2017. Video available at <https://fb.watch/5ufnPPaIT2>.

Raúl Álzaga, *Juez federal goza con Arroyo en España*, Primera Hora, Oct. 17, 2015. Copy supplied.

*Crónica: Una noche de baloncesto con Fufi Santori*, El Nuevo Día, June 12, 2015. Copy supplied.

*Entrevista - Hon. Gustavo Gelpí - presidente saliente de la FBA*, Microjuris, Sept. 17, 2014. Video available at <https://www.youtube.com/watch?v=yTBVGq5fmI4>.

*Women in the Law: Power and Progress*, 61 Fed. Law. 30 (Sept. 2014). Copy supplied.

*On Topic: Judge Gelpí Discusses Federal Bar Association*, United States Courts, July 8, 2014. Audio available at <https://www.uscourts.gov/news/2014/07/08/topic-judge-gelpi-discusses-federal-bar-association>.

Liza M. Rios-Morales, Héctor L. Ramos-Vega, *Hon. Camille L. Vélez-Rivé U.S. Magistrate Judge, District of Puerto Rico*, 61 Fed. Law. 79 (May/June 2014). Copy supplied.

Daniel Rivera Vargas, *Se va el monitor federal*, El Nuevo Día, Feb. 22, 2014. Copy supplied.

Ricardo Córtes Chico, *Visto Bueno de Gelpí al monitor*, El Nuevo Día, Oct. 31, 2013. Copy supplied.

*Hon. Gustavo A. Gelpí habla de cómo afecta el cierre del gobierno federal a la corte federal en PR*, Microjuris, Oct. 9, 2013. Video available at <https://www.youtube.com/watch?v=BLUz2kxpWo>.

*Entrevista a Hon. Gustavo A. Gelpí y Robert J. DeSousa*, Microjuris, Oct. 2, 2013. Video available at <https://www.youtube.com/watch?v=LxulmO1ecGI>.

*Entrevista a Hon. Gustavo Gelpí*, Microjuris, Oct. 1, 2013. Video available at <https://www.youtube.com/watch?v=rh-VZ3QeahQ>.

John Marino, *Gelpí begins serving as president of the Federal Bar Association*, Caribbean Business, Sept. 23, 2013. Copy supplied.

Richard Graffam, *Hon. Raymond L. Acosta Senior U.S. District Judge, District of Puerto Rico*, 60 Fed. Law. 43 (Sept. 2013) (Copy supplied).

*An Interview with Leaders of the Puerto Rico Chapter of the FBA*, 60 Fed. Law. 32 (Sept. 2013). Copy supplied.

Héctor L. Ramos-Vega, Oreste R. Ramos, *Hon. Gustavo A. Gelpí, Jr. U.S. Judge, District of Puerto Rico and Incoming FBA President*, Judicial Profile, Federal Bar Association (Sept. 2013). Copy supplied.

Limarys Suárez Torres, *Fallece el fiscal federal Ernesto López Soltero*, El Nuevo Día, May 2, 2013. Copy supplied.

Héctor L. Ramos-Vega, *Hon. Justo Arenas Chief U.S. Magistrate Judge, District of Puerto Rico*, Judicial Profile, Federal Bar Association (Oct. 2010). Copy supplied.

Ken Herman, *Bush logra récord en nombrar jueces hispanos*, El Nuevo Herald (Sept. 23, 2007), 2007 WLNR 18637460. Copy supplied.

Melissa Correa Velázquez, *Deja la cancha por el estrado*, El Vocero, Sept. 5, 2006. Copy supplied.

Andrea Martínez, *Al trote en el maratón de justicia*, El Nuevo Día, Sept. 1, 2006. Copy supplied.

Rosita Marrero, *Emoción ante nuevo reto*, Primera Hora, Aug. 30, 2006. Copy supplied.

Xavira Neggers Crescioni, *Gelpi to make expediting cases his top priority*, San Juan Star, Aug. 7, 2006. Copy supplied.

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

I have served as a United States District Judge in the District of Puerto Rico since August 2, 2006, and as Chief Judge by virtue of seniority since April 13, 2018. I was nominated by President George W. Bush on April 24, 2006, and unanimously confirmed by the Senate of the United States on July 20, 2006. I took my oath of office on August 1, 2006. The jurisdiction of a federal district judge is general in nature and extends to all federal criminal cases and all civil cases in which there is federal subject-matter jurisdiction. Previously, I served as a United States Magistrate Judge in the District of Puerto Rico from 2001 to 2006, by appointment of the district judges. The jurisdiction of a federal magistrate judge is limited to matters that federal district judges may delegate under 28 U.S.C. § 636.

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

I have presided over approximately 2,140 civil and 1,268 criminal cases for a total of 3,408 cases. However, in the District of Puerto Rico criminal indictments frequently include multiple defendants. It is thus, not uncommon for a case to have 20, 30, 40, or more defendants. Accordingly, I conservatively estimate having sentenced approximately 1,900 defendants for whom a separate judgment is entered. Thus, as a District Judge, I have entered over 4,000 separate judgments in civil and criminal cases combined.

- i. Of these cases, approximately what percent were:

As a district judge, I have presided over 62 jury trials of which 37 were criminal and 25 civil. I have also presided over seven bench trials. As a magistrate judge, I estimate having also presided over at least five civil jury trials and approximately 15 criminal misdemeanor bench trials.

jury trials:	95%
bench trials:	5%

- ii. Of these cases, approximately what percent were:

civil proceedings:	40%
criminal proceedings:	60%

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

Please see attached list of opinions. I have searched my files, electronic databases, and reports generated by the Court's electronic filing system (CM/ECF) in an effort to locate all of the opinions that I have written. I found a total of 1,019 opinions, of which more than 650 have been officially reported or published in electronic databases, such as Westlaw or Lexis. Of the total number of opinions, I issued approximately 880 as a district judge and 130 as a magistrate judge. There may be, however, other opinions which I was unable to find.

- 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. *United States v. Commonwealth of Puerto Rico*, 460 F. Supp. 3d 159 (D.P.R. 2020); 437 F. Supp. 3d 139 (D.P.R. 2020), *amended*, 456 F. Supp. 3d 347 (D.P.R. 2020); 398 F. Supp. 3d 1 (D.P.R. 2019); 922 F. Supp. 2d 185 (D.P.R. 2013)

On December 21, 2012, the United States, represented by the Department of Justice, filed suit against the Commonwealth of Puerto Rico and its police department pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, alleging that the Puerto Rico Police engaged in a pattern and practice of violating the First, Fourth, and Fourteenth Amendments to the Constitution. The parties submitted an Agreement for the Sustainable Reform of the Puerto Rico Police Department. This is, to date, the most comprehensive federal police reform consent decree in the Nation and addresses eleven areas such as professionalization, training, searches and seizures, profiling, and use of



force. The case is still ongoing, and I have appointed a Monitor and Special Master. I regularly hold public hearings and status conferences, as well as conduct on-site visits.

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César Miranda

(Previously Attorney General, Commonwealth of Puerto Rico (2013 – 2016)  
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2. *United States v. Commonwealth of Puerto Rico*, 2020 WL 7024358 (D.P.R. Aug. 11, 2020); 2020 WL 2305295 (D.P.R. May 7, 2020); 26 F. Supp. 3d 139 (D.P.R. 2014)

In 1999, the United States Department of Justice and the Commonwealth of Puerto Rico entered into a consent decree, as amended over time, to safeguard the rights of several hundred mentally disabled individuals under state parens patriae. These persons, under the United States Supreme Court's opinion in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999) and the Americans with Disabilities Act (ADA), 41 U.S.C. § 12101, *et seq.*, must transition from institutionalized settings to community ones. An appointed federal monitor oversees compliance and files reports to the Court. The Commonwealth, over the years, has never achieved sustained compliance. Issues such as institutionalization, overmedicalization, and inadequate program and provider resources persist. As a result, I have held numerous public hearings, conferences, and on-site visits. I also have had to take remedial measures, including a finding of civil contempt against the Commonwealth.

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3. *Watchtower Bible Tract Soc. of N.Y., Inc. v. Mun. of Ponce*, 197 F. Supp. 3d 340 (D.P.R. 2016)

In 2004, Watchtower Bible Tract Society brought suit against eight municipalities and gated communities seeking declaratory and injunctive relief under 42 U.S.C. § 1983 and the First Amendment for violation to the right to free speech and exercise of religion. Watchtower argued that the Commonwealth's Controlled Access Law deprived Jehovah's Witnesses of the constitutional right to profess their faith in public streets within gated communities. The late Judge Jaime Pieras, Jr. held that the Controlled Access Law was constitutional and thus, did not violate the First Amendment. This ruling was appealed and during the pendency of the same Judge Pieras died. I then substituted for him in presiding over the case. The United States Court of Appeals for the First Circuit affirmed Judge Pieras's ruling holding that the Controlled Access Law was constitutional on its face, but found that the law was unconstitutional as applied to public streets within, manned and unmanned gated communities. On remand, I issued a permanent injunction requiring all 78 island municipalities (which had been subsequently included as defendants) to ensure that Jehovah's Witnesses could access all public streets within gated urbanizations. I further issued an opinion holding that streets in a particular gated urbanization were public, hence covered by my injunction. I have also issued rulings involving other municipalities which failed to comply with the injunction and remedial scheme detailed therein. Following this, all defendant municipalities have complied with the constitutional remedial scheme. Other citations for officially reported or published opinions in this case are: *Watchtower Bible Tract Soc. of N.Y., Inc. v. Mun. of Santa Isabel*, Civil No. 04-1452, 2013 WL 1856331 (D.P.R. Mar. 21, 2013), *aff'd in part, vacated in part, remanded sub nom. Watchtower Bible Tract Soc. of N.Y., Inc. v. Mun. of San Juan*, 773 F.3d 1 (1st Cir. 2014), *cert. denied*, 135 S. Ct. 2395 (2015); *Watchtower Bible Tract Soc. of N.Y., Inc. v. Mun. of Santa Isabel*, 982 F. Supp. 2d 127 (D.P.R. 2013); *Watchtower Bible Tract Soc. of New York, Inc. v. Mun. of Santa Isabel*, 869 F. Supp. 2d 215 (D.P.R. 2012).

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4. *United States v. Castro-Correa*, Crim. No. 16-153 (PG-GAG)

Mr. Castro-Correa was indicted for violating 7 U.S.C. § 2156(b) by unlawfully possessing and training dogs for fighting purposes. Following trial, a jury found Mr. Castro-Correa guilty of this charge and he was sentenced to 21 months of imprisonment. This case was the first federal prosecution of dog fighting in the District of Puerto Rico.

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Counsel for Defendant:  
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5. *United States v. Martínez Hernández*, Crim. No. 15-075 (GAG-BJM)

This case involved a nine-defendant indictment charging Mr. Martínez Hernández and other defendants with the murder for hire of Lieutenant Albarati, a Federal Bureau of Prisons correctional officer. All defendants entered guilty pleas, except Mr. Martínez Hernández who stood trial. The trial lasted three weeks, given the complexity of establishing that Mr. Martínez Hernández, while serving a prior federal sentence, orchestrated the murder from within the penal institution. Approximately 20 witnesses testified, including multiple cooperators. Throughout trial, I had to make evidentiary rulings regarding such testimonies on a daily basis. The jury convicted Mr. Martínez Hernández and he was sentenced to mandatory life imprisonment.

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6. *Bouret Echevarria et al. v. Caribbean Aviation Maint. Corp. et al.*, 845 F. Supp. 2d 467 (D.P.R. 2012); 841 F. Supp. 2d 588 (D.P.R. 2012); 841 F. Supp. 2d 565 (D.P.R. 2012); 839 F. Supp. 2d 467 (D.P.R. 2012); 839 F. Supp. 2d 464 (D.P.R. 2012); *Echevarria v. Robinson Helicopter Co.*, 824 F. Supp. 2d 275 (D.P.R. 2011)

Plaintiffs brought this action seeking compensatory damages against Caribbean Aviation Maintenance Corporation and others under Puerto Rico tort law for damages arising out of the death of Mr. Vidal González. On November 12, 2008, a helicopter carrying Mr. Vidal González went out of control while attempting to land. Trial lasted for approximately one month and involved multiple evidentiary rulings regarding expert testimony as to design defect, negligent manufacture, and negligent maintenance. The reported opinions address evidentiary issues such as the admissibility of expert testimonies and economic loss assessment reports. A jury found in favor of defendants as to all claims.

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Tim A. Goetz  
Tim A. Goetz, Attorney at Law  
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7. *Banco Popular de P.R., Inc. v. Latin American Music Co., Inc.*, Civil No. 01-1142, 2010 WL 2900366 (D.P.R. July 21, 2010), *aff'd sub nom. Banco Popular de P.R. v. Asociación de Compositores y Editores de Música Latinoamericana (ACEMLA)*, 678 F.3d 102 (1st Cir. 2012); *Banco Popular de P.R., Inc. v. Latin Am. Music Co., Inc.*, 685 F. Supp. 2d 259 (D.P.R. 2010)

This case involved multiple copyright ownership claims as to traditional Puerto Rican songs, including recordation of their assignment contracts. A bench trial to determine ownership of various songs was held as well as a separate jury trial regarding infringement and damages. Following the bench trial, I found that several particular songs were not validly assigned. A jury subsequently found that copyright infringement took place, but awarded nominal damages.

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8. *Marrero Hernández v. Esso Standard Oil Co. (P.R.)*, 600 F. Supp. 2d 325 (D.P.R. 2009); 599 F. Supp. 2d 175 (D.P.R. 2009); 597 F. Supp. 2d 272 (D.P.R. 2009); 571 F. Supp. 2d 305 (D.P.R. 2008); 453 F. Supp. 2d 374 (D.P.R. 2006); 429 F. Supp. 2d 469 (D.P.R. 2006); 321 F. Supp. 2d 301 (D.P.R. 2004)

In this case approximately 100 residents of La Vega Ward, Barranquitas, Puerto Rico brought an environmental action against Esso Standard Oil Co. for an extensive gasoline storage tank underground spill alleging violations of federal and state environmental laws, including the Clean Water Act, the Resource

Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation, and Liability Act. This was the first case in the Nation in which a Clean Water Act claim was tried before a jury. As a threshold matter, I issued an opinion addressing why the Seventh Amendment required a jury trial in this case: *Marrero Hernández v. Esso Standard Oil Co. (P.R.)*, 599 F. Supp. 2d 175 (D.P.R. 2009). Following a jury verdict of liability, the case was settled.

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9. *United States v. Heredia Ortiz*, Crim. No. 08-330 (GAG)

This case involved the prosecution of 40 defendants stemming from a drug and weapons conspiracy indictment. Specifically, defendants were charged in a six-count indictment with conspiracy to distribute controlled substances as well as to possess firearms in furtherance thereof; aiding and abetting in the distribution of multiple controlled substances; possession of firearms, and forfeiture. After most defendants entered pleas, four stood trial. The same lasted one month and involved approximately 20 witnesses, including cooperators. During the course of the trial I made multiple evidentiary rulings, the most important being the admissibility of co-conspirator statements and cooperator testimony. A jury found all four defendants guilty as to all counts.

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10. *Reyes Cañada v. Rey Hernández*, 411 F. Supp. 2d 53 (D.P.R. 2006); 233 F.R.D. 238 (D.P.R. 2005); 224 F.R.D. 46 (D.P.R. 2004); 221 F.R.D. 294 (D.P.R. 2004); 340 F. Supp. 2d 142 (D.P.R. 2004); 326 F. Supp. 2d 255 (D.P.R. 2004); 286 F. Supp. 2d 174 (D.P.R. 2003); 193 F. Supp. 2d 409 (D.P.R. 2002)

This First Amendment civil rights action seeking compensatory and punitive damages was brought by 16 plaintiffs against the Secretary of Education of Puerto Rico for alleged adverse employment actions against them based on their political affiliation. The trial lasted for approximately one month and involved multiple evidentiary issues, particularly as to circumstantial evidence of politically discriminatory animus. The reported opinions in this case address the awarding of attorney's fees, discovery and evidentiary issues, the denial of a summary judgment motion, a motion to disqualify counsel, and whether plaintiffs were in fact career or trust public employees. A jury found in favor of plaintiffs and awarded each of them damages.

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

1. *P.R. Ass'n of Mayors v. Vélez-Martínez*, 482 F. Supp. 3d 1 (D.P.R. 2020)

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2. *López-Correa v. United States*, Civil No. 18-1930, 2020 WL 5074412 (D.P.R. Aug. 27, 2020)

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3. *Club Gallístico de P.R. Inc. v. United States*, 414 F. Supp. 3d 191 (D.P.R. 2019), *aff'd sub nom. Hernández-Gotay v. United States*, 985 F.3d 71 (1st Cir. 2021)

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4. *United States v. Vaello-Madero*, 356 F. Supp. 3d 208 (D.P.R. 2019), *aff'd on other grounds*, 956 F.3d 12 (1st Cir. 2020), *cert. granted*, 20-303, 141 S.Ct. 1462 (U.S. Mar. 1, 2021)

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5. *Watchtower Bible Tract Soc. of N.Y., Inc. v. Mun. of Ponce*, 197 F. Supp. 3d 340 (D.P.R. 2016)

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6. *United States v. Rivera-Hernández*, 155 F. Supp. 3d 137 (D.P.R. 2015), *aff'd sub nom. United States v. Vega-Martínez*, 949 F.3d 43 (1st Cir. 2020)

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7. *Situ v. O'Neill*, 124 F. Supp. 3d 34 (D.P.R. 2015)

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8. *Hoff v. Popular, Inc.*, 727 F. Supp. 2d 77 (D.P.R. 2010)

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9. *Marrero Hernández v. Esso Standard Oil Co. (P.R.)*, 599 F. Supp. 2d 175 (D.P.R. 2009)

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10. *Ramos v. P.R. Med. Examining Bd.*, 491 F. Supp. 2d 238 (D.P.R. 2007)

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

My research has found that Supreme Court has granted certiorari in one of my cases. The matter is currently pending before the Supreme Court:

*United States v. Vaello-Madero*, 356 F. Supp. 3d 208 (D.P.R. 2019), *aff'd on other grounds*, 956 F.3d 12 (1st Cir. 2020), *cert. granted*, 20-303, 141 S. Ct. 1462 (U.S. Mar. 1, 2021)

My research has found that a party requested certiorari in the following other cases of mine:

*Ortiz-Torres v. United States*, Case Nos. 15-23-22 & 19-1031, *aff'd*, 873 F.3d 346 (1st Cir. 2017), *cert. denied*, 141 S. Ct. 865 (U.S. Nov. 2020)

*United States v. Santiago*, Crim. No. 18-1802, *aff'd*, 947 F.3d 1 (1st Cir. 2020), *cert. denied*, 140 S. Ct. 2818 (U.S. May 26, 2020)

*United States v. Pagán-Romero*, Crim. No. 16-1396, *aff'd*, 894 F.3d 441 (1st Cir. 2018), *cert. denied*, 139 S. Ct. 391 (U.S. Oct. 15, 2018)

*United States v. Díaz-Rosado*, Crim. No. 15-1010, *aff'd*, 857 F.3d 116 (1st Cir. 2017), *cert. denied*, 138 S. Ct. 270 (U.S. Oct. 2, 2017)

*United States v. Amaro-Santiago*, Crim. No. 14-2065, *aff'd*, 824 F.3d 154 (1st Cir. 2016), *cert. denied*, 137 S. Ct. 142 (U.S. Oct. 3, 2016)

*United States v. Maymi-Maysonet*, Crim. No. 14-2183, *aff'd*, 812 F.3d 233 (1st Cir. 2016), *cert. denied*, 137 S. Ct. 100 (U.S. Oct. 3, 2016)

*United States v. Vélez-Soto*, Crim. No. 13-1885, *aff'd*, 804 F.3d 75 (1st Cir. 2015), *cert. denied*, 577 U.S. 1110 (2016)

*United States v. Torres-Colón*, Crim. No. 14-1563, *aff'd*, 790 F.3d 26 (1st Cir. 2015), *cert. denied*, 577 U.S. 882 (2015)

*United States v. Díaz-Castro*, Crim. No. 12-2038, *aff'd*, 752 F.3d 101 (1st Cir. 2014), *cert. denied*, 574 U.S. 1103 (2015)

*Watchtower Bible Tract Soc. of N.Y., Inc v. Mun. of Santa Isabel*, Civil No. 04-1452, 2013 WL 1856331 (D.P.R. Mar. 21, 2013), *aff'd in part, vacated in part, remanded sub nom. Watchtower Bible Tract Soc. of N.Y., Inc v. Mun. of San Juan*, 773 F.3d 1 (1st Cir. 2014), *cert. denied*, 575 U.S. 1037 (2015)

*United States v. Santos-Rivera*, Crim. Nos. 10-1687, 10-1931, 10-2155, *aff'd*, 726 F.3d 17 (1st Cir. 2013), *cert. denied*, 571 U.S. 1226 (2014)

*V. Suárez & Co., Inc. v. Bacardi Int'l Ltd.*, 826 F. Supp. 2d 433 (D.P.R. 2011), *rev'd*, 719 F.3d 1 (1st Cir. 2013), *cert. denied*, 571 U.S. 1024 (2013)

*Consejo de Salud de la Comunidad de la Playa de Ponce, Inc. v. González-Feliciano*, Civil Nos. 11-1121, 11-1126, 11-1733, *aff'd in part, remanded in part*, 695 F.3d 83 (1st Cir. 2012), *cert. denied*, 571 U.S. 816 (2013)

*United States v. Ayewoh*, Crim. No. 07-00467, 2009 WL 10690822 (D.P.R. Jan. 8, 2009), *aff'd*, 627 F.3d 914 (1st Cir. 2010), *cert. denied*, 565 U.S. 836 (2011)

*Monteagudo v. Asociación de Empleados del Estado Libre Asociado de Puerto Rico*, Civil No. 03-2357, 2007 WL 2245944 (D.P.R. Aug. 2, 2007), *aff'd*, 554 F.3d 164 (1st Cir. 2009), *cert. denied*, 558 U.S. 821 (2009)

*Rodríguez-García v. Miranda-Marín*, Civil Nos. 08-2319, 08-2320, *aff'd*, 610 F.3d 756 (1st Cir. 2010), *cert. denied*, 562 U.S. 1180 (2011)

- 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.

As stated above, as a United States District Judge I have presided over approximately 2,140 civil and 1,268 criminal cases for a total of 3,408. However, in the District of Puerto Rico criminal indictments frequently include multiple defendants. It is thus, not uncommon for a case to have 20, 30, 40, or more defendants. Accordingly, I have entered over 4,000 separate judgments in civil and criminal cases combined. Through a review of my own records and searching my cases, using query language devised for this purpose or the Court's electronic case filing system (CM/ECF), I have identified 24 decisions in which the First Circuit has reversed or partially reversed my judgments; 27 decisions in which the First Circuit has vacated and/or remanded my judgments, and four decisions in which the First Circuit has affirmed my judgment, while criticizing my substantive rulings. Similarly, I have identified six decisions in which the District Court rejected or partially rejected my Report and Recommendation, issued while I served as a Magistrate Judge.

1. The First Circuit reversed or partially reversed my decision in the following 24 cases.

*United States v. Muñiz-López*, Crim. No. 10-244-45, Judg., Docket No. 5384 (D.P.R. Dec. 27, 2018), *rev'd and remanded*, 977 F.3d 55 (1st Cir. 2020). Copy supplied. The defendant's sentence was reversed and remanded because at sentencing I imposed conditions of supervised release based on a probable cause finding that rested in part on a complaint written in Spanish and no English translation was in the record.

*In re Reyes-Colón*, Civil 16-2638, 2017 WL 6365433 (D.P.R. Aug. 9, 2017), *rev'd*, 922 F.3d 13 (1st Cir. 2019). In this case, I reversed a bankruptcy court's dismissal order and remanded the case finding that the involuntary petition did not need three or more petitioning creditors. On appeal, the banks claimed that the involuntary debtor had waived several arguments. The First Circuit held that the involuntary debtor did not waive his ability to argue that the bankruptcy court correctly dismissed his petition. Thus, the First Circuit directly reviewed and affirmed the bankruptcy court's decision. As such, my ruling was reversed because the three or more petitioning creditors were indeed eligible.

*Río Grande Comm. Heal v. Commonwealth of Puerto Rico*, Civil No. 03-1640, Order, Docket No. 1123 (D.P.R. July 11, 2018), *rev'd and remanded sub nom. Mun. of San Juan v. Puerto Rico*, 919 F.3d 565 (1st Cir. 2019). Copy supplied. In this case I ruled that under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), an automatic stay did not apply to certain proceedings held to determine the amount of federal court-ordered payments that the Commonwealth owes to several federally qualified health centers ("FQHCs") as per a 2010 injunction I had entered. The First Circuit reversed and remanded concluding that the litigation was subject to the PROMESA automatic stay.

*United States v. Colón*, 213 F. Supp. 3d 297 (D.P.R. 2016), *rev'd and vacated sub nom. United States v. Santiago-Colón*, 917 F.3d 43 (1st Cir. 2019). Because Puerto Rico and the United States constitute a single sovereign for purposes of the Double Jeopardy Clause, I suppressed identification evidence based on a final Puerto Rico court determination. The First Circuit held that that suppression of evidence by a Puerto Rico court does not require a federal court to suppress that same evidence unless federal prosecutors were a party or were in privity with a party to the suppression hearing in the Puerto Rico court.

*Cortés-Ramos v. Sony Corp. of Am.*, Civil No. 14-1578, 2016 WL 6537631 (D.P.R. Nov. 2, 2016), *rev'd*, 889 F.3d 24 (1st Cir. 2018). My post-judgment ruling awarding attorney's fees was reversed because the defendants did not qualify as "prevailing parties" under the Copyright Act.

*López-Erquicia v. Weyne-Roig*, Civil No. 13-1915, 2015 WL 5330384 (D.P.R. Sept. 14, 2015), *rev'd and remanded*, 846 F.3d 480 (1st Cir. 2017). My ruling denying qualified immunity was reversed on appeal.

*Guadalupe-Báez v. Police Officers A-Z*, Civil No. 13-1529, 2014 WL 4656663 (D.P.R. Sept. 17, 2014), *aff'd in part, rev'd in part sub nom. Guadalupe-Báez v. Pesquera*, 819 F.3d 509 (1st Cir. 2016). My ruling dismissing supervisory liability claims in a Section 1983 action was affirmed in part and reversed in part. The First Circuit held that the complaint pleaded sufficient facts for the supervisory claims to go forward.

*Martínez-Rivera v. Puerto Rico*, Civil No. 11-1184, 2011 WL 5844533 (D.P.R. Nov. 21, 2011), *aff'd in part, rev'd in part and remanded sub nom. Martínez-Rivera v. Commonwealth of Puerto Rico*, 812 F.3d 69 (1st Cir. 2016). My ruling was affirmed in part, reversed in part, and remanded given that the right to sue letter requirement in an Americans with Disabilities Act claim is mandatory, but not a jurisdictional prerequisite, and hence may be waived.

*Batista v. Cooperativa de Vivienda Jardines de San Ignacio*, Civil No. 10-1953, 2013 WL 2123487 (D.P.R. May 15, 2013), *aff'd in part, rev'd in part and remanded*, 776 F.3d 38 (1st Cir. 2015). My summary judgment ruling in this Fair Housing Act case was affirmed in part, reversed in part, and remanded as to plaintiff's retaliation claim.

*OMJ Pharm., Inc. v. United States*, Civil No. 11-1312, 2012 WL 5197238 (D.P.R. Oct. 19, 2012), *rev'd and remanded*, 753 F.3d 333 (1st Cir. 2014). This was a case of first impression as to the effect on a United States taxpayer's credit cap of a sale of a line of business in Puerto Rico to a foreign corporation that does not pay United States corporate income taxes. I ruled in favor of the government which argued that regardless of whether the purchaser of a line of business could increase or establish a credit cap, a seller was required to reduce its own cap by the amount associated with the line of business. The First Circuit held that the controlling provisions of the Internal Revenue Code require otherwise, and thus reversed and remanded with instructions to enter summary judgment in plaintiff's favor.

