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S. HRG. 117–825

# CONFIRMATION HEARING ON FEDERAL APPOINTMENTS

## HEARING

BEFORE THE

## COMMITTEE ON THE JUDICIARY
## UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

JULY 14, 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

**WEDNESDAY, JULY 14, 2021**

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

The Committee met, pursuant to notice, at 9:59 a.m., in Room 226, Dirksen Senate Office Building, Hon. Richard J. Durbin, presiding.

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

Also present: Senators Schumer, Menendez, Cardin, Murphy, and Van Hollen.

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

Chair DURBIN. This hearing will come to order. Today, we have five judicial nominees, and one nominee to the Department of Justice. Myrna Pérez, nominated to the second circuit. Judge Sarah Merriam, nominated to the District of Connecticut. Judge Karen Williams, nominated to the District of New Jersey. Two nominees to the DC district court: Jia Cobb and Judge Florence Pan. Matt Olsen, nominated to serve as Assistant AG for the Justice Department's National Security Division. A number of our colleagues will formally introduce the nominees, but I'd like to make a few observations.

First, with these nominees, the Biden administration and the Senate continue to bring diversity and professional balance to the bench. Today's slate includes Myrna Pérez, who will be the first Latina to serve on the second circuit since Justice Sonia Sotomayor. We will also hear from Florence Pan, who will be the first Asian-American woman to serve on the DC district court.

This slate also includes professional diversity. We have two sitting Federal magistrate judges, a judge of the DC Superior Court, who was previously an assistant U.S. attorney, and a former DC public defender. In Mr. Olsen, we have an accomplished national security expert who spent decades working to protect America from enemies, foreign and domestic. We have a civil rights champion in Ms. Pérez, who has devoted her career to protecting and defending America's right to vote. It is a fitting time for her to join the bench, particularly after late rulings by the Supreme Court. I won't go into detail here, in an effort to make sure that we get to the nomi-

nees as quickly as possible. Make no mistake, voting rights are a major issue and will continue to be for some time.

I'm thankful for President Biden in putting forward nominees like Ms. Pérez, who have such extensive experience. She has an impressive career as a litigator and an advocate, and an incredible insight into the impacts that restricted voting laws have on minorities. This type of legal experience is underrepresented on the court, and it's rare to see a voting rights attorney nominated to the Federal bench. This perspective will bring diversity to our courts. Ms. Pérez's record shows she's driven by her dedication to serving others and the Constitution.

Before turning it over to Ranking Member Grassley, I'd like to introduce two of the district court nominees. Eleanor Holmes Norton was unable to make it this morning. Jia Cobb and Judge Florence Pan, both nominated to the DC circuit district court. Both of these nominees have her support, and she submitted statements for the record.

I'm privileged to introduce Ms. Cobb this morning. Not only is she an excellent nominee, but she is an honorary Illinoian, having attended college at Northwestern, and then clerked in Chicago for my friend, Judge Diane Wood on the seventh circuit. After graduating Harvard Law, clerking for Judge Wood, Ms. Cobb began her career in DC as a public defender, representing indigent defendants charged with criminal offenses. For the past 9 years, she has worked as a national civil—at the national civil rights firm Relman & Colfax, representing plaintiffs in fair housing, disability rights, and employment discrimination claims. Ms. Cobb's extensive courtroom experience has undoubtedly prepared her for roles that await her on the U.S. District Court for the District of Columbia.

In the past 15 years, and this is remarkable—anyone who's practicing law today will know it is—Ms. Cobb has tried more than 30 cases to verdict, both criminal and civil. During her 6 years as a public defender, she handled more than 200 cases, and appeared in the court almost daily. It's an incredible record, and I wish we could look to that for every nominee who's coming before us. Having represented both sides in the courtroom, I understand—she understands that she needs to be a voice in our Nation's court so that the law is applied even-handedly.

Next, I'll introduce Judge Florence Pan, also nominated to the DC court here in DC. After graduating summa cum laude with two bachelor's degrees from the University of Pennsylvania, Judge Pan received her law degree with distinction from Stanford, then clerked for Judge Michael Mukasey, well-known to this Committee, on the U.S. District Court for the Southern District of New York, and Judge Ralph Winter on the second circuit.

Before her appointment to the DC Superior Court, Judge Pam spent her entire legal career in public service. She was selected for the prestigious Bristow Fellowship in the Office of the Solicitor General. She was an attorney in the appellate section of the Criminal Division at the Justice Department, and the senior advisor in the Treasury Department. Finally, she served as assistant U.S. attorney for the District of Columbia for a decade, litigating local and Federal courts at the trial and appellate level.

In 2009, President Obama nominated her to serve on the DC Superior Court. She was confirmed by a voice vote. She was also nominated to the DC district court by President Obama, and favorably reported out of this committed by a voice vote in 2016; however, the majority leader at the time refused to hold a floor vote on her nomination before the end of the 114th Congress. Upon confirmation, Judge Pan will become the first Asian-American woman to serve on the district court for the District of Columbia.

With that, I turn to my colleague, Senator Grassley.

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

Senator GRASSLEY. Congratulations to all the nominees. I'll start by addressing the nominee of Myrna Pérez for the second circuit, New York. Ms. Pérez is a civil rights lawyer, focused on voting rights. I think it's good for the President to look beyond the usual talent pools in picking judges. President Trump, for example, nominated a number of civil rights lawyers to the Federal bench. Judges like Kyle Duncan of Louisiana, Matt Kacsmaryk in Texas, and Sarah Pitlyk in Missouri were all civil rights lawyers for significant portions of their careers.

Indeed, should Ms. Pérez be confirmed to the second circuit, she'll join two other civil rights lawyers of color appointed by Trump: Michael Park and Steven Menashi. Judge Park, of course, led the fight to end racial discrimination in higher education, a fight that's unfortunately still ongoing. Judge Menashi, among other things, ended religious discrimination against historically Black colleges at the Univer—Department of Education. I think we've seen the court benefit from this diverse perspective, and it all goes to show that civil rights can take many forms.

That said, my Democratic colleagues all oppose those Trump civil rights lawyers. Perhaps Democrats didn't think that civil rights that they were fighting for. I think the more charitable interpretation is that Democrats disagreed with their judicial philosophy. Yes. They all protected civil rights, but they also believed in textualism and originalism. Ms. Pérez seems to be of the opposite of that. A prominent opponent of voter integrity laws, Ms. Pérez seems to be very committed to a living Constitution. This obviously concerns me, and I hope to discuss this issue with her today.

I'd also like add one more thing about Ms. Pérez. Last night, the Committee received the supplement from her. It was an article she wrote, which the progressive Christian journal Sojourners had just published, entitled, quote, "The GOP Campaign to Make Elections Less Free," end of quote. Ms. Pérez says that this article was submitted before she was a nominee, and that she did not see or approve the title of the article before it was published. I expect to have a number of written questions about this, but I would make a few points: First, given the content of the article and the timeline of Ms. Pérez' nomination, it's very unlikely that Ms. Pérez submitted this inflammatory article while under consideration for her—this seat.

Second, while the authors typically don't choose their titles, I have to image Ms. Pérez could have gotten Sojourners, which isn't The New Yorker or The Washington Post, to accommodate a title

change that wouldn't be an insult to half of this Committee. I'll also note that this article's outrageous subtitle, quote, "Voters are Supposed to Choose Their Politicians, Not the Other Way Around," was written by Ms. Pérez.

Third, regardless of when it was submitted, Ms. Pérez is bound by the Code of Conduct as a judicial nominee, and it's hard to see how publishing this article as a nominee is consistent with Canon 5 of the Code of Conduct.

As to the other nominees, Ms. Cobb seems to have similar problems, having in the past called for interpreting statutes based upon their social histories other than their texts. Judge Merriam seems to have gotten—had a highly partisan political career.

On the other hand, I remember Judge Pan from her last time before the Committee. She seems extremely well qualified for this position, being well acquainted with the challenges faced by the District of Columbia, both as a prosecutor and a local judge.

Judge Williams also seems to be well qualified.

Last, we have Mr. Olsen. I think it's critical important that the National Security Division focus on protecting us from the security threats and not focus on domestic politics. I hope that Mr. Olsen agrees with me on that.

Thank you, Mr. Chairman.

Chair DURBIN. Thank you very much, Senator Grassley. We have some introductions. I note my colleague, Senator Booker is here, and I believe you are prepared to introduce one of the nominees.

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

Senator BOOKER. I am, Mr. Chairman. I know you always get very excited when there is a New Jersey nominee.

Chair DURBIN. Always.

Senator BOOKER. Always. As does Ranking Member Grassley. I am excited. I think all of New Jersey is especially excited, especially around the city of Camden, New Jersey, that I have the opportunity to introduce one of President Biden's nominees to serve as a district judge on the United States District Court for the District of New Jersey, Karen Williams.

Judge Williams is currently serving her second term as a United States magistrate judge, where she has handled thousands of cases and demonstrated her incredible skill as a jurist, and her commitment to justice and law. She is, in many ways, through many eyes, a local hero. She is a light to many in our community as someone who is showing how to conduct yourself with professional excellence, with dignity, honor, and a deep empathy for all of humanity.

As part of her many duties, including handling both criminal and civil cases, Judge Williams also presides over the District of New Jersey's Re-Entry Court. Renew Camden, which works to assist formerly incarcerated people with their re-entry into the community, is yet another testimony that she is living what a great American author, another African-American woman, wrote that, "We are each other's harvest. We are each other's business. We are each other's magnitude and bond." Judge Williams recognizes the bonds we have to each other, that "love your neighbor" does not have conditions. She lives a life of great magnitude.

Judge Williams is ready to serve as a Federal judge. She has experience. She has skill. She has qualifications. She has empathy. She has a life that is a testimony to the qualities we want on the bench.

The American Bar Association just recently unanimously rated her as "well qualified" to be a district judge. She has also the full-throated support of the New Jersey Bar Association, the Garden State Bar Association, and the Association of the Federal Bar of New Jersey.

When, God willing, she is confirmed, Judge Williams will be the first Black woman to serve as a United States district court judge in the Camden, New Jersey, Federal courthouse. She is a trailblazer and a history-maker, should she be confirmed.

I am grateful for her commitment to the law. I'm grateful for her commitment to service. I am grateful for her commitment to her fellow humans. I urge my colleagues to advance Judge Karen Williams's nomination to serve as a Federal judge.

I just want to take a moment, though, if I can. I know I'm stepping out of my lane here, but President Biden's nominee to serve on the Second Circuit Court of Appeals, Myrna Pérez, is an extraordinary candidate. I have read about her, and I just want to celebrate her presence here. I'm grateful that she is someone who has been advocating, tirelessly and relentlessly, for our democracy's most sacred ideals, which are voting rights. I'm excited about her nomination, and I will vote in favor of her to be another Federal circuit judge.

Chair DURBIN. Thank you very much, Senator Booker. We are in a semi-awkward situation. This is the first time that we are officially gathering in person instead of Zooming in our comments, which was extraordinarily convenient, but disjointed in its presentation. We're trying to get everybody back in attendance. Some of the Members are on their way, I am told. It leaves me in a situation where I could give a long speech, but I won't. I hope my friend won't either. I don't think he will.

[Laughter.]

Senator BOOKER. Would you like me to say more about Judge Williams?

[Laughter.]

Chair DURBIN. I think you've really done a fine job.

Senator BOOKER. Thank you.

Chair DURBIN. Don't risk it. Senator Blumenthal is on the way.

Okay. There you are. To the rescue, Senator Richard Blumenthal of Connecticut has arrived in time to say a few words about his nominee.

## OPENING STATEMENT OF HON. RICHARD BLUMENTHAL, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator BLUMENTHAL. Thanks, Mr. Chairman. Thanks for giving me this opportunity. I'm enormously honored and proud to be introducing Sarah Merriam today. Sarah Merriam is the lawyer we all want to grow up to be after we graduate from Yale Law School, and I say that as a dad of a daughter who has just graduated from Yale Law School, and would do well to emulate her extraordinary career in the law and in community service.

Senator Murphy and I recommended Judge Merriam to the White House, and I am grateful to President Biden that he has agreed with our recommendation.

She received her B.A. from Georgetown University in 1993, and her J.D. from Yale Law School in 2000.

I spent a good deal of my career, several decades, as a litigator in the Federal court, and I have a particular allegiance to the values and ethos of the very highest quality that we should be seeking, as well as diversity in our Federal judiciary. Judge Merriam fulfills those qualifications, and expectations, and much, much more.

Her work in the courtroom began long before she joined the bench. After graduating from Yale Law School, she clerked for two Federal judges, both I admire greatly: Judge Alvin Thompson in the District of Connecticut, and Judge Thomas Meskill on the second circuit. She was in private practice. She became an assistant Federal defender in the District of Connecticut from 2007 until she took the bench in 2015.

I am really just thrilled that Federal prosecutors agree with Senator Murphy and myself. Their statement is in the record. So do members of the private bar. Their statements are in accord. I will just say that Judge Merriam really embodies the highest ideals and traditions of our Federal district court in Connecticut.

As a former United States attorney and attorney general for our State, I'm very proud to recommend her to this Committee.

Thank you, Mr. Chairman.

Chair DURBIN. Thanks, Senator Blumenthal. Senator Murphy.

**STATEMENT OF HON. CHRISTOPHER MURPHY,**
**A U.S. SENATOR FROM THE STATE OF CONNECTICUT**

Senator MURPHY. Thank you very much, Mr. Chairman. I know you have a busy agenda ahead of you, and a number of our colleagues who want to introduce the nominees.

Let me just associate myself with the remarks of Senator Blumenthal. I don't know that you're going to see a nominee before this Committee who has, I think, a more important breadth of experience in the legal field than Judge Merriam.

She has been an advocate for working people. She has been a very capable lawyer in private practice, as mentioned. She spent the bulk of her career as a Federal public defender, and now she has been a very well-regarded Federal magistrate, someone who comes to this hearing with deep experience in the Federal court system. I think her resume and her testimony will speak for itself.

I come to you today as someone who has known Judge Merriam for 20 years, both professionally and personally. I will tell you candidly that when I began my time in public service, Sarah was someone that modeled just a unique combination of joy, and compassion, hardheadedness, commonsense, that to me, caused me to choose to pursue a life in the service of the people of Connecticut.

All of us, I think, have one or two of those people that we were able to interact with early in our career that inspired us to decide to pursue a life in public. Judge Merriam is one of those people for me.

From a very personal standpoint, I am incredibly humbled to be able to stand here today and to recommend my friend, to recommend one of Connecticut's brightest legal minds to this Committee.

Last, I'm just so glad that she's here with many of her family members that others are watching from home. As she will mention, they are a big part of the reason why she is here today. They are all good and close friends of mine. I welcome the extended Merriam family to this meeting today.

Again, a busy meeting ahead of you. Very, very pleased to add my words of introduction to those of Senator Blumenthal.

Chair DURBIN. Thanks, Senator Murphy. Senator Menendez.

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

Senator MENENDEZ. Thank you, Mr. Chairman, Mr. Ranking Member, and distinguished Members. It's my pleasure to join my colleague, Senator Booker, a distinguished Member of this Committee, to introduce Karen Williams, an exceptionally qualified nominee for the U.S. District Court for the District of New Jersey, where she has served as a U.S. magistrate judge for more than a decade.

If confirmed, she would be the first Senate confirmed African-American Federal judge to sit in the District of New Jersey's Camden courthouse. Yet it is the breadth and diversity of her experience in the field of law that makes her such an incredibly strong nominee.

Originally from Long Island, Judge Williams attended Penn State University on a track scholarship, and she's never looked back. Started out her career as a wage analyst at the New York University Medical Center. After her mother took a job managing labor relations for the Golden Nugget Casino in Atlantic City, she relocated to Egg Harbor Township, and earned her J.D. from Temple University Beasley School of Law in Philadelphia, and she has called South Jersey home ever since.

Prior to her appointment as a U.S. magistrate judge, she spent 17 years practicing employment and labor law at the firm of Jasinski and Williams. There, she defended workers' rights, negotiated collective bargaining agreements between unions and local municipalities, and led litigation before State and Federal courts.

In 1998, Judge Williams successfully argued on behalf of Atlantic City before the New Jersey Supreme Court in a case that affirmed the local fire department's ability to discipline a firefighter for hurling racial epithets at a police officer.

Since her appointment as a U.S. magistrate judge in 2009, Judge Williams has displayed an unyielding commitment to the fair administration of justice, to equal rights under the law, to a deference to precedent, and to the safety of our communities. Indeed, two of the most notable cases she has presided over involve threats to public safety. One case concerning an individual accused of planning attacks on synagogues. Another involving a defendant who advocated for rioting and looting during protests against police brutality during the death of George Floyd.

In addition, Judge Williams has also served as an adjunct professor at Rowan University, where her classes on law and justice have undoubtedly inspired many students to pursue the legal profession.

Judge Williams may have been born in New York, but she represents the best of New Jersey. I have complete confidence in her judgment, her values, her intellect, and her capacity to serve as a U.S. district court judge for the District of New Jersey. As you know, Mr. Chairman, and I appreciate this Committee and your leadership in dealing with the emergency of judicial vacancies that exist in New Jersey that have been declared a national emergency. The Committee has been moving through nominees. I urge the Committee's support for her nomination as well to help us meet that challenge.

Chair DURBIN. Thanks, Senator Menendez. I might say to you and Senator Murphy. I know you have a busy schedule, and if you would like to leave at this point, it's perfectly acceptable.

We now turn to Senator Cardin from Maryland.

**STATEMENT OF HON. BENJAMIN L. CARDIN, A U.S. SENATOR FROM THE STATE OF MARYLAND**

Senator CARDIN. Thank you, Chairman Durbin, and Ranking Member Grassley. Thank you for giving Senator Van Hollen and I the opportunity to introduce a proud Marylander, President Obama's nominee for—President Biden's nominee for Assistant Attorney General for National Security Division.

Mr. Matt Olsen is a proud Marylander. He hails from Kensington, which is also the home of our distinguished Senator, Senator Van Hollen, and we're very proud of his appointment.

Matt Olsen has tremendous experience at the intersection of law enforcement and intelligence community at exactly the point where the National Security Division straddles these two distinct Government functions. Mr. Olsen has nearly two decades of experience in a wide variety of roles at the justice and intelligence community.

Mr. Olsen received his B.A. from the University of Virginia, and his J.D. from Harvard Law School. He served as a judicial law clerk for Hon. Norma Holloway Johnson, the first Black woman to serve on the DC circuit. Judge Holloway became Mr. Olsen's lifelong mentor.

After completing his clerkship, he joined the Justice Department's Civil Rights Division, where he enforced the Voting Rights Act. He also joined the U.S. Attorney's Office for the District of Columbia, where he supervised the investigation and prosecution of domestic terrorism, espionage, and export violation cases. Mr. Olsen has prosecuted homicide cases, RICO cases, and drug and gang related offenses. I understand that it was Mr. Olsen's work as a U.S. attorney that led him to serve as special counsel to then FBI Director Mueller, where he supported the FBI's national security and counterterrorism work.

After departing the U.S. Attorney's Office and the FBI, Mr. Olsen helped create the National Security Division, and served as one of its first officials as both Acting Assistant Attorney General and a Deputy Assistant Attorney General. He oversaw 125 career professionals, and managed intelligence and surveillance operations and

oversight activities. In this role, he worked closely with the intelligence community.

At the National Security Division, Mr. Olsen led the Justice Department's participation in the interagency Guantanamo Review Task Force created by President Obama to evaluate the status of individuals detained at Gitmo Bay, which as we all know, is an extremely difficult assignment.

In 2010, he was appointed as general counsel to the National Security Agency, which is headquartered in Fort Meade in Maryland. As NSA's chief legal officer, he played a critical role in supporting the Agency's operation mission.

Mr. Chairman, I could go on and on. He has incredible experience in the intelligence community, and justice, and law enforcement. He has the whole package. I want to thank him for his willingness to continue to serve the public, and thank his family for their willingness to allow him to continue. I'm very proud to recommend his nomination to this Committee, and I urge you to consider his nomination.

Thank you, Mr. Chairman,

Chair DURBIN. Thanks Senator Cardin. Senator Van Hollen.

**STATEMENT OF HON. CHRIS VAN HOLLEN,**
**A U.S. SENATOR FROM THE STATE OF MARYLAND**

Senator VAN HOLLEN. Thank you, Chairman Durbin, Ranking Member Grassley, and Members of this distinguished Committee. I'm very proud to have the opportunity to also join my colleague, Senator Cardin, in introducing the President's nomination to serve as Assistant Attorney General for National Security at the Justice Department, Matt Olsen. I would like to also welcome his family: his wife, Fern, and their three children, Elizabeth, Nate, and Will, who are here today.

President Biden has selected wisely in picking a nominee who has the experience, the expertise, and the sound judgment for this very important position. He has very wisely selected a Marylander as well.

I'm not going to cover all the details because Senator Cardin went over his very distinguished career, but I would point out that he has 20 years of experience in exactly the relevant areas for the position for which he's been nominated, national security, counterterrorism, and civil rights.

I do want to highlight a couple of the areas where he served, including the Department of Justice, first in the Civil Rights Division, and then as Acting Assistant Secretary for National Security, where Senator Cardin said he helped establish the National Security Division at DOJ.

His service as general counsel at the National Security Agency, covering issues like cybersecurity and surveillance law will also prove very important in his new position, if confirmed. His most recent Government post, Mr. Olsen served as the Director of the National Counterterrorism Center, where he worked tirelessly at the helm of the Nation's efforts to combat terrorism at home and abroad by integrating terrorism intelligence and connecting the dots to deter, detect, and disrupt terrorist plots. In short, his work has helped save American lives.

Each of these experiences prepare him very well for the skills that he will need to serve in this role. There is no question in my mind, Members of the Committee, that Matt Olsen is ready to take on the important responsibilities as Assistant AG for National Security.

I was delighted to see that just yesterday, 80 former senior officials of the United States Department of Justice, who have served under administrations of both parties, wrote to this Committee, expressing their, quote, "unqualified and enthusiastic support for Mr. Olsen's nomination."

On a personal note, I can testify to Matt Olsen's good character, because I also know him as a good neighbor in Kensington, Maryland. My wife, Katherine, and I frequently encounter Matt, Fern, and their children, walking in the neighborhood. The only family who is not with them today is their dog, Kenie, who is a playmate of our dog.

Chairman Durbin, Ranking Member Grassley, Members of this Committee, I am absolutely confident that, if confirmed, Matt Olsen will serve our country with honor and distinction. I urge you support his nomination for this important post.

Chair DURBIN. Thank you very much, Senator Van Hollen. I thank both you and Senator Cardin. Of course, you can go about your business if you wish. We'll continue here.

We are going to pause momentarily, waiting for the arrival of Senator Schumer, who's going to introduce the nominee for the first panel. If everyone would please relax.

[Pause.]

Chair DURBIN. Welcome, Senator Schumer. The floor is yours.

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

Senator SCHUMER. Thank you, Mr. Chairman. I want to thank you and my colleagues on the Senate Judiciary Committee. It's always a pleasure to be back here where I served many happy years. In fact, if you add up my time on the House Judiciary Committee and the Senate Judiciary Committee, it's 1982 to 2016. That's a lot of years. It's glad to be back.

It's particularly glad to be back for the reason I'm here today. It's my honor, my true honor, to introduce a nominee to the Committee for the Second Circuit of New York, Myrna Pérez, an experienced litigator, one of the foremost election lawyers in the country whom I was so, so proud to recommend to President Biden.

Myrna Pérez's life is a quintessentially American story. The daughter of Mexican immigrants, Myrna grew up in San Antonio, not quite Brooklyn, where her dad served in the Air Force, and her mom worked as a waitress and then at the post office.

As she will tell you, her upbringing was steeped in the immigrant experience of many first-generation Americans. There was a constant struggle against racial, social, and language barriers as the Pérez family found its place in America.

In fact, when Myrna was a kid, her aunt would take her to the polls on Election Day. Even in her early years, she saw first-hand to how cultural differences and byzantine rules made it immensely difficult for Americans like her to engage in the political process,

foreshadowing a career dedicated to the defense of voting rights and equal representation for all Americans.

Make no mistake about it she—and it was no mistake, rather, that she chose the legal profession as a means to achieve that noble goal. Myrna's family will tell you the story of how once, as a kid, she protested that her cousin tried to keep a fish he caught that was technically below the legal size for catch-and-keep. Do you remember what kind of fish it was? A trout. A trout. We have those in New York too.

It was the innate appreciation for the rule of law that propelled Myrna through Yale, Harvard, and eventually Columbia Law School. The first in her family to graduate from college. I hear these stories, and it gives me such faith in America. Such a strong desire to create greater and more equal justice in this country. We have so much potential. We have such a wonderful country; we just have to live up to it. With a nomination like this, we are.

After two clerkships on the Federal bench, Myrna worked as a civil rights fellow in private practice before joining the Brennan Center for Justice at NYU, of course named after the great Justice Brennan. It was at the Brennan Center that Myrna established a reputation as one of the top voting rights and election lawyers in the entire country. For the last 15 years, she's been involved in election-related litigation. Everything from voter roll purges, discriminatory voter ID laws, the voting rights of formally incarcerated people, and protecting the ballot from unlawful rejection.

My colleagues, the Federal bench has long been occupied by former prosecutors and corporate lawyers. While many of these people, many of whom I proudly recommended, have served admirably, it's past time that the Federal bench reflect more accurately the true depth, and breadth, and talent that the legal profession has to offer. It's about time that civil rights attorneys, Federal defenders, and voting rights experts like Myrna Pérez join the ranks. Especially now, when our democracy in many ways is in peril, it's crucial that we elevate someone like Ms. Pérez to the bench. Someone we can trust to faithfully and equally apply the law to preserve our great democracy.

It's not only about her experience as a voting rights litigator. After all, she's going to hear all kinds of cases on the second circuit. What makes Ms. Pérez so qualified for this job is not merely her experience, but her legal excellence. Just listen to what a few of her colleagues have to say about her: "Brilliant," one fellow attorney wrote, quite succinctly. "A force of nature," another said. Another colleague rated her legal skills as simply, quote, "off the charts."

I would add one additional note to these well-deserved praises: Ms. Pérez will serve as the first Latina to sit on the Second Circuit Court of Appeals since then judge, now Justice, Sonia Sotomayor, whom I had the great honor of recommending to President Obama for a seat on the highest Court.

Let me just say, when I met Ms. Pérez, she just knocked my socks off. Yes. She was brilliant, amazing. Yes. She had real compassion and depth of experience. She had a scintillating personality that I'm sure will help her persuade fellow members of the second circuit to the righteousness of the causes that she will follow. I can

think of no one, no one more fitting to carry on Justice Sotomayor's legacy on the second circuit than Myrna Pérez. She's amazing. I'm so proud to nominate her. She carries my highest, highest, highest recommendation.

Chair DURBIN. Thank you very much, Senator Schumer. We appreciate your remarks.

At this point, we're going to ask the staff to prepare for the questioning of nominees. The first panel will be—Ms. Pérez, who is seeking a spot on the circuit court, will be before the Committee.

Then the second panel will include the other nominees.

Senator Schumer is working this like a high school graduation. [Laughter.]

Chair DURBIN. He's attended many.

Senator SCHUMER. I've spoken at over 100 of them virtually this year. Graduations.

Chair DURBIN. I'm sure virtuously too. Ms. Pérez, why don't we ask you to please stand to be sworn. Please raise your right hand.

[Witness is sworn in.]

Chair DURBIN. Thank you. Please proceed with your opening remarks.

## STATEMENT OF MYRNA PÉREZ, NOMINEE TO SERVE AS UNITED STATES CIRCUIT JUDGE FOR THE SECOND CIRCUIT

Ms. PÉREZ. Thank you, Chairman Durbin, Ranking Member Grassley, and Members of the Committee for considering my nomination today. Thank you, Senator Schumer and Senator Gillibrand for your support, and Senator Schumer for your kind words of introduction. I also want to thank President Biden for this nomination. It is the honor of my professional life.

I first want to thank my judges, Hon. Anita Brody of the Eastern District of Pennsylvania, and Hon. Julio Fuentes of the third circuit. While they were appointed by Presidents from different political parties, they had a shared commitment for the rule of law and impartial adjudication.

I want to thank my friends and colleagues. It is not possible to enumerate the many ways in which you enrich me. The support you have shown me has meant more than you know.

I want to thank my church family: Saint Matthews Evangelical Lutheran Church, my extended church family of Crossroads Prison Ministry, and Grace Van Vorst Episcopal Church for all of their prayers. They availeth much.

In the hearing room is my cousin, Hector Pérez, standing in for my many wonderful cousins on the Pérez and Garza side of my family. Of course, I want to thank my many aunts and uncles who played such a big part of my life during my formative years. To my cousins, my aunts and my uncles, my brother, my nieces and my nephews, thank you for the love from afar.

My husband, Mark Muntzel is here. He is a devoted father and a really good sport about going along with my various community projects. Mark also gifted me with a bonus family who welcomed me with open arms.

My parents, Myrna Pérez and Victor Pérez, Junior, came in from Texas to be here today. They immigrated from Mexico to the

United States as children. While I never heard any complaints, I never heard the words discrimination or poverty, even as a young child, I knew that much of their life was very challenging and full of hardships.

To their credit, they never communicated anything but gratefulness for what they had. They taught me to be resilient. They taught me to be resourceful. They taught me to be independent. They taught me to be self-reliant. They taught me to set high standards for myself, and to work very hard to achieve them. Most importantly, they taught me that on my worst day, I am still better off than most of the world on their best.

Finally, in the room is my beloved son. He is my greatest source of strength, joy, and inspiration.

Thank you so much, Members, for giving me a moment to thank all the people who got me here today. I look forward to your questions.

Chair DURBIN. Thank you very much, Ms. Pérez. Let me, before we go into a few questions, say a few words about the disclosure yesterday of the article that was published in Sojourners Magazine. Let me tell you that I have taken a look at the standards of the Committee, and believe that you are in total compliance, both with the letter and spirit of the rules and law.

You submitted to the Committee an article, which had been submitted for publication in May of this year, before your nomination to the second circuit. That article was published online yesterday. We have the letter of transmittal from you with the article in a timely fashion.

Question 12(a) of the Senate Judiciary Questionnaire requires nominees to provide all published materials, including materials published on the internet, to the Committee. The question does not, however, require nominees to produce unpublished materials. You complied completely, as soon as it was published.