*Bonilla v. Federación de Ajedrez de P.R., Inc.*, 832 F. Supp. 2d 108 (D.P.R. 2011), *aff'd in part, rev'd in part, and remanded sub nom. Ortiz-Bonilla v. Federacion de Ajedrez de P.R., Inc.*, 734 F.3d 28 (1st Cir. 2013). In this case I consolidated two cases brought by chess players against a chess federation in Puerto Rico courts that were removed to federal court. My ruling was affirmed in part, reversed in part, and remanded because I did not have jurisdiction over the second suit but was not barred from presiding over the first suit.

*García-Rubiera v. Fortuño*, 873 F. Supp. 2d 421 (D.P.R. 2012), *rev'd in part, vacated in part sub nom. García-Rubiera v. Fortuño*, 727 F.3d 102 (1st Cir.

2013). My order that the Commonwealth notify individual vehicle owners of their reimbursement rights, publish information regarding the reimbursement procedure in two newspapers, and allow at least 120 days for vehicle owners to claim the reimbursements to which they are entitled was reversed. The First Circuit remanded the case with instructions to craft, with the benefit of further guidance, an injunction that more fittingly remedied the Commonwealth's constitutional violations. It also reversed my denial of plaintiffs' request for an award of interim attorneys' fees.

*V. Suárez & Co., Inc. v. Bacardí Intern. Ltd.*, 826 F. Supp. 2d 433 (D.P.R. 2011), *rev'd*, 719 F.3d 1 (1st Cir. 2013). My ruling dismissing the case for lack of subject-matter jurisdiction was reversed and remanded.

*Consejo de Salud de la Comunidad de la Playa de Ponce, Inc. v. González-Feliciano*, Civil No. 06-1260, Order, Docket No. 743 (D.P.R. Nov. 8, 2010), *aff'd in part, rev'd in part and remanded*, 695 F.3d 83 (1st Cir. 2012). Copy supplied. My ruling was affirmed in part, reversed in part and remanded in order to further clarify the formula for calculating Medicaid reimbursement payments I applied in issuing a preliminary injunction.

*Rodríguez-Ramos v. Hernández-Gregorat*, 660 F. Supp. 2d 220 (D.P.R. 2009), *aff'd in part, rev'd in part*, 685 F.3d 34 (1st Cir. 2012). My ruling was affirmed in part, vacated in part, and remanded with instructions to allow plaintiff to amend his complaint to assert facts in support of his claim.

*García-Rubiera v. Fortuño*, 752 F. Supp. 2d 180 (D.P.R. 2010), *aff'd in part, rev'd in part, and remanded*, 665 F.3d 261 (1st Cir. 2011). My ruling was affirmed in part, vacated in part, and remanded because I held that a challenged motor vehicle insurance liability law did not violate the Due Process Clause. The First Circuit ruled that it did.

*García-Rubiera v. Flores-Galarza*, 516 F. Supp. 2d 180 (D.P.R. 2007), *aff'd in part, rev'd in part sub nom. García-Rubiera v. Calderón*, 570 F.3d 443 (1st Cir. 2009). My ruling was affirmed in part, reversed in part, and remanded with instructions to certify the putative class and consider plaintiff's Due Process claims.

*Rivera v. Miranda*, 376 B.R. 382 (D.P.R. 2007), *rev'd sub nom. In re Acosta-Rivera*, 557 F.3d 8 (1st Cir. 2009). My ruling that the bankruptcy court lacked the authority to enter an order excusing non-disclosure after the time for a filing has expired was reversed given that the bankruptcy court has discretion to enter said order.

*Concilio de Salud Integral de Loíza v. Pérez Perdomo*, 479 F. Supp. 2d 247 (D.P.R. 2007), *rev'd and remanded sub nom. Concilio de Salud Integral de Loíza, Inc. v. Pérez-Perdomo*, 551 F.3d 10 (1st Cir. 2008). In this case I vacated a



preliminary injunction I had issued previously and dismissed claims on grounds of mootness based on my finding that defendant's actions (setting up an office to make Medicaid payments) were sufficient to comply with federal law. The First Circuit reversed, finding this to be insufficient.

*Velázquez Linares v. United States*, Civil No. 08-1267, Judg., Docket No. 3 (D.P.R. Mar. 24, 2008), *rev'd*, 546 F.3d 710 (1st Cir. 2008). Copy supplied. In this case I dismissed plaintiff's complaint without prejudice and imposed a mandatory sanction of \$150 for failing to comply with an institutional Court Standing Order. The First Circuit held that the long-standing case filing order was uncertain in its terms and, thus, reversed the dismissal.

*Puerto Ricans for Puerto Rico Party v. Dalmau*, 517 F. Supp. 2d 601 (D.P.R. 2007), *vacated*, 544 F.3d 58 (1st Cir. 2008); *Puerto Ricans For Puerto Rico Party v. Dalmau*, 517 F. Supp. 2d 604 (D.P.R. 2007), *rev'd*, 544 F.3d 58 (1st Cir. 2008). My rulings dismissing this action were vacated, reversed, and remanded because I did not order defendants to file a certified translation of the Puerto Rico Supreme Court opinion that their motion relied on.

*United States v. Uribe-Londono*, Crim. No. 00-92, Order, Docket No. 255, (D.P.R. July 18, 2006), *rev'd and remanded*, 238 F. App'x 628 (1st Cir. 2007) (per curiam). Copy supplied. My ruling denying the petitioner's request to return seized property following his conviction was reversed and remanded as I could not rely on the government's unsworn assertions that the property was "inextricably intertwined" with the underlying offense.

*Rodríguez-García v. Mun. of Caguas*, Civil No. 01-2525, Order, Docket No. 166 (D.P.R. May 4, 2005), *aff'd in part, rev'd in part*, 495 F.3d 1 (1st Cir. 2007). Copy supplied. My ruling dismissing one the defendants at trial was vacated and remanded because I excluded letters when they should not have been.

*Río Grande Comm. Heal v. Commonwealth of Puerto Rico*, Civil No. 03-1640, Order, Docket No. 447, (D.P.R. Dec. 28, 2006), *rev'd and remanded sub nom. Dr. José Belaval, Inc. v. Pérez-Perdomo*, 488 F.3d 11 (1st Cir. 2007). Copy supplied. My ruling dismissing Medicaid reimbursements claims based on the unclean hands doctrine was reversed. The First Circuit held that plaintiff's misconduct in another suit was not sufficiently related to the present reimbursement suit for the doctrine to apply.

2. The First Circuit vacated and/or remanded my decision in the following 27 cases.

*Colón-Torres v. Negrón-Fernández*, Civil No. 14-1300, 2018 WL 2208053 (D.P.R. May 14, 2018), *vacated and remanded sub nom.* 2021 WL 1850555 (1st Cir. May 10, 2021). My order directing payment by an individual capacity civil rights defendant pursuant to a settlement agreement was reversed. In a matter of

first impression, the First Circuit held that the Puerto Rico Oversight, Management and Economic Stability Act (PROMESA) stays actions against individual capacity government defendants.

*Pagán-Lisboa v. Soc. Sec. Administration*, Civil No. 18-1830, Order & Judg., Docket Nos. 43 and 85 (D.P.R. June 19, 2019) (D.P.R. Feb. 28, 2020), *aff'd in part, vacated in part, remanded*, 2021 WL 1573786 (1st Cir. Apr. 22, 2021). Copy supplied. In this case, I dismissed the case for lack of jurisdiction over all of plaintiffs' claims except one as to her action under 42 U.S.C. § 405(g) and for failure to state a claim. As a result, I decided the case should be treated as a social security appeal and remanded it for further administrative proceedings. The First Circuit affirmed the judgment, but vacated my dismissal. It remanded the case for the limited purpose that I accept an amended complaint and then enter a new judgment remanding said plaintiff's case for a new administrative proceeding.

*United States v. González-Flores*, Crim. No. 16-147, Order & Judg., Docket Nos. 54 and 67 (D.P.R. May 30, 2018), *aff'd and remanded*, 988 F.3d 100 (1st Cir. 2021). Copies supplied. In this case, the sentence imposed was affirmed, but the First Circuit remanded to give defense counsel access to the written Statement of Reasons (SOR).

*Borges v. El Conquistador Partn.*, 280 F. Supp. 3d 295 (D.P.R. 2017), *aff'd in part, vacated in part, remanded sub nom. Nieves-Borges v. El Conquistador Partn., L.P., S.E.*, 936 F.3d 1 (1st Cir. 2019). My summary judgment ruling in favor of defendant-employer was affirmed in part, vacated in part, and remanded. The dismissal of the Title VII retaliation claim was affirmed, while that of hostile work environment was vacated.

*Pagán-González v. Moreno*, 202 F. Supp. 3d 220 (D.P.R. 2016), *aff'd in part, vacated in part sub nom.* 919 F.3d 582 (1st Cir. 2019). This civil case was filed following the voluntary dismissal of child pornography charges against plaintiff. Before me, the plaintiff asserted Fourth Amendment and malicious prosecution claims against the law enforcement agents. I granted defendants' motion to dismiss reasoning that plaintiffs' Fourth Amendment claims were time-barred. The ruling was affirmed in part, vacated in part, and remanded because the limitations period for the action did not commence until plaintiff learned that he had been deceived by defendants, who did not enjoy qualified immunity.

*United States v. Lawson*, Crim. No. 15-392, Judg., Docket No. 39 (D.P.R. Sept. 12, 2016), *vacated and remanded*, 891 F.3d 407 (1st Cir. 2018). Copy supplied. My ruling was vacated and remanded because I lacked jurisdiction to subsequently vacate, alter, or revise a criminal sentence which I previously imposed.

*Ortiz-Rivera v. United States*, 203 F. Supp. 3d 216 (D.P.R. 2016), *vacated and remanded*, 891 F.3d 20 (1st Cir. 2018). My ruling was vacated and remanded

because I considered an incomplete record when dismissing Federal Tort Claims Act claims on the ground that these had not been timely presented to the appropriate federal agency.

*United States v. Torres-Rivera*, Crim. No. 10-244, Judg., Docket No. 4619 (D.P.R. Aug. 5, 2015), *vacated and remanded*, 874 F.3d 40 (1st Cir. 2017). Copy supplied. In this case, I denied a motion to reduce sentence based on amendments to Sentencing Guidelines. On appeal, my ruling was vacated, and remanded for the limited purpose that I review and consider defendant's clarified prison record.

*United States v. Mercado-Flores*, 109 F. Supp. 3d 467 (D.P.R. 2015), *adhered to*, 124 F. Supp. 3d 55 (D.P.R. 2015), *and vacated*, 872 F.3d 25 (1st Cir. 2017). In this case, I vacated the sentence I originally imposed on the ground that the statute of conviction did not apply to purely intrastate criminal conduct committed within the Commonwealth of Puerto Rico. The First Circuit reversed and held that I lacked jurisdiction to vacate the sentence. In a subsequent opinion, *United States v. Maldonado-Burgos*, 844 F.3d 339 (1st Cir. 2016), the First Circuit did, however, hold that said statute was inapplicable within the Commonwealth of Puerto Rico.

*González-Oyarzun v. Caribbean City Builders, Inc.*, 27 F. Supp. 3d 265 (D.P.R. 2014), *vacated and remanded*, 798 F.3d 26 (1st Cir. 2015) (per curiam). In this case I dismissed an employment dispute based on a valid forum selection clause and issued a declaratory judgment stating that the Seventh Amendment requires Commonwealth of Puerto Rico courts to provide civil litigants with a jury trial. My ruling was vacated and remanded because Supreme Court precedent had not extended the Seventh Amendment to the States.

*United States v. Dávila-Ruiz*, Crim. No. 13-305, Order, Docket Nos. 38 and 40 (D.P.R. Dec. 11, 2013) (D.P.R. Dec. 13, 2013), *vacated and remanded*, 790 F.3d 249 (1st Cir. 2015). Copy supplied. My ruling denying defendant's motion to withdraw her guilty plea was vacated given that she so moved before I accepted the plea.

*United States v. Cordero-Rosario*, Crim. No. 11-556, Order & Judg., Docket Nos. 54 and 114 (D.P.R. July 3, 2012) (D.P.R. Nov. 21, 2013), *vacated and remanded*, 786 F.3d 64 (1st Cir. 2015). Copies supplied. In this case, I denied a motion to suppress. On appeal, this ruling was vacated and remanded so that I could determine whether consent to search a computer was tainted by earlier unlawful searches.

*Bouret Echevarría v. Caribbean Aviation Maint. Corp.*, Civil No. 09-2034, 2013 WL 5723260 (D.P.R. Oct. 21, 2013), *vacated*, 784 F.3d 37 (1st Cir. 2015). In this case, eighteen months after the jury returned a verdict, the parties were informed that the verdict was influenced by the jurors' improper knowledge of a confidential settlement offer. I rejected a request for an evidentiary hearing,

pursuant to Federal Rule of Civil Procedure 60(b)(6), to explore the alleged jury taint. The ruling was vacated and remanded for the holding of an evidentiary hearing, which in fact was held and no evidence of jury misconduct was found.

*United States v. Correy*, Crim. No. 95-405-7, Judg., Docket No. 3166, (D.P.R. Oct. 25, 2011), *vacated and remanded*, 773 F.3d 276 (1st Cir. 2014). Copy supplied. My sentence was vacated and remanded with instructions to make further individualized, record-based drug-quantity findings on remand.

*Watchtower Bible Tract Soc. of New York, Inc. v. Municipality of Santa Isabel*, Civil No. 04-1452, 2013 WL 1856331 (D.P.R. Mar. 21, 2013), *aff'd in part, vacated in part, remanded sub nom. Watchtower Bible and Tract Socy. of New York, Inc. v. Municipality of San Juan*, 773 F.3d 1 (1st Cir. 2014), *cert. denied*, 135 S. Ct. 2395 (2015). The First Circuit affirmed my issuance of an injunction, but vacated and remanded for the limited purpose of amending the injunction such that the requirement of compliance within a 24-hour period, only applied on business days.

*United States v. Pizarro*, Crim. No. 95-405-10, Judg., Docket No. 3281 (D.P.R. May 17, 2012), *aff'd in part, vacated, and remanded*, 772 F.3d 284 (1st Cir. 2014). Copy supplied. In this case the criminal conviction was affirmed, but the sentence was vacated for failure to instruct the jury on the element of individualized drug quantity for the aggravated conspiracy count and the element of drug quantity for the aggravated possession count before applying a statutory sentencing range that included a mandatory minimum sentence on each count.

*Medina-Velázquez v. Hernández-Gregorat*, Civil No. 09-1692, Op. & Order, Docket No. 93 (D.P.R. Aug. 27, 2010), *vacated and remanded*, 767 F.3d 103 (1st Cir. 2014). Copy Supplied. The First Circuit held that I erred in granting a motion to dismiss employees' political discrimination claims since Plaintiffs' allegations supported a reasonable inference of knowledge and causation.

*Pérez v. Developers Diversified Realty Corp.*, 904 F. Supp. 2d 156 (D.P.R. 2012), *aff'd in part, vacated in part sub nom. Velázquez-Pérez v. Developers Diversified Realty Corp.*, 753 F.3d 265 (1st Cir. 2014). In this case a male former employee brought an action against his former employer claiming that he was terminated based on the discriminatory actions of a female coworker, who subjected him to a hostile work environment, and retaliated against him for complaining of sexual harassment, in violation of Title VII. I granted summary judgment in favor of the employer. As matter of first impression, the First Circuit ruled that an employer can be held liable under Title VII if the plaintiff's co-worker makes statements maligning the plaintiff, for discriminatory reasons and with the intent to cause the plaintiff's firing; the co-worker's discriminatory acts proximately cause the plaintiff to be fired; and the employer acts negligently by allowing the co-worker's acts to achieve their desired effect though it knows (or reasonably should know) of the discriminatory motivation. My grant of summary

judgment as to the employee's discriminatory termination claim was reversed, however all my other rulings were affirmed.

*Dorpan, S.L. v. Hotel Meliá, Inc.*, 851 F. Supp. 2d 398 (D.P.R. 2012), *vacated and remanded*, 728 F.3d 55 (1st Cir. 2013). My ruling was vacated and remanded as the First Circuit held there existed genuine issues of material fact precluding summary judgment.

*Polanco-Quinoñes v. Astrue*, Civil No. 10-1705, Order, Docket No. 12 (D.P.R. Mar. 21, 2011), *vacated and remanded*, 477 F. App'x 745 (1st Cir. 2012). Copy supplied. My ruling affirming an Administrative Law Judge's denial of Plaintiff's application for social security benefits was vacated so that I could consider a treating psychiatrist's opinion.

*Portugués-Santana v. Rekomdiv Int'l, Inc.*, Civil No. 07-1103, Order, Docket No. 185 (D.P.R. Dec. 22, 2011), *aff'd in part and remanded*, 657 F.3d 56 (1st Cir. 2011). Copy supplied. Following a jury verdict, I awarded damages against defendants and denied their motions for judgment as a matter of law, a new trial, and offset of the damages award by another party's settlement amount. My ruling was remanded for me to determine whether the damages award should be offset by the amount of the settlement between the parties.

*Ocasio-Hernández v. Fortuño-Burset*, 639 F. Supp. 2d 217 (D.P.R. 2009), *vacated and remanded*, 640 F.3d 1 (1st Cir. 2011). Applying the federal notice pleading standard I dismissed a complaint for failing to state a plausible claim for relief. The First Circuit reversed and remanded, finding that the complaint did state a plausible claim of political discrimination.

*Consejo de Salud Playa Ponce v. González-Feliciano*, Civil No. 06-1260, Op. & Order, Docket No. 258 (D.P.R. May 12, 2009), *vacated and remanded sub nom. Concilio de Salud Integral de Loíza, Inc. v. Pérez-Perdomo*, 625 F.3d 15 (1st Cir. 2010). Copy supplied. My ruling denying a request for an injunction ordering Medicaid reimbursements was vacated and remanded. The First Circuit held that, while the formula for Medicaid reimbursements was still subject to reformulation, obligations to pay remained and the claim was not for retroactive relief barred under the Eleventh Amendment.

*Nazario v. Rodríguez*, Civil. 04-195, 2007 WL 1760644 (D.P.R. June 18, 2007), *vacated and remanded sub nom. De Jesús Nazario v. Morris Rodríguez*, 554 F.3d 196 (1st Cir. 2009). My ruling denying post-judgment attorney's fees was vacated and remanded.

*Lee-Barnes v. Puerto Ven Quarry Corp.*, Civil No. 03-2358, Op. & Order, Docket No. 145 (D.P.R. July 31, 2006), *vacated*, 513 F.3d 20 (1st Cir. 2008). Copy supplied. In this case, after defendant declared bankruptcy, I issued an order declaring the prejudgment bond null. The First Circuit vacated my underlying

Rule 54(b) certification because the order failed to meet either the “party” or “claim” requirement; it subsequently dismissed the appeal for want of appellate jurisdiction.

*Reyes Cañada v. Rey Hernández*, Civil No. 01-1542, Judg., Amend. Judg., Op. & Order, Docket Nos. 878 and 904 (D.P.R. Dec. 14, 2005) (D.P.R. Jan. 10, 2006), 411 F. Supp. 2d 53 (D.P.R. 2006), *aff’d in part, vacated and remanded sub nom. Martínez-Vélez v. Rey-Hernández*, 506 F.3d 32 (1st Cir. 2007). Copies supplied. In this case a jury verdict was reached in favor of an employee who filed a political discrimination action. The First Circuit held that the record against a direct supervisor was insufficient to allow judgement against him. The ruling was affirmed in part and reversed in part.

*New Comm Wireless Services, Inc. v. SprintCom, Inc.*, Civil No. 01-2270, Op. & Order, Docket No. 27 (D.P.R. Oct. 29, 2001), *vacated and remanded*, 287 F.3d 1 (1st Cir. 2002). Copy supplied. My ruling granting a motion for preliminary injunction was vacated. The First Circuit held that plaintiff had failed to establish a likelihood of success on the merits for its claims.

3. The First Circuit affirmed my judgment, while criticizing my substantive rulings, in the following four cases below.

*United States v. Vaello-Madero*, 356 F. Supp. 3d 208 (D.P.R. 2019), *aff’d on other grounds*, 956 F.3d 12 (1st Cir. 2020), *cert. granted*, 20-303, 141 S. Ct. 1462 (U.S. Mar. 1, 2021). In this case, I ruled as matter of first impression that the exclusion of United States citizens domiciled in Puerto Rico from the Supplemental Security Income (SSI) program under the Social Security Act violated the Equal Protection clause. My legal reasoning was predicated on the fact that said statute both failed to pass rational basis constitutional muster and discriminated on the basis of a suspect classification based on Hispanic origin. The First Circuit affirmed my decision, but exclusively on the grounds that the statute failed to meet the rational basis standard.

*Fed. Deposit Ins. Corp. v. Estrada-Rivera*, 813 F. Supp. 2d 265 (D.P.R. 2011), *aff’d on other grounds sub nom. F.D.I.C. v. Estrada-Rivera*, 722 F.3d 50 (1st Cir. 2013). I ruled that defendants had failed to timely exhaust the mandatory claims process and thus, lacked subject-matter jurisdiction to entertain their counterclaim. The First Circuit affirmed, but found it unnecessary to delve into the parties’ arguments about compliance, or lack thereof, with the statutory claims procedures. It held that defendants failed to satisfy the constitutional case or controversy requirement.

*Muñoz v. Sociedad Española de Auxilio Mutuo y Beneficiencia de Puerto Rico, Inc.*, Civil No. 05-1463, 2008 WL 11333407 (D.P.R. Oct. 8, 2008); 2008 WL 11333321 (D.P.R. June 10, 2008), *aff’d on other grounds*, 671 F.3d 49 (1st Cir. 2012). In this age discrimination and retaliation case, a jury entered verdict in

physician's favor and awarded damages. During post-trial proceedings, I entered a judgment as a matter of law in favor of plaintiff as to his tort claims. The First Circuit affirmed on other grounds concluding I did not commit plain error.

*Collazo v. Nicholson*, Civil No. 05-1783, 2006 WL 8444611 (D.P.R. Sept. 20, 2006), *aff'd on other grounds*, 535 F.3d 41 (1st Cir. 2008). In this case, I entered summary judgment in favor of defendant because plaintiff failed to meet the burden required to establish a hostile work environment claim. The First Circuit affirmed, but on other grounds because the remedy plaintiff sought (compensatory damages for mental anguish, pain, suffering, humiliation, and loss of enjoyment) was not available under the Age Discrimination in Employment Act (ADEA).

4. The District Court rejected or partially rejected my Report and Recommendation, issued while I served as a Magistrate Judge, in the following six cases below.

*Acavedo v. United Parcel Serv., Inc.*, Civil No. 02-2704, Rep. & Rec., Docket No. 182 (D.P.R. Aug. 23, 2005), *adopted in part and rejected in part*, 2005 WL 8167891 (D.P.R. Nov. 30, 2005). Copy supplied. In this case, I issued a Report and Recommendation recommending summary disposition of plaintiff's age discrimination claim. The District Court approved and adopted all my recommendations, except that pertaining to plaintiffs' termination claim under the ADA requesting a reasonable accommodation.

*Mateo-Espada v. Commonwealth of Puerto Rico*, Civil No. 02-2603, 2005 WL 1640485 (D.P.R. June 30, 2005), *rejected*, Docket No. 81 (D.P.R. July 20, 2005). In this race and gender discrimination case, I recommended that summary judgment be entered in favor of defendant as to a specific retaliation claim only. The District Court rejected my recommendation because material issues of fact precluded summary disposition.

*Ortiz v. Margo Caribe, Inc.*, Civil No. 03-2128, Rep. & Rec., Docket No. 82 (D.P.R. Sept. 29, 2004), *adopted in part and rejected in part*, 2005 WL 2077793 (D.P.R. Aug. 29, 2005), *aff'd sub nom. Rodríguez-Ortiz v. Margo Caribe, Inc.*, 490 F.3d 92 (1st Cir. 2007). Copy Supplied. In this case, I issued a Report and Recommendation regarding defendants' motion to dismiss for failure to state a claim under the Private Securities Litigation Reform Act and the Consolidated Omnibus Budget Reconciliation Act. The District Court adopted all my recommendations, except that regarding the exercise of supplemental jurisdiction as to a state law claim. The district court disagreed with my recommendation that it retain jurisdiction over the state claim as it would predominate over the remaining federal claim.

*Vélez Rivera v. Agosto Alicea*, Civil No. 01-2240, Rep. & Rec., Docket No. 106 (D.P.R. Feb. 19, 2004), *rejected*, 334 F. Supp. 2d 72 (D.P.R. 2004), *aff'd*, 437 F.3d 145 (1st Cir. 2006). Copy supplied. In this political discrimination case, I

recommended the denial of defendants' motion for summary judgment because of the existence of material issues of fact. The District Court held that no factual disputes existed and, thus, entered summary judgment in plaintiffs' favor.

*Sloan Const. Co. v. Am. Renovation and Const. Co.*, Civil No. 02-1751, Rep. & Rec., Docket No. 83 (D.P.R. Feb. 9, 2004), *adopted in part and rejected in part*, 313 F. Supp. 2d 24 (D.P.R. 2004). Copy supplied. In this case I issued a Report and Recommendation recommending the denial of defendants' motion for summary judgment and motion to dismiss because a valid contract existed. The District Court rejected said ruling and held that no contract existed but rather a pre-contractual agreement.

*Las Marias Farm Corp. v. Toledo Fernández*, Civil No. 03-1395, Rep. & Rec., Docket Nos. 47 and 88 (D.P.R. Mar. 29, 2004) (D.P.R. July 7, 2014), *adopted in part and rejected in part*, Docket No. 103. Copies supplied. In both Reports and Recommendations, I concluded that plaintiffs had met their burden pursuant to Rule 12(b)(6) regarding their prima facie case of discrimination and that defendants prematurely raised the qualified immunity defense. As such, I recommended denial of the motions. The District Court adopted all of my recommendations because further discovery needed to take place. However, it rejected my recommendation applying the *Mt. Healthy* defense issue.

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

I estimate that approximately 50% of my decisions and rulings are unpublished. These are stored in court's electronic filing system (CM/ECF) for each case. Most of these opinions entail summary memorandum orders for the issues involved or rulings from the bench, as is common in sentencing hearings.

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

I have searched my files, electronic databases, and the court's electronic filing system (CM/ECF) in an effort to locate all of my significant opinions on federal or state constitutional issues in response to this question. The significant opinions of mine that concern constitutional issues are listed below.

*Rosario v. Fin. Oversight and Mgt. Bd. for Puerto Rico*, Civil No. 20-1307, 2020 WL 7689592 (D.P.R. Dec. 23, 2020)

*López-Correa v. United States*, Civil Case No. 18-1930, 2020 WL 5074412 (D.P.R. Aug. 27, 2020)

*Puerto Rico Assn. of Mayors v. Vélez-Martínez*, Civil No. 20-1405, 2020 WL



4731349 (D.P.R. Aug. 14, 2020), *reconsideration denied*, 482 F. Supp. 3d 1 (D.P.R. 2020)

*Consejo de Salud de P.R., Inc. v. United States*, 450 F. Supp. 3d 103 (D.P.R. 2020), *reconsideration denied*, Civil No. 18-1045, 2020 WL 1934447 (D.P.R. Apr. 22, 2020)

*Club Gallístico de P.R. Inc. v. United States*, 414 F. Supp. 3d 191 (D.P.R. 2019), *aff'd sub nom. Hernández-Gotay v. United States*, 985 F. 3d 71(1st Cir. 2021)

*United States v. Pedro-Vidal*, 371 F. Supp. 3d 57 (D.P.R. 2019)

*United States v. Vaello-Madero*, 356 F. Supp. 3d 208 (D.P.R. 2019), *aff'd on other grounds*, 956 F.3d 12 (1st Cir. 2020), *cert. granted*, 20-303, 141 S. Ct. 1462 (U.S. Mar. 1, 2021)

*United States v. Cordero-Rosario*, 252 F. Supp. 3d 79 (D.P.R. 2017)

*Santana-Rios v. United States*, 235 F. Supp. 3d 386 (D.P.R. 2017)

*Watchtower Bible Tract Soc. of New York, Inc. v. Mun. of Ponce*, 197 F. Supp. 3d 340 (D.P.R. 2016)

*United States v. Quintana*, Crim. No. 16-591-46, Orders, Docket Nos. 536 and 565 (D.P.R. Jun. 9, 2017) (Jun. 29, 2017). Copies supplied. The appeal was voluntarily dismissed.