I might also say that I read it. Having read it, some may take exception, I certainly believe they will. I would gladly give your article as a speech from me personally on the floor of the Senate any day of the week. I agree with what you said to the letter. I would also say that it is factually correct in every aspect that I'm aware of. We may disagree on policy, that's the nature of this U.S. Senate and our body politic. In terms of the article itself, as I said, I believe that it's accurate and I would embrace it.

The only reference to the Republican Party was in the title, and that, you said, was not your choice, but the editor's choice. It speaks of issues in State legislatures without any partisan identification on that.

Let's go further with this. You've worked with the Brennan Center. Senator Grassley raised a point which is entirely valid. We raise this point all the time. Do you come to this, really, awesome responsibility with a bias?

You know, I think the world of Justice Brennan, and what he did on the Supreme Court—as a matter of fact, I think there's a quote in here. Let me find it, because it's worth remembering. There's a quote that said that Justice Brennan was—Justice William Brennan was probably the most influential Justice of the century. The source of that quote was Antonin Scalia. Brennan himself was a

well-respected man, and I have turned to the Brennan Center many times when there are questions of policy that they have looked into.

What would you say of your own philosophy? Textualist? Originalist? I don't know all the terminology of the Constitution. Please, the floor is yours.

Ms. PÉREZ. Certainly, Chairman Durbin. Thank you so much. I think the first place you start when examining the Constitution or a statute is with the text. It is the most probative example of how it should be interpreted. I think if, on its face, the text is not clear, you would then look to precedent. If confirmed, I would be looking to precedent both from the Supreme Court and the second circuit. If that still doesn't answer the question, you look to canons of construction. You perhaps approach a legislative history, but there is more than 230 years of jurisprudence in this country, and there is relevant and probative jurisprudence on quite a number of issues. You start with the text, sir.

Chair DURBIN. Members of the Senate and many others swear allegiance to that Constitution. To defend it, people have given their lives in defense of that Constitution. Yet, I would say, in my own personal opinion, as great a document as it is, and it is great, it is not perfect. Its treatment of African Americans, women, and others reflected the mores and standards when the Constitution was written. I would just say, and you don't have to comment, that I am not a literalist when it comes to characterizing African Americans as two-thirds of a citizen or not including women in the right to vote. That, to me, is a reflection of the times, and thank goodness those times have changed.

Speak to me, if you will, though, about the right to vote. That is the central issue that we're discussing in so many aspects. A group of Texas legislators decided to come to Washington so that they wouldn't make a quorum in Texas over controversy involving the voting rights law. People feel very intensely about it. Comment on that, if you would.

Ms. PÉREZ. Senator, the right to vote keeps us free. It protects us from tyranny. It is preservative of all other rights. As an advocate, I have been duty-bound to ensure that the promises this Constitution makes about being able to participate in your own self-governance is actualized.

The position before you I seek is one of a different role, one in which I would not be involved in questions of policy, but merely evaluating the laws that were put before me alongside the record that the parties put in. The fundamental core of what is great about our country, the Constitution and the promises that it makes that we all deserve a free, fair, and accessible vote, is something that is timeless and something that is bipartisan.

Chair DURBIN. I know the answer to the question I'm about to give is very simply a yes, but I'm going to ask you if you would expound on the notion. Have we had any difficulty in the history of this Nation in providing the right to vote to all Americans?

Ms. PÉREZ. Yes, sir. There are times where we have not lived up to the great ideals of the Constitution, and I am very proud to say that we are improving on that, but it requires vigilance, and it re-

quires all of us Americans being part of the "We the People," in order to make and continue to make our union more perfect.

Chair DURBIN. Thank you. Senator Grassley.

Senator GRASSLEY. Thank you, and congratulations on your appointment. I want to talk generally about the approach of this administration. Many names, not just yours, but others that we've already dealt with, about these nominees refusing to even admit that they have a judicial philosophy, let alone talk about what their own judicial philosophy is. Even Judge Gelpi, who literally wrote a book on the Constitution didn't seem to want to talk about it.

I think you're uniquely suited to answer these questions because you've spoken many times about the living Constitution concept in connection with your work at the Brennan Center. What does the living Constitution concept mean to you? You obviously agree with a living Constitution as a method of constitutional interpretation.

Ms. PÉREZ. Senator, Justice Brennan made famous and popular the idea of a living Constitution. Obviously, I've never spoken to him about what it meant or what his interpretation meant. I do think, as a nominee, I believe, and I'm comfortable saying, that the Constitution is an enduring document. Its great values of incredibly important things like equal justice under the law, liberty, the right to free exercise, all of those important attributes of the American experience are still relevant and guiding us today. If they continue to guide us, we will continue to be the greatest country in the world.

Senator GRASSLEY. Thank you for your willingness to express that. Others haven't been quite that outcoming.

On May 27, 2021, you spoke on a virtual panel entitled, "Voting Rights in America: Ensuring Fair and Full Voting for All." During your introduction, you spoke about Justice Brennan and his judicial philosophy. You also went on to say, quote, "If you're one of these people who think that we were at our best when our country was first founded and didn't include women, or people of color, or people without property in the electoral process, this is probably not the conversation for you," end of quote. Who were you describing in that description?

Ms. PÉREZ. Senator, I do speak a lot, so I'm not 100 percent confident that I remember the conversation. If it is the conversation I remember, I was getting a lot of hostile, inappropriate comments in the chat, and I was worried that it was distracting the audience and frustrating the organizers. I was trying to explain to the audience members that I was asked to speak on a particular topic, and I intended to speak on that topic as opposed to engaging with nameless, anonymous people via chat.

Senator GRASSLEY. Okay. Let me follow-up. Is it your view that originalists think America was, quote-unquote, "at its best when people of color couldn't vote?"

Ms. PÉREZ. Senator, I think labels that get thrown around a lot, like originalist, are inchoate and constantly shifting, and so they're too broad and they're not particularly helpful in terms of answering questions.

I will say that I—the people I have encountered that call themselves originalists, I do believe—believe that our country that is in-

clusive is preferable than the restrictions we saw when the country was first founded.

Senator GRASSLEY. Can you name any originalists who might hold that view?

Ms. PÉREZ. I'm sorry?

Senator GRASSLEY. Could you name any originalist who might hold that view?

Ms. PÉREZ. Who holds what view? The idea that the country has improved when we can all include? We are all inclusive.

Senator GRASSLEY. Okay. Then, let me go on to my last question. This deals with recusal. In your questionnaire, you said you would recuse yourself in matters which the Brennan Center was a party or represented a party. Does this also include matters which you or the Brennan Center advocated a policy position on? Let me follow-up that question with, you have spoken about New York election laws and pending voting legislation in Congress, and your positions on those bills are quite clear. Can you comment today to recusing yourself from litigation involving that legislation?

Ms. PÉREZ. Senator, I am very comfortable committing to consulting the statute of 28 U.S.C. § 455 for recusals, and talking to the administrative office, and proceeding in accordance with those dictates.

Senator GRASSLEY. Thank you very much.

Ms. PÉREZ. Thank you so much.

Chair DURBIN. Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Chairman. Welcome——

Ms. PÉREZ. Good morning.

Senator WHITEHOUSE [continuing]. Ms. Pérez. I am delighted that you are here, and I look forward to supporting your confirmation.

I want to ask you a question regarding the Voting Rights Act. There has been some criticism of your nomination that you have dwelt unduly on issues of race with respect to the Voting Rights Act. Could you let us know why, with respect to the voting rights law, that is actually a necessary thing to consider?

Ms. PÉREZ. Thank you, Senator. For the past 15 years or so, I have been an advocate on behalf of an organization and on behalf of clients who seek a free, fair, and accessible vote. As a civil rights litigator, I am duty-bound to be hyper-sensitive and attuned to issues of disparity and racism, and to protect and guard against any threats to a free, fair, and accessible vote. As such, I have been vigilant about monitoring, and watching, and resourcing, and researching potential threats to a fair vote.

Senator WHITEHOUSE. In fact, section 2 of the Voting Rights Act makes it actionable to deny or abridge the right of any citizen of the United States to vote on account of race or color, does it not?

Ms. PÉREZ. That is correct, sir.

Senator WHITEHOUSE. That's actually in——

Ms. PÉREZ. Part of——

Senator WHITEHOUSE [continuing]. The law.

Ms. PÉREZ. Part of my job, sir. Right now.

Senator WHITEHOUSE. Part of your job. It's a part of your job because it's part of the law.

Ms. PÉREZ. That is correct, sir.

Senator WHITEHOUSE. Yes. I'm actually, I think, more to your side than to the originalist side with regards to the Constitution. I like your use of the word enduring. I think we do have an enduring Constitution, and we do have principles in it that endure, but that have to adapt to changing circumstances in society, whether it's new means of communication, or new economic realities. I think too often, originalism is used as a device to try to impose value judgments rather than principle.

I think it was William F. Buckley who, years ago, said, "The purpose of conservatism is to stand athwart history, yelling, 'Stop.'" I don't think the Constitution is designed that way. I just want to say I appreciate your perspective. I tend to share it. I think your use of the word enduring is a very appropriate one. I don't know if you want to elaborate on that in any respect, but thank you for saying that.

Ms. PÉREZ. I would say, Senator, that I love the Constitution. I love the principles it sets out. I love that under the Constitution, we are all equal under the law, that we all have a right to life, liberty, and the pursuit of happiness. I love that we all have the right to free exercise.

I am entirely persuaded in the wisdom of the frameworks it sets up. Things like the rule of law, separation of powers, and an independent judiciary and federalism. As part of those frameworks, it allows us as Americans to live up to our ideals. Those frameworks improve our values, and those values guide our framework. I think together, the country is getting stronger and can get stronger.

Senator WHITEHOUSE. In the context of frameworks, let me ask a final question here that I ask of a great many of the nominees who come before us, because in the framework of the United States Constitution is the jury. Criminal jury and the civil jury. The importance of the jury was something that was really evident to the founders. It was part of the casus belli of the Revolution. It was mentioned in our founding documents. I think many historians see it as a way for popular expression of governance by local communities.

It's been with some degree of distress and dismay that I've watched jury trials more and more evaporate in the Federal system. A lot of it has to do with Supreme Court decisions that have made it easier for big and powerful interests to get out of cases before they, in some cases, even have to properly answer discovery. In other cases, it's been allowing big powerful interests to divert people away from juries and into mandatory arbitration, for instance, which is very often a rigged game. Would you say a word about the historic role of the jury, and whether you have any hesitation about protecting and defending the institution of the jury, as contemplated in the Constitution?

Ms. PÉREZ. Senator, the jury is an important bedrock position in our judicial system. Certainly, as an appellate court judge, I would not be interacting with juries, but I certainly would apply all the standards of deference and reverence for the decisions issued by juries.

Chair DURBIN. Thanks, Senator Whitehouse. Senator Tillis.

Senator TILLIS. I'll defer to Senator Kennedy.

Senator KENNEDY. I'm sorry, Mr. Senator. No. You go ahead. That's very kind of you.

Chair DURBIN. I could ask you to do it jointly.

[Laughter.]

Senator TILLIS. That gives us 10 minutes?

Senator KENNEDY. Yes. Really.

Chair DURBIN. You have to fight over the 10 minutes.

Senator KENNEDY. I'll try not to take my whole time here. Thank you, Mr. Chairman. Counselor, how are you? Good morning. Congratulations.

Ms. PÉREZ. Thank you so much.

Senator KENNEDY. Do you think the Constitution should be used to create new rights?

Ms. PÉREZ. Senator, I think the Constitution is an enduring document, and that the——

Senator KENNEDY. Yes. I agree with you. It's been around a long time. It's enduring. I'm fond of it. You love it. I'm fond of it too. But do you think it aught to be used to create new rights?

Ms. PÉREZ. Senator, I think it is constantly being interpreted, and the Supreme Court has, through the 230 years of jurisprudence, has found rights in it.

Senator KENNEDY. Yes.

Ms. PÉREZ. If I am confirmed as an appellate judge, I would faithfully apply Supreme Court precedent.

Senator KENNEDY. Yes. But are you going to use to try to create new rights?

Ms. PÉREZ. Senator, appellate court judges don't create new rights. They take the record——

Senator KENNEDY. Sure they do.

Ms. PÉREZ [continuing]. Below them——

Senator KENNEDY. Sure they do, Counselor. We've been—we both have been at this a long time. They do it all the time. Then it goes up to the Supreme Court, and the Supreme Court says yea or nay. Or sometimes they don't say anything.

Let me ask you this, what barometer should we use to decide whether a Federal judge ought to create a new right, or the people's elected representatives through a Congress or a legislature? What's the standard you use there?

Ms. PÉREZ. Senator, we have coequal branches of Government. The legislature does the policymaking. The judiciary——

Senator KENNEDY. Yes. What's the standard—I'm sorry to interrupt you. We had this problem in the last administration, and we have it in this administration. If you could just answer my question because 5 minutes just goes like that. What standard do you use, personally, to decide whether a new right ought to be created by a Federal judge or by the U.S. Congress, if it's a Federal right?

Ms. PÉREZ. Senator, I would be applying precedent, and precedent has standard——

Senator KENNEDY. I stipulate that you're going to apply precedent. I stipulate that. Let's take that off the table. What standard should be used to determine whether a new right ought to be created by a court, a Federal judge, unelected, appointed for life, or a United States Congress?

Ms. PÉREZ. Senator, appellate courts have standards of review when looking toward lower court decisions, and I would apply that standard——

Senator KENNEDY. Come on, Counselor. You're not answering my question. It's a real simple question, and you're very smart, and you know what I'm asking. You believe in a living Constitution. Okay. I get that. That's a legitimate point of view.

You say you don't understand what an originalist is, but I think—I don't think you're being candid there. This is what my—let me ask my question again. What standard should be used to decide if you're going to create a new right in the Constitution, whether that right ought to be created by a Federal judge or the people's elected representative? Very simple.

Ms. PÉREZ. Senator, the Federal courts are of limited jurisdiction. The appellate courts sit in between a Supreme Court and——

Senator KENNEDY. Okay. You're not going to answer it. I get it. When you were at the Brennan Center—you're still there. Right?

Ms. PÉREZ. I am on leave, sir.

Senator KENNEDY. Okay. When you were there, did you advocate Federal courts to create new rights under the Constitution?

Ms. PÉREZ. No, sir.

Senator KENNEDY. You never did?

Ms. PÉREZ. No, sir.

Senator KENNEDY. Okay. When you——

Ms. PÉREZ. The right to vote is protected in the Constitution, and it's protected——

Senator KENNEDY. You never asked for new rights. You just said they're already there.

Ms. PÉREZ. Yes, sir.

Senator KENNEDY. Okay. How do you know a right's already there if it's not explicit?

Ms. PÉREZ. In the case of *Boding*——

Senator KENNEDY. No. No. Just in general. If I read your resume, and it's not—something's on there—well, that's a bad example.

If you look at the Constitution, and it doesn't—let's just say—let's say reparations. Okay. It doesn't talk about reparations. How do you know whether a right should be granted if it's not there? That's what I understand you to be saying with the living Constitution.

Ms. PÉREZ. Senator, again, a case would not come before an appellate court unless parties presented an argument.

Senator KENNEDY. I get that. I understand how a lawsuit's tried. How—let me ask you again, how do you know if a right's not explicit in the U.S. Constitution that it's really there? It's hiding. It's lurking, and we just have never seen it.

Ms. PÉREZ. Senator, in *Marbury v. Madison*, the Supreme Court said that the Supreme Court interprets the Constitution.

Senator KENNEDY. Right.

Ms. PÉREZ. I would look to precedent. I would look to see if what——

Senator KENNEDY. What if there's no precedent?

Ms. PÉREZ. There's always some precedent. I——

Senator KENNEDY. See, here's my problem, Counselor. This is where I think you're headed. I think what you want to do on the Federal bench is advance a social agenda and rewrite the Constitution every other Thursday to advance a social agenda that you can't get by the voters through their elected representatives.

Ms. PÉREZ. Senator——

Senator KENNEDY. That's a legitimate thing to be for. This is America. You can believe what you want. You spent your whole career doing that. It bothers me that you're not defending that here, that you're dodging my questions.

Ms. PÉREZ. Senator——

Senator KENNEDY. You're not the only nominee who's done that. It happened under the prior administration. It must be something in the water at the White House. I'd respect you a lot more if you just upfront said it.

Ms. PÉREZ. Senator, I believe in the value of precedent. I think it makes our system——

Senator KENNEDY. So do I, but that's got nothing to do with our discussion. We both know that. I understand that you've been advised to say precedent, precedent, precedent. When in doubt. Is it raining outside? Precedent. It inhibits our ability to have a rational discussion.

Thank you, Mr. Chairman.

Chair DURBIN. Do you want to complete your answer, Ms. Pérez?

Ms. PÉREZ. I'm fine. Thank you.

Chair DURBIN. Thank you. Senator Tillis. I'm sorry. Senator Coons.

Senator COONS. Thank you, Chairman Durbin. Great to be with you, Ms. Pérez. The Committee received a number of glowing letters in support of your nomination. I was struck by one in particular, a letter that I reviewed closely from Reverend Canon Dr. Allison DeFoor of the Episcopal Diocese of Florida. Before his service as a faith leader, Reverend DeFoor practiced law, serving as a county judge, a circuit judge, a prosecutor, a sheriff of Monroe County, and a public defender. He also sought elected offices for the Republican nominee for Lieutenant Governor.

He emphasized in his heartfelt letter of support for you, and I quote, "Myrna is, as a lawyer and individual, a person of the highest integrity. She's thoughtful and sound in her judgment and committed to principles of justice that transcend politics. She embodies the true meaning of public service and would be an exceptional Federal judge." He adds, "This is an informed opinion," something many of us in the Senate would benefit from adding on occasion, if it were true.

Given this informed opinion that I assume is rooted in your close work together, I'd just be interested in learning more about your work with the reverend, and former judge, and sheriff on criminal justice issues. What motivated you to engage in that work? What lessons have you taken from that work which you might apply in your future service?

Ms. PÉREZ. Certainly, sir. The Brennan Center takes the position that all Americans who are living and working in the community should be able to have the right to vote. I have been very fortunate

to work with people from all kinds of backgrounds to try and work in the legislative branch, primarily to make that so.

Reverend Allison is one of the many different kinds of people that I have worked with on this issue. There are a quite a number, and I think it is really encouraging that there are still some issues in which we can get bipartisan support for.

Senator COONS. We've managed to get bipartisan support for criminal justice reform, even on this Committee, with the leadership of our Chairman.

Ms. Pérez, I was also struck that your work has included extensive litigation experience, both at the district and appellate level, and I'd like to give you a chance to talk about your litigation experience, and its relevance to your service, should you be confirmed in the position for which you've been nominated. How would your experience with complex litigation inform your service as a judge, if confirmed?

Ms. PÉREZ. It would give me a very strong appreciation for what it is that district courts have to do. It would make me be very faithful to the standards of review. It would remind me every day that the parties are the masters of their lawsuits. It would also bring to me almost two decades of experience, analyzing constitutional and statutory claims, voluminous documents, a massive amount of motions practice, and would allow me to make sure that I am aware of exactly what it is that parties are doing when they are arguing and prosecuting their cases.

Senator COONS. That's great. Thank you very much. I appreciate your testimony before this Committee today. No further questions. Thank you, Mr. Chairman.

Chair DURBIN. Thanks, Senator Coons. Senator Tillis.

Senator TILLIS. Thank you, Mr. Chairman. Ms. Pérez, thank you for being here. Congratulations on the honor of——

Ms. PÉREZ. Thank you, sir.

Senator TILLIS [continuing]. Being nominated, and to your family.

Ms. PÉREZ. Thank you.

Senator TILLIS. What's your son's name?

Ms. PÉREZ. His name is Diego Isaias.

Senator TILLIS. Welcome. I've got a quick—just a couple of quick questions. I was speaker of the house down in North Carolina when we passed voter ID laws in the State. You know, I feel like—it's difficult for me to understand. I think we have different views about this. When we try to do everything we could to make sure that anyone who wanted—that needed an ID in order to vote, that we would even pay for it. That we would make sure that we gave people not only the opportunity to vote, but fully participate in civil society.

When I went through the TSA, I had to present an ID. When I checked into a hotel 2 weeks ago, I had to present an ID. When I got prepped for my surgery about 2 months ago for prostate cancer, I had to submit an ID to be admitted into the hospital.

It just seems to me that—I'd like for us to get to a point to understand that if we want every American to fully participate in every aspect of society, that an ID is a pretty important part of

that. I'm not going to ask you. I know where you are on it, so we'll agree to disagree on that.

I did want to ask you about something I think you argued in—there was a ballot harvesting case in the 9th District, down in North Carolina. In that particular case, it was a Republican candidate, so I appreciate again, your consistency on the issue. Give me an idea on a State like North Carolina, where ballot harvesting is not allowed, why you think that that is a suppression—a voter suppression measure?

Ms. PÉREZ. Certainly, Senator. I am happy to answer your question. I would, again, recognize that if I am confirmed, I would be taking on a different role, and you are referencing work that I did as an advocate.

We examined the issue in North Carolina and found that there was a disadvantage that was occurring because of the illegal activity that happened there. We responded——

Senator TILLIS. For those whose ballots were harvested?

Ms. PÉREZ. Those whose ballots were tampered with and thrown away. As an advocate, I was duty-bound to call that attention to the public to ensure that I could do everything within my role, that those voting rights of the impacted voters would be vindicated.

Senator TILLIS. Do you—just on a broader question. Again, I understand the limits that you have because of matters that may come before you. Wouldn't it also follow, then, that the same rationale for saying that those votes had been suppressed because they had been tampered with opens up ballot harvesting to potential fraud?

Ms. PÉREZ. Senator, the striking the balance between how much restrictions you need to ensure fraud doesn't happen is something that's better suited for the legislature. If I am confirmed, I would merely be evaluating the law and the precedent before me, as applied to the facts and the record that the parties put before me.

Senator TILLIS. Thank you. Thank you, Mr. Chair. Congratulations, again, to the family, and the story of your family. Thank you.

Ms. PÉREZ. Thank you.

Chair DURBIN. Senator Hawley.

Senator HAWLEY. Thank you, Mr. Chairman. Thank you, Ms. Pérez, for being here. Congratulations on your nomination.

I just want to pick back up where Senator Tillis left off when it comes to ballot harvesting. This is an issue that the U.S. Supreme Court has recently taken up in the *Brnovich* case. You've had quite a lot to say about the *Brnovich* case. You've had quite a lot to say in quite a number of the Supreme Court's precedents, which you will be called upon to apply.

I'd like to get your views on those. You seem to be fine and perfectly willing to characterize Supreme Court precedent, so I look forward to your testimony here under oath. You said that the *Brnovich* case was a clear-cut case. The Supreme Court ruled, and you actually characterized that some of the arguments in the case made by *Brnovich* and made by various amici in support of Arizona as outrageous and harmful, including a brief filed by my colleague, Senator Cruz. I take it you think the *Brnovich* case was wrongly decided?

Ms. PÉREZ. Senator, my views on the *Brnovich* case are immaterial because, if confirmed, I would be duty-bound to apply it, and I would do so without reservation.

Senator HAWLEY. I think they're quite material to get at your judicial philosophy. Let's try again. Do you think the *Brnovich* case was wrongly decided? You said that the case was clear-cut. The Supreme Court ruled differently than you thought. I take it you think it was wrongly decided.

Ms. PÉREZ. Senator, I would apply the precedent without reservation.

Senator HAWLEY. Do you think the *Brnovich* case was rightly decided?

Ms. PÉREZ. Senator, I would apply the *Brnovich* case without reservation. It is the law of the land. The country that I care so much about depends upon stare decisis and the application of precedent.

Senator HAWLEY. That's not what I'm asking you. I'm asking you about your comments on a Supreme Court case, which you will, indeed, be duty-bound to apply. I think understanding your view on that case is relevant.

Let's try a different one. *Shelby County*. You said that the *Shelby County* case gutted voting rights. You think that case was wrongly decided. Will you be able to apply that case faithfully?

Ms. PÉREZ. Without reservation.

Senator HAWLEY. Do you think that the *Heller* case was wrongly decided?

Ms. PÉREZ. Senator, *Heller* is the law of the land, as is its application through the States of *McDonald*. I would apply it without reservation.

Senator HAWLEY. Do you think *Brown v. Board* was wrongly decided?

Ms. PÉREZ. Senator, I would apply *Brown v. Board* without reservation.

Senator HAWLEY. Do you think *Brown v. Board* was rightly decided?

Ms. PÉREZ. Senator, I think there—it was rightfully decided, and it——

Senator HAWLEY. It was rightly decided. *Shelby County* was wrongly decided, you say. You won't say about the *Brnovich* case. You won't say about *Heller*. What's the line, here? How am I to adjudge how you are going to apply the law if you won't be frank with the Committee about what you've said in the past and about your own views now?

I mean, you've been an activist for quite some time. You've commented on many laws. You've called voter ID laws, like we have in my State of Missouri, which by the way, the voters of my State passed directly. The voters passed. You've criticized those as Jim Crow-type laws. That's an extraordinary statement for a judge, someone who wants to be a Federal judge. Not an activist. Not a constitutional lawyer. A Federal judge. You've called the precedent of the U.S. Supreme Court, you've talked about them gutting voting rights. You've criticized them in the harshest of terms. You've done this repeatedly.

I think it's fair game to ask about your view of precedent. How are we going to know? I mean, let's come back to the *Heller* case,

the *McDonald* case, that followed on from *Heller*. Was that rightly decided?

Ms. PÉREZ. Senator, I would apply it without reservation. If I may say, I for the last 15 years, have been an advocate when under our system requires zealously pursuing the interests of my clients.

A judge plays a completely different role, and by accepting this nomination, I am pledging to this body, to the American public, before my God, that I would faithfully discharge my duties under the Constitution, which require me to put aside any personal policy viewpoints I have, and examine what the matter is before me, and apply the precedent of the Supreme Court and the second circuit. I do this without reservation. I am willing and able to serve my country in this way.

Senator HAWLEY. Do you still think the *Shelby County* case gutted voting rights?

Ms. PÉREZ. Senator, as an academic, as a researcher, as an advocate, I have done a number of research where I have had been able to lift out and identify instances in which policies that passed that were not likely to have passed, had it not been for *Shelby County*. *Shelby County* is the law of the land, and I would apply it without reservation.

Senator HAWLEY. Let's talk just a little bit about your broader judicial philosophy. You've been an advocate of living constitutionalism. You said in 2021 that if you were one of those people who think that we are at our best when our country was first founded and didn't include women, or people of color, or people without property in the electoral process, then this conversation about living constitutionalism is probably not for you. I take that to be a disparagement of originalism.

You've also said that the Constitution is not static or frozen in time, but it has to evolve and be dynamic in order to actualize its principles. Is this the judicial philosophy you would follow in cases of first impression when you don't have a controlling precedent on point and you have to construe the Constitution, you would look to dynamic and evolving principles?

Ms. PÉREZ. Senator, I believe in the conversation that you are speaking of, I was talking about Justice Brennan's definition of a living Constitution——

Senator HAWLEY. What would be yours?

Ms. PÉREZ. I believe that we have a Constitution that is enduring. I think its great values are applicable, and relevant, and can guide us today. I think they're timeless. I believe that they make our country strong.

Senator HAWLEY. Do you consider yourself a living Constitutionalist?

Ms. PÉREZ. I don't think those kinds of statements are helpful in explaining the approach that I would take, which would be first examining the text, then examining the precedent. If I needed to go beyond that, I would be looking at the canons of construction, the legislative history, the structure of what was at issue, and more importantly, I would be bound by the record of the parties that presented the case to me.

Senator HAWLEY. My time has expired. Thank you, Mr. Chairman, for your indulgence on this. I'll just say that Ms. Pérez, in

conclusion, I want to echo Senator Kennedy's remarks that I think given your very lengthy record—your very lengthy record of statements about Supreme Court precedent, about many court precedents, I think to come to this Committee and refuse to answer questions about those, to refuse to explain your statements, to say you're not going to comment about decisions. You have commented frequently about decisions. I just think that, with all due respect, that's not candid. I think it's frankly not transparent with this Committee, and I won't be able to support your nomination.

Thank you, Mr. Chairman.

Chair DURBIN. I might add to my friend from Missouri and others, it is not unprecedented. Trump nominees came before this Committee for four straight years, and with the exception of *Brown v. Board of Education*, which they acknowledged starting around 2019, they refused to say to a person whether other cases were, particularly recent cases, correctly decided.

It is a question often asked by the other party in this Committee, and the answers you have given are ones we've heard before. I don't think it should come as a surprise to my colleagues. Senator Padilla.

Senator PADILLA. Thank you, Mr. Chairman. I appreciate the context and background. Ms. Pérez, how are you?

Ms. PÉREZ. Great to see you, sir.

Senator PADILLA. Great to see you. You have spent virtually your entire career advocating for greater access to the ballot and stronger protections for our fundamental right to vote. In the course of that work, clearly you have litigated cases in court. You've advocated for policy changes in states around the country as well as right here in Congress. You and I have worked together in my prior capacity as the chief elections officer for the State of California, so I know how important advocacy on behalf of the right to vote is. Simply put, we are a stronger democracy when every eligible citizen is able to vote, particularly free of harassment, intimidation, and without any unnecessary obstacles or barriers.

I have sort of a bigger picture question in why voting rights? Why have you decided to dedicate your career to the defense of our right to vote, number one? I think more specifically, and for purposes of this Committee, how your views on policy, which we're entitled to have, but how would they affect your rulings as a judge?

Ms. PÉREZ. Thank you, Senator. I think the right to vote keeps us free. I think it protects us from tyranny. I think it is preservative of all other rights. As an advocate, I have been privileged to work alongside with all sorts of Americans from all sorts of backgrounds to make sure that our ability to govern ourselves is able to happen because we all have a free, fair, and accessible vote.

With respect to policy, that is a role that is an active part of my docket. By accepting this nomination, I am pledging to no longer participate in policy disputes. Instead, I will impartially and objectively review the law, apply it to the record before me, and be faithful to the precedent both of the Supreme Court and the second circuit.

Senator PADILLA. Good. I appreciate that answer. I thank you for your clarity. I thank you for your commitment. I thank you for your willingness to serve in this capacity, should you be confirmed.