*Vidal, et al. v. Padilla, et al.*, Civil No. 14-1253, Order & Decl. Judg., Docket Nos. 73 and 76, (D.P.R. Apr. 7, 2016) (Apr. 11, 2016). Copies supplied.

*Morales v. Commonwealth of Puerto Rico*, Crim. No. 15-1096, 2015 WL 4742512 (D.P.R. Aug. 11, 2015)

*United States v. Mercado-Flores*, 312 F. Supp. 3d 249 (D.P.R. 2015)

*United States v. Mercado-Flores*, 109 F. Supp. 3d 467 (D.P.R. 2015), *adhered to*, 124 F. Supp. 3d 55 (D.P.R. 2015), *and vacated*, 872 F. 3d 25 (1st Cir. 2017)

*Toledo-Colón v. Puerto Rico*, 937 F. Supp. 2d 211 (D.P.R. 2013)

*Consejo de Salud Playa de Ponce v. Sec'y of Health of P.R.*, 705 F. Supp. 2d 163 (D.P.R. 2010)

*Rivera v. Díaz*, Civil No. 09-1919, 2010 WL 1542191 (D.P.R. Apr. 15, 2010)

*Consejo de Salud Playa de Ponce v. Rullán*, 586 F. Supp. 2d 22 (D.P.R. 2008)

*United States v. Oquendo-Cedeno*, 531 F. Supp. 2d 224 (D.P.R. 2008)

*United States v. Rodríguez-Pomales*, 500 F. Supp. 2d 51 (D.P.R. 2007)

*Ramos v. P.R. Med. Examining Bd.*, 491 F. Supp. 2d 238 (D.P.R. 2007)

*Broadwell v. Municipality of San Juan*, 312 F. Supp. 2d 132 (D.P.R. 2004)

*United States v. Acevedo-Delgado*, 167 F. Supp. 2d 477 (D.P.R. 2001)

- 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 sat by designation in the United States Court of Appeals for the First Circuit on five occasions, participated in 36 cases, and have issued six opinions to date.

*United States v. Gurry*, Case No. 20-1457

*United States v. Rowan*, Case No. 20-1413

*United States v. Simon*, Case No. 20-1412

*United States v. Lee*, Case No. 20-1411

*United States v. Gurry*, Case No. 20-1410

*United States v. Kapoor*, Case No. 20-1409

*United States v. Kapoor*, Case No. 20-1382

*United States v. Rowan*, Case No. 20-1370

*United States v. Lee*, Case No. 20-1369

*United States v. Simon*, Case No. 20-1368

*Covidien LP v. Esch*, 993 F.3d 45 (1st Cir. 2021). The opinion I authored affirmed the district court's denial of an equitable declaratory judgment following a nine-day jury trial.

*United States v. Rougeau*, 835 F. App'x 613 (1st Cir. 2021)

*Sonoiki v. Harvard University, et al.*, Case No. 20-1689

*N.R. v. Raytheon Company, et al.*, Case No. 20-1639

*Benson v. Wal-Mart Stores East L.P.*, Case No. 20-1495

*Foss v. Marvic*, Case No. 20-1008

*Cason v. Puerto Rico Elec. Power Authority*, 770 F.3d 971 (1st Cir. 2014). The opinion I authored held that the absence of a non-diverse heir in a wrongful death action did not divest the district court of subject-matter jurisdiction where estate members voluntarily withdrew from the action, leaving only non-heirs as parties. The opinion reversed the district court's ruling that the entire case had to be dismissed.

*Acevedo Pérez v. United States*, 768 F.3d 51 (1st Cir. 2014)

*United States v. Felix*, 763 F.3d 105 (1st Cir. 2014)

*United States v. Montañez*, 756 F. 3d 1 (1st Cir. 2014). The opinion I authored affirmed a firearm conviction and sentence over evidentiary challenges regarding a possession count, but reversed the conviction and sentence as to the possession of a firearm in a school zone count.

*Boston Gas Co. v. Century Indemn. Co.*, 588 F.3d 20 (1st Cir. 2009)

*Scottsdale Ins. Co. v. Torres*, 561 F.3d 74 (1st Cir. 2009)

*United States v. Rheault*, 561 F.3d 55 (1st Cir. 2009)

*In re Citigroup*, 535 F.3d 20 (1st Cir. 2008)

*Boston Gas Co. v. Century Indemn. Co.*, 529 F.3d 8 (1st Cir. 2008)

*United States v. Pridgen*, 518 F.3d 87 (1st Cir. 2008). The opinion I authored affirmed a firearm conviction over evidentiary challenges as to statements admitted at trial.

*United States v. Lewis*, 517 F.3d 20 (1st Cir. 2008)

*United States v. Richardson*, 515 F. 3d 74 (1st Cir. 2008). The opinion I authored affirmed the conviction and sentence of a defendant convicted of narcotics and weapons charges.

*Rotinsulu v. Mukasey*, 515 F.3d 68 (1st Cir. 2008)

*Nascimento v. Preferred Mut. Life Ins. Co.*, 513 F.3d 273 (1st Cir. 2008). The opinion I authored affirmed the district court's ruling that under Massachusetts law, a general liability insurance policy did not cover underground storage tank leak damages.

*Alexander v. Brigham and Women's Physicians Organizations Inc.*, 513 F.3d 37 (1st Cir. 2008)

*Lumanauw v. Mukasey*, 258 F. App'x 351 (1st Cir. 2007)

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.

According to reports generated by the Court's electronic case filing system (CM/ECF), I have recused myself *sua sponte*, as a district judge, in 42 civil cases and in one criminal case. I have done so whenever an appearing party or counsel is a former client, close acquaintance, or individual with whom personal contact is frequent. I also disqualify myself from all cases in which one of the universities where I teach appears as a party. All other recusals I decide on a case-by-case basis. The CM/ECF system does not have available information of any recusals for the period I served as a magistrate judge. However, I used the same guiding principles to recuse myself when appropriate.

The United States District Court for the District of Puerto Rico has a recusal list with names of relatives who are attorneys, attorneys who have close ties with me, and companies where a close family member is employed. If any of these individuals appear as a party or counsel in any case, then the system flags these newly assigned cases. The system permits me to identify potential conflicts *ex ante*, and then decide whether to recuse *sua sponte* in a newly assigned case.

I recused myself *sua sponte* in the following 43 cases, for the reasons described below.

I recused myself from *Ruiz-Romero v. Department of Education of the United States of America et al.*, Civil No. 21-1040, because one of the defendants is a university where I teach. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Condado Plaza Acquisition LLC et al v. ROK Acquisitions LLC et al.*, Civil No. 20-1712, because counsel for one of the defendants is a close acquaintance. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned in light of this connection with one of the defendants' counsel and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Díaz-Morales et al v. Universidad de Puerto Rico et al.*, Civil No. 20-01630, because one of the defendants is a university where I teach. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Ramos v. Commonwealth of Puerto Rico*, Civil No. 20-1400, because plaintiff had previously sued me in my official capacity in an unrelated matter. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *D&Z Auction Resellers, LLC et al v. Chinea*, Civil No. 20-1251, because counsel for plaintiff is a close acquaintance. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned in light of this connection with plaintiff's counsel and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Colón-Marín et al v. Presbyterian Community Hospital, Inc. et al*, Civil No. 20-1220, because one of the defendants was my mother's personal physician. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *International Food Service Purchasing Group, Inc. v. Beavers et al.*, Civil No. 20-1162, because counsel for one of the defendants is a close acquaintance. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned in light of this connection with one of the defendants' counsel and that this issue was

incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Ballester Hermanos, Inc. v. Brugal & Ca. C. por A.*, Civil No. 19-02100, because the plaintiff corporation is owned by a close acquaintance. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned in light of this connection with the plaintiff's owner and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *López-Torres v. Universidad Interamericana de Puerto Rico, Inc. et al.*, Civil No. 19-1905, because one of the defendants is a university where I teach. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Pagán-Caraballo et al. v. Puerto Rico Farm Credit, ACA et al.*, Civil No. 19-1649, because one of the counsels for defendant had become senior counsel to the court-appointed monitor in the Puerto Rico Police Reform consent decree case I preside over. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Carrasquillo-González v. Rossello-Nevares et al.*, Civil No. 19-1414, because I currently preside over the Puerto Rico Police Reform consent decree case and the basis for this action occurred during the Reform process. I do not disqualify myself from every case involving the Puerto Rico Police Bureau. I do so on a case-by-case basis. In this particular case, after reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *D&Z Auction Resellers, LLC et al. v. Medi Data Corporation et al.*, Civil No. 19-1242, because counsel for plaintiff is a close acquaintance with whom personal contact is frequent. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned in light of this connection with plaintiff's counsel and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Cruz v. University of Puerto Rico*, Civil No. 18-1575, because one of the defendants is a university where I teach. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality

might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Acevedo-Feliciano et al. v. Archdiocese of San Juan et al.*, Civil No. 18-1060, because several of my high school teachers, with whom I remain close, were plaintiffs in this case. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Ruiz-Colón et al. v. Rodríguez-Eliás et al.*, Civil No. 17-2223, because while working at the Puerto Rico Justice Department two decades ago, I gained personal knowledge of the case during post-conviction proceedings. After reviewing the Code of Conduct for United States Judges, specifically Canons 3(C)(1)(a), (b), and (e), I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Rodríguez-Ramos v. United States*, Civil No. 17-1772, because while serving as a Federal Public Defender more than two decades ago I represented the defendant in the underlying criminal case. After reviewing the Code of Conduct for United States Judges, specifically Canons 3(C)(1)(b) and (e), I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was reassigned to the District Court Judge who currently presides over defendant's criminal case using the Court's Case Assignment System.

I recused myself from *Bautista Cayman Asset Company v. North Bay Development, Inc. et al.*, Civil No. 17-1203, because one of the defendants was my second cousin. After reviewing the Code of Conduct for United States Judges, specifically Canons 3(C)(1)(d), I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *United States v. Pereira-Estrada*, Crim. No. 16-776, because counsel for defendant is a close acquaintance with whom personal contact is frequent. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned in light of this connection with defendant counsel and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *UBS Financial Services, Inc. et al. v. Vizcarrondo et al.*, Civil No. 16-3220, because one of the respondents is a close acquaintance. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Ruiz-Morales v. American Airlines, Inc.*, Civil No. 16-2837 because I personally knew the plaintiff, with whom personal contact is frequent. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Centeno-Návarro v. Caldero-López et al.*, Civil No. 16-2483, because I currently preside over the Puerto Rico Police Reform consent decree case and the basis for this action occurred during the Reform process. I do not disqualify myself from every case involving the Puerto Rico Police Bureau. I do so on a case-by-case basis. In this particular case, after reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Rivera-Díaz v. McConnell Valdés LLC*, Civil No. 16-1680, because I previously worked at the defendant law firm. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Rivera-Astacio et al. v. Commonwealth of Puerto Rico et al.*, Civil No. 15-3181, because I currently preside over the Puerto Rico Police Reform consent decree case and the basis for this action occurred during the Reform process. I do not disqualify myself from every case involving the Puerto Rico Police Bureau. I do so on a case-by-case basis. In this particular case, after reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Quiles-Maldonado v. University of Puerto Rico et al.*, Civil No. 15-03113, because one of the defendants is a university where I teach. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Ruiz-Colón v. Miranda-Rodríguez et al.*, Civil No. 15-01754, because while serving as an attorney at the Puerto Rico Department of Justice, I worked on matters and provided opinions and advice pertaining to the underlying conviction in this case. After reviewing the Code of Conduct for United States Judges, specifically Canons 3(C)(1)(a), (b), and (e), I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.



I recused myself from *Rivera-Santiago et al v. Municipality of Ponce et al.*, Civil No. 15-1731, because I personally knew one of the plaintiffs, with whom personal contact is frequent. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Nicole, Inc. v. Novus, Inc. et al.*, Civil No. 15-1296, because I personally knew and frequently coincided with the owner of the defendant corporation. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Villaman-Santiago et al. v. Presbyterian Community Hospital, Inc. et al.*, Civil No. 15-1057, because I personally knew one of the defendant doctors, with whom personal contact is frequent. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Gelabert-De-Peguerro et al. v. Municipality of San Juan et al.*, Civil No. 14-1812, because I personally knew one of the parties, with whom personal contact is frequent. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Arroyo-Planas et al. v. Lamoutte et al.*, Civil No. 14-1468, because the defendant is a bankruptcy judge with whom I enjoy a close relationship. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The First Circuit ordered that this case be assigned to District Court Judge not sitting in the District of Puerto Rico.

I recused myself from *Fernández et al. v. UBS AG et al.*, Civil No. 14-1441, because at the time one of my close family members had a pending claim against one of the defendants. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Quiñones v. University of Puerto Rico et al.*, Civil No. 14-1331, because one of the defendants is a university where I teach. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality

might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Maldonado-Vinas et al. v. National Western Life Insurance Co.*, Civil No. 14-01192, because counsel for plaintiffs is a close acquaintance. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned in light of this connection with plaintiffs' counsel and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself *Martínez et al. v. Kindred Spirits, Inc. et al.*, Civil No. 13-1792, because previously I was involved in a litigation including the defendant. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Nazario v. Pesquera et al.*, Civil No. 13-1588, because I currently preside over the Puerto Rico Police Reform case and, at the time, I had constant interaction with the parties of the case, the Puerto Rico Police Department (PRPD) Superintendent and high-ranking officials. Moreover, while presiding over the police reform case I had a more detailed look at the intricacies of the PRPD regarding the areas subject the reform process, such as workplace discrimination and sexual harassment. The latter were the allegations in this case. I do not disqualify myself from every case involving the Puerto Rico Police Bureau. I do so on a case-by-case basis. In this particular case, after reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. I issued an order further explaining my reasoning for *sua sponte* disqualification. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *The Quaker Oats Corp. v. Ballester Hermanos Inc.*, Civil No. 12-1712, because the defendant corporation is owned by a close acquaintance with whom personal contact is frequent. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Arroyo v. FDIC et al.*, Civil No. 12-1433, because counsel for one of the defendants was also counsel for a defendant in a civil state court case wherein, I was named plaintiff. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. I issued an order and explained that I disqualified myself "[t]o avoid even the appearance of impropriety, or a conflict of interest, as well as to avoid any future claim for disqualification or ethical violation." The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Universal Insurance Company et al. v. Department of Justice, et al.*, Civil No. 11-1968, because counsel for plaintiff is a close acquaintance. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned in light of this connection with plaintiff's counsel and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Torres v. NBC Universal, Inc.*, Civil No. 11-1308, because counsel for plaintiff is a close acquaintance. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned in light of this connection with plaintiff's counsel and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Tormos-Pol v. Conte-Miller et al.*, Civil No. 10-1935, because one of the defendants is a university where I teach. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Efrón et al. v. Jet First, Inc. et al.*, Civil No. 07-1230, because I had personal knowledge of the underlying case. After reviewing the Code of Conduct for United States Judges, specifically Canon 3(C)(1)(a), I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *García-Monagas et al v. W. Holding Company, Inc. et al.*, Civil No. 07-1217, because my father served as counsel for one of the defendants. After reviewing the Code of Conduct for United States Judges, specifically Canon 3(C)(1)(d), I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

I recused myself from *Ortiz-Cruz et al. v. The University of Puerto Rico et al.*, Civil No. 06-2152, because one of the defendants is a university where I teach. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and that this issue was incurable. The case was randomly reassigned using the Court's Case Assignment System.

As to the remaining parts of questions 14(a), (b), (c), and (d), I recall only one case in which I was asked to disqualify or recuse myself.

I denied motions for recusal, and did not recuse myself, in the following case:

In *UBS Financial Services, Inc. et al. v. Asociacion de Empleados del Estado Libre Asociado de Puerto Rico*, Civil No. 16-2017, the defendant moved for post-judgment disqualification because my father had a minimal and limited appearance as local counsel in the case's arbitration hearing. The parties failed to inform the Court of this matter. I did not disqualify myself because the issue should have been brought to my attention at an early stage of the proceedings rather than raised after considerable judicial time, effort, and resources had been invested. I issued an order explaining my reasoning for denying the defendant's request. Although I did not disqualify myself, "to maintain the Court's appearance of impartiality," the matter was referred to the then-Chief Judge of the District, "to attend to the pending Rule 59(e)/Rule 60(b) motion for relief from judgment or reassign the matter to another judge." The Chief Judge ordered that the case be randomly reassigned using the Court's Case Assignment System. The Rule 59(e)/Rule 60(b) motion was ultimately denied by a subsequent District Court Judge. In turn, this denial was appealed and recently affirmed by the First Circuit.

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 served as Solicitor General for the Commonwealth of Puerto Rico from 1999 to 2000. I was appointed by the Governor of Puerto Rico, Hon. Pedro J. Rosselló González, and unanimously confirmed by the Commonwealth of Puerto Rico Senate.

I have never had any unsuccessful nomination for appointed office, and I have never run for 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 served as law clerk to the Honorable Juan M. Pérez-Giménez in the United States District Court for the District of Puerto Rico from 1991 to 1993.

- 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:

1993 – 1997

Federal Public Defender's Office, District of Puerto Rico  
500 Tanca Street  
San Juan, Puerto Rico 00901  
Assistant Federal Public Defender

July – December 1996

United States Sentencing Commission  
One Columbus Circle, Northeast, Suite 2-500  
Washington, District of Columbia 20002  
Special Counsel (on detail from the Federal Public Defender's Office)

January – November 1997

Commonwealth of Puerto Rico Department of Justice, Office of Legal Counsel  
2 Olimpo Street  
San Juan, Puerto Rico 00907  
Special Counsel to the Attorney General

November 1997 – September 1999

Commonwealth of Puerto Rico Department of Justice, Office of Legal Counsel  
2 Olimpo Street  
San Juan, Puerto Rico 00907  
Assistant Attorney General

1999 – 2000

Commonwealth of Puerto Rico Department of Justice, Office of the Solicitor General  
2 Olimpo Street  
San Juan, Puerto Rico 00907  
Solicitor General

January – June 2001  
 McConnell Valdés LLC  
 270 Muñoz Rivera Avenue  
 San Juan, Puerto Rico 00918  
 Special Litigation Counsel

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

I have never served as a mediator nor an arbitrator.

b. Describe:

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

1993 – 1997: As an Assistant Federal Public Defender, I represented indigent defendants who were criminally charged before the United States District Court for the District of Puerto Rico. I handled all my assigned cases from the defendant's initial appearance through trial or guilty plea, and sentencing, and on appeal before the United States Court of Appeals for the First Circuit. I also worked on various post-conviction relief matters.

July – December 1996: As Special Counsel to the United States Sentencing Commission, I worked on multiple projects involving the revision and application of the United States Sentencing Guidelines.

January 1997 – September 1999: As Special Counsel to the Attorney General from January to November 1997, and later as Assistant Attorney General for the Office of Legal Counsel at the Puerto Rico Department of Justice from November 1997 to September 1999, I was responsible for advising and representing the Attorney General of Puerto Rico in both civil and criminal matters. These matters involved the preparation of legal opinions for the Governor, Attorney General, and other Executive Branch officials; appearing before the Commonwealth Senate and House of Representatives to comment on proposed legislation; drafting bills for the Governor and Attorney General to submit to the Legislature, and advising the Governor whether to sign bills into law or veto the same; drafting and reviewing all contracts and agency agreements involving the Department of Justice; coordinating special legislative and administrative projects involving multiple agencies or branches of governments; and litigating before federal district and appellate courts cases involving important constitutional questions and other matters of public policy. I also served at

times as acting Attorney General and acting Solicitor General.

1999 – 2000: As Solicitor General of the Commonwealth of Puerto Rico I led an office composed of a Deputy Solicitor General, thirty-five Assistant Solicitors General, and support staff. My office represented the Commonwealth of Puerto Rico, its Governor, and Executive branch officers in all appellate civil and criminal cases before the Puerto Rico Supreme Court and intermediate Appeals Courts, as well as before the United States Court of Appeals for the First Circuit. On numerous occasions, I personally appeared and/or argued before said Courts, as well as before the United States District Court for the District of Puerto Rico, and in one specific instance before the United States District Court for the Southern District of New York and the United States Court of Appeals for the Second Circuit. These cases involved matters of public importance, mostly regarding constitutional questions. I filed amicus briefs before the United States Supreme Court and United States Court of Appeals for the District of Columbia Circuit, as well as advised the Attorney General whether to join amicus briefs led by other Attorneys General. My office was assigned by the Puerto Rico Supreme Court the investigation and prosecution of complaints involving ethical misconduct by attorneys. I was also a member of the Department of Justice's committee for evaluation of candidates for district attorney and deputy prosecutor positions.

January – June 2001: As Special Litigation Counsel at McConnell Valdés I worked almost exclusively on commercial litigation before the U.S. District Court for the District of Puerto Rico. I also worked on two cases before the Puerto Rico Court of First Instance, Superior Court, and in one matter before an administrative agency.

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

1993 – 1997: My clients at the Federal Public Defender office were exclusively indigent criminal defendants in federal courts. 100% of my practice was devoted to criminal litigation before the United States District Court and United States Court of Appeals for the First Circuit.

January 1997 – September 1999: My clients at the Department of justice were the Commonwealth of Puerto Rico, its Governor, Attorney General, and Executive Branch officers. About 40% of my practice was devoted to federal litigation involving constitutional and important public policy matters before the United States District Court and the United States Court of Appeals for the First Circuit.

1999 – 2000: My clients as Solicitor General of Puerto Rico were the

Commonwealth of Puerto Rico, its Governor, Attorney General, and Executive Branch officers. About 70% of my practice was devoted to appellate work, 15% to investigating and prosecuting cases of attorney ethical misconduct, and 15% to litigating constitutional matters before the United States District Court and other courts.

January – June 2001: My clients at McConnell Valdés LLC were all corporate clients. The bulk of my legal practice was devoted to federal court 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.

As Assistant Federal Public Defender from 1993 to 1997, 100% of my practice consisted of criminal federal litigation at the district and appellate levels. I estimate that I represented over 100 defendants. I also appeared in court on a daily basis. I served as counsel in seven jury trials and argued several cases before United States Court of Appeals of the First Circuit.

As Assistant Attorney General from 1997 to 1999, 40% of my practice involved constitutional litigation before the United States District Court and United States Court of Appeals of the First Circuit. The remaining 60% of my practice did not involve litigation. I worked on diverse matters such as evaluating and preparing opinions for the Attorney General on proposed Commonwealth legislation and agency matters, and assisted in the drafting of administrative orders establishing prosecutor protocols for drug courts and domestic violence units.

As Solicitor General of Puerto Rico from 1999 to 2000, my practice consisted of approximately 70% appellate litigation, both civil and criminal, before the Puerto Rico Supreme Court and Appeals court, as well as the United States Court of Appeals of the First Circuit and on one occasion before the Second Circuit. I argued once before the Puerto Rico Supreme Court and several times before the First Circuit and once before the Second Circuit. Moreover, 15% of my practice involved prosecuting attorney ethical misconduct cases, and the other 15% to litigating constitutional matters before the United States District Court and state courts.

At McConnell Valdés LLC from January to June 2001, my practice consisted entirely of civil litigation. I appeared in both federal and state court.

- i. Indicate the percentage of your practice in:
- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 80% |
| 2. state courts of record:  | 20% |
| 3. other courts:            | 0%  |
| 4. administrative agencies: | 0%  |



- ii. Indicate the percentage of your practice in:
  - 1. civil proceedings: 50%
  - 2. criminal proceedings: 50%
- 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 tried to verdict seven cases as sole counsel and three cases as co-counsel.

- i. What percentage of these trials were:
  - 1. jury: 70%
  - 2. non-jury: 30%
- 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.

My practice before the Supreme Court of the United States consisted of filing one petition for certiorari during my time as a Federal Public Defender. Certiorari was denied. I do not have copy of the petition and do not recall the name of the case. To the best of my recollection it involved a sentencing issue under the Sentencing Guidelines.

As Solicitor General of Puerto Rico, I filed an amicus brief in support of a certiorari petition. The case was *Efrón v. United States*, 189 F.3d 482 (11th Cir. 1999), *cert. denied* 528 U.S. 987 (1999). 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. *Romeu v. Cohen*, before Judge Shira Sheindlin of the United States District Court for the Southern District of New York and Court of Appeals for the Second Circuit (Chief Judge John Walker, Judge James Oakes, and Judge Pierre Leval). The citations for the published opinions are: 121 F. Supp. 2d 264 (S.D.N.Y. 2000) and 265 F.3d 118 (2nd Cir. 2001).

This case involved the declaratory judgment request of a United States citizen who moved from New York to Puerto Rico to vote absentee in the 2000 presidential election. He challenged the Uniformed and Overseas Citizens Absentee Voting Act on constitutional grounds as it deprived United States citizens who relocate to a United States territory from voting, however, permitted United States citizens who moved to a foreign country to vote absentee. Both courts held that the federal statute passed muster under a rational basis standard. As Solicitor General I represented the Commonwealth of Puerto Rico as plaintiff-appellant intervenor and briefed the case before both courts, as well as argued before the Court of Appeals for the Second Circuit.

Appellant proceeded pro se

Counsel for the United States-Appellee:

Daniel S. Alter  
Yankwitz LLP  
140 Grand Street, Suite 705  
White Plains, NY 10601  
(914) 686-1500

Co-Counsel for Appellee:

Deborah Porder  
60 Centre Street, Room 555  
New York, NY 10007-1402  
(646) 386-3363

2. *Igartúa de la Rosa v. United States*, before the United States Court of Appeals for the First Circuit (Chief Judge Juan Torruella, Judge Sandra Lynch, and Judge Kermit Lipez). The citation for the published opinion on appeal is 229 F.3d 80 (1st Cir. 2000).

This case involved the issue of whether United States citizens living in Puerto Rico may vote in presidential elections. On appeal, the declaratory judgment of the district court in the affirmative was reversed on the ground that only States are entitled under the Constitution to have electors. As Solicitor General I represented the Commonwealth as plaintiff-appellant intervenor and argued the case on appeal.

Counsel for the United States:

Matthew M. Collette

U.S. Department of Justice  
 Office of the Solicitor General  
 950 Pennsylvania Avenue, Northwest  
 Washington, DC 20530-0001  
 (202) 514-2203

Appellee proceeded pro se

Counsel for Intervenor-Appellee:

Ángel E. Rotger Sabat  
 Post Office Box 71449  
 San Juan, PR 00936- 8549  
 (787)-756-9640

John F. Nevares  
 John F. Nevares & Assoc. PSC  
 Post Office Box 13667  
 San Juan, PR 00908-3667  
 787-502-2165

3. *Jusino Mercado v. Commonwealth of Puerto Rico*, before the United States Court of Appeals for the First Circuit (Judges Bruce Selya, Kermit Lipez, and Frank Coffin). The citation for the published opinion is 214 F.3d 34 (1st Cir. 2000).

In this case public employees of the Commonwealth brought an action for overtime pay and liquidated damages under the Fair Labor Standards Act. As Solicitor General I represented the Commonwealth and argued on appeal. The Court of Appeals held that Puerto Rico, like the fifty States, is immune from such federal action.