I do have another question, and sadly, very timely. At the end of the last election cycle, we saw the rule of law tested when President Trump and his enablers filed over 60 post-election lawsuits. Not even counting those that came prior to the election. 60 post-election lawsuits, challenging the outcome of the election. Thankfully, court after court rejected President Trump's frivolous challenges.

There is no question that the system was strained by the former President's unfounded assault. As a voting rights lawyer, you saw this abuse of our judiciary up close. Can you speak to the importance of the rule of law and how you believe that judges can help exemplify and uplift it?

Ms. PÉREZ. Thank you, Senator. The rule of law is a foundational principle. It is all over the way that our country works, in addition to things like an independent judiciary and separation of powers. I think it's one of the genius of our Constitution, and part of the reason why I am very comfortable that I will be able to set aside my past role as an advocate and accept the role of a judge, if I am lucky enough to be confirmed, is because our system requires an independent judiciary.

I know that when I'm a litigant in court, I want to be able to go before a judge that allows me to make the arguments, allows me to make the case, and sets aside whatever personal viewpoints. Our system does not work unless judges do that. I am ready to do that. The country that I love so much depends upon it.

Senator PADILLA. Thank you. Thank you for your responses. Thank you, Mr. Chair.

Chair DURBIN. Thanks, Senator Padilla. Senator Lee.

Senator LEE. Thank you, Mr. Chairman. I'd like to follow-up on one of the questions that Senator Hawley raised with you. You said that you were referring, in those discussions about a living Constitution, to Justice Brennan's interpretive style. Is that correct?

Ms. PÉREZ. That is what I believe the quote he was referring to was referring to.

Senator LEE. Okay. Is this the quote in which you said while you were discussing—I think this was in a panel of discussion just a couple of months ago that Senator Hawley was asking about in which you said, "If you're one of those people who think that we were at our best when our country was first founded and didn't include women, or people of color, or people without property in the electoral process, this is probably not the conversation for you." What I'd like to know, first, what conversation is that? I want to understand the context? What you mean? What conversation isn't for you—are you characterizing people who believe in originalism as believing that we were at our best as a country when we didn't include women or people of color?

Ms. PÉREZ. Senator Lee, as I indicated to Senator Grassley, I do speak a lot. If I remember that conversation correctly, I was getting a lot of hostile and inappropriate comments in the chat. It was causing a disruption to the organizers and the planners who seemed to think that I would be engaging in some conversation with them. I was trying to set expectations for what the conversation would be like.

Senator LEE. I understand that. It's good to know. I'd still like to know what you were referring to.

Ms. PÉREZ. I was trying that—if again that was the conversation that I recall, and I believe that it was, it was me attempting to de-escalate some people who believed that that conversation was a source of a—or was a potential for a back-and-forth over chat, which I was not going to let it devolve into.

Senator LEE. Okay. Do you believe that's a fair characterization of originalists?

Ms. PÉREZ. I do not believe that that is a fair characterization of originalist. I, again, if this is the right conversation that I'm recalling, was trying to deescalate folks who were disrupting a conversation via chat.

Senator LEE. In response to Senator Hawley's questions a moment ago, you said you were referring—when referring to the living Constitution, you were referring to Justice Brennan's approach to interpreting the Constitution. Then you said that that would not necessarily be your approach. Did I understand your response to his question correctly?

Ms. PÉREZ. Senator, I am not a judge. I don't have a judicial philosophy yet. My approach would be to first look at the text, then look at precedent, look at the canons of construction, and keep myself limited to what the parties in the matter presented before me.

Senator LEE. Okay. Insofar as you were characterizing Justice Brennan's approach to constitutional interpretation, how would you characterize that approach today? What is his approach? What was his approach?

Ms. PÉREZ. Again, I've never spoken to Justice Brennan. I didn't have the pleasure of meeting him.

Senator LEE. You said a moment ago you were trying to characterize his approach.

Ms. PÉREZ. He has had quotes about the Constitution not being static, as has Justice John Marshall, in *McCulloch v. Maryland*. What I believe is true, and I believe it's a truism, is that our Constitution is enduring, that it has great values that are universal and timeless, and that those values make our country stronger. Values like freedom of religion. Values like liberty. Values like equal justice under the law.

Senator LEE. Okay. If you were confirmed, are you saying you would not adopt a living Constitution approach?

Ms. PÉREZ. Senator, if I'm confirmed, the first place I would look when evaluating a constitution or a statute would be at its text. That is the most probative offering of what a piece of writing means. If required, I would look to precedent from both the Supreme Court and the second circuit. If that still didn't answer the question, I would look to the canons of construction, the——

Senator LEE. Okay.

Ms. PÉREZ [continuing]. The structure——

Senator LEE. All right. I understand. Back in 2014, you described new voter integrity laws, including, as I understand it, voter ID laws, as representing, quote, "the biggest voting rights rollback since the Jim Crow area." Personally, I think it's an insult to the brave Americans who engaged in the Civil Rights Movement to draw any comparison between the heinous, race-motivated require-

ments imposed by the Democratic Party under the Ku Klux Klan's influence, to compare those to today's commonsense, race-neutral, and often bipartisan election security measures, which according to some polls are supported by a majority of African-American voters. Do you stand by that statement today, that voter ID laws are the biggest voting rights rollback since the Jim Crow area?

Ms. PÉREZ. Senator, I understand and very much believe in the importance of election integrity. Elections are how we resolve our political differences peacefully.

The Supreme Court has spoken and provided standards for assessing voter ID in the *Crawford* case. If I am lucky enough to be confirmed, I would be duty-bound to apply that precedent to any case in controversy that came before me, and I would do so without hesitation or reservation.

Senator LEE. I understand that. I am asking about a statement that you, in fact, made. Do you stand by your statement that it's the biggest voting rights rollback since the Jim Crow era?

Ms. PÉREZ. Senator, if that is the statement that I recall, it was occurring alongside a great number of pieces of legislation across the country that, as an empirical matter, looked different than what we had seen since earlier times. That was what the reference was to.

Senator LEE. You were not referring to voter ID laws?

Ms. PÉREZ. I—again, if I remember correctly, it was a wide array of laws that would have included voter ID laws, because around the time period that you're talking about, we saw a number of them introduced. Again, the Supreme Court has said that, within certain confines, the voter ID laws are acceptable. The fifth circuit en banc also said that there are times when voter ID laws cross the line.

If I am a judge, I would be required to look at all the relevant precedent and examine any law that was before me to figure out if unlawful discrimination was present.

Senator LEE. Okay. I see my time's expired. I do find it concerning that the witness still hasn't distanced herself. I understand sometimes people say things and later regret them. She hasn't distanced herself from statements made to that effect a few years ago, and I think that's significant. Thank you.

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

Senator CRUZ. Thank you, Mr. Chairman. Ms. Pérez, as I look at your career, I see the career of someone who has been an activist, and I believe a radical activist. You have waged litigation campaigns and opposed voter ID laws. You have opposed voter integrity laws. You have opposed prohibitions on ballot harvesting. You have advocated for felons being able to vote. As I look at your record, year after year after year of being an extreme partisan advocate, I'm left with the very likely conclusion that if you were confirmed to the bench, you would likewise be a radical activist on the bench.

Voter ID laws, as Senator Lee just pointed out, you described as the greatest rollback of voting rights in this country. Eighty percent of Americans support voter ID laws. Sixty percent of African-Americans support voter ID laws. Do you believe voter ID laws are constitutional?

Ms. PÉREZ. Senator Cruz, the Supreme Court has said that there are no per se restrictions against voter ID laws. In *Crawford*——

Senator CRUZ. I asked what you believe. I was one of the parties litigating in *Crawford*, so I'm very well familiar with that case, and led a coalition of States defending voter ID laws. Justice Stephens wrote the majority opinion, upholding Indiana's voter ID law. My question to you is, do you believe voter ID laws are constitutional?

Ms. PÉREZ. Senator, I believe they are constitutional. I believe that they can be constitutional because the Supreme Court has said they can be constitutional. In *Marbury v. Madison*, the Supreme Court gets to decide.

That is what our system depends on. We have a concept of vertical stare decisis. We have rules of law. We have precedent——

Senator CRUZ. Ms. Pérez, just a couple of months ago, in March 2021, you said that the voter ID laws that have been passed were due to, I'm going to quote you to get your words right, "anxiety over the browning of America. People having anxiety of the fact that certain folks in power are not going to be able to stay in power." Do you believe the 80 percent of Americans who support voter ID laws and the 60 percent of African Americans who support voter ID laws are doing so because they're concerned about the browning of America?

Ms. PÉREZ. Senator, that quote is clearly referring to politicians. It's not referring to African Americans——

Senator CRUZ. Which politicians here do you believe are concerned about the browning of America?

Ms. PÉREZ. Senator, that context was with respect to State politicians. And——

Senator CRUZ. It's only State politicians.

Ms. PÉREZ. Senator, that context that I'm on record for were referring to State politicians.

Senator CRUZ. All right. Let's talk about politicians here, in this body. As you know, I filed an amicus brief on behalf of 11 Senators in the *Brnovich* case. You made a comment that the brief that I filed was outrageous and harmful. Do you stand by that characterization?

Ms. PÉREZ. Senator, the Supreme Court, as you know, issued its decision in the *Brnovich* case and struck down—I'm sorry, and upheld the restrictions on Arizona. *Brnovich* is law——

Senator CRUZ. Okay. I'd like you to answer my question.

Ms. PÉREZ. *Brnovich*——

Senator CRUZ. Do you stand by the characterization that the amicus brief that I filed on behalf of 11 Senators was, quote, "outrageous and harmful"? That's how you characterized it.

Ms. PÉREZ. Senator, the Supreme Court has issued its ruling on——

Senator CRUZ. I'm going to try again. Do you stand by your characterization? I'm not asking you what the Supreme Court did. You described an amicus brief filed on behalf of 11 Senators as outrageous and harmful. Do you stand by what you said just a few months ago?

Ms. PÉREZ. Senator, what I said as an advocate when it was pending before the Court is not relevant to the issue before you——

Senator CRUZ. Do you stand by it or do you retract it? You have a choice.

Ms. PÉREZ. Senator, as an advocate, I pursued——

Senator CRUZ. Okay. You're going to refuse to answer me on that. I assume you also believe the Supreme Court 6-to-3 decision, agreeing with the position advocated in my amicus brief, I assume you believe that decision was also outrageous and harmful, because that's the language you used.

Ms. PÉREZ. Senator, the *Brnovich* case is the law of the land. It has been settled.

Senator CRUZ. You're not going to answer that either?

Ms. PÉREZ. The law of the land has been settled. What I am going to say, Senator, is that I am pledging to apply precedent.

Senator CRUZ. At the time, you discussed the brief filed by a number of Senators on this Committee as outrageous and harmful. At that time, had you any discussions with the Biden administration about being nominated to be a judge?

Ms. PÉREZ. I would need to remember the timing a little bit. That——

Senator CRUZ. When was the first discussion you had with the Biden administration about being nominated to be a judge?

Ms. PÉREZ. I need to—can—I would need to reference my Senate Judiciary Questionnaire, because that's where I recorded it. I don't have it committed to memory.

Senator CRUZ. You have advocated that felons should be able to vote. Do you believe all felons should vote?

Ms. PÉREZ. Senator, my work in advocacy has been on behalf of persons who are living and working in the community.

Senator CRUZ. Do you believe currently incarcerated prisoners, in jail, should be allowed to vote?

Ms. PÉREZ. Senator, I have been advocating on behalf on people who are——

Senator CRUZ. You're not answering my question.

Ms. PÉREZ. Senator——

Senator CRUZ. I didn't ask what you've advocated in the past. I'm asking what you believe.

Ms. PÉREZ. Senator, the canons of judicial ethics preclude me from answering that question because a situation may come before me.

Senator CRUZ. Let me ask you this. You have advocated in favor of a living Constitution. Indeed, as both Senator Hawley and Senator Lee asked you about, you have disparaged those who believe in originalism as essentially racist and bigots. How do you think you will be able to serve with colleagues on the court of appeals if you have disparaged their constitutional interpretation as racist and bigoted?

Second, why is it that when you advocate a, quote, "living Constitution," that somehow the livingness of it always makes the Constitution agree with the policy positions you happen to embrace? How is that consistent with democracy, to have a judge able to implement whatever policy positions you believe in?

Ms. PÉREZ. Senator, we have had more than two dozen amendments added to the Constitution since it was ratified in 1788.

Senator CRUZ. That's not what a living Constitution is.

Ms. PÉREZ. Women——

Senator CRUZ. A living Constitution means you as a judge, if you're a judge, can change it to whatever you want, and that the voters don't get to speak on it, isn't that right?

Ms. PÉREZ. Senator, women now have the right to vote. African——

Senator CRUZ. We passed an amendment for that. That's a terrific victory, and it was done the right way through an amendment. A living Constitution is judges changing it. Why are judges changing the Constitution to meet their policy preferences consistent with any respect for the democratic process and the ability of voters to decide policy issues?

Ms. PÉREZ. Senator, it is clear that our great Constitution is one that is enduring. It is clear with things like *Brown v. Board* overruling *Plessy v. Ferguson* that evolution happens.

It is also clear that our great Constitution establishes separation of powers. There are bodies, like this one, that engage in policymaking. There are judges that review the cases and controversies that are put before them.

I am pledging, by accepting this nomination, that I am going to cease being an advocate, and I would impartially, without reservation, objectively apply the law to the facts of the case and controversy before me.

Senator CRUZ. Your record is overwhelmingly to the contrary.

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

Senator BLUMENTHAL. Thanks, Mr. Chairman. The simple fact of the matter is you haven't been a judge before, have you?

Ms. PÉREZ. That is correct, sir.

Senator BLUMENTHAL. When my colleague, Senator Cruz, says your record is overwhelming to the contrary, I'm not sure what he is referring to. You have been an advocate, correct?

Ms. PÉREZ. That is correct, sir.

Senator BLUMENTHAL. Tell me how you view the role of advocate as being different from a jurist?

Ms. PÉREZ. Thank you. In the great genius of our Constitution, people play different roles. Advocates zealously argue on behalf of their clients in as many fora as they can. I have had the privilege and pleasure of doing that.

Judges take on a different role. They are limited in what they have jurisdiction over. They are limited in the cases that come before them. They are limited to the arguments what parties put before them. They are limited to binding precedent.

I believe that the most important thing a judge can do, and must do, is in fact, duty-bound to do, is to impartially and objectively apply existing precedent to the facts and the record of the case before them.

Senator BLUMENTHAL. As an advocate, you've had strong beliefs, and you have strong values, and you've advocated causes strongly. I take it, as a member of the Court of Appeals for the Second Circuit, you would be able to put those beliefs, and values, and positions aside, and look at the law, specifically the Constitution and the statutes of the United States of America, correct?

Ms. PÉREZ. Not only would I be capable, sir, I must. The country that I care so deeply about depends upon people playing their roles.

I, if given the chance to serve this country, would not betray its values of an independent judiciary. I would faithfully, to the best of my ability, uphold my duty under the constitution, which would be to fairly and impartially evaluate the cases and controversies before me.

Senator BLUMENTHAL. In fact, all of us who have been advocates, and I've argued cases in the court of appeals that I expect you'll soon join, as well as the district court and U.S. Supreme Court, as well as State courts in Connecticut, like you. As an advocate, you don't want to be an objective, neutral, arbitrator. You want to be on the side of your client, and your cause. That's your record.

If you were, in fact, acting as a judicial official while being an advocate, you'd be betraying your client and your cause, wouldn't you?

Ms. PÉREZ. That is correct, sir.

Senator BLUMENTHAL. When Senator Cruz tries to argue you shouldn't be a judge because you were a good advocate, in effect—and I know he—I think he understands the point I'm making. Your record, in fact, exemplifies your faithfulness to the role that you have been playing as an advocate because our whole system is designed to have fierce and ferocious advocacy on the basis of the law and the facts. In fact, sometimes arguing that courts should expand the law by an expansive interpretation.

Whatever you have argued as a lawyer and an advocate, you would have—you accept the fact, in fact, I sense you embrace it, that you would have a different role as a member of the United States Court of Appeals for the Second Circuit.

Ms. PÉREZ. That is correct, sir.

Senator BLUMENTHAL. Thank you.

Ms. PÉREZ. Thank you, sir.

Senator BLUMENTHAL. Thanks, Mr. Chairman.

Chair DURBIN. Thanks, Senator Blumenthal. Senator Blackburn.

Senator BLACKBURN. Thank you, Mr. Chairman. Welcome.

Ms. PÉREZ. Good morning, Senator.

Senator BLACKBURN. Congratulations——

Ms. PÉREZ. Thank you.

Senator BLACKBURN [continuing]. To you. I just want to be sure I'm understanding some of the comments——

Ms. PÉREZ. Yes, ma'am.

Senator BLACKBURN [continuing]. That you have made. Basically, you're saying as you move to the role of a judge, you would set aside all of your previous opinions?

Ms. PÉREZ. They would not make its way to into any courtroom that I was sitting in.

Senator BLACKBURN. Basically, you're saying you would erase all of this activism from your past?

Ms. PÉREZ. What I'm saying, Senator, is that I would apply the precedent of the Supreme Court——

Senator BLACKBURN. You're going to say what you're going to do is basically, when it comes to your philosophy of the law and your philosophy of the Governmental structure, you are going to hit the reset button, and you will be a neutral and blank slate. Is that what you're telling us?

Ms. PÉREZ. I will be an impartial and objective adjudicator, limited to the subject matter and personal jurisdiction of the case before me, and the arguments——

Senator BLACKBURN. Okay. Let's——

Ms. PÉREZ [continuing]. That the parties have put in front of me.

Senator BLACKBURN. Let's do this, then. Let's go on to the issue of voter ID. Because this is something that causes not only me, but a lot of people in Tennessee who are viewing your nomination, they're really unhappy about your nomination. Because most Americans, as you've heard from others today, they support voter ID laws. They also support the fact that it is up to the State to tend to this. They're very concerned about where you would go.

You know what? They really don't want activist judges. What they want is someone who is going to be an originalist, who is going to look at the text of the Constitution and look at precedent. Things you've said you're going to do, but the answers to your question do not indicate that that is going to be what you're going to do.

I get this funny feeling that you're trying to hedge us, that you've rehearsed your answers, that you're spouting out what you think will not get you into trouble so that you can go through the confirmation process. Then do the happy dance and get on the court, and then go back to your activist ways. That is what is coming across, ma'am. That is what I'm perceiving.

Talk to me just a little bit about what your view is of the elections clause. Then, do you agree that the States have the right to conduct the elections in their State in the manner that they see fit?

Ms. PÉREZ. Senator, States play the primary role in election administration.

Senator BLACKBURN. It is their prerogative, correct?

Ms. PÉREZ. We have a system of federalism within certain bounds, pursuant to the election clause and the statutes of—that this body has created. States play the primary role in the administration of elections.

Senator BLACKBURN. Your previous work in election law and voter ID would not preference any of the decisions that you're going to make?

Ms. PÉREZ. I would very strictly adhere to the precedent of the Supreme Court——

Senator BLACKBURN. You cannot give me a yes or no to that?

Ms. PÉREZ. Yes. I guess—if you don't mind rephrasing the question, I'd like to if I can.

Senator BLACKBURN. I said your prior work in election law, that will not influence your decision-making in election law, electoral cases.

Ms. PÉREZ. If what you're asking, Senator, is whether prior policy positions as an advocate——

Senator BLACKBURN. Your prior work. That's right.

Ms. PÉREZ. My—I am pledging to you that if I am confirmed, that I will set aside any personal views I have as to the merits of policy and apply the country's precedent, which includes cases like *Crawford*, which as we have indicated before, says that voter ID laws are not per se unconstitutional, and I would apply *Crawford*

and any other relevant Supreme Court or second circuit precedent on any matter involving a photo ID law that came before me.

Senator BLACKBURN. Okay. I'm going to send to you a question for an answer in writing, because I will not have enough time for you to give a fulsome answer. It deals with felon enfranchisement on voting and the positions that you have taken in that previously. You did not answer Senator Cruz's question about felons having the right to vote. You were opposite of Governor DeSantis in having them pay all their fines. I will send that question to you in writing for a written answer.

Then, I'm also going to send to you a question dealing with your qualifications.

Mr. Chairman, thank you. I yield back.

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

Senator COTTON. Thank you, Mr. Chairman. Ms. Pérez, I watched some of the hearing on television earlier. I apologize I missed Senator Hawley's question because I was on the floor voting. I was just wondering if you'd return to some of the things he said. My crack staff gave me a summary, but I assume it must be incorrect.

Was it your testimony that *Brown v. Board* was correctly decided?

Ms. PÉREZ. Yes.

Senator COTTON. Was it your testimony that you cannot say whether *Shelby County* and *Brnovich* are correctly decided?

Ms. PÉREZ. Senator, there's an important distinction that if you will give a moment of your time, I'd be happy to explain, but that is accurate.

Senator COTTON. Was *Roe v. Wade* correctly decided?

Ms. PÉREZ. Senator, it is the law of the land, and I would apply it.

Senator COTTON. Was *Lochner* correctly decided?

Ms. PÉREZ. Senator, it is not really the law of the land anymore, but if I had been confirmed during that period, I would have applied it.

Senator COTTON. Was *Dred Scott* correctly decided?

Ms. PÉREZ. Senator, it is——

Senator COTTON. Surely, you can say *Dred Scott* was incorrectly decided.

Ms. PÉREZ. Senator, it was incorrectly decided.

Senator COTTON. What's the distinguishing line of cases you will say were correctly decided and cases you won't say? Because it seems like you're willing to say that they're correctly decided if you like them. If you don't like them, you can't comment on it.

Ms. PÉREZ. Senator, I do appreciate the question, and I think it is important, and I want to clarify this. As a judicial nominee, I am bound by the code of ethics to ensure that any prospective litigant before me knows that they are getting an impartial and fair hearing where they will not be prejudged, where they will be given the opportunity to present their case.

I think that it will not happen that a case of the permissibility of de jure, segregation in schools, would make its way before me. As such, I am comfortable that I would not be violating my code of ethics by commenting on it. There are a handful——

Senator COTTON. Well, that——

Ms. PÉREZ [continuing]. Of other cases that that may be true. *Loving* is probably one of them. *Marbury v. Madison*. Everything else, I would be very, very reluctant to give a potential litigant the wrong impression that they will not get a fair day in court.

Senator COTTON. What about abortion? That's a live issue in the courts.

Ms. PÉREZ. I am not——

Senator COTTON. You're not going to say whether *Roe v. Wade* was correctly decided.

Ms. PÉREZ. That is correct.

Senator COTTON. Okay. You've certainly had a lot of harsh things to say in the past about cases like *Shelby* and *Brnovich*, and some of the issues that were adjudicated there. In fact, we just got notice last night about this article that just was published that you wrote. The title of it is, "The GOP Campaign to Make Elections Less Free."

You noted in the letter you sent with the article that you did not see or approve of the title before it was published——

Ms. PÉREZ. That is correct, Senator.

Senator COTTON [continuing]. Which I can understand. Authors don't choose their own titles. I understand that. You didn't say whether you agree with it. Do you believe that GOP is campaigning to make elections less free?

Ms. PÉREZ. Senator, the entire piece does not mention any political party, and that is because I am an advocate for the right to vote. I would criticize any politician who would impede that right, irrespective of their political party.

Senator COTTON. Do you think requiring voter ID is an impediment to vote and shouldn't be permitted?

Ms. PÉREZ. Senator, the Supreme Court in *Crawford* said that voter ID laws were not per se unconstitutional. However, a fifth circuit en banc said that a particular voter ID law was illegal. This is a case-by-case inquiry where we are fortunate enough to have precedent on, precedent that I would apply faithfully and without reservation.

Senator COTTON. Another—I think Senator Durbin said that this article sounded like a speech he would give on the Senator floor. I agree. I don't think it proves the point you may have been trying to prove though, Senator Durbin. Ms. Pérez, you live in the New York City area?

Ms. PÉREZ. I live in Jersey City.

Senator COTTON. Okay. How did you get down here?

Ms. PÉREZ. I took an Amtrak.

Senator COTTON. Okay. Did you have to show an ID to get your ticket or get on the Amtrak?

Ms. PÉREZ. I don't believe so, sir.

Senator COTTON. Okay. Last time you flew, did you have to show an ID?

Ms. PÉREZ. I did, sir.

Senator COTTON. Do you think that's an unfair restriction on your ability to travel?

Ms. PÉREZ. That is the policy, and I am a rule-follower, and I'm happy to abide by it because I can.

Senator COTTON. Okay. If someone commits a murder, do you think it's fair to call them a murderer?

Ms. PÉREZ. If someone has been convicted——

Senator COTTON. Yes. Convicted.

Ms. PÉREZ [continuing]. For murder——

Senator COTTON. Yes.

Ms. PÉREZ [continuing]. Under—yes.

Senator COTTON. If they commit rape, do you think it's fair to call them a rapist?

Ms. PÉREZ. Have they been convicted?

Senator COTTON. Yes.

Ms. PÉREZ. Yes.

Senator COTTON. Convicted.

Ms. PÉREZ. Yes.

Senator COTTON. If they commit a felony, do you think it's fair to call them a felon?

Ms. PÉREZ. I think that that is a bit different because there's a temporal issue. I think that there's a raging policy debate on that.

Senator COTTON. Because in the past, you've said that you don't like to use that word. In fact, you said, "I don't use words like 'felons' to describe people. I mean, we don't describe people by a mistake that they made."

Ms. PÉREZ. I don't. I believe that every person is a child of God, capable of being redeemed. I never look at anybody and see the worst thing that they've ever done.

Senator COTTON. Those convicted murders or rapists get released from prison, often under misguided policies. Do you think it's still fair to call them a murderer or rapist?

Ms. PÉREZ. Irrespective of what their label was, sir, I would be on record as an advocate of trying to advocate for their right to vote if the criminal justice system had deemed them to be fit to be living amongst us.

Senator COTTON. All right. Thanks for your testimony.

Chair DURBIN. Thank you very much, Ms. Pérez, for appearing before the Committee. You may receive some written questions, which we hope you will provide timely answers to.

Ms. PÉREZ. I will do so, sir. Thank you.

Chair DURBIN. Thank you very much. I'd like to let the staff prepare for the second panel and ask them to please step forward.

I'm going to ask Senator Coons to take over while I go vote and return.

[Pause.]

Senator COONS [presiding]. Please be seated, if you would. I look forward to hearing from our—I'm sorry. We're all just going to have to stand back up to take the oath, so please don't be seated. I look forward to hearing from our next five nominees.

Before making your opening statements, would the nominees please stand to be sworn in?

[Witnesses are sworn in.]

Senator COONS. Thank you. Please be seated. Ms. Cobb, you may begin with your opening statement.

**STATEMENT OF JIA M. COBB, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA**

Ms. COBB. Thank you so much, Senator Coons, and to all the Senators here, to Chairman Durbin for that wonderful introduction, to Ranking Member Grassley. I'd also like to——

Senator COONS. Ms. Cobb, your mic, please. Your mic, please. Sorry, Ms. Cobb.

Ms. COBB. Thanks. That's much better. I'd also like to thank Representative Norton for recommending me, and for President Biden for nominating me.

I have been drawn to a career in the law for as long as I can remember. My father's an attorney. I have such a great respect for the role of our courts in our democracy to interpret the laws.

I do want to take some time to introduce family members who I have here today. First, my parents, James and Anita Cobb, who drove up from Michigan to be here with me to support me, as they always do. Now, that I'm a parent, I understand the significant sacrifices that they made to ensure that me and my sister had an education and opportunity. I would not be here but for their support.

My sister, Jenna Cobb, is also here, who has been a best friend and an enduring source of support and encouragement. She is here with my brother-in-law, Keith Farrugia, who has just been a wonderful addition to our family.

I want to thank all of my friends, colleagues for their support.

Then, last but not least, my son, Ricky, is here. He is missing Slip 'N Slide day at camp to support me here today. Everything that I do is to be an example for him. I'm so thankful that he has an opportunity to have a first-row seat to see how our great democracy works.

I look forward to answering the questions today. Thank you.

Senator COONS. Thank you so much, Ms. Cobb. My thanks to your family and to Ricky in particular. This will be a riveting and hopefully painless session during which your mother will answer some important questions.

Your Honor, Ms. Merriam, if you would please, proceed with your opening statement.

**STATEMENT OF SARAH A.L. MERRIAM, NOMINEE TO SERVE AS UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF CONNECTICUT**

Judge MERRIAM. Thank you, Senator Coons. Thank you to the Committee for holding this hearing, and frankly, all these hearings. I do want to thank President Biden for the great honor of this nomination. I want to thank both Senators Blumenthal and Murphy for their support in this process and for their very kind introductions.

Four of my favorite people are here with us today: my mother, Anne; my stepfather, Michael; my best friend, Paul; and one of my closest friends for over 30 years now, Jenny. My father, Dwight; my little brothers, Jonathan and Alexander, who are not so little anymore; and my baby sister, Lucy, could not be here in person, but I'm confident they're with us through the miracle of streaming video.

There are many others I want to acknowledge who have supported me both throughout this process and throughout my career. My extended family, scores of aunts, and uncles, and cousins all over the country, from Alaska, to Oregon, to Colorado, to Virginia, to Massachusetts, and just about everywhere in between. I'm thinking especially of my Uncle Ross, down in Florida today.

I am blessed with an incredible court family in the District of Connecticut, which we believe to be the oldest operating Federal court in the country. My phenomenal career clerk, Samantha; my term clerk, Annie; and my courtroom deputy, Andrew, make everything work. I especially want to acknowledge my fellow magistrate judges who serve our court and our country with such skill and dedication.

Finally, my friends from every stage of my life from New Haven, from New South, from the district, from Edgewood School to law school, who have become like family to me so much so that their kids call me auntie, and I love them like my own.

I appreciate the opportunity to speak to you today.

Senator COONS. Thank you, Your Honor. Judge Pan.

## STATEMENT OF FLORENCE Y. PAN, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

Judge PAN. Thank you, Senator Coons. I want to thank Chairman Durbin and Ranking Member Grassley for the opportunity to appear at this hearing today. I want to thank President Biden for the tremendous honor of this nomination. Congresswoman Eleanor Holmes Norton for recommending me to the President. I also want to thank Chairman Durbin for his kind introduction today.