Counsel for Appellant:

Michael Leibig (deceased)

4. *Partido Acción Civil v. Estado Libre Asociado (Commonwealth of Puerto Rico)*, Case AC-1999-20 before the Supreme Court of Puerto Rico (Chief Justice José Andreu and Associate Justices Antonio Negron-García, Francisco Rebollo-Lopez, Myriam Naveira- Merly, Federico Hernández-Denton, Jaime Fuster-Berlingeri, and Baltasar Corrada Del Río). The citation for the reported opinion is 150 D.P.R. 359, 2000 WL 223543 (P.R.), and on reconsideration 150 D.P.R. 805, 2000 WL 462276 (P.R.).

In this case a political organization challenged on state and federal constitutional grounds the then-existing provision of Puerto Rico's electoral law requiring that all signatures accompanying its petition to register as a political party be sworn before a notary public. The Supreme Court upheld the validity of said law. As

Solicitor General I represented the Commonwealth of Puerto Rico and argued the case before the Supreme Court in 2000.

Counsel for Appellant:

Nelson Rosario  
1112 Palmas Street, Esquina Roberto H. Todd  
San Juan, PR 00908  
(787) 777-0995

Counsel for Appellee:

Ramón Walker  
Post Office Box 9023550  
San Juan, PR 00902  
(787) 340-6440

Pedro Delgado Hernández  
Clemente Nazario U.S. Courthouse  
150 Chardón Avenue  
San Juan, PR 00918  
(787) 772-3133

5. *Cruz v. Melecio*, Civil No. 99-1296 before Judge Juan M. Pérez-Giménez in the United States District Court for the District of Puerto Rico. My representation commenced in 1999 and concluded in 2000 upon conclusion of the appeal before the United States Court of Appeals for the First Circuit (Judges Bruce Selya, Michael Boudin, and Sandra Lynch). The citation for the published opinion on appeal is 204 F.3d 14 (1st Cir. 2000).

This case is related to *Partido Acción Civil v. Estado Libre Asociado* (described previously) and I also presented a parallel constitutional attack to the notarized signature requirement in Puerto Rico's then existing Electoral Law. The District Court dismissed the case. The Court of Appeals affirmed, holding that considerations of comity and federalism warranted that the federal court abstain from entertaining the same as it was at the time pending before the Puerto Rico Supreme Court. As Solicitor General I argued the case before both courts.

Counsel for Appellant:

Roberto Fernández  
Westernbank World Plaza  
268 Muñoz Rivera Avenue, Suite 1500  
San Juan, PR 00919  
(787) 758-4152

Counsel for Appellee:

Pedro Delgado Hernández  
Clemente Nazario U.S. Courthouse

150 Chardón Avenue  
San Juan, PR 00918  
(787) 772-3133

6. *Olguin Arroyo v. State Elections Brd*, 30 F. Supp. 2d 183 (D.P.R. 1998), before Judge Jaime Pieras of the United States District Court for the District of Puerto Rico. This case involved a constitutional challenge to the voter registration deadline for the 1998 Commonwealth status plebiscite. The court, following a bench trial, held that the challenged deadline was valid. As Assistant Attorney General I represented the Commonwealth of Puerto Rico.

Counsel for Plaintiff:

Pedro Varela  
154 José Padín Street  
San Juan, PR 00918  
(787) 751-0447

Counsel for Co-Defendant:

Pedro Delgado Hernández  
Clemente Nazario U.S. Courthouse  
150 Chardón Avenue  
San Juan, PR 00918  
(787) 772-3133

7. *Popular Democratic Party v. Commonwealth of Puerto Rico*, 24 F. Supp. 2d 184 (D.P.R. 1998), before Judge Juan M. Pérez-Giménez of the United States District Court for the District of Puerto Rico.

This case involved a constitutional challenge to the definition of “Commonwealth” in the state law calling for a status plebiscite in 1998. The same was filed in state court and removed to federal court by the Commonwealth on federal question grounds. Plaintiffs challenged the court’s jurisdiction and moved to remand. The court upheld the removal and the United States Court of Appeals for the First Circuit denied a *mandamus* petition for remand. Following the appellate ruling plaintiffs voluntarily dismissed the case. As Assistant Attorney General I was counsel of record for the Commonwealth before both the district and appeals courts.

Counsel for Plaintiff:

José A. Hernández-Mayoral  
206 Tetuán Street, Suite 702  
San Juan, PR 00901  
(787) 607-4867

Co-Counsel for Defendant:

José Fuentes Agostini

801 Pennsylvania Avenue, Northwest  
Washington, DC 20004  
(202) 236-8993

Carlos Lugo Fiol  
Urbanización El Dorado F8 Calle D  
San Juan, PR 00926  
(787) 645-4211

8. *People of Puerto Rico v. Salas*, Crim. No. 97-2447 before Judge Carmen Cerezo of the United States District Court for the District of Puerto Rico.

The criminal defendant, a federal agent, was charged in Puerto Rico court of felony assault for actions taken while in the performance of his duty. He removed the action to federal court and moved to dismiss given that a grand jury did not indict him. As Assistant Attorney General I represented the Commonwealth and prepared the brief opposing the motion to dismiss. The court denied the motion, agreeing with my argument that the Commonwealth has no access to the grand jury, and that Puerto Rico criminal procedure (which applied on removal) allows it to charge by way of information.

Counsel for Defendant:

Fidel Sevillano  
350 Chardón Avenue  
San Juan, PR 00918  
(787) 282-1844

9. *United States v. Rivera*, Crim. No. 94-272 before Judge Juan M. Pérez-Giménez in the United States District Court for the District of Puerto Rico.

As Assistant Federal Defender my representation of the defendant commenced in 1994 and concluded in 1996 upon conclusion of the appeal before the United States Court of Appeals for the First Circuit (Chief Judge Juan Torruella, Judge Conrad Cyr, and Senior Judge Frank Coffin). The citation for the reported opinion on appeal is 83 F.3d 542 (1st Cir. 1996). A jury convicted my client of carjacking. At sentencing the court imposed a ten-year statutory enhancement to his 15-year sentence based upon a finding of serious bodily injury. On appeal, the sentence was vacated, and the case remanded for resentencing. I tried the case before the District Court and also argued on appeal.

Counsel for the United States:

Silvia Carreño-Coll  
Clemente Nazario U.S. Courthouse  
150 Chardón Avenue  
San Juan, PR 00918  
(787) 772-3190

10. *United States v. Héctor Ramos Vázquez*, Crim. No. 94-53, before Judge Carmen Cerezo in the United States District Court for the District of Puerto Rico.

As Assistant Federal Defender my representation of the defendant commenced in 1994 and concluded in 1995 with the disposition of the case. I challenged on behalf of my client the lawfulness of the search of the defendant's apartment pursuant to a state court-issued warrant, and the ensuing seizure of narcotics and firearms therein. Following an evidentiary hearing, I was able to demonstrate that the officer who provided the search affidavit had provided materially false statements. As a result, the government voluntarily dismissed the case.

Counsel for the United States:

Charles Fitzwilliams  
Post Office Box 9021157  
San Juan, PR 00902  
(787) 381-7108

Counsel for Co-Defendant:

María H. Sandoval  
María H. Sandoval Law Office  
Post Office Box 9878  
San Juan, PR 00908  
(787) 282-0281

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

As Solicitor General and Assistant Attorney General I evaluated proposed amicus curiae briefs prepared by the National Association of Attorneys General for filing before the United States Supreme Court. I would then make a recommendation to the Attorney General of Puerto Rico whether or not to join.

As Solicitor General I settled the case of *Schneider v. Colegio de Abogados*, Civil No. 82-1459 (JRT), before the United States District Court for the District of Puerto Rico. The same commenced in 1982 and involved a federal constitutional challenge to Puerto Rico's compulsory bar association requirement. While legal issues had been long since been resolved on appeal, the issue of attorney fees (in excess of half a million dollars plus interest) for plaintiff had been pending litigation for several years. I also settled the case of *Alvarado v. Alvarado*, Civil Case No. 93-2083 (CCC), also before the United States

District Court for the District of Puerto Rico. The same involved a significant number of government employees who were dismissed following a post-electoral change in administration. Both settlements involved a considerable time-consuming effort by all counsel involved, yet in the end benefited the parties and limited the Commonwealth's possible liability should the matters have continued.

As Assistant Attorney General I was involved in the implementation and expansion of the Drug Program across Puerto Rico's thirteen judicial regions. The program was a joint effort between law enforcement executive branch agencies, headed by the Justice Department, and the judicial branch. At the inception of the program, first time, nonviolent offenders with substance abuse problems were admitted to a diversionary, intensive, court supervised program. If a participant completed the program the criminal case would be dismissed. To date, this program enjoys enormous, continued success. On several occasions as a judge, I have participated in drug-court graduation ceremonies. Years later, on April 2021, as Chief Judge of the United States District Court, I approved the creation of a reentry program for medium- to high-risk supervisees. My earlier experience with the drug-court program played a crucial role in the endorsement of the reentry program.

As Assistant Attorney General I also was involved in the implementation of protocols and preparation of administrative directives for the creation and organization of specialized domestic violence prosecutor units.

I have never performed 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.

Since 2008 I have taught two (2) courses at Inter American University of Puerto Rico School of Law: "Federal Criminal Practice and Procedure" and "The Constitutional and Historical Development of United States Territories: 1898 – Present." The first course has been taught either as a two- or four-credit course and consists of a detailed study of the federal criminal process, beginning with the pre-indictment investigatory phase, and covering all the subsequent phases from indictment and arrest until sentencing and post-trial procedures. The second course is taught as an intersession course and constitutes of a comparative study of the historical and constitutional development of the various United States territories acquired since 1898. Representative syllabi supplied.

Since 2009 I have taught two (2) courses at University of Puerto Rico School of Law: "Federal Criminal Practice and Procedure" and "The Constitutional and Historical Development of United States Territories: 1898 – Present." The course description is the same as detailed above for the Inter American University of Puerto Rico School of Law. Representative syllabus supplied. I no longer teach the "Federal Criminal Practice and Procedure." The course on U.S. Territories is an intersession one. Representative syllabi



supplied.

In August 2011, I taught a week-long course at the University of New Hampshire School of Law, titled “Judicial Opinion Writing.” The intersession course covered the basics of judicial writing. I am unable to locate the syllabus.

Since 2012 I have been teaching one two-credit intersession course at Suffolk University Law School: “Federal Criminal Practice and Procedure.” The course description is same as detailed above for the for the Inter American University of Puerto Rico School of Law. Representative syllabus supplied.

Since 2014 I have been teaching two courses at Pontifical Catholic University of Puerto Rico School of Law: “Federal Criminal Practice and Procedure” and “The Constitutional and Historical Development of United States Territories: 1898 – Present.” Both courses are taught as an intersession or one-credit seminar. The course descriptions are the same as provided above for the Inter American University of Puerto Rico School of Law. Representative syllabi supplied.

In 2018 and since 2020 I have taught ad honorem a course at University of Hawai‘i, Mānoa William S. Richardson School of Law: “The Constitutional and Historical Development of United States Territories: 1898 – Present.” The course is taught as an intersession one-credit seminar. The course description is the same as provided above for the Inter American University of Puerto Rico School of Law. Representative syllabus supplied.

Since 2018 I have taught three courses at Tarleton State University, School of Criminology, Criminal Justice and Strategic Studies as part of their Master of Criminal Justice Program: “The American Judiciary,” “Legal Aspects in Criminal Justice,” and “Federal Criminal Practice and Procedure.” All courses are taught online. The first course encompasses a critical evaluation of the role courts play in the American justice system to include topics that cover the structure, function, and operations of the courts at the state and federal level. The second studies the major legal issues of criminal justice management and the effect of constitutional provisions, statutes, ordinances, and judicial decisions in justice administrations. The third course’s description is similar to that provided above for the Inter American University of Puerto Rico School of Law. Representative syllabi supplied.

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

I do not have any deferred income arrangements.

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, my only commitment, to the extent my judicial duties so permit, is to continue teaching.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

My father and former spouse are admitted to practice before the United States Court of Appeals for the First Circuit. As in the District Court, I would automatically disqualify myself from any matter in which they appear as counsel of record. I would also disqualify myself from all cases where any person close to me is a party or has an interest, including the universities where I teach.

I do not foresee any category of litigation that would present me with a potential conflict of interest.

I have not entered into any financial arrangements that would present me with a potential conflict of interest.

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

If confirmed, I will resolve any other potential conflict of interest that arises in the same manner I have done for the past 20 years as a district and, previously, magistrate judge. I will continue to guide myself by the Code of Conduct for United States Judges, as well as all other applicable statutes, jurisprudence, and

guidelines. When assigned any case I immediately verify who the parties and their counsel are to determine whether disqualification is warranted. I would also recuse from any case over which I presided as a district court judge.

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.

Almost my entire career has been in public service, and I have therefore been precluded from personally engaging in active pro bono representation.

From 1993 to 1996, I served as an Assistant Federal Defender, and as such, 100% of my time was devoted to representing the disadvantaged. I represented indigent criminal defendants at both the trial and appellate levels.

Similarly, as Assistant Attorney General, from 1997 to 1999, I was active in aiding the Attorney General's efforts to successfully advocate for additional federal and state funding for the Puerto Rico Legal Aid Society, which had earlier sustained budget cuts. Without adequate funding indigent defendants in the Commonwealth would not have obtained high-quality legal representation.

As District Court Judge, it has been my philosophy that no party litigating before me shall go underrepresented. I routinely assign pro bono representation to indigent or pro se litigants. An example is the case *United States v. Vaello-Madero*, 356 F. Supp. 3d 208 (D.P.R. 2019), *aff'd on other grounds*, 956 F.3d 12 (1st Cir. 2020), *cert. granted*, 20-303, 141 S.Ct. 1462 (U.S. Mar. 1, 2021), now before the United States Supreme Court. I appointed pro bono counsel from a large New York firm for Defendant, aware that his defense in this civil action would entail complex constitutional research and analysis, as well as result in appellate litigation.

As Chief Judge, I continue to support and promote the District Court's Pro-Bono Program, which connects people unable to afford counsel in a civil action with a pro bono attorney from a selected panel or through court-appointment. The program provides legal help for issues including social security appeals, employment discrimination actions, and civil rights actions filed by persons in custody, among other civil rights actions.

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 April 15, 2012, I was contacted by the White House Counsel's Office for an interview that same day concerning my potential nomination to the United States Court of Appeals for the First Circuit. Since that day, I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice. On May 10, 2021, I met with President Biden. 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).

Angel Kelley  
Formerly Angel Kelley Brown

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

United States District Judge for the District of Massachusetts

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: Massachusetts Superior Court  
Administrative Office:  
3 Pemberton Square, 13<sup>th</sup> Floor  
Boston, Massachusetts 02108

Physical Location:  
Brockton Superior (Plymouth County)  
72 Belmont Street  
Brockton, Massachusetts 02301

Residence: Whitman, Massachusetts

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

1967; New Rochelle, New York

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

2002 – 2003, Temple University School of Law; LL.M., 2003

1989 – 1992, Georgetown University Law Center; J.D., 1992

1985 – 1989, Colgate University; B.A., 1989

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

2013 – present  
Commonwealth of Massachusetts, Superior Court  
3 Pemberton Square, 13<sup>th</sup> Floor  
Boston, Massachusetts 02108  
Regional Administrative Judge for Plymouth County (2017 – 2020)  
Associate Justice

2018 – present  
Boston University School of Law  
765 Commonwealth Avenue  
Boston, Massachusetts 02215  
Adjunct Professor (part-time)

2012 – present  
Suffolk University School of Law  
120 Tremont Street  
Boston, Massachusetts 02108  
Adjunct Professor (part-time)

2009 – 2013  
Commonwealth of Massachusetts, District Court  
Brockton District Court  
215 Main Street  
Brockton, Massachusetts 02301  
Associate Justice

2007 – 2009  
U.S. Attorney's Office  
John Joseph Moakley United States Federal Courthouse  
One Courthouse Way, Suite 9200  
Boston, Massachusetts 02210  
Assistant United States Attorney

2005 – 2007  
Harvard University Law School  
Harvard Legal Aid Bureau  
23 Everett Street  
Cambridge, Massachusetts 02138  
Clinical Instructor

1997 – 2005  
 The Port Authority of New York and New Jersey  
 Law Department  
 4 World Trade Center (Current address)  
 150 Greenwich Street, 24<sup>th</sup> Floor  
 New York, New York 10007  
 Assistant Chief of New York Litigation Division (2005)  
 Senior Trial Attorney (2003 – 2005)  
 Staff Attorney (1997 – 2003)

1992 – 2005  
 Columbia University  
 Double Discovery Program  
 2920 Broadway  
 New York, New York 10027  
 Instructor (part-time)

2004 – 2005  
 New York University  
 Real Estate Institute  
 7 East 12<sup>th</sup> Street  
 New York, New York 10003  
 Instructor (part-time)

1993 – 1997  
 The Legal Aid Society  
 Juvenile Rights Division  
 111 Livingston Street  
 Brooklyn, New York 11201  
 Staff Attorney

1992 – 1993  
 The City of New York  
 Housing Preservation and Development  
 100 Gold Street (Current address)  
 New York, New York 10027  
 Assistant Director

Fall 1992  
 Bergdorf Goodman  
 754 5<sup>th</sup> Avenue  
 New York, New York 10019  
 Salesperson

1990 – 1992

Department of Justice  
Office of International Affairs  
950 Pennsylvania Avenue, Northwest (Current address)  
Washington, District of Columbia 20530  
Student Intern (part-time)

1990 – 1992  
Georgetown University Law Center  
600 New Jersey Avenue, Northwest  
Washington, District of Columbia 20001  
Student Supervisor (part-time)  
Student Guard (part-time)  
Clerical Assistant, Career Services Office (part-time)

Other Affiliations (Uncompensated):

2010 – present  
Roxbury Youthworks, Inc.  
841 Parker Street  
Roxbury Crossing, Massachusetts 02120  
Board Director

2019 – 2020  
Toll House Village Condominium Association  
Janek Property Management  
76 Emmons Street  
Franklin, Massachusetts 02038  
Trustee

2016 - present  
Emory University Law School  
Volunteer Instructor

2008 – 2015  
Harvard Law School  
Volunteer Instructor

1998 – 2001  
The Port Authority of New York and New Jersey  
Police Academy  
Instructor

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



I have not served in the military. I was not required to register with the selective service.

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

Trailblazer recognition, celebrating Black Women Excellence presented by  
Massachusetts Black Women Attorneys (2021)

Burnham “Hod” Greeley Award presented by American Bar Association (2019)

Ida B. Wells Service Award presented by Massachusetts Black Women Attorneys  
Association (2014)

Shenton Service Award from Columbia University’s Double Discovery Program (2005)

Graduated with Honors from Temple University Law School (2003)

Certificate of Recognition from Port Authority of New York and New Jersey for service  
to families of fallen police officers lost on September 11, 2001 (2002)

Certificate of Recognition from Port Authority of New York and New Jersey for efforts  
on the September 11th Loss Recovery Team (2002)

Certificate of Recognition from Port Authority of New York and New Jersey for  
developing the law curriculum for the Port Authority Police Academy (2001)

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

Asian-American Lawyers Association of Massachusetts (2007 – 2009)

Inns of Court, Boston, Massachusetts (approximately 2009)

Inns of Court, New York, New York (approximately 2005)

Massachusetts Bar Association (2007 – 2009)

Massachusetts Bar Association, Lawyer Well-Being Committee (2020 – present)

Massachusetts Black Lawyers Association  
Board Member (2008 – 2009)  
Treasurer (2007 – 2008)  
Member (2005 – 2007)

Massachusetts Black Women Attorneys Association (2008 – 2009)

Massachusetts Judges Conference (2009 – present)

Massachusetts Trial Court’s Committee on Human Trafficking (2015 – 2016)

Massachusetts Trial Court’s Public Outreach Committee, Chair (2015 – present)

Massachusetts Women’s Bar Association  
Board member (2008 – 2009)  
Co-Chair of the Women of Color Committee (2007 – 2008)  
Member (2006 – 2009)

National Asian Pacific American Bar Association (2020 – present)

National Association of Women Judges (2010 – present)

National Bar Association, Judicial Council (2009 – present)

New York City Bar Association (approximately 2005)

Supreme Judicial Court’s Committee on Judicial Ethics (2016 – present)

Supreme Judicial Court’s advisory committee on Judicial Ethics (2012 – 2015)

The Justice Harry J. Elam Judicial Conference, *formerly known as* Massachusetts Black Judges Conference  
Treasurer (2011 – 2020)  
Member (2009 – 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.

New York, 1993  
Massachusetts, 2004

There have been no lapses in membership. I have been on judicial status in both New York and Massachusetts since becoming a judge in 2009.

- 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 (2000)  
 United States Court of Appeals for the First Circuit (2007)  
 United States District Court for the District of Massachusetts (2004)  
 United States District Court for the Eastern District of New York (1995)  
 United States District Court for the Southern District of New York (1995)

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.

Links Incorporated, Boston Chapter (2011 – present)  
 Parliamentarian (2019 – 2021)  
 Corresponding Secretary (approximately 2014)

Toll House Village Condominium Association  
 Trustee (2019 – 2020)

- 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, neither of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, or religion, or national origin 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.

None.

- 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.

On February 24, 2021, I testified before the Massachusetts Governor's Council on behalf of Assistant Clerk Magistrate Sharon Lalli's nomination to the District Court. Video available at <https://www.youtube.com/watch?v=zrNM4-MxE0>.

On January 16, 2013, I testified before the Massachusetts Governor's Council hearing for confirmation to the Superior Court. This was my confirmation hearing. Audio available at <https://sites.google.com/a/patrickmccabegovernorscouncil.com/mccabepatrickgovernorscouncil/honorable-angel-kelley-brown>.

On July 8, 2009, I testified before the Massachusetts Governor's Council for confirmation to District Court. This was my confirmation hearing. I have no notes, transcript, or recording.

- 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.

As Chair of the Trial Court Public Outreach Committee, each year I organize the Massachusetts judiciary's efforts in the American Bar Association's National Judicial Outreach Week program. In that capacity, I have spoken to community organizations and at middle schools and high schools over the last several years about preserving the rule of law or engaged in an interactive discussion about bail. I also regularly speak to students visiting the courthouse. I have searched my files

and the Internet and could not find dates for many of those engagements.

May 6, 2021: Moderator, “Lawyer Well-Being Week Coffee Break – Connect Social Well-Being,” Supreme Judicial Court Lawyer Well-Being Committee, Massachusetts. I moderated an open discussion on connecting to maintain social well-being. I have no notes, transcript, or recording. The address for the Supreme Judicial Court is One Pemberton Square, Boston, Massachusetts 02108.

April 1, 2021: Moderator, “Ghosts of Segregation,” Flaschner Judicial Institute, Boston, Massachusetts. Video available at <https://vimeo.com/534606128/c503dd32c9>.

February 22, 2021: Moderator, “2021 Black History Month – A Virtual Community Conversation on Confronting Racism in the Court System,” Massachusetts Judiciary, Boston, Massachusetts. Video available at <https://youtu.be/0joiDSdHvKU>. Press coverage supplied.

February 18, 2021: Panelist, “Injustice Anywhere is a Threat to Justice Everywhere - Virtual Conversation,” Chelsea Black Community and People’s AME Church, Chelsea, Massachusetts. Video supplied.

February 11, 2021: Panelist, “Virtual Community Conversation on Race,” Massachusetts Trial Court Office of Diversity, Equity, Inclusion, and Experience, Randolph, Massachusetts. I participated in a court-sponsored question-and-answer session about race and the courts. I have no notes, transcript, or recording. The address for the Trial Court is One Pemberton Square, Boston, Massachusetts 02108.

January 28, 2021: Panelist, “Pathway to the Bench: Becoming a Judge as a Woman of Color,” Massachusetts Black Women Attorneys (MBWA) and South Asian Bar Association (SABA), Massachusetts. I participated in a question-and-answer session regarding my pathway to the state court bench as a woman of color. I have no notes, transcript, or recording. The address for the organizations is 16 Beacon Street, Boston, Massachusetts 02108.

January 18, 2021: Keynote speaker, “Dr. Martin Luther King Jr. Celebration, People’s AME Church,” Chelsea, Massachusetts. Video supplied.

November 19, 2020: Panelist, “Bench-Bar Discussion: Collaborating to alleviate stressors in the courtroom and practice of law,” Massachusetts Bar Association. I participated in a question-and-answer session about stressors on litigators during the pandemic. I have no notes, transcript, or recording. The address for the Massachusetts Bar Association is 20 West Street, Boston, Massachusetts 02111.

August 21, 2020: Panelist, “Virtual Community Conversation on Race,” Massachusetts Trial Court Office of Diversity, Equity, Inclusion and Experience,

Worcester, Massachusetts. Video available at <https://youtu.be/RQ20xqJ2LnQ>.

June 22, 2020: Guest speaker, NAACP Business Meeting, Brockton, Massachusetts. Video available at <https://m.facebook.com/Brockton-Area-NAACP-253280214806906/videos/angel-kelley-associate-justice-of-the-superior-court-and-john-laing-chief-experi/1184793965187215>.

February 27, 2020: Speaker, “2020 Black History Month – Community Listening Session,” Massachusetts state court judiciary and Roxbury Community College, Roxbury, Massachusetts. PowerPoint and press coverage supplied.

June 2019: Instructor, Lawyers Without Borders. I joined a team of lawyers and judges to teach judges, lawyers, and law enforcement officers in Kenya on Wildlife Trafficking. I have no notes, transcript, or recording. The address for Lawyers Without Borders is 59 Elm Street, Suite 330, New Haven, Connecticut 06510.

April 24, 2019, Speaker, North Middle School courthouse visit. Brockton Superior Court. I participated in a question-and-answer session with middle school students about court operations. I have no notes, transcript, or recording, but press coverage supplied. The address for the North Middle School is 108 Oak Street, Brockton, Massachusetts 02301.

March 6, 2019: Participant, “Listening Session at Plymouth County House of Corrections,” Massachusetts Trial Court Office of Diversity, Equity, Inclusion, and Experience, Plymouth, Massachusetts. I participated in a question-and-answer session with inmates in the house of corrections to listen to their concerns. The topic was their experience with the courts. I have no notes, transcript, or recording. The address for the Trial Court’s diversity office is One Pemberton Square, Boston, Massachusetts 02108.

January 24, 2019: Recipient, American Bar Association Burnham “Hod” Greeley Award ceremony, American Bar Association, Las Vegas, Nevada. Remarks and press coverage supplied.

August 2018: Instructor, Lawyers Without Borders. I joined a team of lawyers and judges to teach judges, lawyers, and law enforcement officers in Tanzania on Human Trafficking. I have no notes, transcript, or recording. The address for Lawyers Without Borders is 59 Elm Street, Suite 330, New Haven, Connecticut 06510.

March 23, 2018: Speaker: “Preserving the Rule of Law,” Whitman Hanson Regional High School. PowerPoint supplied.

February 22, 2016: Panelist, Women on the Bench at Suffolk Law School,

Suffolk Law School, Boston, MA This program had a question-and-answer format and the topic was life on the bench as women judge. I have no notes, transcript, or recording. The address for Suffolk Law School is 120 Tremont Street, Boston, Massachusetts 02108.

January 2016: Instructor, Lawyers Without Borders. I joined a team of lawyers and judges to teach judges, lawyers, and law enforcement officers in Liberia on Human Trafficking. I have no notes, transcript, or recording. The address for Lawyers Without Borders is 59 Elm Street, Suite 330, New Haven, Connecticut 06510.

February 13, 2015: Panelist, "The Ethical Impact of Litigators, Who Act as if Zealous Advocacy is Synonymous with Meanness," American Bar Association, Miami, Florida. The panel was a question-and-answer format and the topic was civility in the courts. I have no notes, transcript, or recording. The address for the American Bar Association is 1050 Connecticut Avenue, Northwest, Washington, District of Columbia 20036.

2014: Panelist, "A View from the Bench, Suffolk Law School," Suffolk Law Women of Color Committee, Boston, Massachusetts. It was a question-and-answer format and the topic was life on the bench. I have no notes, transcript, or recording. The address for the Suffolk Law School is 120 Tremont Street, Boston, Massachusetts 02108.

March 27, 2014: Organizer, "Human Trafficking: A Hidden Reality," National Association of Women Judges, Weston, Massachusetts. This was a full day training for judges. I have no notes, transcript, or recording. The address for the National Association of Women Judges is 1001 Connecticut Avenue, Northwest, Suite 1138, Washington, District of Columbia 20036.

November 15, 2012: Panelist, "International Symposium on Judicial Ethics: Best Practices in the USA," Turkish Judiciary and Bar, Ankara, Turkey. I gave an overview of the process to become a judge, the judicial code of conduct and process for filing a judicial complaint. I have no notes, transcript, or recording. I am unable to identify an address for the sponsoring organization.

Additionally, I have been involved with the National Institute of Trial Advocacy since 2003. I teach practicing attorneys in Trial Skills and Deposition Skills for NITA. I am unable to locate specific dates for these activities but have taught for them two to three times a year. I have taught in regional programs, including in Boston, Massachusetts, New York, New York, Montgomery, Alabama, and Washington, District of Columbia, as well as in the National program in Louisville, Colorado and for the Southern Poverty Law Center. I have no notes, transcript, or recording. The address for NITA is 325 West South Boulder Road, Suite 1, Louisville, Colorado 80027.

- 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.

Larry Ellison, The MAMLEO Broadcast, Boston Praise Radio, Feb. 13, 2021. Video available at <https://youtu.be/ga7krxQpoeI>.

Tamisha Civil, *Confronting Racism in the Courts, a Community Conversation*, Voice of Reason live radio, Feb. 12, 2021. Video available at <https://youtu.be/6GYSa0Y7raQ>.

Tamisha Civil, Voice of Reason live radio, Feb. 22, 2020. Video available at <https://www.facebook.com/tamisha.civil.96/videos/520569398839804>.

Charles Clemons Muhammad, Touch TV, Feb. 5, 2020. Video available at <https://youtu.be/7fC1L1k6aM0>.

Larry Ellison, The MAMLEO Broadcast, Boston Praise Radio, Feb. 1, 2020. Video available at <https://www.youtube.com/watch?app=desktop&v=HjXc1gRojcM>.

Karen Holmes Ward, CityLine television, Jan. 22, 2020. Video available at <https://www.wcvb.com/article/cityline-sunday-jan-26-2020-ma-trial-court-continue-their-discussion-on-criminal-justice-reform/30631352>.

LC Awards Committee, *In Her Own Words: A Conversation with Judge Angel Kelley* (Spring 2019). 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.

In March 2013, Massachusetts Governor Deval Patrick appointed me to the Superior Court. The Superior Court has jurisdiction over civil matters asserting damages of \$50,000 or more, felony matters, administrative appeals, and requests for equitable relief. The jurisdictional threshold was raised from \$25,000 to \$50,000, effective January 1, 2020. I preside over civil lawsuits including dispositive motions, discovery disputes, conferences, and trials. I preside over all aspects of criminal cases, including arraignment, conferences, dispositive and discovery motions, as well as trials. I also review applications for search warrants.

From 2017 through 2020, I served as the Regional Administrative Judge in Plymouth County, Superior Court. I managed court operations in the county, which includes two courthouses and seven judges, in coordination with the clerk's office, probation department, and security department.



In June 2009, Massachusetts Governor Deval Patrick appointed me to the Brockton District Court. I served as a District Court Judge until my appointment to the Superior Court in 2013. Then the District Court had jurisdiction over civil lawsuits less than \$25,000, misdemeanors, and some felonies.

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

During my time on the bench, I estimate that I have presided over more than 100 trials. In the District Court, I could have a trial every day and on occasion, more than one per day.

- i. Of these, approximately what percent were:

jury trials:	95%
bench trials:	5%
civil proceedings:	50%
criminal proceedings:	50%

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

As a state trial court judge, most of my opinions are unreported decisions that the Clerk's Office disseminates to the parties involved in the case and maintains as part of the court record. The following cases are the only opinions of mine for which I was able to locate citations on a publicly accessible database:

*Bernardi Brockton, LLC v. Jackson*, 2015 Mass. Super. LEXIS 445 (Sept. 16, 2015)

*Patel v. Masonic Temple Ass'n of Quincy*, 33 Mass. L. Rep. 76 (Mass. Super. Ct. Aug. 26, 2015)

*Merchs. Preferred Ins. Co. v. Kostanantipoulos*, 32 Mass. L. Rep. 310 (Mass. Super. Ct. July 10, 2014)

*Lao v. C.R.T.R.*, 2013 Mass. Super. LEXIS 2867 (Mass. Super. Ct. Sept. 30, 2013)

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. Commonwealth v. Starks, 1583CV00146 (Plymouth County).

The defendant was indicted for two separate shooting incidents, one alleging first-degree murder. The Commonwealth sought to try both incidents together. One shooting took place at the home of the defendant's ex-girlfriend and the other shooting took place approximately seven hours later in a different area. The homicide victim was not connected to the victims in the earlier shooting. No weapon was recovered, nor evidence linking the defendant to the firearm or ammunition used in the shootings. The only evidence linking the defendant to the shootings was testimony that the defendant's telephone number used regularly to communicate with his ex-girlfriend appeared on the telephone of the murder victim, just prior to his death. The only evidence linking the two shootings was a match in projectiles and casings found at each scene. Defendant moved to have the indictments severed for trial, which I allowed, despite the possibility that the two trials would likely involve the same witnesses. I determined the gravity of the offenses and potential sentence warranted dispensing with any concern for judicial economy. The Commonwealth chose to proceed with the homicide indictment first. I permitted the Commonwealth to call all witnesses it deemed necessary to establish the identity of the shooter, including evidence of the telephone call with the ex-girlfriend, but precluded the Commonwealth from alleging defendant was involved in a shooting earlier in the evening at his ex-girlfriend's home. This evidence was inadmissible, under sections 404 and of the Massachusetts Evidence Guide, as character evidence and evidence of other alleged unproven crimes. The admission of such evidence was unfairly prejudicial and its effect would have substantially outweighed any probative value to establishing defendant's identity. The Commonwealth called a witness to identify the defendant's telephone number that he used to call the ex-girlfriend and called a police witness to testify that this telephone number also appeared on the murder victim's phone. The jury found the defendant not guilty in 2019. The Commonwealth entered a nolle prosequi on the second indictment for the alleged shooting at the ex-girlfriend's house.

Prosecutors:           Keara Kelley and Shanan Buckingham  
Plymouth County District Attorney's Office  
166 Main Street  
Brockton, MA 02301  
(508) 584-8120

Defense Attorney:   Joseph F. Krowski  
30 Cottage Street  
Brockton, MA 02301  
(508) 587-3701

2. Commonwealth v. Bealer, 1583CR00575 (Plymouth County).

Defendant was indicted for rape of his cousin. Defendant and his girlfriend visited his cousin and her husband. After a night of drinking when their significant others went to sleep, sexual intercourse took place between the defendant and his cousin. That morning, his female cousin alleged she was raped. Defendant claimed it was a consensual sexual encounter. The jury returned a not guilty verdict in 2019.

Prosecutor: Vanessa Madge  
Plymouth County District Attorney's Office  
166 Main Street  
Brockton, MA 02301  
(508) 584-8120

Defense Attorney: Kevin J. Reddington  
Law Office of Kevin Reddington  
1342 Belmont Street  
Suite 203  
Brockton, MA 02301  
(508) 583-4280

3. Commonwealth v. Dominico, 1583CR00152 (Plymouth County).

This case involved an indictment for motor vehicle homicide. The Commonwealth alleged the defendant and the deceased teenage victim were both operating their separate motor vehicles under the influence of alcohol, speeding and tailgating through a residential neighborhood on New Year's Eve, when suddenly the victim's car ran off the road and flipped onto its roof, resulting in his death. During the trial in 2017, the defendant requested a grant of judicial immunity to the defense's teenage witnesses. These witnesses were friends with the deceased victim, joined him in underage drinking that evening, and observed his driving immediately before the accident. During trial, just prior to the defendant calling the juvenile witnesses, the prosecuting attorney raised the issue that these witnesses have a Fifth Amendment privilege against self-incrimination. As asserted, the privilege arose from the potential for future prosecution of the teenagers for underage drinking, the prosecutor claimed. The assistant district attorney informed the court it had no intention to petition for a grant of immunity on behalf of these witnesses, which would shield them from prosecution, and the assistant district attorney also refused the defendant's request for their immunization. Although no judge in the Commonwealth had ever granted judicial immunity to defense witnesses, case law was clear that it was available to the court when presented with unique circumstances or evidence of prosecutorial misconduct. Commonwealth v. Brewer, 472 Mass. 307 (2015). This case presented such unique circumstances, and accordingly I granted judicial immunity to the witnesses. Docket supplied. The Commonwealth took immediate appeal, pursuant to G. L. c. 211 § 3, and its petition was denied.

Prosecutor: E. Russell Eonas

Plymouth County District Attorney's Office  
166 Main Street  
Brockton, MA 02301  
(508) 584-8120

Defense Attorney: David J. Grimaldi  
929 Massachusetts Avenue, #200  
Cambridge, MA 02139  
(617) 661-1529

4. Commonwealth v. Brown, 1583CR00049 (Plymouth County).

This case involved an indictment for murder. In 2017, the defendant filed a motion to dismiss based in part on the presence of a police officer during grand jury testimony. I granted the motion and dismissed the case based on a decision of the Supreme Judicial Court, Commonwealth v. Holley, 476 Mass. 114 (2016), which held that the unauthorized presence of police officer witnesses during grand jury testimony of other witnesses is grounds for dismissal. Copy supplied. I stayed the dismissal to give the Commonwealth an opportunity to evaluate its options for appeal. After two weeks, the Commonwealth ultimately reported it would not file an appeal. The judgment of dismissal was entered.

Prosecutor: E. Russell Eonas  
Plymouth County District Attorney's Office  
166 Main Street  
Brockton, MA 02301  
(508) 584-8120

Defense Attorney: Joan Fund  
1035 Cambridge Street (this office may be closed)  
Suite 16D  
Cambridge, MA 02141  
(617) 945-9693

5. Terry v. Bar Management, 1382CV1440 (Norfolk County).

This case involved tort claims for assault and negligent security. Plaintiff filed suit against defendant, following his attack at a tavern. Two men, who were competing in a beer pong tournament at the bar, engaged in an altercation with plaintiff and assaulted him. Plaintiff claimed physical and psychological injuries. Earlier that evening, the assailants competed in a video-recorded beer pong tournament. The assailants showed signs of intoxication. The assailants encountered plaintiff in the second bar. Plaintiff's claims arose from the defendant's continued service of alcoholic beverages to the assailants. Plaintiff prevailed at trial in 2016. This was a lengthy trial with over 20 motions in limine

filed that involved expert testimony and use of video footage from the beer pong tournament. Docket supplied.

Plaintiff's Counsel: David Bae and Matthew Greene  
Boyle and Shaughnessy Law PC  
695 Atlantic Avenue, 11<sup>th</sup> Floor  
Boston, MA 02111  
(617) 451-2000

Defense Counsel: Marianna Flippo and Dragan Cetkovic  
Dragan M. Cetkovic, PC  
500 Granite Avenue, Suite 4  
Milton, MA 02186  
(617) 690-3501

6. Commonwealth v. Harris, 1283CR0152 (Plymouth County).

This case involved an indictment for drug trafficking. I presided over a jury-waived trial and at the conclusion of the Commonwealth's evidence, defendant's motion for a required finding of not guilty was granted from the bench in 2016.

Prosecutor: Joshua Gedraitis  
Plymouth County District Attorney's Office  
166 Main Street  
Brockton, MA 02301  
(508) 584-8120

Defense Attorney: Joseph Krowski Jr.  
30 Cottage Street  
Brockton, MA 02301  
(508) 584-2555

7. LeDoux v. Bristol Community College, 1273CV0918C (Bristol County).

This case involved a female security officer's claims of sexual harassment and gender discrimination. The defendants moved for summary judgment on several grounds. In 2016, I denied the motion finding that there were genuine issues of material fact regarding the allegations. Copy supplied. The jury found the college liable and returned a verdict of \$2.5 million. Another Superior Court judge conducted the jury trial.

Plaintiff's Counsel: Philip N. Beauregard  
32 William Street  
New Bedford, MA 02740  
(508) 993-0333

Defense Counsel: Daniel Gordon Cromack  
Office of Attorney General, Trial Division  
One Ashburton Place  
Boston, MA 02108  
(617) 963-2573

8. Commonwealth v. DeJesus, 1483CR00441 (Plymouth County).

Defendant was indicted for murder of one male victim, and assault and battery by means of a dangerous weapon of another. A female friend of the defendant's was engaged in providing drugs to these two male victims from New York, who were staying in a hotel for a construction project. The female friend called defendant for help alleging she was being robbed. During the struggle, one man was killed and the other injured. At trial in 2015, defendant claimed self-defense. The jury returned a not guilty verdict.

Prosecutors: Jessica Elumba and Mary Nguyen  
Plymouth County District Attorney's Office  
166 Main Street  
Brockton, MA 02301  
(508) 584-8120

Defense Attorney: Timothy J. Bradl  
15 Broad Street, #240  
Boston, MA 02109  
(617) 276-7891

9. Kelley v. Kelley, 1083CV1153 (Plymouth County).

This was a lawsuit brought by two daughters against their biological father for sexual assault. In 2014, The father moved for summary judgment asserting the claims were barred by the statute of limitations. I denied the motion, pursuant to the discovery rule, finding the statute of limitations began to accrue when the plaintiffs knew of the appreciable harm caused by the defendant's sexual abuse, not the date of the alleged conduct. Copy supplied. At the jury trial conducted before another Superior Court judge, the jury returned a verdict in favor of the plaintiffs for \$15 million.

Plaintiff's Counsel: Kristin M. Knuuttila  
Knuuttila Law, LLC  
175 Federal Street, Suite 1425  
Boston, MA 02110  
(617) 600-3010

Defense Counsel: Michael J. Sacchitella  
Tufankjian McDonald Welch & Sacchitella

25 Crescent Street  
Brockton, MA 02301  
(508) 583-3939

10. Bragdon v. Town of Fairhaven, 1273CV0707 (Bristol County).

This case was a zoning appeal. Residents of the Fairhaven community sought to enjoin the operation of wind turbines. A jury-waived trial was conducted, and the Fairhaven Zoning Board of Appeals' decision was affirmed in 2014. Copy supplied.

Plaintiffs' Counsel: Ann Ponichtera-DeNardis  
Ponichtera & Denardis, PC  
Ten Park Place  
New Bedford, MA 02740  
(508) 991-3355

Defense Counsel: Thomas P. Crotty  
Thomas P. Crotty & Associates, PLLC  
5 Dover Street, #5  
New Bedford, MA 02740  
(508) 990-9101

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

1. Lopes v. City of Brockton, 1383CV01350 (Plymouth County).

Copy supplied.

Plaintiff's Counsel: Jeffrey Rosin  
O'Hagan and Meyer, PLLC  
111 Huntington Avenue, Suite 2860  
Boston, MA 02199  
(617) 843-6800

Defense Counsel: Michael Stefanilo  
Brody Hardoon Perkins and Kesten LLP  
699 Boylston Street  
Boston, MA 02116  
(617) 880-7100

2. Commonwealth v. Noel, 1483CR0458 (Plymouth County).

Copy supplied.

Prosecutor: Jeremy Kusmin  
Plymouth County District Attorney's Office  
166 Main Street  
Brockton, MA 02301  
(508) 584-8120

Defense Counsel: Elliot Levine  
26 Chestnut Street  
Quincy, MA 02169  
(617) 472-2424

3. Commonwealth v. Corbett, 1583CR0109 (Plymouth County).

Copy supplied.

Prosecutor: Vanessa Madge  
Plymouth County District Attorney's Office  
166 Main Street  
Brockton, MA 02301  
(508) 584-8120

Defense Counsel: Joshua Wood  
Joshua J. Wood Law Offices  
1342 Belmont Street, Suite 102  
Brockton, MA 02301  
(508) 427-1622

4. Commonwealth v. Luo and others, 1583CR0518 (Plymouth County).

Copy supplied.

Prosecutor: Jeremy Kusmin  
Plymouth County District Attorney's Office  
166 Main Street  
Brockton, MA 02301  
(508) 584-8120

Defense Counsel: Jack Atwood  
88 Sandwich Street  
Plymouth, MA 02360  
(508) 747-1414

5. Commonwealth v. Parham, 1383CR0623 (Plymouth County).



Copy supplied.

Prosecutor: Shanán Buckingham  
Plymouth County District Attorney's Office  
166 Main Street  
Brockton, MA 02301  
(508) 584-8120

Defense Counsel: Pro se

6. Commonwealth v. Brown, 1583CR0049 (Plymouth County).

Copy previously supplied in response to Q13c.

Prosecutor: E. Russell Eonas  
Plymouth County District Attorney's Office  
166 Main Street  
Brockton, MA 02301  
(508) 584-8120

Defense Attorney: Joan Fund  
1035 Cambridge Street (this office may be closed)  
Suite 16D  
Cambridge, MA 02141  
(617) 945-9693

7. LeDoux v. Bristol Community College, 1273CV0918 (Bristol County).

Copy previously supplied in response to Q13c.

Plaintiff's Counsel: Philip N. Beauregard  
32 William Street  
New Bedford, MA 02740  
(508) 993-0333

Defense Counsel: Daniel Gordon Cromack  
Office of Attorney General, Trial Division  
One Ashburton Place  
Boston, MA 02108  
(617) 963-2573

8. Kelley v. Kelley, 1083CV1135 (Plymouth County).

Copy previously supplied in response to Q13c.

Plaintiff's Counsel: Kristin M. Knuuttila

Knuuttila Law, LLC  
175 Federal Street  
Suite 1425  
Boston, MA 02110  
(617) 600-3010

Defense Counsel: Michael J. Sacchitella  
Tufankjian McDonald Welch & Sacchitella  
25 Crescent Street  
Brockton, MA 02301  
(508) 583-3939

9. Bragdon v. Town of Fairhaven, 1273CV0707 (Bristol County).

Copy previously supplied in response to Q13c.

Plaintiffs' Counsel: Ann Ponichtera-DeNardis  
Ponichtera & Denardis, PC  
Ten Park Place  
New Bedford, MA 02740  
(508) 991-3355

Defense Counsel: Thomas P. Crotty  
Thomas P. Crotty & Associates, PLLC  
5 Dover Street, #5  
New Bedford, MA 02740  
(508) 990-9101

10. Champa v. Weston Public School, 1281CV4475 (Middlesex County).

Copy supplied.

Plaintiff's Counsel: Peter Carr, III  
Eckert Seamens Cherin and Mellott, LLC  
Two International Place, 16<sup>th</sup> Floor  
Boston, MA 02110  
(617) 342-6800

Defense Counsel: Doris R. MacKenzie Ehrens  
Murphy, Hesse, Toomey & Lehane, LLP  
300 Crown Colony Drive, Suite 410  
Quincy, MA 02169  
(617) 479-5000

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

There are no 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.

Commonwealth v. Moniz, 1583CR00383, *rev'd*, 20-P-563 (May 7, 2021). Copy supplied. I allowed defendant's motion to vacate his guilty plea because I had not read him the statutory language regarding a particular adverse immigration consequence contained in the immigration warnings, pursuant to G. L. c. 278, § 29D, specifically that his guilty plea may result in his "exclusion from admission" to the United States. On the Commonwealth's appeal, the Appeals Court reversed, finding I substantially advised him of the pertinent immigration warning and verbatim recitation of the statute was not required.

Commonwealth v. Caldwell, 0083CR03158, *rev'd*, SJC -12907 (May 6, 2021). Copy supplied. Defendant was convicted on a joint venture theory for allegedly raping his 4-year-old niece, along with his two brothers. In his third motion for new trial, defendant asserted his counsel was ineffective because he failed to present expert testimony to suggest the complaining witness's testimony resulted from false memories developed from watching a particularly violent movie depicting brothers raping women. Defendant also asserted that newly discovered evidence indicates exculpatory evidence was withheld from the defense and such evidence would have provided impeachment material for the sole witness, who testified the defendant made a jailhouse confession. I denied defendant's motion for new trial. The Supreme Judicial Court reversed, finding the exculpatory evidence withheld was defendant's strongest basis to challenge the credibility of this witness.

Commonwealth v. Defrancesco, 1883CR00018, *rev'd*, 99 Mass. App. Ct. 208 (2021). Copy supplied. Defendant was indicted for possession of drugs and firearms. Defendant filed a motion to suppress evidence, asserting the magistrate should not have issued a search warrant for one of multiple vehicles associated with defendant. I granted the motion to suppress, finding the search warrant affidavit failed to establish the requisite nexus between the items sought and the vehicle. The Appeals Court reversed, finding there was sufficient basis to authorize a search of the vehicle.

Commonwealth v. Ashford, 1083CR00205, *rev'd*, SJC 12874 (December 16, 2020). Copies supplied. This case involved defendant's conviction for a gun offense and sentencing pursuant to the Armed Career Criminal Act. After a jury-waived trial on the sentencing enhancement charges, another judge found the defendant guilty of the subsequent offense portion of his indictments based on two prior convictions, one of which was a conviction for assault and battery with

dangerous weapon. The case came before me on a motion for required finding of not guilty, following an appeal that was affirmed by the Appeals Court. I denied defendant's post-trial and post-appeal motion for required finding of not guilty. The Supreme Judicial Court applied a more recent decision retroactively and reversed. It held Commonwealth v. Brown, 479 Mass. 600 (2018) applies retroactively to convictions under G.L. c. 269, § 10(n). The legal effect requires the Commonwealth to prove defendant's knowledge that the firearm is loaded. The Court also held a prior conviction of assault and battery by means of a dangerous weapon must be based on intentional acts, not reckless ones, to constitute a predicate for sentencing enhancement under the Armed Career Criminal Act.

Boursiquot v. United Healthcare Services, 1983CR00267, *rev'd*, 96 Mass. App. Ct. 624 (2020). Copy supplied. This case involved an arbitration clause. Plaintiff filed suit claiming gender discrimination and retaliation. Upon commencement of an unpaid social work internship, the defendant hospital presented plaintiff an arbitration agreement that she signed along with her hiring papers. When subsequently hired for a paid position, defendant hospital provided plaintiff with new hiring papers, which did not include a new arbitration agreement. I denied defendant's motion to compel arbitration. The Appeals Court reversed my decision, ruling plaintiff's signing of the arbitration agreement required all disputes pertaining to her employment to be resolved by an arbitrator, including whether there was a valid arbitration agreement.

Leonard v. Zoning Board of Appeals of Hanover, 1683CV00024, *rev'd*, 96 Mass. App. Ct. 490 (2019). Copy supplied. This case was a consolidated action, involving a zoning dispute pertaining to outdoor space of a commercial establishment. The parties filed cross-motions for declaratory relief, regarding the interpretation of the zoning bylaws. I decided the cross-motions for a summary judgment, affirming the zoning board's determination that a special permit was required for an outdoor display, because it was not a lawful prior non-conforming use and required a special permit. Additionally, I decided the use of concrete barriers to separate the adjoining property was not a violation of the zoning bylaws and did not require a special permit. The Appeals Court affirmed my ruling in part and reversed in part. In affirming my decision, the Appeals Court also held the outdoor display was not a lawful non-conforming use and required a special permit and that the use of concrete barriers did not require a special permit. In reversing my decision, the Appeals Court held the town did not exhaust its administrative remedies, prior to seeking declaratory relief and vacated my rulings in connection with its claim. Essentially, the outcome was the same.

O'Connor v. Kadrmas Eye Care, and another, 1683CV00024, *rev'd*, 96 Mass. App. Ct. 273 (2019). Copy supplied. This case involved multiple claims and crossclaims between doctors separating from a medical practice. I allowed plaintiff's motion for summary judgment as to defendant's counterclaims for breach of fiduciary duty and breach of contract. The Appeals Court reversed my

decision on the breach of fiduciary duty claim, finding there was a genuine issue of material fact and affirmed my dismissal of defendant's breach of contract claim. Plaintiff filed claims for breach of contract and for non-payment of wages under the Wage Act. I entered summary judgment in favor of plaintiff on both claims. On plaintiff's claims, the Appeals Court affirmed in part and reversed in part. The Appeals Court reversed my ruling on the Wage Act claim, holding distributions under the stock agreement are not wages within the scope of the Wage Act and affirmed on the breach of contract claim, because defendant failed to raise a genuine issue of disputed fact.

Gliottone v. Ford Motor Company, and another, 95 Mass. App. Ct. 704 (2019). Copy supplied. This case alleged a breach of expressed and implied warranties under the Lemon Law. I granted defendant's summary judgment motion, finding plaintiff was required to present expert testimony to prove the existence of a mechanical defect in the motor vehicle at the time of sale. The Appeals Court disagreed and held despite the buyer's modification and installation of a supercharger, a jury could, without expert testimony, determine the existence of a defect under the Lemon Law.

Commonwealth v. Widener, 91 Mass. App. Ct. 696 (2017). This case involved the Armed Career Criminal Act. After a jury-waived trial on the sentencing enhancement charges, I found the defendant guilty of the subsequent offense portions of his indictments based on three prior convictions, when the defendant had four prior convictions. Consequently, I sentenced the defendant to a mandatory minimum term of imprisonment of fifteen years for having three prior convictions. The Appeals Court reversed and remanded the case after deciding the sentence under the ACCA was not proper without specifying which of the four prior convictions I relied upon to enhance his sentence based on having three prior convictions. The Appeals Court reversed based on a recent SJC case that was decided after my sentence was imposed, which states that the ACCA "applies only when a defendant's previous convictions of three qualifying crimes 'arising from separate incidences' were the results of separate, sequential prosecutions." Commonwealth v. Resende, 474 Mass. 455, 469 (2016). The Appeals Court found two of defendant's previous convictions were two separate offenses, charged separately, but defendant pled guilty to both and sentence to both on the same date, which therefore did not constitute "sequential prosecutions" and were not "separate incidences," under Resende. Consequently, the Appeals Court ruled those two prior convictions could not be counted as two separate convictions eligible to be used for sentencing enhancement under the ACCA. Defendant still had three prior convictions of qualifying crimes. I therefore resented him to the same mandatory minimum sentence based upon the three prior convictions.

Figuerado v. Sturdy Memorial Hospital, 1373CV00489, *rev'd*, 89 Mass. App. Ct. 1134 (2016). Copy supplied. This case involved a claim of medical malpractice. I granted defendant's motion to dismiss for plaintiff's failure to post the \$6,000 bond, required within 30 days of a medical tribunal's findings. The Appeals Court held the motion should not have been granted, because the 30<sup>th</sup> day was on a

Sunday, and plaintiff was permitted to post the bond on Monday, the 31st day after the tribunal.

Champa v. Weston Public Schools, 1281CV4475, *rev'd*, 473 Mass. 86 (2015). Copy previously supplied in response to Q13d. This case involved plaintiff's request for declaratory judgment requiring disclosure of settlement agreements between the town's public school and parents of students in special education programs, regarding the payment and placement of students in out-of-district private schools. The legal issues involved several state statutes and regulations pertaining to the public records laws and any applicable exemptions. I found the agreements were a matter of public record and did not meet any exemption thereby requiring disclosure, but also determined that portions of the agreements were private and would require redaction. On appeal, the Supreme Judicial Court reversed my decision, stating I interpreted the statutes too narrowly and the records were exempt from disclosure, but nonetheless agreed with me that after proper redaction the records must be disclosed.

Sturm Corporation v. Gilbane Building Company, 1282CV0113, *rev'd*, 2014-P-1866 (July 31, 2015). Copies supplied. In this case, plaintiff alleged defamation and other claims. I granted defendant's summary judgment motion that asserted it was protected by the qualified common interest privilege for any defamatory statements. The Appeals Court disagreed and reversed, finding the defendant did not establish on the undisputed record that the statements were entitled to the qualified privilege, therefore they were not entitled to summary judgment.