I am the daughter of immigrants from China. My parents, Wu Ching and Felicia came to the United States in 1961 to pursue graduate degrees in New York City. They chose to remain here because they recognized that this country offered the best opportunities for their children, my sister Gloria and me.

Both of my parents became American citizens. After naturalization ceremonies, each of them took an oath of allegiance before a United States district judge. When they took those oaths, they never imagined that one of their children might one day be nominated to assume a position of such trust and responsibility. I think it's fair to say that my presence before this Committee is a fulfillment of the hopes and dreams that my parents held when they chose to make their lives here in the United States.

My parents can't be here today, but they're watching these proceedings from their home in Virginia with my sister, Gloria. I want to thank them for the sacrifices and the choices that they made which allowed me to become the person that I am today.

With me in the hearing room are my wonderful husband, Max Stier; our son, Zachary, who's 16, and probably will be asking all the Members of the Committee for their autographs after this hearing.

[Laughter.]

Also, I'm pleased to have with me, my brother-in-law, John Neuffer. My younger son, Noah, who is 15, can't be here today be-

cause he's in Sewanee, Tennessee, at the Sewanee Summer Music Festival.

I also want to acknowledge and thank other family members who are supporting me from afar. My cousins, Pearl Wong, Sanchez Chi, Stephanie Chi, and Debbie Wen are watching from the great State of New Jersey, which is where I grew up. My in-laws, Serena Stier and Steven Burton, are watching from the great State of Iowa.

Thank you, and I look forward to answering any questions from the Committee.

Senator COONS. Thank you, Your Honor. Judge Williams.

**STATEMENT OF KAREN McGLASHAN WILLIAMS, NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY**

Judge WILLIAMS. Good morning. Thank you, Chairman Durbin, Ranking Member Grassley, and—I'm sorry. Senator Coons for holding this hearing today and the honor of appearing before this body.

Senator Booker, I believe our ancestors are indeed smiling down on us this morning. Senator Menendez, thank you for your ever so kind words.

I have many thanks—many to thank for the journey that finds me here today. My village is strong, and the list is long, but I will be quick.

My family is here with me. Jim, my husband of 32 years, thank you for all that you do and all that you have done. Our daughter, Danielle, who works in elementary education. Our son, Justin, who works with Hope Scholars. My mother, Millicent Tate, who transitioned from this life in 2004, was the strongest, most resilient woman I have ever known, and the first person to tell me that I was enough. She showed me and prepared me for the grind. My dad, Norman Tate, who is here with me. The man brave enough to marry a divorced mother of four, thank you for lighting a new path for all of us.

Eton Carver White, also known as Uncle Jimmy, and his family. Uncle Jimmy, thank you for your service to this country and our family. My siblings, Michelle, Diane, Patrick, and Julian, their spouses, and my nieces and nephews. To the Lewis family and all of those born McGlashan, all of the cousins who started out on West Street in Jamaica, came through Brooklyn, and landed all over this country. To my in-laws, Jackie, Bonnie, Judy, Andre, Cathy, little Jimmy. My sis, Lisa, and her family.

To the sisterhood—my sisterhood, known as Alpha Kappa Alpha Sorority, Incorporated, for its service to all mankind and instilling that purpose in me. David Jasinski for allowing me the room to develop as an attorney. Finally, the District of New Jersey, my Federal family. My court family, my courthouse family, my chamber staff, Nicole, Tiana, and Cara.

Shout-out to Camden. Shout-out to the seven southernmost counties of New Jersey, especially Atlantic County, where I put down my first legal roots.

My village is strong. My list is long. I appreciate the patience of this body for allowing me this time.

Senator COONS. Thank you. Finally, Mr. Olsen.

**STATEMENT OF MATTHEW G. OLSEN, NOMINEE TO SERVE AS ASSISTANT ATTORNEY GENERAL, NATIONAL SECURITY DIVISION**

Mr. OLSEN. Thank you. Thank you, Senator Coons and Members of the Committee. I am so honored to appear before you today as the nominee to be the Assistant Attorney General for National Security. I am grateful to the President for his confidence in nominating me for this position. I would also like to thank Senator Cardin and Senator Van Hollen for those very kind introductions.

I am joined here today by my family: my wife, Fern; my three children, Elizabeth, Nate, and Will. I would not be here without their love and support.

I would also just like to take a moment to remember my parents, Myrna and Van. I was born in North Dakota. I moved here as a young kid because my dad got a job with a Member of the House of Representatives from North Dakota. We were going to move back to North Dakota in 2 years, and we ended up staying here for my entire life. My mom was a school nurse. Public service is—was the—is the most noble calling in my family.

Congress established the National Security Division after 9/11 and charged it with carrying out the Department of Justice's most important priority, and that is to protect the Nation from terrorism and other threats to our national security by pursuing justice through law. The threats we face today are diverse and complex. The National Security Division plays a vital role in protecting the Nation.

I believe that our greatest strength in defending the Nation comes from our career public servants. They are dedicated to securing our country with fidelity to our founding values.

If confirmed, it would be my absolute honor to lead and support the extraordinary workforce of the National Security Division. We will confront domestic and international terrorism. We will counter threats to our cyberinfrastructure. We will protect our Nation from espionage and foreign adversaries. We will work to foster trust of the work of the Intelligence Community.

I believe that my experience has prepared me to take on this critical responsibility. I began my career in the Department of Justice in the Civil Rights Division as a trial attorney. As an assistant United States attorney, as a Federal prosecutor in Washington, DC, for over a decade, I prosecuted crimes at the State and the Federal level. Those included murders, homicides, complex conspiracies, and public corruption cases.

I learned to pursue justice based on the evidence and based on the law. I learned to protect both the public safety and the rights of the accused and all Americans under our Constitution.

The terrorist attacks on September 11, changed the course of my career. It led me to shift my focus to National security. I first worked at the FBI as special counsel to Director Mueller, helping to support the transformation of the FBI after 9/11.

In 2006, I returned to Main Justice to help establish the new National Security Division. I was responsible for overseeing the Department's intelligence work, including the implementation of Congress's landmark changes to the Foreign Intelligence Surveillance Act. I was the general counsel of the National Security Agen-

cy, and from 2011 to 2014, I served as the Director of the National Counterterrorism Center, which Congress established to unify and coordinate our counterterrorism efforts.

At every stage of my career, I have been guided by the values of the Department of Justice, devotion to the Constitution, to the search for the truth and to the pursuit of equal justice under the law.

If I am confirmed, I will follow the facts and I will follow the law. I will work relentlessly to advance the security of the Nation.

I look forward to answering your questions. Thank you.

Senator COONS. Thank you. Thank you to all of our five witnesses of this panel for your opening statements. We're now going to proceed to 5-minute rounds of questioning. As you all know, the Senate is currently in the middle of a vote series, thus Senators will come in and out, and I presume that the Chairman will return, and I will go for a second vote.

Let me begin. If I could, Mr. Olsen, from your opening statement, it's clear you're no stranger to the critical work of the National Security Division. I'd be interested in having you just elaborate a little bit on the time you spent working there previously. Can you explain the critical role that office plays in supporting our national security? Then, just elaborate a little bit more on your service, working for the U.S. Attorney's Office in the Bush administration, and how that experience prepared you for your service in the subsequent Obama administration.

Mr. OLSEN. Yes. Yes. Absolutely. Thank you, Senator. I—you know, I was there at the very beginning of the National Security Division. I was there at the very beginning of the National Security Division.

It was established by Congress because of a recognition that the Department of Justice's various elements that worked on national security, whether that's the Foreign Intelligence Surveillance Act, or counterterrorism, or counterespionage, were not sufficiently unified. The decision was made to create the first new division in several decades, the National Security Division, which like a number of other parts of the Government, were reformed in response to the attacks of 9/11.

In my judgment, the division has been an unqualified success. Bringing together intelligence professionals, attorneys who work on applications to the FISA court, along with the prosecutors who handle and oversee counterterrorism cases and counterespionage cases, and really been part of the broader national security reformation following the attacks of 9/11.

I should add that it's also continued to evolve since I left a decade ago. I left in 2009, and it has changed to evolve to meet the threats we face today, whether those threats are from cyber actors, from those that would seek to steal our intellectual property. It has continued to grow and evolve as the threats that we face have grown and evolved. Again, to continue to represent the Intelligence Community very effectively.

Senator COONS. Thank you, Mr. Olsen. I think based on your broad and deep service and experience, we're lucky to have you nominated to continue your public service in this role.

Ms. Williams, if I might—Judge Williams. Forgive me. You've served as a magistrate judge, I think, for a dozen years. How has that role and experience prepared you for an Article III judgeship? What aspects of that new role for which you've been nominated are you most excited about, if confirmed?

Judge WILLIAMS. Thank you, Senator. For the past 12 years, I have served the District of New Jersey as a magistrate judge, and I am lucky to be in the District of New Jersey, which has delegated quite a bit of authority to magistrate judges in our district. Most of my work is managing cases and preparing them for disposition by the Article III judges.

How my work as a magistrate judge has prepared me is to understand the process of judging, and justice, and to ensure that everyone who appears before me as a magistrate judge or, if confirmed, as a district court judge, is privy to a fair, impartial process.

Senator COONS. Thank you, Your Honor. Judge Pan, during your tenure as a magistrate judge, if I understand correctly, you've presided over more than 650 trials. That is an astonishing body of work. You've spent your entire career in public service. President Obama noted your unwavering commitment to justice and integrity upon your initial nomination. I just would be interested in how your experience as a magistrate judge, and your long public service dedication will inform your service in the Federal judiciary as an Article III judge, should you be confirmed?

Judge PAN. Thank you, Senator Coons, for that question. For the last 12 years, I've served as a judge on the District of Columbia Superior Court, the local court of general jurisdiction in the District of Columbia. I've served in the criminal division, the civil division, and the family court. Before that, I was an assistant United States attorney for 10 years. I have devoted the last 22 years to serving the citizens and residents of the District of Columbia.

Senator COONS. It didn't seem that long at the time, but when you say it, it seems like a long time, doesn't it?

Judge PAN. Yes. It's been an honor and a privilege. I would be honored to continue my service to this same community in this new capacity as an Article III judge to consider issues of constitutional and Federal importance, and to continue my service in that regard.

Senator COONS. Thank you very much. My 5 minutes are up. Senator Cotton.

Senator COTTON. Thank you, Mr. Acting Chairman. Congratulations to you all. Mr. Olsen, I remember when you used to come briefly to Congress as the Director of NCTC, and I always found you to be a sober, reasonable, national security professional. I guess when Joe Biden nominated you to this position, I thought it was one of his better choices.

Then, I started looking at what you've been up to for the last 4 years, and I have questions about which Matt Olsen we're getting. In 2017, you wrote an op-ed, entitled, "The Electoral College, a National Security Threat." I want to repeat that. "The Electoral College is a National Security Threat." Do you believe that—still believe that the Electoral College is a national security threat?

Mr. OLSEN. Senator, let me begin by thanking you for your initial comments about my time as the National Counterterrorism Center

Director. I spent a better part of my career as a Government public servant, protecting the country.

I left the Government in 2014 and entered the private sector. I wanted to stay—remain engaged on the issues that I thought were important. As a private citizen, of course, I expressed some views, including that article you're referring to, in a way that I wouldn't and haven't expressed as a public—as a public or Government servant.

That view, yes. There are aspects, in context, if I may explain. There are aspects of the way in which the Electoral College allowed—or could allow nefarious cyber actors to pinpoint their efforts to influence an election. There are ways in which the Electoral College makes us more vulnerable to nefarious, particularly nation-State cyber actors to influence elections. That's——

Senator COTTON. That's what I——

Mr. OLSEN [continuing]. What I was seeking to highlight.

Senator COTTON. I'm sorry. Our time——

Mr. OLSEN. No. Of course.

Senator COTTON. Our time is very limited here. You still think the Electoral College is a national security threat?

Mr. OLSEN. I stand by the content of the article that I wrote.

Senator COTTON. Okay.

Mr. OLSEN. Yes.

Senator COTTON. Should the Department of Justice ever bring a lawsuit to try to force States to, say, adopt the National Popular Voter Compact?

Mr. OLSEN. Senator, I'm not familiar with any——

Senator COTTON. Right.

Mr. OLSEN [continuing]. Statutory provisions or proposals along those lines.

Senator COTTON. Last year, in the middle of riots that caused billions of dollars of damage, and had murders spiking at rates not seen in a generation, you described the situation as "mostly peaceful protests." Do you think the rioting we saw last year was mostly peaceful protests?

Mr. OLSEN. I think that—I'm not sure exactly the comment you're referring to. But I——

Senator COTTON. You signed a public letter last June saying that.

Ms. OLSEN. Yes. I will say this, Senator. If I am confirmed and have the opportunity to lead the National Security Division, the threat that we face from the types of violence that we've seen in the past several years, particularly any type of domestic terrorism, I would be responsible for enforcing our laws and enforcing those laws, regardless of ideology, and enforcing them fairly and impartially. That would be my pledge.

Senator COTTON. You once wrote that, "ISIS supports Donald Trump." Do you think that ISIS supported Donald Trump?

Mr. OLSEN. I appreciate again, Senator, the content—the article you're referring to, again—I—as a private citizen, I tried to stay engaged on the national security issues that I had worked on. I will answer your question directly.

The article I wrote was based on statements that I had seen that I was very concerned about from a propaganda standpoint. In 2016,

when I wrote that article, ISIS had risen and was using its propaganda machine to influence people in the United States, and they were using the language, the words, of then-candidate Donald Trump to advance their propaganda machine. I was referring to their exact words in making that statement.

I stand by the article. I was concerned about the ways in which ISIS was using that—those comments to recruit and mobilize people in the United States.

Senator COTTON. If it's true that ISIS supported Donald Trump, do you think Abu Bakr al-Baghdadi thinks he made a bad bet?

Mr. OLSEN. I'm very supportive of the nature in which we prosecuted—and the way the Trump administration took the fight to ISIS over the past several years.

Senator COTTON. Okay. Mr. Olsen, I'll just say again, I had a lot of respect for the medals, in what we saw as the NCTC Director. I feel like something has changed here just in the last 4 years. To review what we've covered today, you've said ISIS supports Donald Trump. You referred to rioting last summer as mostly peaceful protests. You've said the Electoral College is a national security threat.

It's one thing to leave the Government and comment on public affairs, and be partisan, to give money to candidates of your choice and to campaign for them. I feel like something about Donald Trump's Presidency in the last 4 years sent you a little bit around the bend. So it makes me wonder which Matt Olsen we're going to be getting at the Department of Justice.

My time's expired.

Senator COONS. Thank you, Senator Cotton. Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman. You know, I want to put in the record, first of all, a letter from more than 20 former prosecutors in Connecticut, including 3 of my successors, maybe more, as U.S. Attorney Derick Dailey, Chris Crowley, and Stan Twardy. All of them among the most distinguished lawyers, but also former prosecutors in Connecticut. A rather extraordinary letter, attesting to the integrity and intellect of Judge Merriam. If there's no objection, I ask that it be put in the record, Mr. Chair.

Senator COONS. Without objection.

Senator BLUMENTHAL. Thank you. The reason I focus on this letter is, Judge, because your career has been on the other side of the courtroom from them. All the Members of this panel who have been in the trenches of litigation, particularly in the criminal area, know how heated and contentious it can sometimes be. To have this kind of extraordinary vote of confidence in your integrity and credibility, I think, says far more than I could about the qualifications that you bring to this position.

There are a lot of things going on here today here in the Capitol. The President's going to visit. We have potentially an infrastructure agreement. For all of us in Connecticut, your appearance here is one of the more consequential events of the day and of this year because you will serve on the bench for decades, God willing.

You may well hear cases of students who are now in law school. Every one of you who will serve on the bench are the voice and face of justice to everyday Americans. Most litigants simply don't have the wherewithal, or the time, or resources to appeal to the Second

Circuit Court of Appeals. For them, the decisions in the district court are justice in America.

This position is so profoundly important to our Nation. To have someone who, as has been stated by those lawyers I mentioned, has, quote, "brought an evenhanded and accessible approach to the Federal bench," end quote, and "applied the law fairly and properly, without regard to personal preference," end quote, is an extraordinary gift to the people of Connecticut and our country.

Maybe, if you don't mind, could you tell me a little bit about how your experience as a Federal defender has informed your work as a magistrate judge, and the approach that you will take on the United States district court bench?

Ms. MERRIAM. Thank you, Senator, for those very kind words. Connecticut has the great benefit of being a fairly small Federal court. It is collegial, and people know each other, and they respect each other. I felt that as a defender. I felt that as a law clerk. I felt it in private practice. I feel it now, as a magistrate judge.

In the 18 months in which I was appointed as a magistrate judge, two others were appointed in close succession: one a career prosecutor and one a career civil litigator. Over the past 4½ years, almost 5 years, the three of us have worked as magistrate judges together, asked for each other's advice, shared our ideas for how to better the system, and to better the experience of people that come in front of us. Because as magistrate judges, we are the first person a litigant usually sees. Likewise for a public defender, you're the first person a defendant turns to when they are caught up in a system that can be very scary.

At the end of the day, I think my experience there helped me to see all sides of the system and to understand that when people come to court, it's because something has gone terribly wrong, and we need to help them get through that crisis with respect.

Senator BLUMENTHAL. Thank you. Mr. Olsen, you and I spoke about the 9/11 families when we had an opportunity to talk privately. I emphasized to you my concern about the Government, in effect, withholding evidence and information that they need to pursue their case against the government of Saudi Arabia. I think the failure to provide that evidence and information is absolutely unconscionable from what I know.

I have purposely rejected opportunities to look at the classified information, because I want to talk as publicly as I can about what I do know without any threat or hint that I'm violating the rules of classification. I think the American people deserve an explanation as to why our Government is, in effect, withholding or concealing evidence that would aid the 9/11 families in pursuing justice against the government of Saudi Arabia, which may well have aided and abetted the attackers on 9/11 that caused the deaths of their loved ones.

I have written, along with my colleagues, Senators Gillibrand and Menendez, to the Attorney General Merrick Garland and Director Wray as recently as 2 weeks ago. Over the past couple of years, I've sent several letters with different groups of colleagues on and off this Committee concerning the Department's and the FBI's invocation of the state secrets privilege, still without any explanation.

I asked Director Wray about this issue in 2019, and I've asked Attorney General Garland and Helaine Greenfeld about it earlier this year. The administration, so far, has provided no explanation or the evidence that the 9/11 families are seeking.

We are approaching the 20th anniversary of that insidious, unspeakable act of horror, an attack on our Nation. The American people deserve to know, 20 years later, why that information still needs to be withheld.

You and I talked about it. I know you're not in the job right now, but I would like a commitment from you that you will review this matter, and you'll consider whether the privilege has been properly invoked and provide an explanation to the American people.

Mr. OLSEN. Senator, thank you. Thank you for the opportunity to discuss this issue with you. As I mentioned, I am in this work of national security because of 9/11, and you have my commitment that, if confirmed, I will work with the Attorney General to review this matter closely.

Senator BLUMENTHAL. Thank you. By the way, on the Electoral College, I agree with you. Thank you.

Chair DURBIN [presiding]. Senator Grassley.

Senator GRASSLEY. Ms. Cobb, as a law student in 2004, you wrote an article on Federal statutes and regulations. You argued that social history should be used in statutory interpretation, a position that led you to criticize a dissent by Justice Thomas. In criticizing Justice Thomas, you wrote about, quote, "the utility of looking at the social and legislative histories in tandem to garner a complete understanding of both the purpose and the meaning of the legislation," end of quote. Do you think that the words in a statute can change meaning based on social events?

Ms. COBB. No, Senator. If I could just put that in context? I believe you're referring to an article I wrote when I was maybe 23 or 24 years old. I had never had a client before, never been in court.

My role as a judge is obviously different than my academic pursuits when I was in my 20's. I believe that you start with the text. I have never used——

Senator GRASSLEY. I think you've answered my question.

Ms. COBB. Thank you.

Senator GRASSLEY. You bet. I thank you for up front saying, no. Second, do you agree with Justice Kavanaugh that courts should phaseout the statutory term "alien" in favor of "noncitizen" because of the perceived social history of those terms?

Ms. COBB. I don't have a position on that, Senator. I have not considered that.

Senator GRASSLEY. In January of this year, you were a panelist for the Metropolitan and Washington Employment Lawyer Association. You spoke at a webinar entitled, quote, "Litigating Race Discrimination and Employment in the BLM Era." My understanding—that's the end of the quote. My understanding is that you talked about both racial discrimination and sexual harassment.

Will you please explain for us how litigation has impacted or changed by the Black Lives Matter era? In other words, I wouldn't think that that movement would change anything from what it would be previous to that. I'll wait for your opinion.

Ms. COBB. Senator, yes. I didn't choose that title, and I don't know that it actually captured what was discussed at that informal luncheon discussion. I think a better title, if I were choosing it, would be, "Litigating Cases or Current Considerations for Litigating Cases."

I think that there is a lot more discussion about race. Whether you want to attribute that to the Black Lives Matter movement or anything else, I think people are more in tune to it.

There are certain considerations as litigators. For example, one thing that came up that I recall from that informal discussion was just talking about voir dire. You have jurors that have, you know, exposure to what they're seeing on the news, and may have opinions that litigants need to flesh out to make sure that we're getting fair and impartial jurors. I think a better title would be, "Current Considerations for Litigating Race Discrimination and Sexual Harassment Cases."

Senator GRASSLEY. Okay. Mr. Olsen, as the head of the National Security Division, you will supervise the Counterterrorism Section. I'm deeply concerned, given recent events, that the current administration does not take an evenhanded approach to domestic terrorism. For example, we know that the FBI is currently investigating 500 domestic terrorism cases of primarily anarchist extremists that were open during the 2020 riots. These cases constitute 25 percent of the FBI's current domestic terrorism investigations, yet they are not mentioned in the administration's domestic terrorism strategy.

Two questions. Will you commit to pursuing left-wing domestic terrorism cases in addition to right-wing ones?

Mr. OLSEN. Thank you, Senator Grassley. Absolutely. I will pursue all acts of violence, all acts of domestic terrorism, regardless of ideology. That's the commitment that I make. That's the commitment the Attorney General has made.

Senator GRASSLEY. Specifically, how do you plan to ensure that your Division is prosecuting left-wing domestic terrorism cases at the same rate and pace as right-wing cases?

Mr. OLSEN. Senator, I was a prosecutor here in Washington, DC, for 10 years. I worked as a career public servant on national security matters for another decade. My entire career has been based on following the facts and following the law, applying the law to those facts.

If I'm confirmed, in the National Security Division, that's exactly what I will do. I will follow the facts, investigate every case that falls within my purview without regard to ideology.

Senator GRASSLEY. My last question is to Judge Merriam. At your investiture, Judge Alvin Thompson said, quote, "I believe that in both her professional life and her personal life, she lives out the ideals of justice and fairness expressed by John Rawls in a publication, 'A Theory of Justice.'" What does "A Theory of Justice" mean to you?

Judge MERRIAM. Thank you, Senator Grassley. I'm afraid I have not read it, and I'm not familiar with what Judge Thompson was referring to.

Senator GRASSLEY. As a magistrate judge, how does the concept of justice as fairness affect your job, if at all?

Judge MERRIAM. Every day, Senator. Every day, it is my job to make sure that every party that comes in front of me is treated completely fairly.

Senator GRASSLEY. Do you think an effort to achieve justice from Rawls—well, I guess you can't command—comment on that. I won't ask that question.

Judge MERRIAM. Thank you, Senator.

Chair DURBIN. I'll get you a copy of that book, Senator. This is a transition period. We're going live, as they say, except a couple of the Senators are in a remote, virtual situation. We're going to see if they're tuned in.

Senator KLOBUCHAR. Thank you.

Chair DURBIN. From the great State of Minnesota, Senator Klobuchar.

Senator KLOBUCHAR. Thank you. I am—I'm not in an undisclosed position here. I am in the Capitol, but thank you very much, Chairman Durbin. Thank you to our panel of witnesses, and I should say nominees.

I want to welcome you, Judge Pan, especially back to the Senate with another opportunity to be considered. I know you got out of the Committee by voice vote last time back in 2016, and then sadly wasn't considered by the full Senate.

In the years since you appeared before the Committee, you have continued to serve as a judge on the DC Superior Court. Could you talk a little bit about the last question from Senator Grassley? How do you ensure that those who appear before you believe that the court can reach a fair and just decision?

I think it's very important right now for judges to think about this because over the last 4 years, we had some politicization from the White House of the judiciary. To me, that all citizens feel that judges can be fair in their decision-making process is really important.

Judge PAN. Thank you, Senator Klobuchar. As a judge on the DC Superior Court for the past 12 years, I have tried every day to make sure that every litigant, every party, every witness, everyone that comes into my courtroom receives fair treatment, open-minded decision-making, and prompt decision-making from the court. I think that that's what they're entitled to from our system of justice. I'm deeply committed to ensuring that everyone who enters my courtroom receives the highest quality of justice and fair treatment. We've received training from my court to make sure that this happens. I try to do it every day. Thank you.

Senator KLOBUCHAR. Thank you. At a time where we've seen this horrific violence against the Asian-American community, it's critical that our institutions reflect the diversity of our country. If confirmed, you would actually be—I was surprised by this, the first Asian-American woman to serve on the district court for the District of Columbia. Can you take a moment to tell us what that would mean to you personally, to your family, and to the community?

Judge PAN. Thank you, Senator Klobuchar. I think diversity on the bench is important because it contributes and promotes confidence in our judiciary for the community to see that the judiciary actually reflects the membership of the community as well. I also

think it performs an important role model function for members of the bar who are people of color, and—or from groups that are not traditionally, or haven't been nominated to the bench in large numbers. I think that that is important.

I'm deeply honored to be honored—to be nominated by the President. I was the first Asian Pacific American judge in the District of Columbia. It would be a tremendous honor to become the first female Asian Pacific American judge on the United States District Court in this jurisdiction.

Senator KLOBUCHAR. Very good. Thank you very much. Mr. Olsen, I enjoyed our discussion, and I want to welcome you as an honorary Minnesotan since you were born in Fargo. You've spent summers in our great State in Detroit Lakes.

You spent more than two decades in Government service and national security, in numerous leadership roles under both President Bush and Obama. How has your experience in national security from across Government, and having served Presidents of both parties, prepared you for your role? Then, if you could just comment a little bit about what we talked about the other day, the cybersecurity and elections? Thank you.

Mr. OLSEN. Thank you very much for that, Senator Klobuchar. I came up on working in national security during a time when the Bush administration was in office. In fact, some of the most consequential work I did, in my own view, on national security took place during the Bush administration.

The transformation of the FBI, the passage of the landmark changes to the Foreign Intelligence Surveillance Act. These were priorities of the Bush administration.

I stayed on as a career national security official into the Obama administration. I think one of the enduring lessons of that experience was that national security really transcends political or partisan considerations. That's true, not just in my own experience, it is absolutely true of the people that I worked with, whether they were in the Intelligence Community or at the Justice Department. That people who worked on national security cared about protecting the country. They were not influenced, and they refuse to be influenced by political or partisan concerns.

That would be the way I would proceed if I am fortunate enough to be confirmed, is to continue to lead the National Security Division according to that ideal of nonpartisan apolitical commitment to national security. That's what I learned from that experience.

On the second part of your question, Senator, you know, cybersecurity has been an issue for a number of years. It has really taken prominence in the past several years as a national security threat. I would be committed to continuing the great work that the National Security Division has done in prosecuting cybercriminals, people who are engaged in nefarious cyber activity that threatens our national security, particularly our critical infrastructure. There are nation-states, particularly the Chinese—or China, that is involved in stealing our intellectual property, carrying out espionage through cyber.

The National Security Division plays a critical role in countering that activity. That's something I think that's going to continue to

be a priority going forward, and I look forward to, if confirmed, being able to work on that further.

Senator KLOBUCHAR. Thank you. Thank you to all the nominees.

Chair DURBIN. Thank you, Senator Klobuchar. Is Senator Ossoff with us?

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

Chair DURBIN. Take it away.

Senator OSSOFF. Thank you. Congratulations to these nominees on your nominations. Mr. Olsen, my first question is for you, please. Despite serious problems documented in the FISA application process by the Department of Justice Inspector General, among others, the Foreign Intelligence Surveillance Court approved electronic collection activity in response to all 459 of the final filed Government applications requesting such authority in 2020.

Given the deficiencies that have been identified by DOJ's Inspector General in the FISA application process, are you open to and will you work with this Committee to develop possible legislative fixes to ensure the integrity of the process?

Mr. OLSEN. Senator, the answer—direct answer to your question is yes. I look forward to working with this Committee in continuing to improve the Foreign Intelligence Surveillance Act and its implementation.

If I may just say, it is a landmark law. It has provided as a tool, indispensable intelligence to our—to protect our country. At the same time, I was very concerned by the findings of the Inspector General in its recent report on the deficiency in the way that the law has been implemented. I am absolutely committed. It would be, in fact, a priority, if I'm confirmed, to continue to work to address those deficiencies and to improve the process because the trust of the American people depends on their confidence in the way that law is implemented.

Senator OSSOFF. You acknowledge that the remedy to those documented flaws may include legislative fixes. You're willing to engage, in good faith, with this Committee to consider such fixes?

Mr. OLSEN. Yes. Of course. Working with the rest of the Justice Department and the Intelligence Community with this Committee and Congress to implement those changes. I've done that in the past, and I would do so again.

Senator OSSOFF. Thank you, Mr. Olsen. In your position, you will have responsibility for reviewing all applications for surveillance under FISA, is that correct?

Mr. OLSEN. Yes.

Senator OSSOFF. Based on the Department's disclosed FISA statistics for 2020, you personally would need to review and fact check at least one 25-page document every day in order to personally render such oversight. Can you please describe the process that you anticipate you would implement by which you would assess the accuracy of facts stated in applications to the Foreign Intelligence Surveillance Court?

Mr. OLSEN. Yes, of course. Senator, the National Security Division includes, when I was last there, approximately 100 attorneys who are responsible for appearing before the FISA court, representing the Government before the FISA court, and working with

the Intelligence Community, particularly the FBI, to review those applications. Ultimately, they go to a senior official, whether the Attorney General, the Deputy Attorney General, or if I'm confirmed, me in the role as the Assistant Attorney General, for final signature.

The crucial point here, of course, is that the process needs to be sufficiently robust so that facts are checked and documents are reviewed by agents at the FBI, for example, who submit these applications, by lawyers at the FBI, by lawyers at the Department of Justice, by the individuals who support the judges. There's a multilayered process to check the facts and to ascertain the lawfulness of any application, that it meets the standards, in particular probable cause standard, before it's approved by the FISA court judge.

Again, I was very concerned by the IG's finding of 17 significant problems in a number of applications that the Inspector General reviewed. I know that there are a number of steps already underway by the FBI and DOJ to address those concerns. I would make it a priority to ensure that those are implemented.

Senator OSSOFF. Thank you. Mr. Olsen, you will take personal responsibility for ensuring that all applications to the FISC are factual and accurate?

Mr. OLSEN. Yes, Senator. That is part of this job, is to be personally responsible, in my view, for the FISA court process, and to represent the Government in a way to ensure that FISA court applications are complete and accurate.

Senator OSSOFF. Thank you. Section 702 permits the Government to obtain the content of communications between Americans and foreign surveillance targets. This, sometimes referred to as incidental collection of American communications, can sweep Americans into surveillance without warrants from courts other than the Foreign Intelligence Surveillance Court. Some would argue this deprives them of Fourth Amendment protections. What are your views on the scope of this incidental collection, and whether or not it does pose a threat to the privacy of American citizens?

Mr. OLSEN. Senator, in my views, section 702, first of all, has proven to be extraordinarily successful in collecting critical intelligence that's focused on non-U.S. persons, non-U.S. citizens who are outside the United States. It has been upheld numerous times by courts that have reviewed the way in which section 702 operates with judicial and congressional oversight.

The concern that you raise is an important one, that is the privacy concerns are interests that are implicated when a U.S. person is—their communications are captured in the course of targeting a non-U.S. person overseas. The key here is that there are procedures in place to destroy that information if it does not involve foreign intelligence or for evidence of a criminal act.

I would say that there have been a number of cases where that, as we've referred to, incidental collection has led to important foreign intelligence also being collected. For example, if a target outside the United States is communicating with a coconspirator inside the United States, the Government has identified that coconspirator inside the United States, and then have been able to follow-up appropriately under the Fourth Amendment to continue that collection.

The law, I think, strikes the right balance. That said, we need to be careful and sensitive to the privacy interests that are certainly implicated by the way it operates.

Senator OSSOFF. Thank you, Mr. Olsen. I'll have additional questions on this subject for the record. If indeed you are confirmed, I look forward to working with you. Thanks for your testimony. I yield, Mr. Chairman.

Chair DURBIN. Thanks, Senator Ossoff. I think I'll be the last to wrap up. I just have a question for the aspiring judges, and it relates to my own experience here, serving in Congress.

It was about 30 years ago when we declared a war on drugs. The reason that we acted as we did had a lot to do with the advent of crack cocaine. The arrival of this new narcotic was scary. It was very cheap, very addictive, and very destructive to many people. During the course of our debate on this issue, I was in the House at the time, there were incidents that occurred that gave us a sense of immediacy of all the discovery of this drug and such.

There was a case that did not involve crack cocaine, but had a great deal of publicity involving a Maryland basketball player, Len Bias. As a consequence, we did something dramatic. We created a sentencing guideline for crack cocaine at 100 times the level of powder cocaine. One hundred times.

The idea was that if we came down that hard, that fast, that dramatically, that it would really break the back of crack cocaine in terms of its infiltration into America. We were completely wrong. Completely. The number of addicts increased. The price of the drug on the street went down instead of up. We started filling our prisons, primarily with African-American defendants. Dramatic increases in our Federal prison population to levels we'd never seen before.

In some of the sentencing that went on as a result of it, we look back on it and say, "How could we have done that?" A man named Alton Mills in the Chicagoland area, three nonviolent crack cocaine sales, life in prison. Life in prison. Many others just like it. It went way beyond any deterrent effect and really reflected our desperation to bring this under control.

Many judges commented, as they were forced by our mandatory minimum sentences and other guidelines, they didn't feel justice was being served in our courts when they imposed these sentences. I know several of those judges personally who talked to me at the time.

Since then, I have tried to correct my mistake, and we passed two reforms of the sentencing law. Senator Grassley was my partner in the most significant one, the First Step Act, and Fair Sentencing before that.

I'd like to ask the four of you who are aspiring to these district court judgeships, what lesson we should have learned from this experience? Judge Pan.

Judge PAN. Thank you for the question, Senator. I think that you raise a question of deep significance that affects many people. The lesson that I've learned from what you've just said is that the legislature can learn from mistakes and seek to correct them through the legislative process. I think that's a very positive thing for the legislature to undertake.

Of course, as a judge, this is not the kind of thing that we can address as a policy matter. I think sentencing considerations before judges are done on a case-by-case, individual, basis, and we are required to look at the facts of each case. From a judge's perspective, I think that making the sentencing guidelines no longer mandatory, now voluntary, is another thing that's been helpful in this regard.

Chair DURBIN. There are sentencing enhancements that are suggested by the Government in many cases. Does that come into play? That's a discretionary decision by the judge.

Judge PAN. Yes. Of course, as a judge, and in performing the function of sentencing, which is so important because the liberty of another person is at stake, a judge must consider all the relevant factors, including the requests of the Government, and weigh all of that under the totality of the circumstances.

Chair DURBIN. Judge Williams.

Judge WILLIAMS. Senator, my understanding of how, as a judge, if confirmed as a district court judge to deal with it, is informed by my handling of some misdemeanor cases, clearly not on point with addressing the crack cocaine issue. As I agree with Judge Pan, that's an issue for the legislature.

What we have learned, what we learn and know as judges, is that we have guidelines to follow, 3553(a) allows judges to interact with a very, very seasoned and skilled probation office that helps inform and supply us with the information necessary to work through those guidelines on individual cases. I've done that in misdemeanor cases for individuals charged with crimes. Should I be confirmed, I look forward to working with our many talented probation officers as I work through the Sentencing Act in the role of sentencing as a district court judge.

Chair DURBIN. Judge Merriam.

Judge MERRIAM. Thank you, Senator. When I was in the Federal Defender's Office, I was there when the initial changes in the crack/powder disparity went into effect. I was heavily involved in the process of organizing the district, which meant everyone. That was the prosecutors, and the probation office, and the judges, and the Marshals Service, and the defense bar to make those changes applicable to the clients where it was appropriate as quickly and efficiently as possible to try to do the justice on the ground that the legislature had seen fit to put in place.

Those changes have certainly made a real difference over the years. At the end of the day, we're bound, now, other than by the mandatory minimums, by 3553(a), which is, as Judge Williams referenced, very broadly encompassing the kinds of factors and the kinds of considerations a judge can take into account. That discretion is an awesome one, and an important one, and allows judges, I think, to work within the law to try to do justice.

Chairm DURBIN. Ms. Cobb.

Ms. COBB. Thank you. It's hard to improve upon the responses that have been given. I think what struck me most about what you said is the fact that this body was paying attention to what was happening in the courts, and I think that's extraordinarily important. When laws are passed, particularly that provide criminal penalties, whether they be mandatory minimums or otherwise, to pay

attention to kind of what the effect is on the ground once those laws are implemented.

I know that the Sentencing Commission does some work in compiling statistics. I really think it's important to, you know, continue to pay attention to what's happening after these laws are passed.

Chair DURBIN. Let me just add one other thing that has changed the conversation. Twenty or 15 years ago, if you would have said, "Oh, did you hear about that person who overdosed on drugs last night?" the most common answer would be, "No. I didn't. Was it an African American? Inner city? A man between 20 and 35?" You would have been right in most cases. Not anymore.

When we talk about drug overdoses now, it could have been that cheerleader at the all-white high school in the suburbs. Drug addiction has how reached every corner of America. We're starting to look at it anew. It is no longer, "Just say no." We realize it is a medical problem, a disease. We haven't responded with the adequate resources to deal with addiction. I hope we will in the future. The conversation on drugs has changed in America because the victims have changed pretty dramatically. That is going to be part of the reality that I hope you soon will be dealing with in your new positions.

I thank you for your cooperation at this hearing. It's been an important one. You may receive some written questions in the near term.

Is there anything else I need to do formally?

He wants me to read it and make sure you understand this. Questions for the record will be due to the nominees by 5 p.m. on Wednesday, July 21. The record will remain open until that time to submit letters and similar materials.

With that, the hearing is adjourned. Thank you all very much.

[Whereupon, at 12:54 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

**Senator Chuck Grassley, Ranking Member**
**Questions for the Record**
**Jia Cobb**
**Nominee to be United States District Judge for the District of Columbia**

1. **When Justice Elena Kagan was nominated to the Supreme Court, she explained her view that the American founders "wrote a Constitution for the ages." Justice Kagan famously went on to say: "Either way we apply what they say, what they meant to do. So in that sense, we are all originalists."**
   a. **When you consider your approach to constitutional law, would you say that there is any sense in which you are an originalist? Please explain why you are or are not.**

      Response: If confirmed as a district court judge, I will be bound to follow the interpretive approach that Supreme Court or D.C. Circuit precedent dictates. The Supreme Court has, in some cases, interpreted constitutional provisions based on the original meaning of the text at issue. *See, e.g.*, *United States v. Jones*, 530 U.S. 428 (2012) (Fourth Amendment); *District of Columbia v. Heller*, 554 U.S. 570 (2008) (Second Amendment). I would faithfully apply that precedent if confirmed. In other cases, the Supreme Court has not relied on original public meaning to interpret constitutional text. *See, e.g.*, *Dickerson v. United States*, 530 U.S. 428 (2000) (reaffirming that the Fifth Amendment requires *Miranda* warnings prior to custodial interrogations); *Trop v. Dulles*, 356 U.S. 86 (1958) (considering "evolving standards of decency" in interpreting the Eighth Amendment). If confirmed, I will also be required to adhere to that precedent, even though the Supreme Court did not employ an originalist methodology to interpret the text or even if I disagreed with the Court's approach or decision.

   b. **If you are required to interpret constitutional text, do you consider what the text was publicly understood to mean at the time that it was written?**

      Response: Yes.

   c. **If you are required to interpret constitutional text, are you interested in briefing on what the text was publicly understood to mean at the time that it was written? And if you felt that the briefing on this constitutional history or context was too sparse, would you consider requesting supplemental briefing?**

      Response: Yes. I would also consider requesting supplemental briefing if the parties' briefing on the constitutional history or context of constitutional text, or any other issue relevant to my decision-making, was too sparse.

2. **When government actions curtail individual rights, the relevant standard of review can make a tremendous difference in the outcome of litigation. I am referring to**

**standards of review such as strict scrutiny—not to standards of review such as de novo review. I would appreciate understanding your thoughts on several related questions.**

**a. Please explain the contours of the strict-scrutiny legal standard and when it applies, with relevant case law discussing the standard.**

Response: Strict scrutiny is the highest and most rigorous standard of judicial review that courts use to determine the constitutionality of a law or policy. To withstand strict scrutiny, the law or policy at issue must be narrowly tailored to serve a compelling state interest. *See, e.g., Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942). The Supreme Court has applied strict scrutiny to laws that involve suspect classifications or infringe upon certain fundamental rights. The Supreme Court has recognized "suspect classes" to include those that pertain to "immutable characteristic[s] determined solely by accident of birth," and classifications 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) (internal quotations and citations omitted). Classifications based upon race, alienage, national origin, and religion are suspect classes requiring strict scrutiny. *See, e.g., Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 n.4 (1976); *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). Examples of cases in which the Supreme Court has applied strict scrutiny to laws that implicate fundamental rights include content-based restrictions on speech, *see, e.g., Reed v. Town of Gilbert*, 576 U.S. 155 (2015), and laws burdening religious practice that are not neutral and of general applicability, *see, e.g., Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).

**b. Strict scrutiny is widely viewed as favorable for individuals asserting their constitutional or civil rights, regardless of the facts—while rational basis is widely viewed as an easier standard for the government, regardless of the facts. When federal courts apply intermediate scrutiny, does the standard itself tend to favor either individuals or the government? Please explain using relevant case law.**

Response: As a judicial nominee, I do not think that it would be proper for me to opine whether intermediate scrutiny review favors a particular litigant. If I am confirmed, I will be bound to apply intermediate scrutiny to those cases in which the Supreme Court or D.C Circuit has indicated that it is the appropriate standard of review—for example, in cases involving classifications based upon gender, *see e.g., Craig v. Boren*, 429 U.S. 190 (1976), or content-neutral speech regulations, *see, e.g., McCullen v. Coakley*, 573 U.S. 464 (2014).

**c. Many circuit courts apply "heightened rational basis review," a phrase that draws in part from the Supreme Court's opinion in *Plyler v. Doe*, 457 U.S. 202, 238 (1982). Under this heightened review, "[r]ather than relying upon the various post-hoc rationalizations that *could* conceivably have justified the laws, the Court focused on the motivations that *actually* lay behind the laws." *Bishop v. Smith*, 760 F.3d 1070, 1099 (10th Cir. 2014) (Holmes, J., concurring) (emphases in original). How would you define (1) ordinary rational-basis review and (2) heightened rational-basis review?**

Response: Rational basis review requires a court to determine whether a law is rationally related to a legitimate government interest. *See, e.g., Railway Express Agency, Inc., et al. v. New York*, 336 U.S. 106 (1949); *see also F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993) (recognizing that "a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification."). In *Ruggiero v. F.C.C.*, 317 F.3d 239 (2003), the D.C. Circuit, sitting *en banc*, determined that a heightened standard of rational basis review, which it defined as "occup[ying] a ground somewhere between…minimal scrutiny… and intermediate scrutiny…," was appropriate in a case involving a facial challenge to the constitutionality of the character qualification provision of the Radio Broadcasting Preservation Act of 2000.

**d. Assuming that you were choosing between ordinary and heightened rational basis, how would you decide which to apply?**

Response: I would apply Supreme Court and D.C. Circuit precedent to determine the applicable standard of review in a case.

**3. In the context of federal case law, what is super precedent? Which cases, if any, count as super precedent?**

Response: To my knowledge, neither the Supreme Court nor the D.C. Circuit has used or defined the term "super precedent." It is not a term that I have used in my practice. If confirmed, I will faithfully adhere to all Supreme Court and D.C. Circuit precedent and will not elevate some decisions over others.

**4. One of the federal courts' important functions is reading statutes and regulations, determining what they mean, and determining how they apply to the facts at hand.**

**a. How would you determine whether statutory or regulatory text was ambiguous?**

Response: Assuming that there was no applicable Supreme Court or D.C. Circuit precedent construing the specific provision at issue, I would analyze the text, consider its plain meaning, and, if necessary, analyze its structure and employ traditional canons of construction to interpret it. If, after analyzing the text, I determined that the text could only be read one way, the text would not be ambiguous. On the other hand, if the text at issue could be plausibly read or understood in more than one way, I would consider the text to be ambiguous.

**b. Would you apply different standards to determining whether statutory text and regulatory text were ambiguous? If so, how would the ambiguity standards differ?**

Response: No.

**c. When interpreting ambiguous text, what tools would you use to resolve the ambiguity?**

Response: If the text's meaning remained unclear after analyzing the text and its structure, and exhausting traditional canons of construction, I would look to Supreme Court and D.C. Circuit precedent analyzing the same or similar language in other statutes or regulations. If that still did not resolve the ambiguity, I would consider persuasive authority from other jurisdictions. If controlling precedent, analysis of the text of the statute, or persuasive authority did not resolve the matter, I would consider certain legislative history, such as committee reports, as permitted by Supreme Court or D.C. Circuit precedent. For genuinely ambiguous agency regulations, I would follow the Supreme Court's precedent in *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019) to determine whether it would be appropriate to consider an agency's interpretation of its regulation.

**d. When interpreting ambiguous text, how would you handle two competing and contradictory canons of statutory interpretation?**

Response: I would closely examine the plain language of the provision at issue and the and structure of the statute before employing any traditional canons of statutory construction. In the event of a conflict, I would look to determine whether the Supreme Court or D.C. Circuit has offered any guidance on the appropriate method of construction to apply in the case.

**5. Federal courts usually examine the law de novo because each court is usually obligated to correctly interpret the law to the best of its own ability. But in some cases, federal courts defer to how others interpret the law. A number of Supreme Court decisions outline this deference.**

**a. What is *Skidmore* deference? Please summarize the DC Circuit's *Skidmore* jurisprudence.**

Response: *Skidmore* deference refers to a Supreme Court doctrine of

administrative agency deference that permits a federal court to defer to an agency's interpretation of a statute it administers, even when the agency's interpretation does carry the force of law (for example, opinion letters or enforcement guidelines). *See Christensen v. Harris County*, 529 U.S. 576 (2000). Where *Skidmore* deference is applicable, the agency's determination is not binding and is "entitled to respect only to the extent it has the power to persuade." *Gonzales v. Oregon*, 546 U.S. 243, 256 (2006) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (internal quotations and citations omitted)); *see also e.g., Indian River Cty. v. U.S. Dep't of Transp.*, 945 F.3d 515, 531 (D.C. Cir. 2019) ("When an agency's interpretation of a statute has been binding on agency staff for a number of years, and it is reasonable and consistent with the statutory framework, deference to the agency's position is due under *Skidmore*."); *Orton Motor, Inc. v. U.S. Dep't of Health & Hum. Servs.*, 884 F.3d 1205, 1211 (D.C. Cir. 2018) ("Ultimately, a court will uphold an agency determination under Skidmore if it is persuasive.").

**b. What is *Chevron* deference? Please summarize the DC Circuit's *Chevron* jurisprudence.**

Response: *Chevron* deference refers to a Supreme Court doctrine of administrate agency deference that requires a federal court to defer to an agency's reasonable interpretation of a statute that it administers. *See Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984). It applies to agency interpretations that carry the force of law (such as a formal rule). The Supreme Court articulated a two-part test to guide courts in determining whether such deference is warranted. First, the Court determines whether the statute is ambiguous. *Id.* at 842, 843 n.9. If the statute is not ambiguous, the inquiry ends and the court "must give effect to the unambiguously expressed intent of Congress" rather than consider the agency's interpretation. *Id.* at 842–43. If Congress's intent with respect to the specific issue is not clear from the statute, the court moves to part two of the test to determine whether the agency's interpretation is based on a "permissible construction" of the statute. *Id.* at 843. If it is, the court must defer to the agency's reasonable interpretation. D.C. Circuit precedent tracks the Supreme Court's precedent. *See, e.g., Am. Hosp. Ass'n v. Azar*, 964 F.3d 1230, 1241, 1244 (D.C. Cir. 2020); *Murray Energy Corp. v. EPA*, 936 F.3d 597, 608 (D.C. Cir. 2019). Recently, the D.C. Circuit reaffirmed that in determining whether a statute is ambiguous and *Chevron* deference is warranted, "the court begins with the text, and employ[s] traditional tools of statutory construction to determine whether Congress has spoken directly to the issue." *Overdevest Nurseries, L.P. v. Walsh*, 2021 WL 2603184 at * 3 (D.C. Cir. June 25, 2021) (internal quotations and citations omitted).

**c. What is *Auer* deference? Please summarize the DC Circuit's *Auer* jurisprudence.**

Response: *Auer* deference refers to a Supreme Court doctrine of administrative agency deference that instructs courts to defer to an agency's reasonable interpretation of its own ambiguous regulations. *See Auer v. Robbins*, 519 U.S. 452 (1997). In *Kisor v. Wilkie*, the Supreme Court clarified the circumstances under which *Auer* deference is warranted. 139 S. Ct. 2400 (2019). First, a court must "exhaust all the traditional tools of construction" to determine whether the regulation is "genuinely ambiguous." *Id.* At 2415. If the regulation is genuinely ambiguous, *Auer* deference is warranted only where the agency's interpretation is reasonable. *Id.* at 2415–16. The agency's interpretation must also be its authoritative and "official" position, as opposed to an "ad hoc statement not reflecting the agency's views." *Id.* at 2416. Ultimately, *Auer* deference is unwarranted where a "court concludes that an interpretation does not reflect an agency's authoritative, expertise-based, fair, or considered judgment." *Id.* at 2414 (internal quotations and citations omitted). *See also Nat'l Lifeline Ass'n v. F.C.C.*, 983 F.3d 498, 507 (D.C. Cir. 2020).

**6. What is more important for a district judge: (a) reaching what he thinks is the correct conclusion or (b) reaching a conclusion that he knows will not be overturned on appeal? How would you decide whether to go with option (a) or (b)?**

Response: I do not view these options as mutually exclusive. If confirmed as a district court judge, I would be bound by Supreme Court and D.C. Circuit precedent. This binding precedent compels the "correct conclusion." If a judge knows that a decision will not be overturned on appeal, I can only imagine it is because there is some guiding precedent that informs how a higher court would decide the matter. Following that guiding precedent (option b) is the correct conclusion (option a). I would strive to reach the "correct conclusion" by strictly applying Supreme Court and D.C. Circuit precedent.

**7. In *McGowan v. Maryland*, 366 U.S. 420, 442 (1961), the Supreme Court wrote that "the 'Establishment' Clause does not ban federal or state regulation of conduct whose reason or effect merely happens to coincide or harmonize with the tenets of some or all religions." Do you agree that secular actions with some religious overlap can be constitutional?**

Response: I agree that the above-quoted language accurately articulates the Supreme Court's holding in *McGowan v. Maryland*. If confirmed, I would be bound by the Supreme Court's decision. I would faithfully apply this precedent without reservation.

**8. Do you agree with the Supreme Court's statement in *Bostock v. Clayton County*, 590 U.S. ___ (2020), that the Free Exercise Clause lies at the heart of a pluralistic society? If so, does that mean that the Free Exercise Clause legally requires that religious**

**organizations and individuals should be free to act consistently with their beliefs in the public square?**

Response: The free exercise of religion is a foundational and fundamental constitutional right. Supreme Court precedent and federal law protect the rights of individuals to act in accordance with their religious beliefs. If confirmed, I would faithfully apply this law and precedent without reservation.

9. **Do you agree with the Supreme Court that the principle of church autonomy goes beyond a religious organization's right to hire and fire ministers? Please describe your view on whether and/or how the Supreme Court has placed limits on church autonomy.**

Response: The Supreme Court recently considered this question in *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020). In *Our Lady of Guadalupe,* the Supreme Court held that the "ministerial exception" articulated in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012), was not limited to members or employees of a religious institution who have formal titles and training as ministers or religious leaders. In determining that the First Amendment barred the teachers of the religious institutions from filing suit for employment discrimination and challenging their terminations, the Court affirmed that the First Amendment "protects the right of religious institutions to determine for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Our Lady of Guadalupe*, 140 S. Ct. at 2055 (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952) (internal quotations omitted)). If confirmed, I would faithfully apply this precedent without reservation.

10. **The Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that the Second Amendment protects an individual's right to possess a firearm, regardless of the individual's participation in a "well regulated Militia." The Supreme Court later expanded on that right in *McDonald v. Chicago*, 561 U.S. 742 (2010), when it held that the Fourteenth Amendment's Due Process Clause incorporated the Second Amendment. If you were confirmed to the DC district court and had to handle a Second Amendment challenge, what level of scrutiny would you apply?**

Response: The D.C. Circuit has adopted a two-part test for analyzing Second Amendment challenges. *See Schrader v. Holder*, 704 F.3d 980, 988 (2013). First, the Court considers whether "the activity or offender subject to the challenged regulation falls outside the Second Amendment's protections." *Id.* at 988-89. If the answer to this question is yes, the inquiry ends. If the answer is no, the Court goes on to determine "whether the provision passes muster under the appropriate level of constitutional scrutiny." *Id.* at 989. The

appropriate level of scrutiny to apply turns upon whether the law at issue "imposes substantially on the Second Amendment's core." *Wrenn v. D.C.*, 864 F.3d 650, 657 (D.C. Cir. 2017) (quoting *Heller v. D.C.* (*Heller II*), 670 F.3d 1244 (D.C. Cir. 2011) (internal quotation marks omitted)); *see also Heller II*, 670 F.3d at 1257 ("As with the First Amendment, the level of scrutiny applicable under the Second Amendment surely depends on the nature of the conduct being regulated and the degree to which the challenged law burdens that right.") (internal quotations and citations omitted). After conducting detailed analyses, the D.C. Circuit has applied intermediate scrutiny to gun registration requirements, *see, e.g., Heller II*, 670 F.3d at 1257 and as-applied challenges to statutes prohibiting gun possession by persons convicted of certain criminal offenses, *see, e.g., Schrader*, 704 F.3d 980; *Medina v. Sessions*, 279 F.Supp.3d 281, 291 (2017). On the other hand, a "total ban" on Second Amendment rights is "always invalid," and does not require a reviewing court to apply tiers of scrutiny. *Wrenn*, 864 F.3d at 665. I would follow the tests and analyses articulated in Supreme Court and D.C. Circuit precedent to determine the appropriate level of scrutiny to apply in any case.

**11. After many years of relative quiet, Second Amendment jurisprudence has developed into a substantially larger body of law during the past decade. I would appreciate understanding your thoughts on several related questions.**

**a. According to the Supreme Court, what are the permissible limits on an individual's right to keep and bear arms?**

Response: In *District of Columbia v. Heller*, the Supreme Court expressed that "nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *D.C. v. Heller*, 554 U.S. 570, 626-27 (2008).

**b. Do the Supreme Court's precedents leave room for other constitutionally permissible limits—on an individual's right to keep and bear arms—that the Supreme Court has not already specified?**

Response: Yes. In *District of Columbia v. Heller*, the Supreme Court recognized that its list (cited in response to Question No. 11a) "does not purport to be exhaustive." 554 U.S. 570, 628 n.26 (2008).

**c. Is the Second Amendment individual right to "keep" arms at all different from the right to "bear" arms?**

Response: In *District of Columbia v. Heller,* the Supreme Court stated: "there seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms." 554 U.S. 570, 595 (2008). I am unaware of any precedent where the Supreme Court has

differentiated between the right to "keep" arms and the right to "bear" arms. I would faithfully follow all binding Supreme Court and D.C. Circuit precedent.

**12. Is the Second Amendment personal right to "keep" arms at all different from the right to "bear" arms?**

Response: In *District of Columbia v. Heller,* the Supreme Court stated: "there seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms." 554 U.S. 570, 595 (2008), I am unaware of any precedent where the Supreme Court has differentiated between the right to "keep" arms and the right to "bear" arms. I would faithfully follow all binding Supreme Court and D.C. Circuit precedent.

**13. When it comes to drugs, federal and local laws are not always the same. As a federal judge, would you apply the Controlled Substances Act as it is written—even if the District of Columbia's relevant drug law was more permissive than the federal law?**

Response: Yes.

**14. Please explain, with detail, the process by which you became a district-court nominee.**

Response: On February 15, 2021, I submitted a Judicial Candidate Questionnaire to Representative Eleanor Holmes Norton's District of Columbia Federal Law Enforcement Nominating Commission. I interviewed with the Commission on March 4, 2021, and the Commission selected me as a finalist to interview with Representative Norton. Representative Norton interviewed me on March 12, 2021. Representative Norton recommended my nomination to the White House. I met with officials from the White House Counsel's Office on March 17, 2021. Since March 20, 2021, I have been in contact with officials from the Department of Justice's Office of Legal Policy. On June 15, 2021, President Biden announced his intent to nominate me and my nomination was submitted to the Senate for consideration.

**15. Have you had any conversations with individuals associated with the group Demand Justice—including, but not limited to, Brian Fallon or Chris Kang—in connection with this or any other potential judicial nomination? If so, please explain the nature of the conversations.**

Response: I know Chris Kang and have talked to him. Mr. Kang previously worked on judicial nominations for the White House. I spoke to him about how the application and nomination processes work because I had no familiarity with these processes before I pursued this opportunity. I do not know Brian Fallon and have not talked to any other person who is, to my knowledge, associated with Demand Justice.

**16. Have you had any conversations with individuals associated with the American Constitution Society—including, but not limited, to Russ Feingold—in connection with this or any other potential judicial nomination? If so, please explain the nature of the conversations.**

Response: No.

**17. Please explain with particularity the process by which you answered these questions.**

Response: I reviewed the questions and drafted my answers, conducting research where necessary. I provided my draft responses to the Department of Justice's Office of Legal Policy for review and feedback. After receiving feedback from the Office of Legal Policy, I revised and finalized my responses for submission.

**18. Do the answers in this document reflect your true and personal views?**

Response: Yes.

**Nomination of Jia M. Cobb**
**to be United States District Judge for the District of Columbia**
**Questions for the Record**
**Submitted July 21, 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 judicial nominee, it would generally not be appropriate for me to offer my opinion on the merits of Supreme Court decisions. *District of Columbia v. Heller* is binding precedent and I would strictly apply it, without reservation, 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: The Second Amendment right to keep and bear arms is an individual right. *See D.C. v. Heller*, 554 U.S. 570, 578-79 (2008); *McDonald v. City of Chicago*, 561 U.S. 742, 780 (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 *Rehaif v. United States*, 139 S. Ct. 2191 (2019), the Supreme Court held that a felon in possession offense requires the government to prove not only that the defendant knew he possessed a firearm, but also that he knew he was a felon when he possessed it. In *Greer v. United States*, the Supreme Court held that a trial court's failure to instruct the jury (or advise a defendant during a plea colloquy) of the required *mens rea* for a felon in possession offense does not require the automatic reversal of a conviction. Instead, *Rehaif* errors raised for the first time on appeal are subject to plain error review under Federal Rule of Criminal Procedure 52(b), which permits an appellate court to review an error that "affects substantial rights." In order to establish that a

*Rehaif* error affected "substantial rights," the Supreme Court held that the defendant must make a sufficient showing on appeal that he would have presented evidence that he did not, in fact, know he was a felon.

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, made retroactive by the First Step Act, modified criminal penalties only for crack cocaine offenses that carried mandatory-minimum sentences. Accordingly, the defendant sentenced under 21 U.S.C. § 841(b)(1)(C) was not convicted of a covered offense under the Fair Sentencing Act and thus not eligible for a sentencing modification.

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 the Eighth Amendment does not require a sentencing court to find that a juvenile defendant is permanently incorrigible to impose a sentence of life without the possibility of parole, so long as the sentencing court has discretion in imposing the sentence.