Commonwealth v. Sheppard, 0931CR001613, *rev'd*, 84 Mass. App. Ct. 1135 (2014). Copy supplied. This case involved a motor vehicle accident that resulted in a fatality. Defendant filed a motion to suppress results of a blood test for narcotics. I granted defendant's motion to suppress because there was no evidence of a written consent for specifically testing for narcotics. The Appeals Court reversed and held the Commonwealth proved consent for the blood draw and for narcotics testing, in addition to alcohol testing.

Commonwealth v. Huggins, 0915CR02209, *aff'd*, 84 Mass. App. Ct. 107 (2013). Copy supplied. I denied from the bench the defendant's motion to dismiss the criminal charges against him. The Appeals Court affirmed my decision but stated that the motion did not require an evidentiary hearing and should have been decided on the written statements supporting the Commonwealth's complaint.

Commonwealth v. Poole, 1034CR3310, *rev'd*, 83 Mass. App. Ct. 1129 (2013). Copy supplied. The defendant was charged with operating under the influence of alcohol, third offense. I granted defendant's motion to suppress, finding that the police lacked reasonable suspicion to stop a motor vehicle. The Appeals Court disagreed and reversed, holding there was sufficient evidence to support reasonable suspicion for the motor vehicle stop.

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

I have issued well over one hundred opinions during my near 12 years on the bench as a District and Superior Court Judge. I am unable to provide an exact number. I regularly decide both dispositive and non-dispositive motions in civil and criminal cases. The number of unpublished opinions probably constitute about 99 percent of the total. All opinions are stored in court files, maintained in the Clerk's Office, and are available to the public. Around 2015, the Massachusetts state trial courts commenced an electronic docketing system, where opinions are accessible. This system is unable to generate a list of issued opinions.

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

I have not written any significant opinions on federal or state constitutional issues.

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

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

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

In the Superior Court we are assigned to a session for three months at a time.

Superior Court Judges may move between different sessions within a courthouse or in different counties. Cases are assigned to the session, not the judge. During the three-month-sitting, each judge presides over the cases assigned to the session. Some judges may have recusal lists for cases involving family members or former law partners. The clerk's office will steer those cases to another session to avoid any conflicts of interest. It is common for the issue of recusal to arise upon the calling of a case.

While sitting in Norfolk County on a civil case, whose name I am unable to recall, an attorney sought my recusal because a member of his firm was on the Governor's Council at the time of my last confirmation hearing and his partner voted against my nomination. As required by the Massachusetts Code of Judicial Conduct, Rule 2.11, I first conducted a subjective evaluation of my ability to decide fairly and impartially the case, and then an objective analysis, to determine whether a fully informed disinterested observer might reasonably question my impartiality. I determined that I could be impartial and that a fully informed disinterested person would not question my impartiality, because I had already decided several motions in the case, within the year prior to the motion for recusal and the lawyer had not previously filed a motion for recusal. Additionally, the council member never appeared on the case and I was not aware the council member was a part of the same firm. The motion for recusal appeared to me to be an attempt at forum shopping, specifically because to have the case transferred to one of the two other judges in the courthouse the same issue would exist. These two other judges were appointed after me and their hearings would have included the same council member. Without knowledge of the council member's vote for these two judges, the case would be heard by a judge, whom the council member voted in favor of or one whom she opposed. Therefore, any conceivable question of impartiality would also exist for each civil judge in that courthouse at that time. Counsel never requested, pursuant to Superior Court Standing Order 9-80, special assignment to a judge, who did not appear before the Governor's Council during the tenure of that council member. I therefore denied the motion.

In the same county on another civil case, whose name I am unable to recall, I sua sponte recused myself from hearing a motion to be argued by the former United States Attorney, who had hired me as an Assistant United States Attorney. Even though I determined I could handle fairly and impartially the matter, I determined that, due to the relationship with my former boss, one might reasonably question my impartiality. That motion was assigned to another civil session, while I sat in that county.

While sitting in Attleboro District Court, I sua sponte recused myself from a case, whose name I am unable to recall. I was in the process of taking a plea and sentencing a defendant, when he informed me that he had been to my mother's home to perform home repairs. Because of my concerns for my mother's safety, I questioned my ability to sentence the defendant without fear of retaliation. The plea was taken by another judge.



Also, while in Attleboro District Court, I was hearing a bail argument in a case whose name I am unable to recall, when court staff alerted me that the defendant reported knowing me. I discovered the defendant appearing before me had recently been to my home to deliver a vehicle. This case was given to another session for handling.

While sitting in a Brockton Superior Court civil session, I had recently heard argument on a motion, when I discovered my husband was in the midst of a business transaction with one of the litigants to purchase a vehicle. I sua sponte recused myself from deciding the motion that was taken under advisement. Due to the temperament of the litigant, the business transaction with my husband, and because the litigant had been to my home, I decided the prudent course of action was to recuse myself from deciding the case. The motion was assigned to another session.

**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, other than my judicial position.

- 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 never served as a clerk to a judge.

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

I never practiced law alone.

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

1993 – 1997

The Legal Aid Society  
Juvenile Rights Division  
110 Livingston Street  
Brooklyn, New York 11201  
Staff Attorney

1997 – 2005

The Port Authority of New York & New Jersey  
New York Litigation Division  
4 World Trade Center, 24<sup>th</sup> Floor  
New York, New York 10007  
Staff Attorney (1997 – 2003)  
Senior Trial Attorney (2003 – 2005)  
Assistant Chief of New York Litigation division (2005)

2005 – 2007

Harvard Law School  
Harvard Legal Aid Bureau  
23 Everett Street  
Cambridge, Massachusetts 02138  
Clinical Instructor

2007 – 2009

United States Attorney's Office  
Major Crimes Unit  
One Courthouse Way, 9<sup>th</sup> Floor  
Boston, Massachusetts 02210  
Assistant United States Attorney

2009 – 2013

Commonwealth of Massachusetts Trial Court  
District Court  
24 Chardon Street  
Boston, Massachusetts 02108  
Judge

2013 – present

Commonwealth of Massachusetts Trial Court  
Superior Court

3 Pemberton Square, 13<sup>th</sup> Floor  
Boston, Massachusetts 02108  
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 served as a Smalls Claims Arbitrator in New York State, Bronx County in 2004 and 2005. I sat on average once a month for two years hearing claims up to \$3,000. I heard more than 50 cases and I am unable to recall any significant matters.

b. Describe:

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

Notwithstanding the teaching components of my clinical teaching position, 100 percent of my legal career as an attorney was in public sector litigation. My practice included discovery and motion practice, as well as trials in civil and criminal cases, as defense counsel and prosecution in state and federal courts. For two years, as a Clinical Instructor/Supervising Attorney at Harvard Law School, I split my time teaching and practicing law. In 2009, I was appointed to the state District Court as a judge and then in 2013 I was appointed to the Superior Court. Both are courts of general jurisdiction.

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

From 1993 to 1997, I was a staff attorney with the Legal Aid Society, Juvenile Rights Division, serving as a Law Guardian in child protective matters, representing abused and neglected children, and served as a public defender in cases alleging juvenile delinquency and commission of status offenses in Brooklyn Family Court.

Between 1997 and 2005, I worked at The Port Authority of New York and New Jersey, Law Department. I was hired as a staff attorney and promoted to Senior Trial Attorney in 2003, then promoted again to Assistant Chief of the New York Litigation Division in 2005. As trial counsel, I was primarily engaged in civil defense litigation and represented the Port Authority in cases involving general tort claims, alleged violations of federal civil rights (*e.g.*, employment discrimination and police misconduct), insurance disputes, Federal Employers Liability Act cases involving railroads, aviation, and maritime matters. Due to my prior

criminal practice, I specialized in cases alleging police misconduct, excessive use of force and false arrest. As in-house counsel, I provided legal advice to the various operating departments and provided other legal services to the bi-state agency.

From 2005 to 2007, I taught at Harvard University Law School's Legal Aid Bureau as a Clinical Instructor/Supervising Attorney. I taught substantive family law and litigation skills. I supervised students in the handling of cases on behalf of indigent clients and victims of domestic violence, in divorce proceedings, custody disputes, and child support matters in the Probate and Family Court in Suffolk and Middlesex counties.

From 2007 until my appointment to the District Court bench in 2009, I was an Assistant United States Attorney in the Major Crimes Unit at the Boston office of the United States Attorney's Office. I prosecuted crimes such as bank robberies, drug and gun offenses, crimes against children (child pornography and sex trafficking of minors), immigration violations, federal employee embezzlement, and crimes committed on federal property.

- 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.

While working at the Legal Aid Society from 1993 through 1997, I appeared in Family Court frequently, almost daily. While working at the Port Authority of New York and New Jersey from 1997 to 2005, I was in court several days per week, in state or federal court. While working at the Harvard Legal Aid Bureau between 2005 and 2007, I appeared in the Probate and Family Court or administrative agency with my students several times per week. While working at the United States Attorney's Office, from 2007 to 2009, I appeared in federal court several times per week.

- i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 45% |
| 2. state courts of record:  | 50% |
| 3. other courts:            | 1%  |
| 4. administrative agencies: | 4%  |

- ii. Indicate the percentage of your practice in:

- |                          |     |
|--------------------------|-----|
| 1. civil proceedings:    | 70% |
| 2. criminal proceedings: | 30% |

- 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 tried approximately 25 jury trials in New York State courts and three Federal courts (Southern District of New York, Eastern District of New York, and District of Massachusetts). I am unable to estimate the number of non-jury trials that I tried in the Brooklyn Family Court and Massachusetts Probate and Family Courts in civil and juvenile delinquency cases. Because the exact number of bench trials is unknown and too voluminous to estimate, the percentages below represent a rough estimate. I often tried several bench trials per week and they generally lasted a couple of hours.

- i. What percentage of these trials were:
  - 1. jury: 5%
  - 2. non-jury: 95%

- 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 never 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.
1. United States v. Frabizio, 03-CR-10283 (D. Mass.)

The defendant was indicted for possession of child pornography. The case was initially tried before a jury in 2007. That trial resulted in a hung jury. In 2009, I was assigned as co-counsel to try this case for the second time to give the prosecution of the case a fresh perspective. The primary issue at trial was whether the pornographic images in defendant's possession were images of real children. We presented expert

testimony from a pediatrician to prove the age of the subjects and the defendant presented expert testimony to establish the ease of manipulating photographic images to make the subject appear younger. In the second trial, the jury returned a guilty verdict.

Representation: 2009

Judge and Court: The Honorable Nancy Gertner, United States District Court for the District of Massachusetts

Co-counsel:

Dana Gershengorn  
Formerly Assistant United States Attorney  
Currently Associate Justice of the Juvenile Court  
1 Center Plaza  
7<sup>th</sup> Floor  
Boston, MA 02108  
(617) 788-6550

Opposing counsel:

Miriam Conrad  
Office of Federal Defenders  
51 Sleeper Street, #5  
Boston, MA 02210  
(617) 223-8061

2. United States v. Riley, 08-CR-10375 (D. Mass.)

In 2009, I obtained a single indictment against a defendant for felon in possession of a firearm. I worked with an Assistant U.S. Attorney from Maine to transfer a single indictment from Maine to Massachusetts. Once transferred the indictments were consolidated, and the defendant pled guilty to both indictments.

Representation: 2009

Judge and Court: The Honorable Douglas Woodlock, United States District Court for the District of Massachusetts

I did not have co-counsel.

Opposing counsel:

Charles McGinty (retired)  
Officer of Federal Defenders

51 Sleeper Street, #5  
Boston, MA 02210  
(617) 223-8061

3. United States v. Nguyen, 07-CR-10054 (D. Mass.)

In 2008, I joined the trial team at the trial stage. I served as second chair at trial. This case involved the making of false statements in a citizenship application. The jury returned a guilty verdict.

Representation: 2008

Judge and Court: The Honorable Nancy Gertner, United States District Court for the District of Massachusetts

Co-counsel:

Jeremy Sternberg  
United States Attorney's Office  
One Courthouse Way  
Boston, MA 02210  
(617) 748-3100

Opposing counsel:

Edward Lee  
65 Franklin Street, Suite 500  
Boston, MA 02110  
(617) 350-6882

4. The Port Authority Asian Jade Society, and others, v. The Port Authority of New York and New Jersey, 05-CV-3835 (S.D.N.Y.)

I was sole counsel assigned to handle a race discrimination lawsuit filed by 13 plaintiffs. Thirteen members of the Asian Jade Society (Asian-American police officers association) filed a lawsuit against the Port Authority alleging race discrimination. Prior to my departure from the Port Authority, I answered the complaint, conducted initial investigation, discovery, as well as development of case strategy, then interviewed and retained trial and consulting experts. The case continued for several years after my departure from the Port Authority in 2005 and was ultimately tried before a jury in March 2009.

Representation: 2005

Judge and Court: The Honorable Miriam Cedarbaum, United States District Court for the Southern District of New York

I did not have co-counsel.

Opposing counsel:

Karen King  
Cravath, Swaine & Moore LLP  
Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019  
(212) 474-1000

5. Taveras v. The Port Authority of NY & NJ, 03-CV-4478 (S.D.N.Y.)

In this suit alleging civil rights violations (employment discrimination), plaintiff, a New York City Police Officer, sued the Port Authority, alleging it denied plaintiff an employment opportunity with the Port Authority Public Safety Department as a police officer, due to his failure to meet the physical and visual acuity requirements. I handled the case representing the Port Authority as sole counsel from receipt of complaint through dismissal of the case. I filed the summary judgment motion and the court allowed the motion.

Representation: 2004 – 2005

Judge and Court: The Honorable Judge Shira Scheindlin, United States District Court for the Southern District of New York

I did not have co-counsel.

Opposing counsel:

Brian Raum  
99 Wall Street, 19<sup>th</sup> Floor  
New York, NY 10005  
(212) 361-3717

6. Martin v. The Port Authority of New York and New Jersey, et. al., 110352/03

In this railroad claim pursuant to Federal Employers Liability Act, I answered the complaint on behalf of the Port Authority, conducted discovery, and negotiated a settlement of this action from receipt of the complaint in 2004. The case resulted in a multimillion-dollar settlement arising from a train derailment that caused substantial physical damages to a young patron.

Representation: 2004



Judge and Court: Judge unknown, New York Supreme Court

I did not have co-counsel.

Opposing counsel:

Michael Levine  
445 Broad Hollow Road  
Melville, NY 11747  
(631) 293-2300

7. Traore v. Sgt. Silva et. al., 02-CV-3795 (E.D.N.Y.)

At the time I took over this case as lead counsel for the Port Authority, the case involved Section 1983 allegations of civil rights violations against five police officers, claiming police misconduct and excessive use of force. Initially, there were ten named police officers as defendants. Plaintiff was seeking compensatory and punitive damages. This case was transferred to me as sole counsel during the discovery phase. I completed discovery, filed motions in limine, and tried the case to a defense verdict.

Representation: 2004 – 2005

Judge and Court: The Honorable Sterling Johnson, United States District Court for Eastern District of New York

I did not have co-counsel.

Opposing counsel:

Fred Brian Lichtmacher and Michael Gorman  
The Law Office of Fred Lichtmacher P.C.  
60 East 42<sup>nd</sup> Street, Suite 2001  
New York, NY 10165  
(212) 922-9066

8. Hanchi v. The Port Authority of NY & NJ, 120783/03

This was a personal injury case where the plaintiff was injured using an electric hand dryer in the ladies' room at the Port Authority Bus Terminal. I handled the case as sole counsel from receipt of complaint through settlement, including filing an answer, discovery requests, motions, and negotiating a \$350,000 settlement in 2004.

Representation: 2004

Judge and Court: Judge unknown, New York Supreme Court

I did not have co-counsel.

Opposing counsel:

Greenberg & Stein  
295 Madison Avenue, 20<sup>th</sup> Floor  
New York, NY 10017  
(212) 681-2535

9. 9/11 Insurance Litigation – SR International Co. v. World Trade Center, et. al.,  
01-CV-9291 (S.D.N.Y.)

The Port Authority of New York and New Jersey was self-insured and had excess insurance coverage. Following the 9/11 terrorist attacks, insurance litigation was initiated to determine whether the two plane attacks on separate buildings constituted one attack or two. The Port Authority advocated for two occurrences, which would have doubled the coverage. Immediately following 9/11, I was tapped to join a small team of attorneys involved in the initial planning and strategy development for the upcoming insurance litigation. Due to the size of the litigation, number of insurers involved, and teams of attorneys involved, I am unable to provide the names and addresses of counsel.

Representation: 2001 – 2002

Judge and Court: The Honorable Michael Mukasey, United States District Court for the Southern District of New York

Lead counsel for the Port Authority:

Megan Lee  
Assistant General Counsel  
4 World Trade Center  
150 Greenwich Street  
24<sup>th</sup> Floor  
New York, NY 10007  
(212) 435-3435

10. 1993 World Trade Center Bombing cases – numerous cases

As a result of the 1993 World Trade Center bombing, over 400 personal injury and business interruption separate lawsuits were filed against the Port Authority of New York and New Jersey. I participated in large-scale discovery practice and conducted depositions and document discovery as a part of a team of attorneys on behalf of the Port Authority. Due to the size of the litigation, I am unable to provide a list of names and addresses.

Representation 1997 – 2001

Judge and Court: The Honorable Stanley Sklar, New York Supreme Court

Lead counsel for the Port Authority:

James Begley  
Deputy General Counsel  
4 World Trade Center  
150 Greenwich Street  
24<sup>th</sup> Floor  
New York, NY 10007  
(516) 255-5086

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

In 2016, Chief Justice of the Trial Court appointed me to chair the newly created Trial Court Public Outreach Committee. As Chair of the Public Outreach Committee, I lead the Committee in creating opportunities for judges and other court staff to participate in community outreach projects. The ABA created this initiative in 2017 to educate the public about the role of the judiciary and the importance of judicial independence in preserving the rule of law. In Massachusetts, we have expanded our outreach efforts beyond one week and to the entire month of March. In 2019, we recruited over 180 state court judges to make visits to over 200 schools, libraries, civic, religious and community groups. In January 2019, the ABA presented me with the Burnham “Hod” Greeley award for my leadership in these efforts. In addition to our work on NJOW, I arranged Listening Sessions in the community. In Plymouth county, we initially hosted listening sessions in the Courthouse, then in the community at the public library, and in the house of corrections where criminal defendants are detained on pre-trial status or sentenced to a period of incarceration. The purpose of these listening sessions was to create opportunities for judges to engage directly with the community to hear from court-users about their experiences. The insights gained from these events have been very informative and productive in our administration of justice.

In 2018, I suggested and organized an educational program for judges called the ABC’s on Drugs: Addiction – Behavior – Consequences. This was an educational primer for judges on drug use and addiction. I created this program because many judges come from personal and professional environments removed from drug activity and only encounter this aspect of society while hearing cases. The program covered current trends in street

level drug dealing, the nature of addiction, the impact on the communities and treatment options. The presenters included a state trooper, probation officers, treatment providers and persons in recovery.

As a Superior Court Judge, I served as the Regional Administrative Judge in Plymouth County for four years. I arranged quarterly Bench-Bar meetings and educational programs for court employees, judges, and the bar. One of the educational programs was called Sentencing and Beyond, which focused on understanding the calculation of jail credit for good time, classification in the Department of Corrections (DOC), programs offered in DOC, and the interplay between probation and parole. I organized other programs such as the effective use of GPS devices, Office of Community Corrections, Re-entry services, and introduction of the new Pre-Trial Services unit in the Probation Department. Additionally, I organized a program on Cultural Awareness and Sensitivity. This program was an open dialogue with the bar to raise cultural awareness and sensitivity to ensure everyone using the courthouse is treated with dignity and respect.

As an Assistant United States Attorney, I participated in two special federal court programs as the representative from the U.S. Attorney's Office. I was one of two designated representatives from the U.S. Attorney's Office to serve in the federal court's Court Assisted Recovery Effort (CARE) program, run by then-United States Magistrate Judge Leo Sorokin. CARE is a program that intensely supervises defendants with long-term drug addiction problems when they are released back into the community. The program's goal is to keep the community safe by helping defendants create sober, gainfully employed, and law-abiding lives, through rehabilitation.

I also volunteered to serve as the liaison to a pilot re-entry program, run by then-United States Magistrate Judge Timothy Hillman. The purpose of RESTART (Re-entry: Empowering Successful Todays and Responsible Tomorrows) is to provide a comprehensive and coordinated network of services to defendants returning into the community, with the goal of reducing recidivism and aiding in their successful reintegration into society. Re-entry support and services has proven to be successful at reducing recidivism. Defendants who served long prison terms or who were incarcerated at a young age, often return to the community without support and adequate skills to survive lawfully in the community. Successful re-entry programs set goals to eliminate the contributing factors that lead individuals to return to criminal activity.

While at the United States Attorney's Office, I was designated the Point of Contact for all investigations of child sex trafficking as a part of the Justice Department's initiative against child exploitation and obscenity crimes. I also participated in Boston's Human Trafficking Task Force.

On September 11, 2001, The Port Authority of New York and New Jersey lost 87 employees, including 37 police officers. I personally knew many of these officers and taught with them at the police academy. In honor of their sacrifice, I volunteered my legal services to their families. It was my honor and duty to offer my legal services to the

families of these courageous men and women. For my volunteer work, I received a Certificate of Recognition.

I have never performed 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 Trial Advocacy in Fall 2018, Fall 2019, and Fall 2020 at Boston University School of Law. The course covered basic trial techniques and the art of advocacy. The students learned to deliver opening statements, conduct skilled direct and cross-examinations, and present persuasive closing arguments. Representative syllabus supplied.

I have taught one or two sections of Trial Advocacy at Suffolk University in a semester, typically in the Spring, starting from 2012, but sometimes in the Fall too. The course covered basic trial techniques and the art of advocacy. The students learned to deliver opening statements, conduct skilled direct and cross-examinations, and present persuasive closing arguments. Representative syllabus supplied.

I have served as a part of a team of instructors who teach a one-week Trial Advocacy course at Emory Law School for the Kessler-Eidson Program for Trial Techniques. I taught the course in the Spring Terms in 2016, 2017, 2018, and 2019. I am unable to locate any syllabi.

I have served as a part of a team of instructors who taught a one-week Trial Advocacy Workshop at Harvard Law School. I taught this course during the Fall Terms from 2008 through 2015. I am unable to locate any syllabi.

I served as Clinical Instructor at Harvard Law School's Legal Aid Bureau from 2005 to 2007. I taught litigation skills and joined other clinical faculty staff in teaching classes involving domestic relations and administrative hearings. I am unable to locate any syllabi.

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

I contributed funds into the New York State Deferred Compensation Plan. I do not have specific plans for distribution of those funds.

I contributed funds into the Massachusetts Deferred Compensation Smart Plan. I do not have specific plans for distribution of those funds.

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.

Currently, I am scheduled to teach Trial Advocacy at Boston University Law School in the Fall of 2021. I have no other commitments. If confirmed, I am likely to resume teaching in some capacity at schools or other educational programs.

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 am unaware of any family members or other persons, parties, categories of litigation, or financial arrangements that are likely to present potential conflicts of interests. However, if confirmed, I will recuse myself from any litigation where I have played a role in representing or advising any party to the litigation. I will also recuse myself from matters involving family members or matters in which I have financial interests. I will remain vigilant for real or potential conflicts that could give rise to an appearance of a conflict. Potential conflicts will be evaluated on a case-by-case basis. I will determine the appropriate action after review of the canons of ethics and consultation with the parties. If necessary, I will recuse myself.

- 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, to address any real or potential conflicts I will carefully consult and

will comply with the Code of Conduct for United States Judges and applicable statutes, including 28 U.S.C. § 455, any and all applicable laws, rules, and practices governing such circumstances. If appropriate, I would notify all parties of the potential conflict of interest, and consult with them about it, to determine the appropriate resolution. If appropriate, I will recuse myself.

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

I have dedicated my entire professional career to public interest and public service work. On my personal time, I have also served disadvantaged communities. In 2007, post-Hurricane Katrina, I volunteered one week in New Orleans, Louisiana to assist a community based non-profit organization with legal matters, involving efforts to reclaim public housing for displaced residents. As a judge, I am prohibited from providing pro bono legal services, but I continue to work with bar associations to serve the community. In 2010, I organized a community service project for the Women Bar Association's Women of Color Committee to develop programming for at-risk adolescent girls involved with Roxbury Youthworks, Inc. From that experience, I joined the Board of Roxbury Youthworks, Inc., which is a community based non-profit organization for at-risk juveniles involved with the Massachusetts child protective agency and youth services. Since 2016, I have extended my pro bono activities to include international service projects with Lawyers Without Borders, teaching in Liberia, Tanzania, and Kenya.

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 2017, I submitted my application to the bipartisan Advisory Committee on Massachusetts Judicial Nominations and interviewed with both U.S. Senators, and then the White House in 2018. The White House took no action on my application. In 2019, new members were appointed to the bipartisan advisory committee. I applied again, interviewed with the bipartisan advisory committee and my application was advanced again to the senators. No action was taken.

On January 1, 2021, Senators Elizabeth Warren and Edward Markey announced new committee members to the bipartisan Advisory Committee on Massachusetts Judicial Nominations to consider applications for federal judicial vacancies in the United States District Court for the District of Massachusetts. On January 18, 2021, I submitted my application for consideration. I interviewed with the advisory committee on February 4, 2021. I interviewed with Senators Warren and Markey on February 17, 2021. I interviewed with attorneys from the White House Counsel's Office on February 23, 2021. Since February 25, 2021, 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).

Christine Patricia O'Hearn  
Christine Patricia McCall (maiden name)

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

United States District Judge for the District of New Jersey

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

Office: Brown & Connery, LLP  
360 Haddon Avenue  
Westmont, New Jersey 08108

Residence: Cherry Hill, New Jersey

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

1969; Camden, New Jersey

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

1990 – 1993, Temple University School of Law; J.D., *cum laude*, 1993  
1987 – 1990, University of Delaware; B.A., 1990

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.

1992 – present  
Brown & Connery, LLP  
360 Haddon Avenue

Westmont, New Jersey 08108  
 Partner (2001 – present)  
 Associate (1993 – 2000)  
 Law Clerk (1992 – 1993)

2006 – 2007  
 Rutgers University School Of Law – Camden  
 217 North 5th Street  
 Camden, New Jersey  
 Adjunct Professor, Employment Law

Spring 1993 (approx.)  
 United States Magistrate Judge M. Faith Angell  
 United States District Court for the Eastern District of Pennsylvania  
 Robert N.C. Nix Federal Building  
 900 Market Street, Suite 211  
 Philadelphia, Pennsylvania 19107  
 Extern

1992 (approx.)  
 Camden County Prosecutor's Office  
 200 Federal Street  
 Camden, New Jersey 08103  
 Extern

Summer 1991  
 United States Attorney's Office for the Eastern District of Pennsylvania  
 Philadelphia, Pennsylvania  
 615 Chestnut Street, Suite 1250  
 Philadelphia, Pennsylvania 19106  
 Intern

1990-1992  
 JC Penney  
 2000 NJ-38, Suite 1000  
 Cherry Hill, New Jersey 08002  
 Loss Prevention Associate

Other Affiliations:

Approximately 2009 – present  
 Health Professionals and Allied Employees Retiree Medical Trust  
 140 Sylvan Avenue, No. 303  
 Englewood Cliffs, New Jersey 07632  
 Trustee

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

I did not serve in the military. I 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.