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 reversed the denial of an injunction that would have prohibited California from enforcing its COVID-19 restrictions against the applicants' private, in-home religious gatherings pending appeal. In doing so, the Supreme Court made clear that government regulations are not "neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise." 141 S. Ct. 1294, 1296 (2021) (emphasis in original). Further, in determining whether activities are comparable for purposes of the Free Exercise Clause, courts must consider "the risks various activities pose, not the reasons why people gather." *Id.*

9. **Please describe what you believe to be the Supreme Court's holding in *Sanchez v. Mayorkas*, 593 U.S. _____ (2021).**

   Response: In *Sanchez v. Mayorkas*, the Supreme Court held that the grant of Temporary Protected Status under 8 U.S.C. § 1254a is not an "admission" under 8 U.S.C. § 1255. Thus, an individual who entered the United States unlawfully was not eligible to become a lawful permanent resident under 8 U.S.C. § 1255, despite having been granted Temporary Protected Status.

**10. What is your view of arbitration as a litigation alternative in civil cases?**

Response: I have not developed an opinion regarding arbitration as an alternative to litigation in civil cases. Moreover, my personal views about the merits of arbitration, or any other matter, would have no bearing on my decision-making as a district court judge, if confirmed.

**11. Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.**

Response: I reviewed the questions and drafted my answers, conducting research where necessary. I provided my draft responses to the Department of Justice's Office of Legal Policy for review and feedback. After receiving feedback from the Officer of Legal Policy, I revised and finalized my responses for submission.

**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 Jia Michelle Cobb, to be United States District Judge for the District of Columbia**

## 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. **You are currently litigating two Section 1983 suits on behalf of BLM protesters. In one of the suits, the plaintiffs allege that during the BLM protests last summer, D.C. police responded with excessive force by using pepper spray and batons. Do you believe law enforcement used excessive force when it employed pepper spray and batons against the protestors on January 6?**

   Response: Supreme Court precedent instructs how to assess excessive force claims, including the specific factors to weigh and consider. *See, e.g., Graham v. Connor*, 490 U.S. 386 (1989). I have not investigated the circumstances of law enforcement's alleged use of force against any individual on January 6th, and thus do not have the information that would be necessary to answer this question. Further, given that there are pending cases involving the events on January 6th before the court to which I have been nominated, and it is possible that a case involving those events could come before me if I am confirmed, it would be inappropriate for me to offer any personal opinion or compare the matter to any work that I have done as an advocate. If confirmed, my prior litigation work will have no bearing on my judicial decision-making.

2. **Please describe the legal distinction between a protest and a riot?**

   Response: Congress has defined a riot as a "public disturbance" that involves either (1) "an act or acts of violence by one or more persons part of an assemblage of three or more persons, which act or acts shall constitute a clear and present danger of, or shall result in, damage or injury to the property of any other person or to the person of any other individual" or (2) "a threat or threats of the commission of an act or acts of violence by one or more persons part of an assemblage of three or more persons having, individually or collectively, the ability of immediate execution of such threat or threats, where the performance of the threatened act or acts of violence would constitute a clear and present danger of, or would result in, damage or injury to the property of any other person or to the person of any other individual." 18 U.S.C. § 2102(a). The First Amendment protects "the right of the people peaceably to assemble," U.S. Const. amend. I, however, the Supreme Court has recognized that "where demonstrations turn violent, they lose their protected quality as expression under the First Amendment." *Grayned v. City of Rockford*, 408 U.S. 104, 116 (1972).

3. **Is it appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns? Please explain.**

   Response: The Constitution requires that the President "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3. The Supreme Court's decision in *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579 (1952), provides guidance concerning how to evaluate the appropriate scope of executive power.

4. **Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's philosophy from Warren, Burger, Rehnquist, or Robert's Courts is most analogous with yours.**

Response: I do not use any labels to characterize my judicial philosophy. For me, my "judicial philosophy" is the method and manner in which I would approach judicial decision-making if I am fortunate enough to be confirmed. I believe that a judge must thoroughly study the facts and arguments presented by the parties to fully engage with litigants and render informed decisions. A judge must be neutral and impartial, as well as provide parties a full opportunity to be heard on matters related to their cases. I also believe that a judge must put aside all personal beliefs and base her decisions solely on what the law demands, including the text of any relevant constitutional or statutory provisions and applicable precedent. Further, I believe that a judge must treat all parties with respect and expeditiously rule on matters that come before the court. I have not studied the individual philosophies of Supreme Court Justices and would have a very different function if I am confirmed as a district court judge, and therefore cannot compare the approach that I would take to the philosophy of any Supreme Court Justice.

5. **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 Supreme Court and D.C. Circuit precedent concerning the meaning of the Constitution in applying its provisions.

6. **Please briefly describe the interpretative method known as originalism.**

Response: While others may have a different view, I understand "originalism" to refer to the belief that constitutional text should solely be interpreted consistent with the way the text would have been understood at the time that it was adopted.

7. **Please briefly describe the interpretive method often referred to as living constitutionalism.**

Response: While others may have a different view, I understand "living constitutionalism" to refer to the belief that the meaning of the Constitution can change over time in accordance with changing circumstances.

8. **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: While it is possible that, if confirmed, I will encounter factual scenarios that another court has never confronted, I struggle to imagine a circumstance in which there would not be any precedent—not even analogous precedent—to guide my decision-making. If confirmed, I would be bound by Supreme Court and D.C. Circuit precedent,

including the methods those courts have used to interpret specific constitutional provisions. The Supreme Court has, in some cases, interpreted constitutional provisions based on the original public meaning of the text at issue, *see, e.g.*, *United States v. Jones*, 565 U.S. 400 (2012); *District of Columbia v. Heller*, 554 U.S. 570 (2008), but not all, *see, e.g., Dickerson v. United States*, 530 U.S. 428 (2000); *Trop v. Dulles*, 356 U.S. 86 (1958). If I ever confronted the rare circumstance in which there were truly no guiding or analogous precedent, I would consider the original public meaning of the text, as well as any other arguments the parties made about the interpretation of the Constitution in the case.

9. **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 *District of Columbia v. Heller*, the Supreme Court recognized that "the public understanding of a legal text in the period after its enactment or ratification….is a critical tool of constitutional interpretation." 554 U.S. 570, 605 (2008).

10. **Is the ability to own a firearm a personal civil right?**

Response: Yes.

11. **Do Americans have the right to their religious beliefs outside the walls of their houses of worship and homes?**

Response: Yes.

12. **Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?**

Response: The executive branch is responsible for making political appointments and is required to follow the Constitution. If confirmed and called to rule upon the constitutionality of an executive appointment, I would follow Supreme Court and D.C. Circuit precedent.

**Questions for the Record for Jia Michelle Cobb**
**From Senator Mazie K. Hirono**

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:

   **a. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

   Response: No.

   **b. Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

   Response: No.

**Senator Mike Lee**
**Questions for the Record**
**Jia Cobb, D.D.C.**

**1. How would you describe your judicial philosophy?**

Response: I do not use any labels to describe my judicial philosophy. For me, my "judicial philosophy" is the method and manner in which I would approach judicial decision-making if I am fortunate enough to be confirmed. I believe that a judge must thoroughly study the facts and arguments presented by the parties to fully engage with litigants and render informed decisions. A judge must be neutral and impartial, as well as provide parties a full opportunity to be heard on matters related to their cases. I also believe that a judge must put aside all personal beliefs and base her decisions solely on what the law demands, including the text of any relevant constitutional or statutory provisions and applicable precedent. Further, I believe that a judge must treat all parties with respect and expeditiously rule on matters that come before the court.

**2. What sources would you consult when deciding a case that turned on the interpretation of a federal statute?**

Response: I would first determine whether the Supreme Court or D.C. Circuit previously interpreted the specific statutory provision at issue, because I would be bound to follow that precedent. If there was no controlling precedent construing the provision at issue, I would look at the text of the statute. If the statute did not specifically define the terms at issue, I would consider the plain meaning of the terms in the statutory text. If the statute was ambiguous on its face, I would look to other methods of statutory construction to interpret the text. If the meaning of the statute remained unclear after exhausting all available canons of statutory construction, I would consider persuasive authority analyzing similar language in other statutes or precedent from other jurisdictions. In the rare circumstance in which controlling precedent, analysis of the text of the statute, or other persuasive authority did not resolve the matter, I would consider certain legislative history, if appropriate, such as committee reports.

**3. What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?**

Response: I would interpret the constitutional provision in accordance with how the Supreme Court or D.C. Circuit interpreted the provision at issue. I believe that it would be rare to confront a true constitutional issue of first impression as a district court judge, but if I encountered that rare circumstance, I would consider the text of the provision and the meaning of the terms at issue, as well as the method of interpretation that the Supreme Court or D.C. Circuit has used in the most analogous circumstance.

**4. What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?**

Response: The text and original meaning of a constitutional provision play an important role in interpreting the Constitution. The Supreme Court has, in some cases, interpreted constitutional provisions based on the original meaning of the text at issue, *see, e.g.*, *United States v. Jones*, 565 U.S. 400 (2012); *District of Columbia v. Heller*, 554 U.S. 570 (2008), but not all, *see, e.g., Dickerson v. United States*, 530 U.S. 428 (2000); *Trop v. Dulles*, 356 U.S. 86 (1958). If I am confirmed, I will be bound to follow all Supreme Court and D.C. Circuit precedent concerning the appropriate method of constitutional interpretation in any case.

**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: Please see my response to Question 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: It is my understanding that "plain meaning" refers to the term's ordinary meaning at the time of its enactment.

**6. What are the constitutional requirements for standing?**

Response: The Supreme Court articulated the minimum constitutional requirements for Article III standing in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). Those requirements are: (1) that the plaintiff has suffered an injury in fact that is "concrete and particularized" and "actual or imminent," not "conjectural or hypothetical"; (2) that there is a causal connection between the alleged injury and the defendant's actions, and (3) that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 560–61 (internal quotations and citations omitted). The Supreme Court recently reaffirmed these requirements in *California, et al. v. Texas, et al.* 141 S. Ct. 2104 (2021).

**7. Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?**

Response: In *McCulloch v. Maryland*, 17 U.S. 316 (1819), the Supreme Court recognized that Congress has powers beyond those expressly enumerated in the Constitution by virtue of the Necessary and Proper Clause. *McCulloch* recognized Congress's power to establish a national bank as an example of Congress's implied powers under the Constitution.

**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 apply Supreme Court and D.C. Circuit precedent to evaluate the constitutionality of the law. 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 law in question 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 due process clauses of the Fifth and Fourteenth Amendments protect certain unenumerated "fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition," and "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal quotations and citations omitted). In *Washington v. Glucksberg*, the Court collected cases recognizing substantive due process rights, including: the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); to marital privacy and use of contraception, *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Eisenstadt v. Baird*, 405 U.S. 438 (1972); to bodily integrity, *Rochin v. California*, 342 U.S. 165 (1952), and to abortion, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). *Id.* at 720; *see also Saenz v. Roe*, 526 U.S. 489 (1999) (recognizing a right to travel); *Obergefell v. Hodges*, 576 U.S. 644 (2015) (recognizing a right of same-sex couples to marry). The Supreme Court has also "assumed, and strongly suggested" that there is a "right to refuse unwanted lifesaving medical treatment." *Glucksberg*, 521 U.S. at 720.

**10. What rights are protected under substantive due process?**

Response: Please see my response to Question No. 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: My response to Question No. 9 is not based upon my personal beliefs, but my understanding of the Supreme Court's precedent. The Supreme Court has held that the due process clauses protect the unenumerated rights identified in response to

Question No. 9 because they are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) (internal quotation and citations omitted). The Supreme Court has not afforded the same protection to economic rights that were initially recognized in *Lochner v. New York*. *See, e.g., West Coast Hotel Co. v. Parrish,* 300 U.S. 379 (1937); *Williamson v. Lee Optical of Okla. Inc*., 348 U.S. 483 (1955). If confirmed, I will faithfully apply all Supreme Court precedent, regardless of any opinion I may have about the merits of the Court's decisions.

**12. What are the limits on Congress's power under the Commerce Clause?**

Response: Congress may regulate the use of the channels of interstate commerce, the instrumentalities of interstate commerce, and activity that substantially affects interstate commerce. *See 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 recognized "suspect classes" to include those that pertain to "immutable characteristic[s] determined solely by accident of birth," and classifications 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) (internal quotations and citations omitted). Classifications based upon race, alienage, national origin, and religion are suspect classes requiring strict scrutiny. *See, e.g*., *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 n.4 (1976); *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

**14. How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?**

Response: The separation of powers and system of checks and balances in our Constitution are foundational. Congress is charged with making the law. Courts interpret the laws when there are cases or controversies concerning the application of the law in a case. The executive branch enforces the law. The Framers developed these separate branches of government to decentralize power and to ensure that each branch of government could operate as a check on the power 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: I would look to the text of the Constitution and applicable Supreme Court and D.C. Circuit precedent on the proper scope of executive or congressional power. I would follow that precedent in resolving the controversy before me. For example,

cases like *United States v. Lopez*, 514 U.S. 549 (1995); *United States v. Morrison*, 529 U.S. 598 (2000); or *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) could be instructive depending on the issue.

**16. What role should empathy play in a judge's consideration of a case?**

Response: None.

**17. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?**

Response: Both outcomes are equally undesirable.

**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 studied this issue and have not developed an opinion regarding any changes in the Supreme Court's exercise of its power to invalidate federal statutes.

**19. How would you explain the difference between judicial review and judicial supremacy?**

Response: I understand judicial review to refer to the power of the judicial branch to assess the legality of actions taken by the legislative or executive branch. I understand judicial supremacy to refer to the view that Supreme Court is the final interpreter of the meaning of 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: Elected officials have an independent obligation to uphold the Constitution and are also required to adhere to duly rendered judicial decisions. As a judicial nominee, I do not believe it would be appropriate for me to offer an opinion as to

how elected officials can best balance their constitutional obligations and responsibilities in the event an official perceives some conflict.

**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 essential that judges remain cognizant of their limited authority. Federal judges are not elected officials. They do not share the legislature's power to make the law or the executive's power to enforce the law. A court's role is limited to interpreting what the law is, and only in cases involving actual controversies that are brought before it.

**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: If I am confirmed as a district court judge, it will not be within my purview to question the constitutional underpinnings of a case or limit its applicability below what Supreme Court or D.C. Circuit precedent requires. If I am confirmed, I will be bound to fully and faithfully apply binding precedent to the cases before me regardless whether I agree with it.

**23. When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?**

Response: The sentencing statute, 18 U.S.C. § 1335(a), identifies the factors that a court is directed to consider in sentencing.

**24. 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 familiar with any statement from the Biden Administration defining equity. I do not have a personal definition of equity, but understand it to refer to the quality of being fair and impartial.

**25. Is there a difference between "equity" and "equality?" If so, what is it?**

Response: I do not have personal definitions of "equity" and "equality" and would defer to their dictionary definitions. I understand that there is a current debate concerning the meaning of "equity" and "equality" with some holding the view that equality is focused on ensuring that individuals are provided the same resources and opportunities, while equity concerns ensuring equality in outcomes.

**26. Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 24)?**

Response: In interpreting the 14th Amendment, I would look to the text of the constitutional provision and Supreme Court and D.C. Circuit precedent concerning the scope of its protections.

**27. How do you define "systemic racism?"**

Response: I understand systemic racism to refer to discrimination or causal racial disparities that are the result of policies, patterns, or practices, as opposed to discrete instances of discrimination by individual actors.

**28. How do you define "critical race theory?"**

Response: I do not have a personal definition of critical race theory but understand it to refer to a field of legal scholarship that studies the intersection between race and United States law. I am not familiar with its specific tenets.

**29. Do you distinguish "critical race theory" from "systemic racism," and if so, how?**

Response: Please see my responses to Questions Nos. 27 and 28.

**Senator Ben Sasse**
**Questions for the Record**
**U.S. Senate Committee on the Judiciary**
**Hearing: "Nominations"**
**July 21, 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: I do not use any labels to describe my judicial philosophy. For me, my "judicial philosophy" is the method and manner in which I would approach judicial decision-making if I am fortunate enough to be confirmed. I believe that a judge must thoroughly study the facts and arguments presented by the parties to fully engage with litigants and render informed decisions. A judge must be neutral and impartial, as well as provide parties a full opportunity to be heard on matters related to their cases. I also believe that a judge must put aside all personal beliefs and base her decisions solely on what the law demands, including the text of any relevant constitutional or statutory provisions and applicable precedent. Further, I believe that a judge must treat all parties with respect and expeditiously rule on matters that come before the court.

2. **Would you describe yourself as an originalist?**

   Response: Please see my response to Question No. 1.

3. **Would you describe yourself as a textualist?**

   Response: Please see my response to Question No. 1.

**4. Do you believe the Constitution is a "living" document? Why or why not?**

Response: I do not use the term "living" to describe the Constitution. That term has several definitions and is fraught for many. Instead, I agree with judges and judicial nominees who have described the Constitution as an enduring document. Part of the genius of the Constitution is that its mandates and principles can be applied to new circumstances.

**5. Please name the Supreme Court Justice or Justices appointed since January 20, 1953 whose jurisprudence you admire the most and explain why.**

Response: My deep admiration for many Supreme Court justices does not flow from their jurisprudence or how they may have voted in any case. Rather, I admire Supreme Court justices for their intellectual rigor, fidelity to the law, and service to our democracy. I am particularly grateful for trailblazers like Thurgood Marshall and Sandra Day O'Connor, who reached the height of the legal profession with many odds stacked against them. As the first African American and first woman on the Court respectively, they served an important role modeling function that was motivating for me as I pursued a career in the law.

**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 Bord 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?**

Responses to Questions 6-29: For those cases listed above that remain binding precedent, I would be obligated to follow them, if confirmed, regardless whether I agree with them. I can fulfill that obligation without reservation, and my personal opinions about the Supreme Court's rulings will play no role in my decision-making. Prior judicial nominees have made exceptions to the general rule against nominees commenting on the merits of Supreme Court decisions to acknowledge that *Marbury v. Madison, Brown v. Board of Education* (including *Bolling v. Sharpe*), *Loving v. Virginia*, and *Gideon v. Wainwright* were correctly decided, and I agree.

**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: An appellate court, sitting *en banc*, can overturn its precedent in certain circumstances. Federal Rule of Appellate Procedure 35 governs *en banc* determination and provides that an *en banc* hearing should be ordered only when "necessary to secure and maintain uniformity of the court's decisions" or "the proceeding involves a question of exceptional importance." Of course, if I am confirmed as a district court judge, I would have no occasion to consider whether D.C. Circuit precedent should be revisited. I would be bound to defer to the D.C. Circuit's determination whether it is appropriate to reaffirm or overturn precedent.

**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: Please see my response to Question 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. A defendant's race should not be a factor in the court's sentencing decisions.

For Ms. Jia Cobb:

**1. Why did you choose to work for the Public Defender Service for the District of Columbia?**

Response: I went to law school to pursue a career in public service. At law school, I had two professors who started their careers at the Public Defender Service for the District of Columbia (PDS) and spoke highly of their experience. I spent part of my 2L summer at PDS and participated in a trial advocacy course during my 3L year that PDS attorneys largely taught. Based on these experiences, I decided that PDS was a great place to begin my career in public service. I welcomed the opportunity to work with individual clients

and to ensure that all my clients received the protections that our Constitution affords them, regardless of their financial circumstances. Additionally, PDS is known for its substantial trial training and supervision. In addition to the important work that I could do for clients—which was my priority—I also learned how to effectively prepare and conduct a trial from talented trial lawyers.

2. **Were you ever concerned that your work for the Public Defender Service for the District of Columbia would result in more violent criminals—including gun criminals and sex criminals—being put back on the streets?**

   Response: No.

**Questions from Senator Thom Tillis**
**for Jia Michelle Cobb**
**Nominee to be United States District Judge for the District of Columbia**

1. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   Response: Yes.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: Judicial activism may have different definitions to different people. I define a judicial activist as a judge who does not set aside her personal views about the outcome of a case and who does not feel constrained by the requirements of the law in making judicial decisions—neither of which are appropriate.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: Impartiality is an absolute expectation for a judge.

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: If I am confirmed as a district court judge, I would be required to apply federal statutes and applicable precedent regardless whether I agree with them. I would also be required to respect and uphold lawful determinations of a jury, regardless whether I would have made a different decision as the finder of fact. The only desirable outcome in any case is one that comports with the law. A judge who faithfully and strictly applies the law will likely have to render decisions that conflict with her personal beliefs, but she must do so regardless of the result.

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: The Supreme Court has held that the Second Amendment confers, "an individual right to keep and bear arms." *D.C. v. Heller*, 554 U.S. 570, 595 (2008); *see*

*also McDonald v. City of Chicago,* 561 U.S. 742 (2010) (holding that the right of an individual to keep and bear arms under the Second Amendment is enforceable against the states). If confirmed, I would follow this precedent without reservation.

**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 review Supreme Court and D.C. Circuit cases and apply the applicable precedent to the matters before me. Supreme Court and D.C. Circuit precedent provide instruction for analyzing Second Amendment challenges. *See, e.g., D.C. v. Heller*, 554 U.S. 570 (2008); *Wrenn v. D.C.*, 864 F.3d 650 (D.C. Cir. 2017); *Schrader v. Holder*, 704 F.3d 980 (2013); *Heller v. District of Columbia* (*Heller II*), 670 F.3d 1244 (D.C. Cir. 2011). The Supreme Court is also considering a case concerning whether New York's denial of applications for concealed-carry licenses violates the Second Amendment, which may be instructive on the issue once it is decided. *See New York State Rifle & Pistol Ass'n, Inc., et al. v. Bruen, et al.*, No. 20-843.

The Supreme Court has also considered the permissibility of certain COVID-19 restrictions that impact constitutional rights, which I would consider in evaluating any similar challenges. *See, e.g.*, *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68 (2020); *Tandon v. Newsom*, 141 S. Ct. 1294 (2021).

**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: There is ample Supreme Court and D.C. Circuit precedent on qualified immunity, and I would analyze and apply this precedent in resolving qualified immunity cases, if confirmed. Supreme Court precedent makes clear that officers are entitled to qualified immunity unless "(1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of the conduct was clearly established at the time." *D.C. v. Wesby*, 138 S. Ct. 577, 589 (2018).

**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 judicial nominee, I do not think it would be proper for me to offer my opinion on Supreme Court precedent. I believe that legislative bodies are best suited to answer questions regarding the scope of qualified immunity and to make changes if they deem appropriate.

**11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?**

Response: Please see my response to Question No. 10.

**12. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?**

Response: As a judicial nominee, I do not generally think it would be proper for me to offer my opinion on, or criticize, Supreme Court precedent. In any event, I have not developed an opinion on the matter because I have not litigated patent eligibility cases in my civil practice. I would look to precedent setting forth standards for patent eligibility, for example, *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014) and *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), to apply to any patent eligibility matters before me, if confirmed.

**13. How would you apply current patent eligibility jurisprudence to the following hypotheticals. Please avoid giving non-answers and actually analyze these hypotheticals.**

**a. *ABC Pharmaceutical Company* develops a method of optimizing dosages of a substance that has beneficial effects on preventing, treating or curing a disease or condition for individual patients, using conventional technology but a newly-discovered correlation between administered medicinal agents and bodily chemicals or metabolites. Should this invention be patent eligible?**

Response: I agree with other judicial nominees who have declined to analyze specific factual hypotheticals, as doing so may suggest how candidates would decide matters that could come before them, if confirmed. If a matter like the hypothetical posed in Question No. 13a came before me, if confirmed, I would look to precedent, such as *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014); *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012); and any other precedent that could potentially be instructive, to apply to the facts of the case before me.

**b. *FinServCo* develops a valuable proprietary trading strategy that demonstrably increases their profits derived from trading commodities. The strategy involves a new application of statistical methods, combined with predictions about how trading markets behave that are derived from insights into human psychology. Should *FinServCo's* business method standing alone be eligible? What about the business method as practically applied on a computer?**

Response: I agree with other judicial nominees who have declined to analyze specific factual hypotheticals, as doing so may suggest how candidates would decide matters that come before them, if confirmed. If a matter like the hypothetical posed in Question No. 13b came before me, if confirmed, I would look to precedent, such as *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014); *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012); *Bilski v. Kappos*, 561 U.S. 593 (2010); and any other precedent that could potentially be instructive, to apply to the facts of the case before me.

**c. *HumanGenetics* Company wants to patent a human gene or human gene fragment as it exists in the human body. Should that be patent eligible? What if *HumanGenetics* Company wants to patent a human gene or fragment that contains sequence alterations provided by an engineering process initiated by humans that do not otherwise exist in nature? What if the engineered alterations were only at the end of the human gene or fragment and merely removed one or more contiguous elements?**

Response: I agree with other judicial nominees who have declined to analyze specific factual hypotheticals, as doing so may suggest how candidates would decide matters that come before them, if confirmed. If a matter like the hypothetical posed in Question No. 13c came before me, if confirmed, I would look to precedent, such as *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014); *Association for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576 (2013); *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012); and any other precedent that could potentially be instructive, to apply to the facts of the case before me.

**d. *BetterThanTesla ElectricCo* develops a system for billing customers for charging electric cars. The system employs conventional charging technology and conventional computing technology, but there was no previous system combining computerized billing with electric car charging. Should *BetterThanTesla's* billing system for charging be patent eligible standing alone? What about when it explicitly claims charging hardware?**

Response: I agree with other judicial nominees who have declined to analyze specific factual hypotheticals, as doing so may suggest how candidates would decide matters that come before them, if confirmed. If a matter like the hypothetical posed in Question No. 13d came before me, if confirmed, I would look to precedent, such as *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014); *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012); *Bilski v. Kappos*, 561 U.S. 593 (2010); *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398 (2007), and any other precedent that could potentially be instructive, to apply to the facts of the case before me.

**e. *Natural Laws and Substances, Inc.* specializes in isolating natural substances and providing them as products to consumers. Should the isolation of a**

**naturally occurring substance other than a human gene be patent eligible? What about if the substance is purified or combined with other substances to produce an effect that none of the constituents provide alone or in lesser combinations?**

Response: I agree with other judicial nominees who have declined to analyze specific factual hypotheticals, as doing so may suggest how candidates would decide matters that come before them, if confirmed. If a matter like the hypothetical posed in Question No. 13e came before me, if confirmed, I would look to precedent, such as *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014); *Association for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576 (2013); *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012); and any other precedent that could potentially be instructive, to apply to the facts of the case before me.

**f. A business methods company, *FinancialServices Troll,* specializes in taking conventional legal transaction methods or systems and implementing them through a computer process or artificial intelligence. Should such implementations be patent eligible? What if the implemented method actually improves the expected result by, for example, making the methods faster, but doesn't improve the functioning of the computer itself? If the computer or artificial intelligence implemented system does actually improve the expected result, what if it doesn't have any other meaningful limitations?**

Response: I agree with other judicial nominees who have declined to analyze specific factual hypotheticals, as doing so may suggest how candidates would decide matters that come before them, if confirmed. If a matter like the hypothetical posed in Question No. 13f came before me, if confirmed, I would look to precedent, such as *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014); *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012); *Bilski v. Kappos*, 561 U.S. 593 (2010); and any other precedent that could potentially be instructive, to apply to the facts of the case before me.

**g. *BioTechCo* discovers a previously unknown relationship between a genetic mutation and a disease state. No suggestion of such a relationship existed in the prior art. Should *BioTechCo* be able to patent the gene sequence corresponding to the mutation? What about the correlation between the mutation and the disease state standing alone? But, what if *BioTech Co* invents a new, novel, and nonobvious method of diagnosing the disease state by means of testing for the gene sequence and the method requires at least one step that involves the manipulation and transformation of physical subject matter using techniques and equipment? Should that be patent eligible?**

Response: I agree with other judicial nominees who have declined to analyze specific factual hypotheticals, as doing so may suggest how candidates would decide matters that come before them, if confirmed. If a matter like the hypothetical posed

in Question No. 13g came before me, if confirmed, I would look to precedent, such as *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014); *Association for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576 (2013); *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012); *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398 (2007); and any other precedent that could potentially be instructive to apply to the facts of the case before me.

**h. Assuming *BioTechCo's* diagnostic test is patent eligible, should there exist provisions in law that prohibit an assertion of infringement against patients receiving the diagnostic test? In other words, should there be a testing exemption for the patient health and benefit? If there is such an exemption, what are its limits?**

Response: As a judicial nominee, I do not believe it would be proper to opine regarding any provisions that should exist in law.

**i. *Hantson Pharmaceuticals* develops a new chemical entity as a composition of matter that proves effective in treating TrulyTerribleDisease. Should this new chemical entity be patent eligible?**

Response: I agree with other judicial nominees who have declined to analyze specific factual hypotheticals, as doing so may suggest how candidates would decide matters that come before them, if confirmed. If a matter like the hypothetical posed in Question No. 13i came before me, if confirmed, I would look to precedent, such as *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014); *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012); and any other precedent that could potentially be instructive to apply to the facts of the case before me.

**j. *Stoll Laboratories* discovers that superconducting materials superconduct at much higher temperatures when in microgravity. The materials are standard superconducting materials that superconduct at lower temperatures at surface gravity. Should *Stoll Labs* be able to patent the natural law that superconductive materials in space have higher superconductive temperatures? What about the space applications of superconductivity that benefit from this effect?**

Response: I agree with other judicial nominees who have declined to analyze specific factual hypotheticals, as doing so may suggest how candidates would decide matters that come before them, if confirmed. If a matter like the hypothetical posed in Question No. 13j came before me, if confirmed, I would look to precedent, such as *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014); *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012); and any other precedent that could potentially be instructive to apply to the facts of the case before me.

**14. Based on the previous hypotheticals, 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**
**Judge Sarah Merriam**
**Judicial Nominee to the U.S. District Court for the District of Connecticut**

1. **Prior to your current career you were extremely active in partisan politics. Indeed Senator Murphy once commended your lack of a judicial temperament when working as a political operator. What assurances can you give me that you will put your partisan preferences behind and do equal justice as an Article III judge?**

   Response: My active work in partisan politics ended in 2007, when I became an Assistant Federal Defender. For the past six years I have served as a United States Magistrate Judge. In that role, I have been completely impartial. I have demonstrated judicial temperament. I have scrupulously followed my oath of office, doing equal justice "without respect to persons" and without regard for any past partisan positions. I would continue to do so if confirmed as a District Judge.