“AV” rated by Martindale Hubbell

Super Lawyers (2020 – 2021)

“Our First Ever Best Attorneys in Business,” South Jersey Biz (May 2014)

Fellow, American College of Trial Lawyers (2013 – present)

New Jersey’s Top Rated Lawyers (2012)

Philadelphia’s Top Rated Lawyers, Labor and Employment (2012)

Certified Civil Trial Attorney by the New Jersey Supreme Court (2007 – present)

Super Lawyers Rising Stars (2006 – 2009)

Named one of “Top 40 Attorneys Under 40” in New Jersey, New Jersey Law Journal (2002, 2004)

Featured in “Women and Minorities in the Legal Profession,” New Jersey Law Journal (2003)

Temple University School of Law

Moot Court Board (1991 – 1993)

Finalist, I. Herman Stern Moot Court Competition (1991)

Best Oral Advocate Award (1991)

Distinguished Class Performance, Evidence (1991)

Distinguished Class Performance, Federal Courts (1992)

Distinguished Class Performance, Conflicts of Laws (1992)

Distinguished Class Performance, Civil Procedure (1993)

Invitation to Temple Law Review (1992)

Deans Honor List (4 of 6 semesters)

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 (1993 – present)

American College of Trial Lawyers, Fellow (2013 – present)  
 New Jersey State Committee, Member (2013 – present)  
 Federal Civil Procedure Committee, Member (2020 – present)  
 Emil Gumpert Award Committee, Member (2020 – present)  
 Griffin Bell Award Committee, Member (2020 – present)

Camden County Bar Association (1993 – present)

Federal Bar Association (2021 – present)

New Jersey State Bar Association (1993 – present)  
 Cannabis Law Committee (2019 – present)

New Jersey Supreme Court Board on Attorney Certification, Civil Trial Certification,  
 Member (2014 – present)

New Jersey Supreme Court, Committee on the Unauthorized Practice of Law, Member  
 (2008 – 2010)

New Jersey Supreme Court, District IV Ethics Committee, Member (2003 – 2009)

Pennsylvania Bar Association (1993 – present)

United States Magistrate Judge Selection Committee, Member (Camden Vicinage)  
 (2020)

United States Supreme Court Historical Society, New Jersey State Chair (approximately  
 2013)

10. **Bar and Court Admission:**

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

New Jersey, 1993  
 Pennsylvania, 1993

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.

Supreme Court of the United States, 2007  
 United States Court of Appeals for the Third Circuit Court, 1994  
 United States District Court for the District of New Jersey, 1993  
 United States District Court for the Eastern District of Pennsylvania, 1996

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.

Health Professionals and Allied Employees Retiree Medical Trust, Trustee  
 (approximately 2009 – present)

National Association of Women Business Owners, Member (2017 – present)

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

To my knowledge, none of these organizations 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.

With Christopher A. Reese, *Theft or Protected Activity? Can You Terminate the Document Thief?*, Defense Research Institute, For the Defense (Jan. 2016). Copy

supplied.

*Social Media in Employment Discrimination Cases: How to Get It and What to Do With It*, 220 N.J.L.J. 447 (2015). Copy supplied.

*Social Media Discovery in Employment Discrimination Cases*, The Job Description, Defense Research Institute, Vol. 27, Issue 2 (2015). I am unable to locate a copy of this article.

*Substantial Expansion of the NJLAD Anti-Retaliation Provision*, 193 N.J.L.J. 758 (2008). Copy supplied.

*Assumption Refuted: No Duty to Provide Pregnant Employees with Light Duty*, 192 N.J.L.J. 1079 (2008). Copy supplied.

*The Proper Response to a Grievance: How an Attorney Can Effectively Manage an Ethics Inquiry*, 187 N.J.L.J. 260 (2007). Copy supplied.

*Health Care Employers May Balance Accommodation of Disabled Employee Against Patient Safety*, Corporate Counsel (2006). Copy Supplied.

*Accommodation Versus Risk, Friction Between Accommodating a Disabled Employee and Ensuring Patient Safety*, 186 N.J.L.J. 286 (2006). Copy supplied.

*More Outrage over Hirshman Op-Ed*, 185 N.J.L.J. 1037 (2006). Copy supplied.

*Benefits Decision Does Not Bar Other Suits; Collateral Estoppel Is Not Applicable to Unemployment Compensation Determinations*, 184 N.J.L.J. 891 (2006). Copy supplied.

*Doctor Cannot Veto Settlement With Hospital*, 181 N.J.L.J. 518 (2005). Copy supplied.

*Discrimination Decision a Mixed Bag for Employers: State Supreme Court Addresses Emotional Distress, Individual Liability Under NJLAD*, 178 N.J.L.J. 949 (2004). Copy supplied.

*Partnership and Moms: We Can Choose to Have Both*, 11 N.J. Law. No. 13 (2002). 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.

American Bar Association, Midwinter Report of the Subcommittee on Family and Medical Leave Act, Labor And Employment Law (2001, 2002). I am unable to locate a copy of this report.

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

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.

March 26, 2021: Panelist, "Deposition College," New Jersey Institute Continuing Legal Education, New Brunswick, New Jersey. Course materials supplied.

August 7, 2020: Panelist, "Mistrials, Curative Instructions, Post Verdict Testimony", New Jersey Association for Justice, Trenton, New Jersey. Course materials supplied.

August 13, 2020: Panelist, "Closing Arguments", American College of Trial Lawyers and New Jersey Institute of Continuing Education, New Brunswick, New Jersey. I participated on a panel discussing effective closing arguments at trial. I have no notes, transcript, or recording. The address for the New Jersey Institute of Continuing Legal Education is One Constitution Square, New Brunswick, New Jersey 08901.

2019: Panelist, "Federal Judicial Intern Program," United States District Court for the District of New Jersey, Camden, New Jersey. I participated in a panel and question and answer session held annually for federal clerks and interns concerning the practice of law after completing a clerkship. I have no notes, transcript, or recording. The address for the United States District Court for the District of New Jersey is Mitchell H. Cohen Building & U.S. Courthouse 4th & Cooper Streets Camden, New Jersey 08101.

May 11, 2018: Panelist, "Demonstrative Evidence in Employment Litigation," New Jersey Association for Justice, Trenton, New Jersey. I participated on a panel

discussing the use of demonstrative evidence in employment litigation matters. I have no notes, transcript, or recording. The address for the New Jersey Association for Justice is 150 West State Street, Trenton, New Jersey.

2018: Panelist, "Federal Judicial Intern Program," United States District Court for the District of New Jersey, Camden, New Jersey. I participated on a panel and held annually for federal clerks and interns concerning the practice of law after completing a clerkship. I have no notes, transcript, or recording. The address for the United States District Court for the District of New Jersey is Mitchell H. Cohen Building & U.S. Courthouse 4th & Cooper Streets Camden, New Jersey 08101.

March 10, 2017: Moderator and Speaker, "Deposition College," New Jersey Institute Continuing Legal Education, New Brunswick, New Jersey. I moderated a panel discussing the basic protocols for taking and defending depositions. I have no notes, transcript, or recording. The address for the New Jersey Institute of Continuing Legal Education is One Constitution Square, New Brunswick, New Jersey 08901.

February 24, 2017: Panelist, "Perspectives from the Bench and Bar – Brown Bag Lunch Series," United States District Court for the District of New Jersey and Association of the Federal Bar of New Jersey, Camden, New Jersey. I participated on a panel discussing federal practice. I have no notes, transcript, or recording. The address for the United States District Court for the District of New Jersey is Mitchell H. Cohen Building & U.S. Courthouse 4th & Cooper Streets Camden, New Jersey 08101.

2017: Speaker, "Discrimination, Harassment, Workplace Bullying and Workplace Violence," Gloucester County Insurance Commission. PowerPoint supplied.

2017: Panelist, "Federal Judicial Intern Program," United States District Court for the District of New Jersey, Camden, New Jersey. I participated on a panel and held annually for federal clerks and interns concerning practice of law after clerkship. I have no notes, transcript, or recording. The address for the United States District Court for the District of New Jersey is Mitchell H. Cohen Building & U.S. Courthouse 4th & Cooper Streets Camden, New Jersey 08101.

2016: Panelist, "Insights to Federal Practice: Perspectives of the Bench and Bar," Federal Bar Association, District of New Jersey, Cherry Hill, New Jersey. I participated on a panel concerning the nuts and bolts of federal practice with federal judges and practitioners. I have no notes, transcript, or recording. The address for the Federal Bar Association, District of New Jersey, P.O. Box 285, Caldwell, New Jersey 07006-0285

2016: "Panelist, "Federal Judicial Intern Program," United States District Court for the District of New Jersey, Camden, New Jersey. I participated on a panel held



annually for federal clerks and interns concerning practice of law after clerkship. I have no notes, transcript, or recording. The address for the United States District Court for the District of New Jersey is Mitchell H. Cohen Building & U.S. Courthouse 4th & Cooper Streets Camden, New Jersey 08101.

2016: Panelist, "Liability and Workers Compensation Cost Containment Strategies, Public Employer Risk Management Association," PERMA, Parsippany, New Jersey. I participated on a panel discussing employment risks in the workplace. I have no notes, transcript, or recording. The address for PERMA is 9 Campus Drive, Parsippany, New Jersey 07054.

September 20, 2016: Panelist, "The New Jersey Compassionate Use of Medical Marijuana Act," Camden County Bar Association, Cherry Hill, New Jersey. I participated on a panel discussing the then newly enacted statute on medical marijuana. I have no notes, transcript, or recording. The address for the Camden County Bar Association is 1040 Kings Highway North, Cherry Hill, New Jersey 08034.

July 11, 2016: Panelist, "Civil Trial Advocacy Summer Institute, Expert Witnesses at Trial," New Jersey Institute of Continuing Education, New Brunswick, New Jersey. I participated on a panel discussing direct and cross examination of expert witnesses at trial. I have no notes, transcript, or recording. The address for the New Jersey Institute of Continuing Legal Education is One Constitution Square, New Brunswick, New Jersey 08901.

2015: Panelist, "Psychological Fitness: Legal Issues & Referral Guidelines for Public Safety Agencies," Burlington County Prosecutor's Office, Mt. Holly, New Jersey. I participated on a panel discussing fitness-for-duty issues for police officers. I have no notes, transcript, or recording. The address for the Burlington County Prosecutor's Office is 49 Rancocas Road, P.O. Box 6000, Mt. Holly, New Jersey 08060.

2011: Panelist, "Elected Officials Seminar," New Jersey Municipal Excess Joint Insurance Fund, Parsippany, New Jersey. I participated on a panel discussing management of employment liability in the workplace. I have located course materials that I believe I may have commented on but do not recall writing. Course materials supplied.

2010: Panelist, "Risk Management for Municipalities," New Jersey Joint Insurance Fund, Parsippany, New Jersey. I participated on a panel discussing management of employment liability in the workplace. I have located course materials that I believe I may have commented on but do not recall writing. Course materials supplied

2008: Panelist, "Elected Officials Seminar," New Jersey Municipal Joint Insurance Fund, Parsippany, New Jersey. I participated on a panel discussing

management of employment liability in the workplace. I have located course materials that I believe I may have commented on but do not recall writing. Course materials supplied

2007: Panelist, "Hospital Law and Employment Law," Widener School of Law, Wilmington, Delaware. I participated on a panel for law students discussing legal and employment issues in the healthcare industry. I have no notes, transcript, or recording. The address for Widener Law School is 4601 Concord Pike, Wilmington, Delaware.

2006: Panelist, "Hospital Law and Employment Law," Widener School of Law, Wilmington, Delaware. I participated on a panel for law students discussing legal and employment issues in the healthcare industry. I have no notes, transcript, or recording. The address for Widener Law School is 4601 Concord Pike, Wilmington, Delaware.

2006: Panelist, "Mastering Federal Rules of Civil Procedure & Local Rules," Camden County Bar Association, Cherry Hill, New Jersey. I participated on a panel and question discussing to federal practice. I have no notes, transcript, or recording. The address for the Camden County Bar Association is 1040 Kings Highway North, Cherry Hill, New Jersey 08034.

2004: Panelist, "Understanding the Federal Rules of Civil Procedure," Camden County Bar Association, Cherry Hill, New Jersey. I participated on a panel discussing federal practice. I have no notes, transcript, or recording. The address for the Camden County Bar Association is 1040 Kings Highway North, Cherry Hill, New Jersey 08034.

2003: Panelist, "Elected Officials Seminar," New Jersey Municipal Excess Liability Fund, Parsippany, New Jersey. I participated on a panel discussing management of employment liability in the workplace. I have located course materials that I believe I may have commented on but do not recall writing. Course materials supplied

2002: Panelist, "Elected Officials Seminar," New Jersey Municipal Excess Liability Fund, Parsippany, New Jersey. I participated on a panel discussing management of employment liability in the workplace. I have located course materials that I believe I may have commented on but do not recall writing. Course materials supplied.

2000: Panelist, "Family and Medical Leave Act, Drafting an FMLA Policy," Cherry Hill, New Jersey. I participated in a panel discussing the FMLA. I have no notes, transcript, or recording. The address for Lorman Business Institute is P.O. Box 509, Eau Claire, Wisconsin 54702-0509.

2000: Panelist, "Sexual Harassment in Schools," Camden County Bar Association, Cherry Hill, New Jersey. I participated on a panel discussing sexual harassment in schools. I have no notes, transcript, or recording. The address for the Camden County Bar Association is 1040 Kings Highway North, Cherry Hill, New Jersey 08034.

1999: Panelist, "Sexual Harassment," Camden County Bar Association, Cherry Hill, New Jersey. I participated on a panel discussing sexual harassment in schools. I have no notes, transcript, or recording. The address for the Camden County Bar Association is 1040 Kings Highway North, Cherry Hill, New Jersey 08034.

1999: Panelist, "Family and Medical Leave Act, Drafting an FMLA Policy," Lorman Business Institute, Cherry Hill, New Jersey. I participated on a discussing the FMLA. I have no notes, transcript, or recording. The address for Lorman Business Institute is P.O. Box 509, Eau Claire, Wisconsin 54702-0509.

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

I have from time to time been quoted in local press articles related to litigation matters I have handled as authorized by the client and as related to the outcome of litigation.

Jim Walsh, *Rebuff For Suit Claiming Hiring Bias at Camco PD*, Courier-Post, Oct. 10, 2019. Copy supplied.

Claire Lowe, *Ex-O.C. Official Appeals Dismissal of Federal Suit*, The Press Of Atlantic City, May 31, 2019. Copy supplied.

Charles Toutant, *Lawyer Ordered to Pay \$89,234 for Bringing Frivolous Lawsuit*, N.J. L. J. (Apr. 4, 2019). Copy supplied (reprinted in multiple outlets).

*Lawyer Sanctioned After Employment Discrimination Lawsuit Deemed Frivolous* (Feb. 10, 2019). Copy supplied.

Matt Gray, *Fired Cop Dishonest, Can't Have Job Back, Judge Says*, South Jersey Times, Nov. 1, 2017. Copy supplied (reprinted in multiple outlets).

Jim Walsh, *Judge Ordered To Read Briefs Before Ruling*, Courier-Post, Mar. 7, 2017. Copy supplied (reprinted in multiple outlets).

Matt Skoufalos, *Haddon Twp. Faces Tort Notice, Lawsuits, from Current, Former Police Officers* (Mar. 1, 2017). Copy supplied.

Jim Walsh, *Judge Allows Suit Against Haddon Twp. to Proceed*, Courier-Post, Feb. 22, 2017. Copy supplied.

Tim Cwiek, *Lesbian Police Officer Fights for Pension* (Mar. 17, 2016). Copy supplied.

Andy Polhamus, *Sexual Assault Suit Dropped, County Cleared*, South Jersey Times, June 28, 2015. Copy supplied (reprinted in multiple outlets).

Melanie Burney, *Farm to pay back wages and penalties for failing to hire U.S. Workers*, Phila. Inquirer, January 6, 2015. Copy supplied.

Stephanie Weaver, *Lancaster County Woman Sues A.C. Moore*, Reading Eagle, July 19, 2014. Copy supplied (reprinted in multiple outlets).

Joe Green, *Former Gloucester County Sheriff's Officer Claims Sex Assault, Sues County*, NJ.com (July 17, 2014). Copy supplied.

Jim Walsh, *Court Rules Against Former Tax Clerk*, Courier-Post, July 9, 2014. Copy supplied.

Phil Davis, *Ex-Lieutenant Suing Cherry Hill Police Department*, South Jersey Times, May 7, 2014. Copy supplied (reprinted in multiple outlets).

*Our First-Ever Best Attorneys in Business*, South Jersey Biz (May 2014). Copy supplied.

Phil Davis, *Ex-Officer Files Lawsuit Against P.D., Township*, South Jersey Times, Apr. 9, 2014. Copy supplied.

Carol Comegno, *Authorities Dismiss Falsification Charge Against Former Pine Hill Tax Collector*, Courier-Post, Oct. 25, 2012. Copy supplied.

George Mast, *Ex-Cop to Get \$267,000 in Bias Case*, Courier-Post, May 24, 2012. Copy supplied.

Jamie Primeau, *\$425,000 Settlement for Fioccos' Suit Against the State and the College*, The Signal (May 5, 2012). Copy supplied (reprinted in multiple outlets).

Lisa Coryell, *Judge Allows Family's Suit Over Son's TCNJ Death*, The Gloucester County Times, Nov. 12, 2011. Copy supplied (reprinted in multiple outlets).

Lisa Coryell, *Fiocco Parents: TCNJ Graduate Killed Our Son*, The Times of Trenton, Oct. 22, 2011. Copy supplied (reprinted in multiple outlets).

Jim Walsh, *Guardsmen Sue Over Job Loss While Serving*, Courier-Post, July 16, 2011. Copy supplied.

Christina Paciolla, *Court Backs Dismissal Of Harassment Suit Against Gloucester County Officials*, The Gloucester County Times, Aug. 25, 2010. Copy supplied.

Lisa Coryell, *Fiocco's Parents Win Access To Student Data*, Times of Trenton, Apr. 1, 2009. Copy supplied (reprinted in multiple outlets).

Pete McCarthy, *Ex-County Worker To Appeal Ruling To Pay For Legal Fees*, The Gloucester County Times, Feb. 11, 2009. Copy supplied.

Henry Gottlieb, *Punitive Damages Not Recoverable in Hospital Doctor's Suit Over Dismissal*, 193 N.J.L.J. 1 n.5 (Aug. 4, 2008). Copy supplied.

Jan Hefler, *Parents of Student Who Died in Landfill File Lawsuit*, Phila. Inquirer, Mar. 16, 2008. Copy supplied (reprinted in multiple outlets).

Wendy Ruderman & Mark McDonald, *Report Tomorrow On Linc Ramps: E-Mails Express Safety Concerns*, Phila. Daily News, Jan. 11, 2007. Copy supplied.

Michael Booth, *Negligent Assignment of Horse to Rider Can Leave Owner Liable*, 186 N.J.L.J. 7 (Dec. 25, 2006). Copy supplied.

Linda Stein, *Injured Rider Will Get Trial Appeals Court Says Owner Responsible For Pairing Woman, Horse*, Times of Trenton, Dec. 19, 2006. Copy supplied.

Charles Toutant, *N.J. Regulators Trying to Put State, Federal Family Leave Rules in Sync*, N.J.L.J. (Nov. 7, 2006). Copy supplied.

Daniel Walsh, *Seabrook House Whistle-Blower Wins \$1 Million Lawsuit*, The Press of Atlantic City, Apr. 8, 2006. Copy supplied.

Martin C. Bricketto, *Monroe Fails Bid to Drop Suit by Gooden*, The Gloucester County Times, Mar. 11, 2006. Copy supplied.

Charles Toutant, *Cardiologist Wins Punitive Damages of \$4.68M in Wrongful Discharge Suit*, 183 N.J.L.J. 1 (Jan. 23, 2006). Copy supplied.

Renee Winkler, *Court Orders Retrial in Whistleblower Case*, Courier-Post, May 26, 2005. Copy supplied.

Renee Winkler, *Firefighter's Family OK's \$2.8 Million Settlement*, Firefighter Close Calls (May 24, 2005). Copy supplied.

*Monroe Should Rule Out Double Health Coverage*, Courier-Post, Apr. 2, 2004.  
Copy supplied.

*Court Oks Dual Benefits for Monroe Couple*, Courier-Post, Mar. 30, 2004. Copy  
supplied.

Mary P. Gallagher, *\$1M for Injuries from Runaway Tire*, N.J.L.J., Aug. 6, 2001.  
Copy supplied (reprinted in multiple outlets).

Bernie Weisfeld, *Monroe Seeks to Overturn Ruling on Fired Worker*, Courier-  
Post, April 28, 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 never held judicial office.

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

- i. Of these, approximately what percent were:

jury trials: \_\_\_\_\_ 0%  
bench trials: \_\_\_\_\_ 0% [total 100%]

- ii. Of these, approximately what percent were:

civil proceedings: \_\_\_\_\_ %  
criminal proceedings: \_\_\_\_\_ % [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
  - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have never 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.

I have never held public office. I have never been candidate for elective office or a nominee for appointed office.

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

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.

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

I have never practiced alone.

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

1992 – present  
Brown & Connery, LLP  
360 Haddon Avenue  
Westmont, New Jersey 08108  
Law Clerk (1992 – 1993)  
Associate (1993 – 2000)  
Partner (2001 – 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.

- b. Describe:



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

While in law school, I interned at the U.S. Attorney's Office in the Eastern District of Pennsylvania. In that position, I did legal research and writing on constitutional issues including those related to the then newly enacted forfeiture statutes as well as other criminal issues. I also externed with United States Magistrate Judge M. Faith Angell, in the Eastern District of Pennsylvania where I worked on criminal matters including habeas corpus petitions and civil motions.

In February 1992, during my second year of law school, I joined the firm of Brown & Connery, LLP as a law clerk. As a law clerk, I worked on various civil litigation matters.

The general character of my law practice has been civil litigation in state and federal courts. Over my 28 years of practice, it has included personal injury, product liability, commercial, civil rights, employment, and other complex civil litigation matters on behalf of both plaintiffs and defendants.

Upon graduation from law school, I joined Brown & Connery, LLP as an associate attorney in August 1993. As an associate attorney, my practice initially focused on representing plaintiffs in personal injury matters and also defending certain commercial litigation matters. In January 2001, I became a partner at the firm.

In the early 2000s my practice centered on representing employees as plaintiffs in employment discrimination matters and complex personal injury and wrongful death matters. My typical clients during this time period included individuals who were injured and/or who had suffered employment discrimination in the workplace. My cases included representing employees who had suffered disability discrimination, sex discrimination, failure to accommodate, race discrimination, pregnancy discrimination, hostile work environment and retaliation in the workplace. While representing plaintiffs in personal injury, wrongful death, and employment discrimination matters, I achieved numerous settlements and jury verdicts in favor of employees and plaintiffs, several of which were in excess of \$1 million.

For the past 15 years, my practice has focused on the defense of complex employment litigation matters, though I continued to represent plaintiffs in some cases as well. My practice has concentrated on defense of private and public employers and my typical clients include healthcare facilities, counties, state and municipal entities, and other public entities. My current practice includes: representation of management and employees in

litigation related to state and federal anti-discrimination laws; state and federal family leave laws; retaliation; breach of contract; breach of duty of loyalty; restrictive covenants, tortious interference; and civil service personnel matters. I have appeared before state and federal administrative agencies, including the Equal Employment Opportunity Commission; the New Jersey Division of Civil Rights; the New Jersey Public Employee Relations Commission; the National Labor Relations Board; the New Jersey Department of Labor; the U.S. Department of Labor; the New Jersey Civil Service Commission; the Office of Administrative Law; and the Pennsylvania Human Relations Commission. While representing defendants in these types of matters, I have achieved numerous dismissals of cases via motion, as well as favorable jury verdicts and favorable settlements.

In summary, I have significant trial experience representing both plaintiffs and defendants including many completed jury trials in state and federal court as first chair, totaling over 150 first chair trial days.

My practice also includes some non-litigation work such as counseling and training as to sexual harassment, discrimination, and prevention of employment claims; drafting employment policies and handbooks; compliance with state and federal employment laws; drafting employment contracts, non-solicitation and confidentiality agreements; drafting collective bargaining agreements and related negotiations, grievances, and arbitrations; and negotiating and drafting separation and severance agreements, and preparing for reductions in force.

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

As described above, early in my career my practice focused on representing individuals as plaintiffs in litigation matters. Over the past 15 years, my practice has evolved to representing mostly defendants including healthcare facilities, counties, state and municipal entities, and other public entities and agencies.

- 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 is 90% litigation. I appear in federal court frequently. My current practice is approximately 60% state court and 40% federal court matters. My practice is 100% civil matters.

- i. Indicate the percentage of your practice in:
  - 1. federal courts: 40%

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

ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 100%
- 2. criminal proceedings: 0%

- 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 approximately 19 cases to verdict, totaling over 150 first chair trial days.

i. What percentage of these trials were:

- 1. jury: 95%
- 2. non-jury: 5%

- 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.

1. *Ladd v. Walmart*, No. 1:98-cv-00001 (D.N.J.), Hon. Joel B. Rosen

From 1998 to 2001, I was lead counsel for the plaintiff and sole trial counsel in this personal injury/slip and fall case which occurred on the premises of a large

retailer while he was working. We alleged the retailer failed to provide a safe place for the plaintiff to perform his work duties. During the pre-trial process I prepared all pleadings, written discovery, discovery motions, and summary judgment motions. I conducted all depositions. I retained experts and expert reports on liability and damages. For pre-trial preparation, I prepared motions in limine, jury instructions and pre-trial disclosures. I prepared all witnesses for trial. I argued all motions in limine. During the trial, I delivered the opening statement and closing arguments, and examined every witness. After six days, the jury returned a verdict in favor of the plaintiff for approximately \$285,000.

Counsel for Defendant:  
Patrick J. McDonnell, Esq.  
500 Marlton Pike West  
Cherry Hill, NJ 08002  
(610) 337-2087

2. *Wiggins, et al v. Schlumberger Danyl/Schlumberger Smart Cards and Systems, N.A.*, No. 1:98-CV-02288 (D.N.J.), Hon. Jerome B. Simandle

From 1998 until 2000, I was co-counsel for the plaintiff in this case with my partner. This was a lawsuit against the plaintiff's employer alleging age discrimination and retaliation. I prepared pleadings, written discovery, opposition to the defendant's motion for summary judgment and pre-trial submissions including motions in limine and proposed jury instructions. To the best of my recollection, I argued the motions in limine, delivered the opening statement and conducted examination of several witnesses during trial. After nine days of a jury trial, we obtained a verdict in favor of the plaintiff for \$95,000.00. A substantial six figure settlement was thereafter reached prior to completion of the trial on punitive damages.

Co-Counsel for Plaintiff:  
William M. Tambussi, Esq.  
360 Haddon Avenue  
Westmont, NJ 08108  
(856) 854-8900

Counsel for Defendant, Schlumberger, Ltd.:  
William Joseph Martin, Esq. (local counsel)  
Martin, Gunn & Martin  
216 Haddon Avenue, Suite 420  
Westmont, NJ 08108  
(856) 858-0900

Kathleen Pontone, Esq.  
George A. Stohner, Esq.  
Miles & Stockbridge

100 Light Street  
Baltimore, MD 21202  
(410) 727-6464

3. *Heenan v. Securitex Fire Gear*, No. 1:02-cv-01352 (D.N.J.), Hon. Joseph Irenas and Hon. Joel B. Rosen

From 2002 to 2005, I was co-counsel for the plaintiff in this case with my partner. This was a complex product liability case related to the wrongful death of a firefighter in the line of duty against the manufacturer of turnout gear. During the pre-trial process I prepared all pleadings, written discovery, discovery motions, and summary judgment motions. I conducted nearly all depositions. I retained experts and expert reports on liability and damages. I prepared the opposition to the motion for summary judgment filed by the defendant. We obtained a multi-million-dollar settlement in favor of the widow and the children of the decedent.