2. **In the context of federal case law, what is super precedent? Which cases, if any, count as super precedent?**

   Response: I am not familiar with the term "super precedent." Upon receipt of this question, I conducted a Westlaw search for that term in Supreme Court and Second Circuit reported cases, and found no results.

3. **Should law firms undertake the pro bono prosecution of crimes?**

   Response: Only the government may prosecute crimes. "It is a truism, and has been for many decades, that in our federal system crimes are always prosecuted by the Federal Government, not as has sometimes been done in Anglo-American jurisdictions by private complaints." Connecticut Action Now, Inc. v. Roberts Plating Co., 457 F.2d 81, 86–87 (2d Cir. 1972); see also Hill v. Didio, 191 F. App'x 13, 14–15 (2d Cir. 2006) ("[W]e have long recognized that crimes are prosecuted by the government, not by private parties.").

4. **Do you agree with Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a "living constitution"?**

   Response: I am not familiar with Judge Jackson's comments, and I am not aware of her beliefs on the issue. The Constitution has served this country for more than 230 years, and I expect it will continue to do so for many centuries more. I do not subscribe to any particular judicial philosophy such as "living constitutionalism." If I am confirmed as a District Judge, I would interpret the Constitution in accordance with the established precedent of the Supreme Court and the Second Circuit.

5. **Should a judge yield to social pressure when deciding the outcome of cases?**

   Response: No.

6. **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: No. Please see my response to Question 3.

7. **The Federalist Society is an organization of conservatives and libertarians dedicated to the rule of law and legal reform. Would you hire a member of the Federalist Society to serve in your chambers as a law clerk?**

   Response: In my six years as a Magistrate Judge I have hired law clerks based on their abilities and skills, as revealed by their law school records, their writing samples, the recommendations of those who know their work, and their curriculum vitae, and without consideration of any memberships or affiliations. If I am confirmed as a District Judge, I would continue to hire law clerks based upon ability and record.

8. **Absent a traditional conflict of interest, should paying clients of a law firm be able to prevent other paying clients from engaging the firm?**

   Response: I was never tasked with this sort of decision-making when I was in private practice, and have no opinion on the issue. I would leave such decisions to the law firm.

9. **Should paying clients be able to influence which pro bono clients engage a law firm?**

   Response: I was never tasked with this sort of decision-making when I was in private practice, and have no opinion on the issue. I would leave such decisions to the law firm.

10. **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.

11. **Should judicial decisions take into consideration principles of social "equity"?**

    Response: Judicial decisions should be based on the law. I am not sure what is meant in this context by "social equity," but a judicial decision should not be based on a judge's personal views on the equities of a situation.

12. **Is it ever appropriate for a judge to publicly profess political positions on campaigns and/or candidates?**

    Response: No.

13. **Is threatening Supreme Court Justices right or wrong?**

Response: It is wrong to threaten a Justice. In fact, it is a crime to threaten any federal judge if the threat is made "with intent to impede, intimidate, or interfere with" the judge "while engaged in the performance of official duties, or with intent to retaliate against" the judge "on account of the performance of official duties[.]" 18 U.S.C. §115(a)(1).

14. **How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?**

Response: I believe the distinction between an "attack" and a criticism would depend on the specific circumstances, including the language used, and I am unaware of any case law on the question. There is case law providing guidance on the question of whether any particular statement constitutes a "threat" to a sitting judge so as to constitute a criminal offense.

15. **Do you think the Supreme Court should be expanded?**

Response: This is a policy question, and it is my understanding that it is currently the topic of at least one proposed piece of legislation. As a sitting judge and a nominee it would be improper for me to opine on this question, which is the preserve of the Legislative and Executive Branches.

16. **Should a defendant's personal characteristics influence the punishment he or she receives?**

Response: The sentencing statute directs a sentencing judge to consider "the history and characteristics of the defendant[,]" 18 U.S.C. §3553(a)(1), among other factors, in determining an appropriate sentence.

17. **If the Justice Department determines that the prosecution of an individual is meritless and dismisses the case, is it appropriate for a District Judge to question the Department's motivations and appoint an amicus to continue the prosecution? Please explain why or why not.**

Response. I believe this question is currently pending in a federal court outside of my District. Therefore, it would be improper for me to comment, as a sitting judge and a nominee, pursuant to Canon 3(A)(6) of the Canons of Judicial Conduct, which prohibits a judge from making "public comment on the merits of a matter pending or impending in any court." I note that the Supreme Court disapproved of the solicitation of amicus briefs by an Appeals Court, under the "principle of party presentation[.]" United States v. Sineneng-Smith, 140 S. Ct. 1575, 1578 (2020).

18. **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: This is an open question in federal law. The Supreme Court has held that, in a class action, "the scope of injunctive relief is dictated by the extent of the violation

established, not by the geographical extent of the plaintiff class." Califano v. Yamasaki, 442 U.S. 682, 702 (1979). More recently, the Court has observed that only where a constitutional violation has been shown to be "systemwide" should the corresponding injunctive relief be given that scope. Lewis v. Casey, 518 U.S. 343, 359 (1996). Justice Thomas has expressed skepticism about whether such injunctions are within the authority of a district court. See Trump v. Hawaii, 138 S. Ct. 2392, 2425 (2018) (Thomas, J., concurring). He observed, however, that "[a]n injunction that was properly limited to the plaintiffs in the case would not be invalid simply because it governed the defendant's conduct nationwide." Id. at 2425 n.1. Justice Gorsuch noted last year that the Supreme Court has not yet taken up what he views as "the underlying equitable and constitutional questions raised by the rise of nationwide injunctions." Dep't of Homeland Sec. v. New York, 140 S. Ct. 599, 601 (2020) (Gorsuch, J., concurring). If presented with this question, I would apply Supreme Court and Second Circuit precedent to determine the proper scope of any injunction to be issued.

19. **What legal standard would you apply in evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?**

Response: The Supreme Court has not yet articulated the appropriate standard for review of a law that infringes Second Amendment rights; either intermediate or strict scrutiny must be applied. See Rogers v. Grewal, 140 S. Ct. 1865, 1868 (2020) (Thomas, J., dissenting) (noting variety of approaches used by Circuit Courts after District of Columbia v. Heller, 554 U.S. 570 (2008)). The Second Circuit has suggested that two factors should be considered in determining the appropriate level of scrutiny: "(1) how close the law comes to the core of the Second Amendment right and (2) the severity of the law's burden on the right." New York State Rifle & Pistol Ass'n, Inc. v. Cuomo, 804 F.3d 242, 258 (2d Cir. 2015) (citations and quotation marks omitted). If presented with this question, I would apply Supreme Court and Second Circuit precedent to determine the proper standard of review.

20. **In your view, is a personal philosophical or religious objection to the death penalty on the part of the President a valid justification to abandon the defense of a death sentence on direct appeal?**

Response: The question of whether to pursue a particular prosecution or appeal can only be decided by the Executive Branch.

21. **In your view, is a personal philosophical or religious objection to the death penalty on the part of a District Judge a valid justification not to impose a death sentence?**

Response: No. A judge must apply the law regardless of her personal views.

22. **Do you believe potential voter fraud or other election abnormalities are concerns that the Justice Department should take seriously?**

Response: I believe free and fair elections are a cornerstone of our democracy and should be a concern for all Americans. The question of which issues should be prioritized by the Department of Justice is a policy question, which can only be decided by the Executive Branch.

23. **Do state school-choice programs make private schools state actors for the purposes of the Americans with Disabilities Act?**

Response: The Supreme Court has "identified a host of facts that can bear" on the question of when the acts of a private entity can be considered "state action." Brentwood Acad. v. Tennessee Secondary Sch. Athletic Ass'n, 531 U.S. 288, 296 (2001). I am unaware of any precedent applying these tests to private schools operating under school-choice programs, under the Americans with Disabilities Act. However, I note that the Court has found that a school that "depended on the State for funds[]" did not become a "state actor" for purposes of 42 U.S.C. §1983, finding that "the school's fiscal relationship with the State is not different from that of many contractors performing services for the government" Rendell-Baker v. Kohn, 457 U.S. 830, 840, 843 (1982). If this issue were presented to me, I would research it thoroughly and apply Supreme Court and Second Circuit precedent to reach a decision.

24. **Does illegal immigration impose costs on border communities?**

Response: I have no personal knowledge of this issue.

25. **When was the last time you visited the U.S.-Mexico border?**

Response: I have never visited the U.S.-Mexico border.

26. **When was the last time you visited the U.S.-Mexico border outside of a port of entry?**

Response: I have never visited the U.S.-Mexico border.

27. **Do Blaine Amendments violate the Constitution?**

Response: The "Blaine Amendment" "would have added to the Federal Constitution a provision similar to the" type of "no-aid" provision challenged in Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246, 2259 (2020). The Supreme Court has found such state laws, which prohibit aid to certain schools based on their religious character must be subjected to strict scrutiny. The Court has struck down such laws in both Espinoza and Trinity Lutheran Church of Columbia, Inc. v. Comer, 137 S. Ct. 2012 (2017), as violations of the Free Exercise clause of the First Amendment. If presented with a challenge to a "Blaine Amendment" type law, I would apply Supreme Court and Second Circuit precedent.

28. **Is it possible to turn lead into gold?**

Response: I am not a scientist, but I was taught in school that it is a matter of accepted scientific fact that one element cannot be converted into another element.

29. **Does the sun revolve around the earth?**

Response: I am not a scientist, but I was taught in school that it is a matter of accepted scientific fact that the Earth revolves around the sun.

30. **Are illnesses caused by an imbalance of humors?**

Response: I have never heard this theory, and cannot answer the question.

31. **Is a human embryo something other than a living human being?**

Response: I am not a medical professional or scientist, and I do not believe this question was addressed when I took biology in the 1980s. As a sitting judge, I have never been presented with a case in which this issue would become relevant. However, the question of the status of a human embryo remains the subject of extensive and ongoing debate and litigation. As a sitting judge and as a nominee, it would therefore be inappropriate for me to comment further.

32. **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 sent a letter to Senator Blumenthal and Senator Murphy in early February 2021, indicating that I would be interested in being considered for the judicial vacancies in the District of Connecticut. I received information from Senator Blumenthal's office by email, including a questionnaire to be completed for review by an Advisory Committee appointed by the Senators. I submitted the questionnaire and other requested materials to the Committee through a member of Senator Blumenthal's office. It is my understanding that the Advisory Committee recommended my nomination to the Senators, though I was never contacted directly by the Advisory Committee. I was contacted by Senator Blumenthal's office to arrange an interview with Senator Blumenthal and Senator Murphy by Zoom, which occurred in March 2021. Senator Blumenthal's office then contacted me to inform me that my name had been provided to the White House Counsel's Office.

I received an email from the White House Counsel's Office on April 18, 2021, and was interviewed by attorneys from that Office on April 20, 2021. On June 15, 2021, my nomination was submitted to the Senate.

33. **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.

a. **Did anyone do so on your behalf?**

Response: No.

34. **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.

a. **Did anyone do so on your behalf?**

Response: No.

35. **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.

a. **Did anyone do so on your behalf?**

Response: No.

36. **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.

a. **Did anyone do so on your behalf?**

Response: No.

37. **List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.**

Response: I was interviewed by attorneys from the White House Counsel's Office on April 20, 2021. I have been in contact with representatives of the White House Counsel's Office and the Office of Legal Policy since April 22, 2021.

38. **Please explain, with particularity, the process whereby you answered these questions.**

Response: I received the questions by email on July 21, 2021, and immediately began preparing my responses. In responding to some questions, I referred to my Senate Judiciary Questionnaire. I also conducted research on Westlaw and other online sources regarding particular terms and cases raised by some of the questions. I shared my responses with employees of the Department of Justice, Office of Legal Policy, Judicial Nominations staff, who offered feedback on some of my responses.

**Nomination of The Honorable Sarah A. L. Merriam to be**
**United States District Judge for the District of Connecticut**
**Questions for the Record**
**Submitted July 21, 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 Magistrate Judge, I apply Supreme Court precedent without exception or hesitation, and if confirmed as a District Judge, I could continue to do so. As a sitting judge, and as a nominee, it is generally inappropriate for me to either praise or criticize any binding Supreme Court precedent, since I am bound to apply all of them.

4. **Is the Second Amendment right to keep and bear arms an individual right belonging to individual persons, or a collective right that only belongs to a group such as a militia?**

   Response: The Supreme Court has held that there is "no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms." D.C. v. Heller, 554 U.S. 570, 595 (2008) (emphasis added).

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, 2095 (2021), the Supreme Court considered the availability of relief under its recent decision in Rehaif v. United States, 588 U.S. ——, 139 S. Ct. 2191 (2019). Rehaif clarified the mens rea requirement for the offense of unlawful possession of a firearm by a prohibited person, such as a convicted felon. Greer holds that a defendant is only entitled to plain error relief on a claim under Rehaif if the defendant "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." Greer, 141 S. Ct. at 2100.

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, 141 S. Ct. 1858 (2021), the Supreme Court held that the First Step Act does not authorize a sentence reduction for a defendant convicted under 21 U.S.C. §841(b)(1)(C), which carries no mandatory minimum sentence, because the penalties under that subsection were not modified by the Act.

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 found that a sentencing court need not make either an express or implicit factual finding of "permanent incorrigibility" at sentencing in order to impose a sentence of life without parole on a person under the age of 18 who has been convicted of murder. Id. at 1318.

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, 141 S. Ct. 1294 (2021), the Court found that COVID restrictions imposed by the State of California treated certain religious gatherings less favorably than some secular activities, and that the restrictions therefore were not content-neutral, triggering strict scrutiny review. The Court found that the restrictions violated the petitioners' free exercise rights, and issued an injunction against the restrictions pending appeal.

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, 141 S. Ct. 1809 (2021), the Supreme Court found that an immigrant who entered the United States unlawfully, but was later granted "Temporary Protected Status," was not eligible to apply for Legal Permanent Resident status because the Temporary Protected Status does not alter the fact that his initial entry into the United States was not lawful, and only those who enter the country lawfully are eligible for Legal Permanent Resident status.

10. **What is your view of arbitration as a litigation alternative in civil cases?**

    Response: When I was in private practice, I do not believe I was ever involved in an arbitration, or confronted with the question of whether it would be a good alternative to litigation. As a Magistrate Judge, I regularly preside over settlement conferences, if the parties seek to resolve matters that have already proceeded to litigation, but I have not

had occasion to be involved with arbitration. As a result, I do not have any particular views on arbitration.

11. **Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.**

Response: I received the questions by email on July 21, 2021. I prepared the responses myself. In responding to some questions, I referred to my Senate Judiciary Questionnaire. I also conducted research on Westlaw and other online resources regarding particular terms and cases raised by some of the questions.

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. I wrote and drafted all of my responses myself. After I drafted my responses, I shared them with employees of the Department of Justice, Office of Legal Policy, Judicial Nominations staff, who offered feedback on some of my responses.

**SENATOR TED CRUZ**
**U.S. Senate Committee on the Judiciary**

**Questions for the Record for Sarah Ann Leilani Merriam, to be United States District Judge for the District of Connecticut**

## 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. **You have a long and deep history of partisan political activity. If confirmed, what steps will you take to ensure that you not only follow the judicial oath to be impartial, but that you appear to be impartial?**

   Response: My active work in partisan politics ended in 2007, when I became an Assistant Federal Defender. For the past six years I have served as a United States Magistrate Judge. In that role, I have been completely impartial. I have demonstrated judicial temperament. I have scrupulously followed my oath of office, doing equal justice "without respect to persons" and without regard for any past partisan positions. I would continue to do so if confirmed as a District Judge. In addition to conducting myself in a completely impartial fashion on the bench, I strictly adhere to Canon 5. I ensure that I do not attend events in the community or make public statements that might give rise to any appearance of impartiality.

2. **In 2003, you wrote about several steps the City of Hartford could take to "turn this city around" including increased police presence, DUI checkpoints, parking enforcement, etc. You urged the City to "get serious about law enforcement in Hartford." Do you continue to believe that these recommendations were correct?**

   Response: I continue to believe that those recommendations were correct at the time I made them. At the time I wrote those letters, I lived, worked, and owned a home in downtown Hartford. I have not lived or worked in Hartford for almost 15 years now, so I have no current opinion on the City of Hartford's law enforcement priorities.

3. **Is it appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns? Please explain.**

   Response: No.

4. **Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's philosophy from Warren, Burger, Rehnquist, or Robert's Courts is most analogous with yours.**

   Response: I am a trial judge, and if I am confirmed, I will continue to be a trial judge. In that role, I am focused on resolving the disputes that come before me fairly and accurately and with respect and courtesy to all parties. I understand that when a case comes to federal court, something has gone wrong, and the parties to the dispute, whether civil or criminal, need the Court's assistance in resolving the dispute. I dedicate myself to doing that while honoring the dictates of the Code of Conduct, particularly Canon 3(A), balancing every party's "full right to be heard" with the need to "dispose promptly of the business of the court[,]" while being courteous and respectful to all concerned. There is no individual Justice whose philosophy of judging I have studied carefully enough to know whether it aligns with my own approach. The role of a Supreme Court Justice is so different from the role of a trial judge that it is difficult to analogize the two.

5. **Does the Constitution's meaning evolve and adapt to new circumstances even if the document is not formally amended? If so, when?**

Response: Only in those limited circumstances when the Supreme Court so declares. If I am confirmed as a District Judge, my role would be to apply the Constitution as it has been interpreted by the Supreme Court, and by the Second Circuit. I would faithfully apply that precedent, and honor the limitations it imposes.

6. **Is it ever appropriate to use legislative history when interpreting a law? If so, under what circumstances, and how should that legislative history be used.**

Response: Yes, sometimes. The Supreme Court and the Second Circuit have, in some circumstances, looked to legislative history in interpreting laws, if the plain language of the statute is unclear, and persuasive legislative history is available. See, e.g., Barnhill v. Johnson, 503 U.S. 393, 401 (1992) ("[A]ppeals to statutory history are well taken only to resolve 'statutory ambiguity.'"). "If the text is clear, it needs no repetition in the legislative history; and if the text is ambiguous, silence in the legislative history cannot lend any clarity." Encino Motorcars, LLC v. Navarro, 138 S. Ct. 1134, 1143 (2018). The Supreme Court has recently confirmed that though it may be useful at times, "legislative history is not the law." Azar v. Allina Health Servs., 139 S. Ct. 1804, 1814 (2019) (citations and quotation marks omitted). Within the broad category of "legislative history," different sources are accorded different weight. See, e.g., Food Mktg. Inst. v. Argus Leader Media, 139 S. Ct. 2356, 2364 (2019) (describing excerpts from committee testimony as "among the least illuminating forms of legislative history" (citation and quotation marks omitted)). I would use legislative history in interpreting a law only if and when such use is consistent with Supreme Court and Second Circuit precedent.

7. **Please briefly describe the interpretive method often referred to as living constitutionalism.**

Response: Black's Law Dictionary defines "living constitutionalism" as: "The doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." Living Constitutionalism, Black's Law Dictionary (11th ed. 2019).

8. **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: Only the Supreme Court can decide this, and to the best of my knowledge, it has not spoken clearly on this issue, in binding precedent. The Court has debated the use of evidence of current public opinion or understanding, but I am not aware that it has reached a decisive, collective conclusion. See, e.g., Atkins v. Virginia, 536 U.S. 304, 325 (2002) (Rehnquist, C.J., dissenting) (disagreeing with majority's use of "public opinion poll results" in consideration of Eighth Amendment issues); but see, e.g., Trop v. Dulles, 356 U.S. 86, 101 (1958) (discussing "evolving standards of decency"). If presented with

the issue, I would consider such public understanding only if and when such consideration is consistent with Supreme Court and Second Circuit precedent.

9. **Is the ability to own a firearm a personal civil right?**

Response: Yes. See District of Columbia v. Heller, 554 U.S. 570 (2008) (describing the right to possess and carry firearms as an individual right).

10. **Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?**

Response: No.

**Questions for the Record for Sarah Ann Leilani Merriam**
**From Senator Mazie K. Hirono**

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:

   **a. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

   Response: No.

   b. **Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

   Response: No.

**Senator Mike Lee**
**Questions for the Record**
**Sarah Merriam, D. Conn.**

1. **How would you describe your judicial philosophy?**

Response: I am a trial judge, and if I am confirmed, I will continue to be a trial judge. In that role, I am focused on resolving the disputes that come before me fairly and accurately and with respect and courtesy to all parties. I understand that when a case comes to federal court, something has gone wrong, and the parties to the dispute, whether civil or criminal, need the Court's assistance in resolving the dispute. I dedicate myself to doing that while honoring the dictates of the Code of Conduct, particularly Canon 3(A), balancing every party's "full right to be heard" with the need to "dispose promptly of the business of the court[,]" while being courteous and respectful to all concerned.

2. **What sources would you consult when deciding a case that turned on the interpretation of a federal statute?**

Response: I begin with the text of any statute. Next, I would consult Supreme Court and Second Circuit precedent interpreting that statute. If no binding precedent were available, I would turn to precedent interpreting related or analogous statutes, or to persuasive precedent from other Circuits. Ordinarily I expect that would end my inquiry. In the unusual case where the text and the applicable case law were insufficient to resolve the issue, I would look to any other persuasive and reliable sources approved by the Supreme Court and the Second Circuit for interpretation of that or similar statutes, such as legislative history.

3. **What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?**

Response: I would begin with the text of the constitutional provision. Next, I would consult Supreme Court and Second Circuit precedent interpreting that provision. If no binding precedent were available, I would turn to precedent interpreting related or analogous provisions, or persuasive precedent from other Circuits. Ordinarily I expect that would end my inquiry. In the unusual case where the text and the applicable case law were insufficient to resolve the issue, I would look to any other persuasive and reliable sources approved by the Supreme Court and the Second Circuit for interpretation of that or similar provisions.

4. **What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?**

Response: The text controls. Where the Supreme Court or the Second Circuit has indicated that original meaning may be relevant to the interpretation of a particular provision, that is also a relevant consideration.

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: I begin with the text of any statute. I read the statute as a whole, with an eye to its structure, and I give primary weight to the plain meaning of the text.

**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 would strictly follow the guidance of the Supreme Court on this question. The Supreme Court has indicated in some contexts that "our understanding of" particular constitutional provisions "has evolved over time." Gonzales v. Raich, 545 U.S. 1, 15–16 (2005). In other contexts, the Supreme Court has turned to the original meaning of a provision. See, e.g., Gamble v. United States, 139 S. Ct. 1960, 1966 (2019) (considering original meaning of Double Jeopardy Clause); Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Aurelius Inv., LLC, 140 S. Ct. 1649, 1659 (2020) (considering original meaning of Appointments Clause).

6. **What are the constitutional requirements for standing?**

Response: The "irreducible constitutional minimum of standing consists of three elements. The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1547 (2016) (citation and 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: As early as the seminal case of M'Culloch v. Maryland, the Supreme Court has held that certain powers are implicitly granted to Congress, specifically, those necessary to carry out its duties under the Constitution: "Even without the aid of the general clause in the constitution, empowering congress to pass all necessary and proper laws for carrying its powers into execution, the grant of powers itself necessarily implies the grant of all usual and suitable means for the execution of the powers granted." M'Culloch v. Maryland, 17 U.S. 316, 323–24 (1819). One hundred years later, the Supreme Court held that the question of whether a particular unenumerated power may be attributed to Congress "must depend upon how far such

limited power is ancillary or incidental to the power granted to Congress[.]" Marshall v. Gordon, 243 U.S. 521, 537 (1917).

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 begin by evaluating the scope of Congress's power in the relevant area, as delineated in the text of the Constitution. I would then consult Supreme Court and Second Circuit precedent interpreting similar enactments. To the extent the government argued that Congress acted pursuant to some established but unenumerated power, I would evaluate whether the Supreme Court had in fact recognized such a power.

9. **Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?**

Response: The Ninth Amendment protects against the infringement of unenumerated rights, suggesting that those rights must be protected. The Supreme Court has found particular unenumerated rights are protected by the Constitution, including the right to interstate travel, the right to vote, and various "privacy" rights, including those described below in response to Question 10.

10. **What rights are protected under substantive due process?**

Response: In 1997, the Supreme Court described the rights it had identified as protected by "substantive due process" as follows: "In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the rights to marry, Loving v. Virginia, 388 U.S. 1 (1967); to have children, Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535 (1942); to direct the education and upbringing of one's children, Meyer v. Nebraska, 262 U.S. 390 (1923); Pierce v. Society of Sisters, 268 U.S. 510 (1925); to marital privacy, Griswold v. Connecticut, 381 U.S. 479 (1965); to use contraception, ibid.; Eisenstadt v. Baird, 405 U.S. 438 (1972); to bodily integrity, Rochin v. California, 342 U.S. 165 (1952), and to abortion, Casey, supra. We have also assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment. Cruzan, 497 U.S., at 278–279." Washington v. Glucksberg, 521 U.S. 702, 720 (1997).

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: The rights protected by "substantive due process" are delineated by the Supreme Court. If I am confirmed as a district judge, I will apply the precedent of the

Supreme Court and the Second Circuit in determining what types of rights are, or are not, protected under that doctrine.

12. **What are the limits on Congress's power under the Commerce Clause?**

Response: Congress's power under the Commerce Clause is limited to three types of congressional action: "First, Congress can regulate the channels of interstate commerce. Second, Congress has authority to regulate and protect the instrumentalities of interstate commerce, and persons or things in interstate commerce. Third, Congress has the power to regulate activities that substantially affect interstate commerce." Gonzales v. Raich, 545 U.S. 1, 16–17 (2005). The Commerce Clause does not permit Congress "to regulate individuals as such, as opposed to their activities[.]" Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 557 (2012). It can also be limited by other Constitutional provisions. See, e.g., United States v. Martignon, 492 F.3d 140, 149 (2d Cir. 2007) (Copyright Clause); Ry. Lab. Executives' Ass'n v. Gibbons, 455 U.S. 457, 468 (1982) (Bankruptcy 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 held that application of strict scrutiny review is triggered by classifications based on race, national origin, or alienage. Graham v. Richardson, 403 U.S. 365, 372 (1971).

14. **How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?**

Response: The Constitution was designed with the tripartite system of checks and balances to ensure that no one branch oversteps its authority, as a check on the risk of tyranny. Our founders were fearful of centralized government, so they created a system in which one branch writes the laws, one branch enforces the laws, and one branch interprets the laws, with each having authority over the other in various ways (e.g., appointment, advice and consent, judicial review, impeachment, veto). It was a creative solution, and a remarkable system, as evidenced by the fact that few systems have survived and thrived for 230 years, as ours has.

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 begin with the text of the Constitution setting out the scope and the limits of that branch's authority, as well as the scope of the authority of the other branches in the disputed area. I would rely upon binding Supreme Court and Second Circuit precedent to evaluate the scope of the authority granted to the branch, and whether its actions were Constitutional.

16. **What role should empathy play in a judge's consideration of a case?**

Response: As a sitting Magistrate Judge, I always bear in mind that the parties before me are human. Federal litigation, whether civil or criminal, is often the result of serious harms and can have devastating consequences for all concerned, whether that be individuals, businesses, or governmental entities. I strive to ensure that all parties are heard, that they feel that the Court has given careful consideration to their arguments, and that they are treated with respect. When the Court issues a ruling, it is nearly always the case that at least one party's position is not upheld; my hope is that when the parties understand the process and feel that it was fair, they will be more accepting of the ruling, even if it is unfavorable to them. This promotes the legitimacy of the courts in the eyes of the public, as well as finality in litigation.

17. **What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?**

Response: Either error could cause serious harm, to the parties directly affected and to the integrity of the system itself.

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 do not know the reasons for this shift. Question 17 presages the upsides and downsides of this trend: The downsides to aggressive judicial review include the risk that constitutional statutes will be struck down, and a perception by the public or the other branches that the judicial branch is overstepping its bounds. The downsides to judicial passivity include the risk that unconstitutional statutes will be permitted to stand, and a perception by the public or the other branches that the judicial branch is abdicating its proper role in the system of checks and balances.

19. **How would you explain the difference between judicial review and judicial supremacy?**

Response: Judicial review refers to the power of the court to review and invalidate, if appropriate, the actions of the executive and legislative branches. Judicial supremacy refers to the idea that the Supreme Court's interpretation of the Constitution is binding on the executive and legislative branches, as well as the states.

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 a judge, it is my duty to render decisions that are just, and that accurately apply the laws and the Constitution of this country. A court's duty is always to do justice, in fidelity to the Constitution. I cannot comment on the decisions that elected officials make when confronted with a decision by the highest court of the land that they believe to be unconstitutional.

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: The role of a judge is to decide only the case or controversy presented, and to do so by applying the law as it is set out in the Constitution, statutes and precedent, to the facts established. The limitations of that role must be acknowledged and respected, in order for the system of checks and balances to work properly, and for the public to have full faith in the judiciary.

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: A district court judge's obligation is to apply existing precedent. Any expansion of the scope of precedent must consider carefully whether there is support in the law for such expansion.

23. **When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?**

Response: None. Only those factors set forth in 18 U.S.C. §3553(a) should be considered in sentencing a defendant. As the Sentencing Guidelines state, race, sex, national origin, creed, religion, and socio-economic status "are not relevant in the determination of a sentence." U.S. Sent'g Guidelines Manual §5H1.10 (policy statement) (2018).

24. **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 do not disagree with the definition set forth above, but I would clarify that in my definition, equity is not limited to ensuring justice and fairness to the populations enumerated in that definition, or any other specific group. It entails justice and fairness for all, without limitation. This is consistent with my oath of office, which requires me to do justice "without respect to persons."

25. **Is there a difference between "equity" and "equality?" If so, what is it?**

Response: The difference, under the dictionary definitions, is that the former describes treatment, while the latter describes status. Equity is defined as "justice according to natural law or right, specifically: freedom from bias or favoritism." Merriam-Webster.com online dictionary, accessed July 22, 2021. Equality is defined as "the quality or state of being equal." Id.

26. **Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 24)?**

Response: The 14th Amendment guarantees "equal protection of the laws."

27. **How do you define "systemic racism?"**

Response: I have no personal definition of the term. I believe when that term is used by others, they are referring to the idea that an entire system, and its institutions, are imbued with racism, whether subtle or overt. An online dictionary defines it as "policies and practices that exist throughout a whole society or organization, and that result in and support a continued unfair advantage to some people and unfair or harmful treatment of others based on race[.]" Systemic Racism, Cambridge Dictionary online dictionary.