Co-Counsel for Plaintiff:  
William M. Tambussi, Esq.  
360 Haddon Avenue  
Westmont, NJ 08108  
(856) 854-8900

Counsel for Defendant:  
John Gerard Devlin, Esq.  
1500 John F. Kennedy Boulevard, Suite 1000  
Philadelphia, PA 19102  
(215) 564-6740

4. *Marcacci v. Seabrook House*, Docket No., CAM-L-7224-01, 2006 WL 1342692, N.J. Super. Ct., Camden County, Hon. Louise Donaldson (first trial) and Hon. Ronald Freeman (second trial); N.J. App. Div., Docket No. A-1434-03T2, Hon. Joseph L. Yanotti and Lorraine C. Parker

From 2001 to 2006, I was counsel for the plaintiff and sole trial counsel in this case involving whistleblower claims. During the pre-trial process I prepared all pleadings, written discovery, discovery motions, and summary judgment motions. I conducted all depositions. I retained experts and expert reports on damages. For pre-trial preparation, I prepared motions in limine, jury instructions and pre-trial disclosures. I prepared all witnesses for trial. I argued all motions in limine. During the first trial, I delivered opening statements, arguments on a directed verdict, and examined every witness. The first trial judge entered a directed verdict for defendant which was subsequently reversed on appeal and the case was tried to verdict on retrial. I prepared the appeal briefs and argued the appeal. During the second trial, I delivered the opening statement and closing arguments, arguments on a directed verdict, and examined every witness. After approximately 15 days (trial and retrial combined), the second jury found in favor

of the plaintiff and awarded \$1,000,000. The case thereafter settled prior to the punitive damages phase of trial.

Counsel for Defendant:  
Lawrence B. Berg, Esq.  
15000 Midlantic Drive, Suite 200  
P.O. Box 5429  
Mount Laurel, NJ 08054  
(856) 414-6031

5. *Kurnik v. The Cooper Health System*, Docket No. L-001728-02, 2008 WL 2829963, N.J. Super. Ct., Burlington County, Hon. Mary White Bell

From 2002 to 2008, I was lead defense counsel and first chair trial counsel in this case involving allegations of breach of employment contract and wrongful termination. During the pre-trial process I prepared all pleadings, written discovery, discovery motions, and summary judgment motions. I conducted all depositions. For pre-trial preparation, I prepared motions in limine, jury instructions and pre-trial disclosures. I prepared all witnesses for trial. I argued all motions in limine. During the trial, I delivered the opening statement and closing argument, arguments on a directed verdict, and examined every witness. After 16 days of trial, the jury rendered a verdict as to liability and damages in excess of \$2 million and awarded \$5 million in punitive damages. The verdict was subsequently reversed and vacated on appeal. I prepared the appeal briefs and argued the appeal. The case settled thereafter.

Counsel for Plaintiff:  
James M. Andrews, Esq.  
125 Half Mile Road, Suite 300  
Red Bank, New Jersey 07701  
(732) 741-3900

6. *Corley v. Delaware Valley Institute of Fertility & Genetics*, N.J. Super. Ct., Burlington Cty., Docket No. BUR-L-3207-09

From 2009 to 2011, I was lead counsel for the plaintiff, a physician, in a lawsuit against his employer, a medical practice, alleging claims of disability discrimination, failure to accommodate, hostile work environment and breach of contract. During the pre-trial process I prepared all pleadings, written discovery and discovery motions. I conducted all depositions. A six-figure settlement in favor of the employee was reached.

Counsel for the Defendant:  
Jeffrey Resnick, Esq.  
Sherman, Silverstein, Kohl, Rose & Podolsky, P.A.  
East Gate Corporate Center

308 Harper Drive, Suite 200  
Moorestown, New Jersey 08057  
(856) 661-2085

7. *District IV Ethics Committee v. David S. Rochman*, Docket No. IV-05-040, 202 N.J. 133 (2010), New Jersey Office of Attorney Ethics, District IV Ethics Committee; Special Master, Andrew Kushner, Esq.; Disciplinary Review Board, Louis Pashman, Esq. (Chair); Bonnie Frost, Esq. (Vice Chair); Edna Y. Baugh Esq.; Bruce W. Clark Esq.; Jeanne Doremus; Hon. Reginald Stanton; Spencer V. Wissinger III; Morris Yamner Esq.; Robert C. Zmirich

From 2009 to 2010, I was assigned to prosecute this matter as a member of the District IV Ethics Committee. The case involved prosecuting an attorney for violations of New Jersey Rules of Professional Conduct. I handled all pre-hearing discovery and was sole trial counsel for the hearing. After 15 days of trial before a Special Master, the attorney was found to have violated multiple Rules of Professional Conduct. The attorney appealed to the New Jersey Disciplinary Review Board. I prepared the appeal brief and argued before the Review Board. The Review Board affirmed the Special Master's findings including violations of Rule of Professional Conduct 1.3 (lack of diligence), 1.15(b) (failure return retainer funds), and 1.4(b) and (c) (failure to communicate with client). The penalty was a reprimand and referral to the local bar association Committee on Professionalism for an assessment and mentoring if appropriate. The New Jersey Supreme Court thereafter affirmed.

Counsel for Respondent:  
David S. Rochman, Esq. (pro se)  
103 Fairway Terrace  
Mount Laurel, NJ 08054  
(856) 751-2345

8. *Anis v. State of New Jersey, et. al*, Docket No.: CPM-L-069-14, N.J. Super. Ct., Cape May County, Hon. Christopher Gibson

In 2015 to 2016, I was asked to assume the role of lead defense counsel and first chair trial counsel in this case involving the defense of race discrimination, whistleblower claims based on patient abuse, and retaliation claims filed by a former state employee against the State and four individual supervisors. The discovery phase of the case was handled by prior counsel. I prepared and argued motions in limine, jury instructions and pre-trial disclosures. I prepared all witnesses for trial. During the trial, I delivered opening and closing arguments, arguments on a directed verdict motion, and examined most of the witnesses. After a six-week trial, the jury rendered a full defense verdict on all counts as to all defendants.

Counsel for Plaintiff:  
Michelle Douglass, Esq.  
8000 Sagemore Drive, Suite 8303  
Marlton, NJ 08053  
(856) 512-1461

Co-Counsel for Defendants:  
Kathleen E. Dohn, Esq.  
Brown & Connery, LLP  
360 Haddon Avenue  
Westmont, NJ 08108

9. *DeMarzo v. Cape May County Prosecutor's Office*, Docket No.: CPM-L-129-13, N.J. Super. Ct., Atlantic County, Hon. Mary J. Siracusa

In 2017, I was asked to assume the role of lead defense counsel and first chair trial counsel in this case involving the defense of claims of malicious prosecution against a prosecutor and a prosecutor's office related to official misconduct charges that were filed against an elected official and his attorney. The discovery phase of the case was handled by prior counsel. I oversaw and assisted in the preparation of approximately eleven motions in limine, jury instructions and all pre-trial disclosures. I prepared all witnesses for trial. I argued the majority of motions in limine. During the trial, I delivered opening and closing arguments, arguments on a directed verdict motion, and examined all but one witness. After 19 days of trial, the jury returned a verdict in favor of both plaintiffs awarding approximately \$500,000 combined. The case settled prior to the punitive damages phase.

Counsel for Plaintiff DeMarzo:  
Louis M. Barbone, Esq.  
1125 Pacific Avenue  
Atlantic City, NJ 08401  
(609) 348-1125

Counsel for Plaintiff Lashman:  
David Castellani, Esq.  
450 Tilton Road, Suite 245  
Northfield, NJ 08225  
(609) 641-2288

Co-Counsel for Defendants:  
Gina M. Roswell, Esq.  
Brown & Connery, LLP  
360 Haddon Avenue  
Westmont, NJ 08108  
(856) 854-8900



10. *Bennett v. State of New Jersey, et al.*, Docket No.: MER-L-1774-15, N.J. Super. Ct., Mercer County; Hon. Anthony J. Massi

From 2015 to 2019, I was lead defense counsel and first chair trial counsel in this case which was litigated over a period of several years. The case involved whistleblower claims and retaliation claims by a former employee against the State and four individual defendants, alleging wrongful termination and failure to promote as to six different positions. During the pre-trial process I oversaw and assisted with the preparation of all pleadings, written discovery, discovery motions, depositions, and summary judgment motions. I retained experts and expert reports on damages. Summary judgment was granted as to all failure to promote claims and the remaining retaliation claims proceeded to trial. For pre-trial preparation, I prepared motions in limine, jury instructions and pre-trial disclosures. I prepared all witnesses for trial. I argued nearly all of the motions in limine. During the trial, I delivered opening and closing arguments, arguments on a directed verdict motion, and examined all but one witness. After an eight-week jury trial (32 trial days), the jury rendered a verdict in favor of defendants. The matter is presently pending appeal. I oversaw and assisted in preparation of the appeal briefs.

Counsel for Plaintiff:  
Claudia A. Reiss, Esq.  
360 Mt. Kemble Avenue, #1004  
Morristown, New Jersey 07960  
(973) 845-9922

Co-Counsel for Defendants:  
Therese M. Taraschi, Esq.  
Brown & Connery, LLP  
360 Haddon Avenue  
Westmont, New Jersey 08108  
(856) 854-8900

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.)

My practice has involved trial and appellate civil litigation in a variety of subject matters including personal injury, product liability, commercial, civil rights and employment matters. I have represented both plaintiffs and defendants. I have been lead counsel in every case I have tried other than one case.

I have also provided non-litigation services to clients including counseling and training to employers related labor and employment laws and training employees as to harassment and discrimination in the workplace.

Additionally, I served on the United States Magistrate Judge Selection Committee in 2020 for the Camden Vicinage which entailed reviewing approximately 75 to 100 applications and interviewing and selecting applicants. As a member of the New Jersey Supreme Court District IV Ethics Committee, I tried an ethics case (identified on my list of significant cases above) representing the Committee and the individual grievant for 15 trial days pro bono, and further argued the appeal before the Disciplinary Review Board. That matter entailed hundreds of hours of work. I also served for two years as a member on the New Jersey Supreme Court Committee on Unauthorized Practice of Law.

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.

From 2006 to 2007, I taught two semesters of basic employment law at Rutgers University School of Law, Camden, New Jersey. I am unable to locate a copy of the syllabus used.

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.

If confirmed, I will resign from my law firm, which is the only paid position that I hold. Upon my resignation, I would be entitled to receive compensation for my capital contributions as of the date of withdrawal and compensation as of that date for my equity interest in the law firm and its associated partnership, Lawland, LLP, and yearly salary.

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 may at some point determine to pursue teaching but have no current commitment or intention to do so.

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 am not aware of any potential conflicts of interest other than my relationship with my current law firm. I would analyze and address any such conflicts as required by the Code of Conduct for United States Judges and 28 U.S.C. § 455.

- 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 analyze and address any potential conflicts as required by the Code of Conduct for United States Judges and 28 U.S.C. § 455.

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

In my capacity as a member of the Emil Gumpert Award Committee with the American College of Trial Lawyers, I review applications for the award of funds from the ACTL Foundation to entities that further the purpose of social justice, perform site visits of the applicants, and prepare reports as to their worthiness of receipt of the funds.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission

recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I interviewed with Senator Menendez on February 17, 2021, regarding my interest in the position. I interviewed with Senator Booker on February 25, 2021, regarding my interest in the position. I interviewed with attorneys from the White House Counsel's Office on March 1, 2021. Since March 4, 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 NON-JUDICIAL NOMINEES**

**PUBLIC**

1. **Name**: State full name (include any former names used).  
  
Helaine Ann Greenfeld
2. **Position**: State the position for which you have been nominated.  
  
Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice
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:  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530  
  
Residence:  
Chevy Chase, MD
4. **Birthplace**: State date and place of birth.  
  
1963, Baltimore, Maryland
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.  
  
Georgetown University Law Center, 1989-1992  
J.D., May 1992  
  
USDA Graduate School, 1986-1987  
No degree Received  
  
University of Michigan, Institute of Social Research, Summer 1987  
No degree Received  
  
Hebrew University, Jerusalem, Israel, January 1984-May 1985  
Semester abroad; no degree received.

Yale University, 1981-1985  
B.A., May 1985

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

January 2021 – Present  
Deputy Assistant Attorney General for Office of Legislative Affairs (April 2021 – Present)  
Acting Assistant Attorney General & Principal Deputy Assistant Attorney General for Office of Legislative Affairs (January 2021 – April 2021)  
United States Department of Justice  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530

October 2020 – January 2021  
Volunteer  
Biden-Harris Presidential Transition  
1401 Constitution Ave., NW  
Washington, D.C. 20230

September 2020 – October 2020  
Senior Counsel  
United States Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, D.C. 20002

August 2017 – October 2019  
Chief Counsel  
United States Senator Mazie Hirono  
109 Hart Senate Office Building  
Washington, D.C. 20002

March 2017 – April 2017  
Consultant  
Leadership Conference for Civil and Human Rights  
1620 L Street, NW, Suite 1100  
Washington, D.C. 20036

January 2009 – February 2013  
Counselor to Attorney General Holder (December 2011 – February 2013)  
Deputy Associate Attorney General (January 2009 – December 2011)

United States Department of Justice  
950 Pennsylvania Ave., NW  
Washington, D.C. 20002

January 2001 – May 2006  
Senior Nominations Counsel, Chief Nominations Counsel  
Chairman Patrick Leahy  
United States Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, D.C. 20002

June 1993 – January 2001  
Senior Counsel to Assistant Attorney General; Deputy Assistant Attorney General, Office  
of Policy Development (April 1997 – January 2001)  
Special Assistant to Assistant Attorney General for Civil Rights (March 1994 – April  
1997)  
Special Assistant, Office of Policy Development (now the Office of Legal Policy)  
Member of Judicial Vetting Team (September 1993 – March 1994)  
Special Assistant, Member of Ruth Bader Ginsburg Confirmation Team (June 1993 –  
August 1993)  
United States Department of Justice  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530

August 1992 – December 1992  
Judicial Law Clerk  
The Honorable Mariana R. Pfaelzer  
United States District Court for the Central District of California  
312 N. Spring Street  
Los Angeles, CA 90012

Summer 1991, Summer 1992  
Summer Associate  
Wilmer, Cutler & Pickering (Now Wilmer Hale)  
1875 Pennsylvania Avenue NW  
Washington, D.C. 20006

August 1989 – Fall 1990  
Freelance Polling Analyst  
Washington, D.C.

July 1985 – May 1989  
Receptionist; Junior Analyst; Senior Analyst  
Hickman-Maslin Research  
Washington, D.C.  
(No longer in business)

September 1984 – May 1985  
 Sunday School teacher  
 Hillel Children's School at Yale  
 80 Wall St  
 New Haven, CT 06511

**Board Memberships**

June 2007 – June 2009  
 Board Member, ex officio  
 Jewish Federation of Greater Washington  
 6101 Executive Blvd #100  
 North Bethesda, MD 20852

June 2003 – June 2011; June 2013 – June 2019  
 Board Member  
     Secretary (June 2005 – June 2007)  
     President (June 2007 – June 2009)  
     Chair, Head of School Search Committee (January 2018 – March 2020)  
 Milton Gottesman Jewish Day School of the Nation's Capital  
 6045 16th St NW  
 Washington, D.C 20011

Late 1980s (approximate)  
 Board Member  
 Yale Club of Washington, D.C.  
 4200 Wisconsin Ave NW #106-270  
 Washington, D.C. 20016

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

I have not served in the U.S. Military. I am not subject to selective service registration requirements.

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.

Georgetown University Law Center

*Summa Cum Laude*, 1992



Tamm Memorial Award, 1992 (Awarded to the best example of student writing in *The Georgetown Law Journal*)

West Publishing Hornbook Award, 1991

American Jurisprudence Awards, 1991

George Brent Mickum III Prize, 1990

Kappa Beta Pi Award, 1990

Charles A. Keigwin Award, 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.

District of Columbia Bar Association  
January 1995- Present

Maryland State Bar Association  
February 1993-Present

American Bar Association  
February 1993 – August 2003

10. **Bar and Court Admission:**

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

Maryland, February 1993  
District of Columbia, January 1995

- 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, June 2002

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.

Chevy Chase Recreation Association, mid-2000's

North Shores Homeowners Association, April 2009 – Present

In addition, I have made financial contributions to charitable organizations over the years. Such organizations may list me as a member by virtue of my financial contribution. I have not listed above any organization to which I gave funds and did not otherwise participate in programmatic activities.

- b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminate 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, none of these organizations 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.

I have done my best to identify books, articles, reports, letters to the editor, editorial pieces, or other published material, including through a review of my personal files and searches of publicly available electronic databases. There may be other materials that I have been unable to identify, find, or remember.

I have located the following:

“Some Constitutional Problems with the Resegregation of Public Schools,”  
Georgetown Law Journal 80, No. 2 (December 1991), 363-386. (Copy attached)

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

a summary of its subject matter.

I have done my best to identify any reports, memoranda or policy statements I prepared or contributed in the preparation of, including through a review of my personal files and searches of publicly available electronic databases. I have not located any responsive materials. There may be materials that I have been unable to identify, find, or remember.

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

I have done my best to identify any testimony, official statements or other communications related, in whole or in part, to matters of public policy or legal interpretation, including through a review of my personal files and searches of publicly available electronic databases. There may be other materials I have been unable to identify, find, or remember.

Government of the District of Columbia Board of Zoning Adjustment, Public Hearing re Zoning Changes for Jewish Primary Day School of the Nation's Capital (Dec. 18, 2007). Transcript attached.

- 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.

In the course of my volunteer work with the Milton Gottesman Jewish Day School (formerly the Jewish Primary Day School of the Nation's Capital), I often spoke at school-related events, including 6<sup>th</sup> grade graduations, parent meetings, or District of Columbia Advisory Neighborhood Commission meetings. I typically spoke from notes, which I did not retain. Two formal sets of remarks I gave were to introduce speakers at one of the school's annual events:

Jewish Primary Day School of the Nation's Capital, Yitzhak Rabin Memorial Lecture, Introduction of Justice Elena Kagan, Washington, D.C. (December 12, 2012). I did not retain notes or a copy of my remarks and was unable to locate press coverage.

Jewish Primary Day School of the Nation's Capital, Yitzhak Rabin Memorial Lecture, Introductory Speaker, Washington, D.C. (May 3, 2009). Transcript attached.

Shorenstein Center, Panel on Nominations of Harriet Myers and Samuel Alito, Panelist, Cambridge, Massachusetts. Video: <https://www.c-span.org/video/?191766-4/nominations-harriet-myers-samuel-alito> (March 24, 2006). I did not retain notes and was unable to locate press coverage.

Benjamin N. Cardozo School of Law, The View from D.C., Speaker, New York, NY (March 23, 2004). I did not retain notes or a copy of my remarks, although it was covered in a blog called "Legal Theory", a copy of which is attached.

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

I have done my best to identify all interviews given, including through a review of personal files and searches of publicly available electronic databases. There may be other materials I have been unable to identify, find, or remember.

I have located the following:

Jeopardy!, Jeopardy: Season 28, Episode #6235 (October 28, 2011). I was unable to locate a video.

Federal Times, Stimulus Highlights (September 14, 2009) (Attached)

Democratic Governance and Rights Unit (DGRU), Judicial Selection in South Africa (April 2004) (Attached)

Washington Jewish Week, JPDS Growth Project OK'd (January 31, 2008) (Attached)

The Washington Post, They're Fishing on the Hill, but It's No Vacation (August 4, 2005) (Attached)

The Washington Post, Democrats to Compare Roberts's Views Now, Then (August 4, 2005) (Attached)

MetroWest Jewish News, NJ Reverse Discrimination Case May Spearhead Change (March 30, 1995) (Attached)

New Haven Register, Capital Yale Club Busiest in U.S. (March 12, 1989)  
(Attached)

Yale Daily News, Yale Club Writes Letter for Cheerleaders (October 20, 1988)  
(Attached)

Daily Collegian, Abortion Survey: Most in U.S. Favor Woman's Privacy (January 22, 1988) (Attached)

13. **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 public office. However, as listed in my response to Question 6 above, I have held a number of positions in the federal government.

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

I have never been employed by a political campaign. I volunteered for the Biden-Harris campaign and Transition in the Fall of 2020 through January 19, 2021. In addition, I have volunteered with a variety of Democratic campaigns over the years, distributing literature, helping organize campaign events, doing research, and serving as an election protection volunteer lawyer, including to the best of my recollection during the presidential campaigns of 1992, 2000, 2008, 2016, and 2020.

14. **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 judicial law clerk for the Honorable Mariana Pfaelzer in the United States District Court for the Central District of California from August 1992 to December 1992.

- 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.

January 2021 – Present

Deputy Assistant Attorney General for Office of Legislative Affairs (April 2021 – Present)

Acting Assistant Attorney General & Principal Deputy Assistant Attorney

General for Office of Legislative Affairs (January 2021 – April 2021)

United States Department of Justice

950 Pennsylvania Ave., NW

Washington, D.C. 20530

October 2020 – January 2021

Volunteer

Biden-Harris Presidential Transition

1401 Constitution Ave., NW

Washington, D.C. 20230

September 2020 – October 2020

Senior Counsel

United States Senate Committee on the Judiciary

224 Dirksen Senate Office Building

Washington, D.C. 20002

August 2017 – October 2019

Chief Counsel

United States Senator Mazie Hirono

109 Hart Senate Office Building

Washington, D.C. 20002

March 2017 – April 2017

Consultant

Leadership Conference for Civil and Human Rights

1620 L Street, NW, Suite 1100

Washington, D.C. 20036

January 2009 – February 2013

Counselor to Attorney General Holder (December 2011 – February 2013)

Deputy Associate Attorney General (January 2009 – December 2011)

United States Department of Justice

950 Pennsylvania Ave., NW  
Washington, D.C. 20530

January 2001 – May 2006  
Senior Nominations Counsel, Chief Nominations Counsel  
Chairman Patrick Leahy  
United States Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, D.C. 20002

June 1993 – January 2001  
Senior Counsel to Assistant Attorney General; Deputy Assistant Attorney  
General, Office of Policy Development (April 1997 – January 2001)  
Special Assistant to Assistant Attorney General for Civil Rights (March 1994 –  
April 1997)  
Special Assistant, Office of Policy Development (now the Office of Legal Policy)  
Member of Judicial Vetting Team (September 1993 – March 1994)  
Special Assistant, Member of Ruth Bader Ginsburg Confirmation Team (June  
1993 – August 1993)

United States Department of Justice  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530

August 1992 – December 1992  
Judicial Law Clerk  
The Honorable Mariana R. Pfaelzer  
United States District Court for the Central District of California  
312 N. Spring Street  
Los Angeles, CA 90012

Summer 1991, Summer 1992  
Summer Associate  
Wilmer, Cutler & Pickering (Now Wilmer Hale)  
1875 Pennsylvania Avenue NW  
Washington, D.C. 20006

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

I have not served as a mediator or arbitrator.

b. Describe:

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

character has changed over the years.

My career legal career has focused entirely on matters of legal policy, which I explain in more detail in response to Question 16. I was briefly involved in one litigation matter, which is described in Question 15 below.

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

Since becoming a lawyer, my practice has been entirely in the public sector, working at either the U.S. Department of Justice or the U.S. Senate, except for an approximately six-week period when I briefly consulted with a public interest organization.

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

I have only been involved in one litigation matter, which is described in Question 15 below.

- i. Indicate the percentage of your practice in:

1. federal courts: \_\_\_\_\_%
2. state courts of record: \_\_\_\_\_%
3. other courts: \_\_\_\_\_%
4. administrative agencies: \_\_\_\_\_%

- ii. Indicate the percentage of your practice in:

1. civil proceedings: \_\_\_\_\_%
2. criminal proceedings: \_\_\_\_\_%

- 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 no cases to verdict, judgment, or final decision.

- i. What percentage of these trials were:

1. jury: \_\_\_\_\_%
2. non-jury: \_\_\_\_\_%

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.



I have not practiced before the Supreme Court.

15. **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. Longchamps*

Case No./Citation: 1:95-cv-0002-JD

Court of Jurisdiction: United States District Court for the District of New Hampshire

Presiding Judge: the Honorable Joseph A. DiClerico, Jr.

Dates of Involvement: January 1995 – November 1995

In 1995, I briefly served as counsel, in my then-capacity as an attorney with the Civil Rights Division of the U.S. Department of Justice (specifically, as a Special Assistant to the Assistant Attorney General for Civil Rights, Deval Patrick), representing the United States in a Fair Housing Act case brought by the federal government against a landlord for race discrimination. That case was first filed on January 4, 1995; my role as counsel was terminated on July 19, 1995, while the case was pending. The case was terminated in November 1995. This is the only litigation matter I have participated in over the course of my career.

Co-Counsel:

Louis M. Stewart

Formerly of the U.S. Department of Justice, Civil Rights Division

Current contact information unavailable

T. David Plourde

Formerly of the United States Attorney's Office for the District of New Hampshire

Current contact information unavailable

Opposing Counsel:

Susan Longchamps  
Pro Se Defendant  
Current contact information unknown

Kathleen A. Sternenberg  
Law Offices of Kathleen A. Sternenberg  
27 Webster St, Manchester, NH 03104  
Tel: (603) 641-1048

Robert E. McDaniel  
The McDaniel Law Office LLC  
4 Stevens Avenue  
P.O. Box 961  
Meredith, NH 03253  
Tel: (603) 677 7072; Email: robertemcd@gmail.com

16. **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.)

Since graduating from law school, my professional career has focused on serving in a number of legal policy positions in the U.S. Department of Justice and the U.S. Senate. I have never lobbied.

From 1993 to 2001, I served in a number of roles at the U.S. Department of Justice. From 1993 to 1997, I was a Special Assistant working on judicial nomination vetting in the Office of Policy Development (OPD) (now called the Office of Legal Policy), then in the Civil Rights Division. In the Civil Rights Division, I oversaw the Assistant Attorney General's speaking engagements and scheduling, supervised law clerks and interns, and provided support to the work of the Assistant Attorney General and the Division.

From 1997 to 2001, I served in the Office of Policy Development, first as a Senior Counsel and later as a Deputy Assistant Attorney General. In OPD I assisted on all matters related to judicial nominations, including vetting, preparation, and support of Article III nominations.

From 2001 to 2006, I served as Nominations Counsel, and then Chief Nominations Counsel, to then-Chairman Patrick Leahy on the U.S. Senate Judiciary Committee, handling issues related to Judicial and Executive Branch nominations.

From 2009 to 2013, I served in two different roles at the U.S. Department of Justice, first as a

Deputy Associate Attorney General, and then as a Counselor to Attorney General Eric Holder. In both positions, I advised on matters related to Congress, including nominations, and served as liaison with other Department components.

From 2017 to 2019, I served as Chief Counsel to Senator Mazie Hirono, where I was responsible for all work related her service on the Senate Judiciary Committee, including nominations, oversight, and legislation.

Since January 20, 2021, I have served in the U.S. Department of Justice, first as the Acting Assistant Attorney General and Principal Deputy Assistant Attorney General in the Office of Legislative Affairs (OLA). Since my nomination to the position of Assistant Attorney General for the Office of Legislative Affairs, I have been serving as a Deputy Assistant Attorney General in OLA. In these roles, I have been principally responsible for managing the Justice Department's relationship with Congress.

17. **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.

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

I have no arrangements in the future to be compensated for any financial or business interest.

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

None.

20. **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).

Please see my SF-278 as provided by the Office of Government Ethics.

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

See attached Net Worth Statement.

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors 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.

During the nomination process, I consulted with the Department of Justice's ethics office and Designated Ethics Officer to identify any potential conflicts, including those presented by my husband's business. If I am confirmed, I will continue to consult with that office and will recuse myself from any matter in which recusal is required.

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

If I am confirmed, any potential conflict of interest will be resolved in accordance with the terms of an ethics agreement that I have entered with the Department's designated agency ethics official. If confirmed, I will continue to consult with the Department of Justice's ethics office and will recuse myself from any matter in which recusal is required.

23. **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 work load, 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. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

As a government attorney, I have not actively participated in pro bono legal services, but I have spent significant amounts of time since the late 1990s devoted to volunteering with the Milton Gottesman Jewish Day School of the Nation's Capital, serving as a member of the Board of Trustees, the Secretary and President of the Board, and as Chair of the Head of School Search Committee. I was inspired by the experience of my children's Jewish day school education to support the only Jewish day school in the Nation's Capital, which I believe contributes to the vitality of the local Jewish community.