28. **How do you define "critical race theory?"**

Response: I have no personal experience with or training in critical race theory; I do not have a personal definition of the term. I have been unable to identify any single definition that is universally accepted. A law review article says: "Critical Race Theory seeks to remind society how deeply issues of racial ideology and power

continue to matter in American life." Carlo A. Pedrioli, Book Review, 7 Afr.-Am. L. & Pol'y Rep. 93, 96 (2005) (citations and quotation marks omitted). An online encyclopedia states: "Critical race theorists hold that the law and legal institutions in the United States are inherently racist insofar as they function to create and maintain social, economic, and political inequalities between whites and nonwhites, especially African Americans." Critical Race Theory, Britannica.com online encyclopedia.

29. **Do you distinguish "critical race theory" from "systemic racism," and if so, how?**

Response: My understanding is that "critical race theory" is an academic and intellectual movement or school of thought, whereas "systemic racism" is a description of a circumstance that may be present in a given system.

**Senator Ben Sasse**
**Questions for the Record**
**U.S. Senate Committee on the Judiciary**
**Hearing: "Nominations"**
**July 21, 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: I am a trial judge, and if I am confirmed, I will continue to be a trial judge. In that role, I am focused on resolving the disputes that come before me fairly and accurately and with respect and courtesy to all parties. I understand that when a case comes to federal court, something has gone wrong, and the parties to the dispute, whether civil or criminal, need the Court's assistance in resolving the dispute. I dedicate myself to doing that while honoring the dictates of the Code of Conduct, particularly Canon 3(A), balancing every party's "full right to be heard" with the need to "dispose promptly of the business of the court[,]" while being courteous and respectful to all concerned.

2. **Would you describe yourself as an originalist?**

   Response: I have never described myself as an "originalist." While I am aware that academics and commentators use that term, I have not used it. I believe that, where supported by Supreme Court precedent, interpretation of a Constitutional provision should take into account "the intent of those who prepared it or made it legally binding" and the "meaning that it would have conveyed to a fully informed observer at the time when" it was adopted. Originalism, Black's Law Dictionary (11th ed. 2019). If I am confirmed as a District Judge I will follow the guidance of the Supreme Court and the Second Circuit in interpreting the Constitution.

3. **Would you describe yourself as a textualist?**

Response: I have never described myself as a "textualist." I do firmly believe that any interpretation of the Constitution, a statute, or a rule, must begin with the plain meaning of the text. That has been my approach as a Magistrate Judge, and would continue to be so if I am confirmed as a District Judge. I follow, and would continue to follow, the guidance of the Supreme Court and the Second Circuit in interpreting the text of the Constitution, a statute, or a rule.

**4. Do you believe the Constitution is a "living" document? Why or why not?**

Response: The Constitution has served this country for more than 230 years, and I expect it will continue to do so for many centuries more. I do not subscribe to any particular judicial philosophy such as "living constitutionalism." If I am confirmed as a District Judge, I would interpret the Constitution in accordance with the established precedent of the Supreme Court and the Second Circuit.

**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 no individual Justice whose jurisprudence I have studied carefully enough to identify as the one I most particularly admire. When I read a Supreme Court case in my research, I am focused on the holding of the case, rather than the author, and I think of each Supreme Court ruling as embodying the collective wisdom of the majority of the Court, rather than the views of one Justice.

**6. Was Marbury v. Madison correctly decided?**

Response: As a Magistrate Judge, I apply Supreme Court precedent without exception or hesitation, and if confirmed as a District Judge, I would continue to do so. As a sitting judge, and as a nominee, it is generally inappropriate for me to comment on the correctness of any binding Supreme Court precedent, because I am bound to apply all such precedent. However, there are certain Supreme Court decisions that are so fundamental and widely accepted that they present an exception to this rule. That includes Marbury v. Madison, which I do believe was correctly decided.

**7. Was Lochner v. New York correctly decided?**

Response: As a Magistrate Judge, I apply Supreme Court precedent without exception or hesitation, and if confirmed as a District Judge, I would continue to do so. As a sitting judge, and as a nominee, it is generally inappropriate for me to comment on the correctness of any binding Supreme Court precedent, because I am bound to apply all such precedent.

**8. Was Brown v. Board of Education correctly decided?**

Response: As a Magistrate Judge, I apply Supreme Court precedent without exception or hesitation, and if confirmed as a District Judge, I would continue to do so. As a sitting

judge, and as a nominee, it is generally inappropriate for me to comment on the correctness of any binding Supreme Court precedent, since I am bound to apply all such precedent. However, there are certain Supreme Court decisions that are so fundamental and widely accepted that they present an exception to this rule. That includes Brown v. Board of Education, which I do believe was correctly decided.

**9. Was Bolling v. Sharpe correctly decided?**

Response: Please see my response to Question 7.

**10. Was Cooper v. Aaron correctly decided?**

Response: Please see my response to Question 7.

**11. Was Mapp v. Ohio correctly decided?**

Response: Please see my response to Question 7.

**12. Was Gideon v. Wainwright correctly decided?**

Response: Please see my response to Question 7.

**13. Was Griswold v. Connecticut correctly decided?**

Response: Please see my response to Question 7.

**14. Was South Carolina v. Katzenbach correctly decided?**

Response: Please see my response to Question 7.

**15. Was Miranda v. Arizona correctly decided?**

Response: Please see my response to Question 7.

**16. Was Katzenbach v. Morgan correctly decided?**

Response: Please see my response to Question 7.

**17. Was Loving v. Virginia correctly decided?**

Respons: As a Magistrate Judge, I apply Supreme Court precedent without exception or hesitation, and if confirmed as a District Judge, I would continue to do so. As a sitting judge, and as a nominee, it is generally inappropriate for me to comment on the correctness of any binding Supreme Court precedent, because I am bound to apply all such precedent. However, there are certain Supreme Court decisions that are so

fundamental and widely accepted that they present an exception to this rule. That includes Loving v. Virginia, which I do believe was correctly decided..

**18. Was Katz v. United States correctly decided?**

Response: Please see my response to Question 7.

**19. Was Roe v. Wade correctly decided?**

Response: Please see my response to Question 7.

**20. Was Romer v. Evans correctly decided?**

Response: Please see my response to Question 7.

**21. Was United States v. Virginia correctly decided?**

Response: Please see my response to Question 7.

**22. Was Bush v. Gore correctly decided?**

Response: Please see my response to Question 7.

**23. Was District of Columbia v. Heller correctly decided?**

Response: Please see my response to Question 7.

**24. Was Crawford v. Marion County Election Bord correctly decided?**

Response: Please see my response to Question 7.

**25. Was Boumediene v. Bush correctly decided?**

Response: Please see my response to Question 7.

**26. Was Citizens United v. Federal Election Commission correctly decided?**

Response: Please see my response to Question 7.

**27. Was Shelby County v. Holder correctly decided?**

Response: Please see my response to Question 7.

**28. Was United States v. Windsor correctly decided?**

Response: Please see my response to Question 7.

**29. Was Obergefell v. Hodges correctly decided?**

Response: Please see my response to Question 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: Stare decisis generally requires that a Circuit Court have compelling reasons to overturn its own precedent. See, e.g., Wilson v. Cook Cty., 937 F.3d 1028, 1035 (7th Cir. 2019), cert. denied sub nom. Wilson v. Cook Cty., Illinois, 141 S. Ct. 110 (2020). A Circuit Court may reverse its own prior precedent if that precedent has been overruled or undermined by the Supreme Court, by an en banc ruling, or by statute. See In re Sokolowski, 205 F.3d 532, 534–35 (2d Cir. 2000) ("As we have explained, this court is bound by a decision of a prior panel unless and until its rationale is overruled, implicitly or expressly, by the Supreme Court or this court en banc." (citations and quotation marks omitted)). Thus, an appellate court would be required to reaffirm its own precedent unless that precedent had been brought into question by statute or subsequent rulings of the Supreme Court or of that appellate court acting en banc.

**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: Please see my response 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. Only those factors set forth in 18 U.S.C. §3553(a) should be considered in sentencing a defendant. As the Sentencing Guidelines state, race, sex, national origin, creed, religion, and socio-economic status "are not relevant in the determination of a sentence." U.S. Sent'g Guidelines Manual §5H1.10 (policy statement) (2018).

**For Judge Sarah Merriam:**

**1. Why did you choose to work for the Office of the Federal Defender?**

Response: As a law clerk in the District Court, I had an opportunity to observe scores of lawyers. I was impressed with the legal skills and efforts of the small group of attorneys at the Office of the Federal Defender. I was eager to take on a role that involved regular courtroom appearances, independent work, interesting legal issues, and challenging assignments. The Office of the Federal Defender offered all of that in a small office led

by a lawyer I knew and liked, and staffed by some of the most well-respected lawyers in the District.

2. **Were you ever concerned that your work for the Office of the Federal Defender would result in more violent criminals—including gun criminals and sex criminals—being put back on the streets?**

   Response: As an Assistant Federal Defender, it was my job to provide the effective assistance of counsel guaranteed by the Fifth and Sixth Amendments to the Constitution. My focus was on ensuring that the rights of the indigent persons whom I was assigned to represent were protected. In each case, the United States Attorney's Office served its role as an advocate for the prosecution, I served my role as an advocate for the defendant, and the ultimate decisions about the penalties to be imposed were for the District Judge.

3. **At your investiture, Judge Alvin Thompson described you in the following manner: "I believe that in both her professional life and her personal life, she lives out the ideals of justice and fairness as expressed by John Rawls in A Theory of Justice." Do you agree with his sentiment, and do you take it as a compliment?**

   Response: I am sure Judge Thompson intended it as a compliment. The comment was made in the context of Judge Thompson's recounting an occasion, before I became a judge, on which I worked to raise money for a soup kitchen in my hometown of New Haven. However, I have not read Rawls' work, and cannot comment on his views. I do attempt, in my personal and professional life, to promote justice and fairness.

4. **At your investiture, Senator Chris Murphy described you in the following manner: "The period of time in which our lives intersected with the most concentration . . . was a period of her life when she was being paid for showing an absolute lack of judicial temperament." Do you agree with his sentiment, and if so, how has your temperament changed in your role as a judge?**

   Response: I believe Senator Murphy was referring to the fact that during the time when I was in regular contact with him, in the 1990s and again in 2006, I was working as an advocate, including on political campaigns. As an advocate, it was my job to present one side of an issue, and to do so, sometimes, rather vociferously. For the past six years, I have served as a United States Magistrate Judge. As a judge, my role is entirely different. As a judge, I hear from advocates, and then I decide the questions presented to me based on the facts and on the established law. I have no "side" as a judge. I am neutral, unbiased, and independent.

**Questions from Senator Thom Tillis**
**for Sarah Ann Leilani Merriam**
**Nominee to be United States District Judge for the District of Connecticut**

1. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   Response: Yes.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: Black's Law Dictionary defines "judicial activism" as: "A philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usu. with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." Black's Law Dictionary (11th ed. 2019). I think of judicial activism as describing a practice whereby a judge would have an outcome in mind, based on personal views, rather than determining the outcome based solely on the existing law and facts presented. I do not consider that appropriate. A judge must make decisions based on a faithful application of the law to the facts, rather than an effort to achieve a particular result.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: I believe impartiality is not only an expectation for a judge, but in fact a necessity. The oath of office I took when I became a Magistrate Judge requires me to "administer justice without respect to persons[.]" 28 U.S.C. §453. I would uphold that same oath – and the same duty of impartiality – if I am confirmed as a District Judge.

4. **Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

   Response: No.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: A judge must faithfully interpret and apply the law, regardless of the outcome. A judge has no interest in what the outcome is, only in applying the law to the facts presented.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No.

7. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

Response: I will enforce and apply the Constitution itself, and the Supreme Court's precedential decisions interpreting it. Those decisions include District of Columbia v. Heller, 554 U.S. 570 (2008), and McDonald v. City of Chicago, 561 U.S. 742 (2010). Taken together, these decisions establish that the individual right to possess firearms is protected by the Second Amendment, and that the right to bear arms is fundamental. If I am confirmed as a District Judge, I will apply Supreme Court and Second Circuit precedent to any matters 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 evaluate such a claim the way I evaluate all claims, by researching and applying the law of the Supreme Court and the Second Circuit. The Supreme Court has offered guidance on issues related to COVID restrictions on constitutionally protected religious activity, in Tandon v. Newsom, 141 S. Ct. 1294 (2021), and Roman Cath. Diocese of Brooklyn v. Cuomo, 141 S. Ct. 63 (2020). These decisions, as well as the Supreme Court's recent Second Amendment jurisprudence, would guide my decision making. Cases raising issues relating to the ability of a local official to impose COVID restrictions are currently pending in the District of Connecticut. I cannot comment further on the ultimate question, as a sitting judge and a nominee, pursuant to Canon 3(A)(6) of the Canons of Judicial Conduct, which prohibits a judge from making "public comment on the merits of a matter pending or impending in any court."

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: A court must grant qualified immunity to law enforcement personnel and departments "unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time. Clearly established means that, at the time of the officer's conduct, the law was sufficiently clear that every reasonable official would understand that what he is doing is unlawful. ... This demanding standard protects all but the plainly incompetent or those who knowingly violate the law." D.C. v. Wesby, 138 S. Ct. 577, 589–90 (2018) (citations and quotation marks omitted). To be "clearly established," the law generally must have been dictated by controlling authority, and the law must apply with specificity to the particular circumstances presented. See, e.g., Mullenix v. Luna, 577 U.S. 7, 12 (2015). If I am confirmed as a District Judge, I will apply Supreme Court and Second Circuit precedent to any matters involving claims of qualified immunity.

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: Qualified immunity is the law, but the precise contours of its protection are currently and constantly being litigated, and the question is likely to come before me either in my current role, or, if I am confirmed, as a District Judge. Pursuant to Canon 3(A)(6) of the Canons of Judicial Conduct, a judge is prohibited from making "public comment on the merits of a matter pending or impending in any court." If I am confirmed as a District Judge, I will apply Supreme Court and Second Circuit precedent to any matters involving claims of qualified immunity.

**11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?**

Response: Qualified immunity is the law, but the precise contours of its protection are currently and constantly being litigated, and the question is likely to come before me either in my current role, or, if I am confirmed, as a District Judge. Pursuant to Canon 3(A)(6) of the Canons of Judicial Conduct, a judge is prohibited from making "public comment on the merits of a matter pending or impending in any court." If I am confirmed as a District Judge, I will apply Supreme Court and Second Circuit precedent to any matters involving claims of 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: In six years as a Magistrate Judge, I have served in a settlement role in several patent cases, but I have not been required to rule on eligibility issues. As such, I have no particular views on the Supreme Court's patent eligibility jurisprudence. Furthermore, as a sitting judge, it would be inappropriate for me to either praise or criticize the Supreme Court's jurisprudence on this or any issue.

**13. How would you apply current patent eligibility jurisprudence to the following hypotheticals. Please avoid giving non-answers and actually analyze these hypotheticals.**

**a. *ABC Pharmaceutical Company* develops a method of optimizing dosages of a substance that has beneficial effects on preventing, treating or curing a disease or condition for individual patients, using conventional technology but a newly-discovered correlation between administered medicinal agents and bodily chemicals or metabolites. Should this invention be patent eligible?**

Response: A federal court "is without power to give advisory opinions" and will not decide hypothetical issues. Asbury Hosp. v. Cass Cty., N. D., 326 U.S. 207, 213 (1945). As a sitting judge and a nominee, I cannot offer an advisory opinion indicating how I would rule in such a hypothetical case. Were I to offer an opinion on this hypothetical question, that could be perceived as suggesting that I have pre-

judged disputes which may come before me. Furthermore, issues of patent eligibility are currently pending in my District, and any comment by me could be perceived as a violation of Canon 3(A)(6). If I am confirmed, and I am presented with a case or controversy presenting issues of patent eligibility, I will apply Supreme Court and Second Circuit precedent to the facts established in the particular case before me.

**b.** ***FinServCo*** **develops a valuable proprietary trading strategy that demonstrably increases their profits derived from trading commodities. The strategy involves a new application of statistical methods, combined with predictions about how trading markets behave that are derived from insights into human psychology. Should *FinServCo's* business method standing alone be eligible? What about the business method as practically applied on a computer?**

Response: Please see my response to Question 13.a.

**c.** ***HumanGenetics*** **Company wants to patent a human gene or human gene fragment as it exists in the human body. Should that be patent eligible? What if *HumanGenetics* Company wants to patent a human gene or fragment that contains sequence alterations provided by an engineering process initiated by humans that do not otherwise exist in nature? What if the engineered alterations were only at the end of the human gene or fragment and merely removed one or more contiguous elements?**

Response: Please see my response to Question 13.a.

**d.** ***BetterThanTesla ElectricCo*** **develops a system for billing customers for charging electric cars. The system employs conventional charging technology and conventional computing technology, but there was no previous system combining computerized billing with electric car charging. Should *BetterThanTesla's* billing system for charging be patent eligible standing alone? What about when it explicitly claims charging hardware?**

Response: Please see my response to Question 13.a.

**e.** ***Natural Laws and Substances, Inc.*** **specializes in isolating natural substances and providing them as products to consumers. Should the isolation of a naturally occurring substance other than a human gene be patent eligible? What about if the substance is purified or combined with other substances to produce an effect that none of the constituents provide alone or in lesser combinations?**

Response: Please see my response to Question 13.a.

**f. A business methods company, *FinancialServices Troll,* specializes in taking conventional legal transaction methods or systems and implementing them through a computer process or artificial intelligence. Should such**

**implementations be patent eligible? What if the implemented method actually improves the expected result by, for example, making the methods faster, but doesn't improve the functioning of the computer itself? If the computer or artificial intelligence implemented system does actually improve the expected result, what if it doesn't have any other meaningful limitations?**

Response: Please see my response to Question 13.a.

g. ***BioTechCo*** **discovers a previously unknown relationship between a genetic mutation and a disease state. No suggestion of such a relationship existed in the prior art. Should** ***BioTechCo*** **be able to patent the gene sequence corresponding to the mutation? What about the correlation between the mutation and the disease state standing alone? But, what if** ***BioTech Co*** **invents a new, novel, and nonobvious method of diagnosing the disease state by means of testing for the gene sequence and the method requires at least one step that involves the manipulation and transformation of physical subject matter using techniques and equipment? Should that be patent eligible?**

Response: Please see my response to Question 13.a.

h. **Assuming** ***BioTechCo's*** **diagnostic test is patent eligible, should there exist provisions in law that prohibit an assertion of infringement against patients receiving the diagnostic test? In other words, should there be a testing exemption for the patient health and benefit? If there is such an exemption, what are its limits?**

Response: Please see my response to Question 13.a.

i. ***Hantson Pharmaceuticals*** **develops a new chemical entity as a composition of matter that proves effective in treating TrulyTerribleDisease. Should this new chemical entity be patent eligible?**

Response: Please see my response to Question 13.a.

j. ***Stoll Laboratories*** **discovers that superconducting materials superconduct at much higher temperatures when in microgravity. The materials are standard superconducting materials that superconduct at lower temperatures at surface gravity. Should** ***Stoll Labs*** **be able to patent the natural law that superconductive materials in space have higher superconductive temperatures? What about the space applications of superconductivity that benefit from this effect?**

Response: Please see my response to Question 13.a.

**14. Based on the previous hypotheticals, 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: In six years as a Magistrate Judge, I have not had occasion to consider these issues. My primary involvement in patent cases has been in the context of settlement discussions, and the question of incentives to innovation has not arisen. If I am confirmed, and presented with cases presenting these issues, I would apply the precedent of the Supreme Court and the Second Circuit.

**Post-Hearing Questions for the Record**
**Matthew G. Olsen**
**Submitted July 21, 2021**

**Senator Chuck Grassley, Ranking Member**

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: Yes. Flying the American flag is one way to honor the United States of America.**

2. You failed to include three politically-charged "DOJ Alumni Letters" in your SJQ in section 12(c), as required of all nominees. You failed to include:

   - The DOJ Alumni Open Letter on Protecting Free and Fair Elections on October 1, 2020;[1]
   - The DOJ Alumni Letter to Inspector General Michael Horowitz on June 10, 2020;[2]
   - The DOJ Alumni Statement on Flynn Case on May 11, 2020;[3]

   Of the many nominees who have come before this Committee, only two others have signed the letters: (1) Vanita Gupta, the Associate Attorney General of the DOJ, who was roundly criticized for her partisan activism; and (2) Tana Lin, a judicial nominee to the Western District of Washington, who gained fame through her active resistance to President Trump and his administration.

   a. Do you still stand by the comments in the letters today?
   b. On what factual basis did you reach the conclusions contained in these letters?
   c. How can I be assured that you will not immediately jump to partisan conclusions, given your proclivity to do so, based on your signatures on these letters?
   d. How can I be assured that you will treat individuals who hold beliefs different from yours fairly, given your signatures on these letters?

**RESPONSE (2(a)-(d)): I stand by my decision to sign on to these letters. In general, each letter included the factual bases for the statements and conclusions they expressed. I did not view the letters to be partisan. I have served in the Department of Justice under administrations of both political parties. In signing the letters, I joined with hundreds of other former DOJ employees reflecting a bipartisan consensus in support of the points expressed. If confirmed, I will continue to serve in a nonpartisan manner and will respect and listen to the views of all Department employees.**

[1] https://medium.com/@dojalumni/doj-alumni-open-letter-on-protecting-free-and-fair-elections-78bea0575e1a
[2] https://medium.com/@dojalumni/doj-alumni-letter-to-inspector-general-michael-horowitz-8011bb12167b
[3] https://medium.com/@dojalumni/doj-alumni-statement-on-flynn-case-7c38a9a945b9

3. I understand that you own a farm in North Dakota. Does this include mineral rights?

**RESPONSE: Yes, I have a share of the mineral rights, along with other family members, to our family farm in North Dakota.**

4. When we spoke on the phone, you stated that you did not see an "Obama Justice Department" or a "Bush Justice Department." Did you see a "Trump Justice Department"?

**RESPONSE: The mission of the Department of Justice is "[t]o enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans." To carry out this mission and to adhere to the rule of law, the Department of Justice must act independently of political influence. In my experience, the workforce of the Department of Justice holds true to this principle.**

5. You authored an op-ed recommending that the government ensure the safety of census data by "retain[ing] a reputable outside cybersecurity firm to audit current plans for data protection, then have this firm either confirm publicly the adequacy of existing cybersecurity protocols or assist the government in addressing any gaps identified."

    a. Do you plan to fully divest of the securities you currently hold in IronNet Cybersecurity, Inc.?

**RESPONSE: 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 will enter into with the Department's designated agency ethics official.**

    b. Will you commit to recusing from any situation where your former company, IronNet Cybersecurity, Inc. might profit?

**RESPONSE: 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 will enter into with the Department's designated agency ethics official. Consistent with Department policy, I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know**

**that a person whose interests are imputed to me has a financial interest directly and predictably affected by the particular matter, unless I first obtain a written waiver or qualify for a regulatory exemption.**

6. You previously called the immigration crisis at the border, "bogus." According to statistics provided by the U.S. Customs and Border Patrol, the number of Southwest Land Border Encounters has more than doubled over the last year.[4] Comparing the statistics for March 2018 and March 2021 shows that the rate of encounters more than tripled for the same month. On the whole, this graph demonstrates that illegal immigrants are entering this country at an unprecedented rate, particularly as compared to the prior three years. Given these statistics, please explain:

    a. Why this surge does not qualify as a "crisis"?
    b. Why the situation is not "bogus"?
    c. Whether you stand by your prior statement.

**RESPONSE (6(a)-(c)): In 2019, I wrote an article, along with General Michael Hayden (ret.), the former director of the Central Intelligence Agency and National Security Agency. Based on the available facts and our experience, we stated that there was not a national security crisis along the southern border. We cited reporting by the State Department finding no credible evidence that terrorist groups were sending operatives into the United States via Mexico. We stated that unsupported claims about terrorists crossing the U.S.-Mexico border could potentially distract from the genuine national security threats the country faces.**

7. In 2017 you openly supported James Comey.[5] Since that time we have learned that Comey:

    - repeatedly lied;
    - leaked classified information to a friendly media contact;
    - usurped the role of the Attorney General by announcing that Hillary Clinton would not face criminal charges for mishandling classified information;
    - believed that the FISA process with regard to Carter Page was "handled in a thoughtful responsible way by the DOJ and the FBI";[6]
    - authored memos about every interaction with the President of the United States in an effort to criminalize his actions;
    - and refused to defer to the judgment of his boss, Sally Yates, during the investigation into Lt. General Michael Flynn, sending agents to interview him and defying the express orders of his superior.

[4] https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters
[5] *See, e.g.*, Pam Benson, The Cipher Brief, "The Decision to Fire Comey Doesn't Add Up," May 11, 2017, available at: https://www.thecipherbrief.com/column_article/the-decision-to-fire-comey-doesnt-add-up-2
[6] Comey Remarks to Reporter (Dec. 7, 2018) https://www.c-span.org/video/?455597-5/fbi-director-comey-remarks-closed-testimony.

a. Do you still stand by your support for Comey?
b. Do you think it is appropriate for a subordinate to defy his or her boss?
c. Do you agree that the Carter Page FISA application was "handled in a thoughtful [and] responsible way by the DOJ and the FBI"?
d. Do you plan on authoring memos of every conversation you have (if any) with President Biden?
e. Is it appropriate for a senior government official to leak classified information to a friendly reporter?
f. Is it appropriate for a senior government official to leak classified information to a friendly reporter to promote a narrative?

**RESPONSE (7(a)-(f)): I stand by my comments 2017 in support of Director Comey. To the extent the remaining questions refer to claims regarding Director Comey's actions, I do not have sufficient factual basis to express an informed view.**

8. ISIS used Obama drone strikes as recruiting propaganda.[7] Is it fair to say ISIS supported Obama, based on the standard you articulated during your hearing?

**RESPONSE: No.**

9. Should the DOJ focus on prosecuting the individuals who caused billions of dollars of damage in Portland, Oregon, Seattle, Washington, and Minneapolis, Minnesota during so-called demonstrations last summer?

**RESPONSE: Individuals who commit violations of the federal criminal law are subject to prosecution in accordance with the principles of federal prosecution. I agree with the Attorney General the Department of Justice is committed to the fair and impartial prosecution of violations of federal law without regard to ideology.**

10. In a statement, you wrote that "We do not tolerate the destruction of our communities or violence, and perpetrators should be arrested and prosecuted." Do you believe the DOJ has committed enough resources to holding the perpetrators of the destruction of our communities accountable?

**RESPONSE: Because I do not currently work in the Department, I am not aware of the resources the Department has dedicated to different enforcement priorities. I believe that the Department is committed to investigating and prosecuting domestic terrorism. I look forward to learning more about these matters if I am confirmed.**

[7] *See, e.g.*, https://www.theguardian.com/world/2015/nov/18/obama-drone-war-isis-recruitment-tool-air-force-whistleblowers

11. Is a social worker qualified to respond to a domestic violence call where there is an allegation that the aggressor is armed?

**RESPONSE: As a general matter, I believe that trained law enforcement officials should respond to armed aggressors.**

12. Is it appropriate for protestors to ignore social distancing mandates and gathering limitations to protest racial injustice?

**RESPONSE: I believe people should adhere to health guidelines issued by public health experts.**

13. Is it appropriate for protestors to ignore social distancing mandates and gathering limitations to protest gun control?

**RESPONSE: I believe people should adhere to health guidelines issued by public health experts.**

14. Is it appropriate for the government to use law enforcement to enforce social distancing mandates and gathering limitations for individuals attempting to practice their religion in a church, synagogue, mosque or any other place of religious worship?

**RESPONSE: I believe people should adhere to health guidelines issued by public health experts.**

15. You have stated that "[t]he use of any law enforcement for political purposes is inappropriate" and that the "[i]ndiscriminate use of federal police can drive a wedge between key constituencies, undermine critical partnerships, and undermine our nation's ability to protect against terrorist threats and criminal activity." Was the erection of Capitol fencing until last week an inappropriate use of law enforcement power?

**RESPONSE: Because I do not have sufficient information about the factors that were considered in providing security to the Capitol, I cannot comment on whether specific security measures were appropriate.**

16. According to the Customs and Border Protection, "[f]ederal officials have logged more than 1.1 million apprehensions at the U.S. Mexico border this fiscal year, after another busy month in June."

a. Does that number—1.1. million—concern you from a security perspective?
b. Given that the United States is now dealing with the Delta strain of the COVID-19 virus, shouldn't we be doing more to screen and/or vaccinate these individuals?
c. Given your status as the Director of Human Rights First, how do you intend to use your position, if confirmed, to combat:
    i. The rampant sexual assaults happening to women and children?
    ii. The devastating deaths due to heat exhaustion?

**RESPONSE (16(a)-(c)): I have not served in the government for several years and do not have enough information to make judgments about the issues you raise. If confirmed, I will work to ensure that the National Security Division plays an appropriate role in addressing security and other concerns at the border.**

17. Yesterday at your SSCI nominations hearing you said that "combating … the domestic terrorism threat as well as the international terrorism threat is a top priority for the Department of Justice." What presents a greater threat to national security: domestic or international terrorism?

**RESPONSE: I believe the work of the National Security Division is to be vigilant in protecting the national all against all terrorist threats, domestic and international.**

18. Is it appropriate for a low-level government official (including law enforcement) to be terminated for 'liking' a post on social media that:

    a. Contains views contrary to yours?
    b. Contains some allusion to violence?
    c. Contains views contrary to what you perceive to be the prevailing media narrative?

**RESPONSE (18(a)-(c)): I do not believe that federal career government employees should be treated differently based on their political views. Any employment decision must be made consistent with all applicable laws, policies, and procedures.**

19. Does the president have the power to remove senior officials at his pleasure?

    a. Is it possible that removing someone—as is the President's power—can be for wholly apolitical reasons?
    b. Do you still stand by your prior commentary criticizing President Trump for removing several intelligence community senior officials?

**RESPONSE: The President is the head of the executive branch and is empowered to remove certain non-career officials at his pleasure. Presidents can and have exercised such authority for wholly apolitical reasons. I stand by my prior comments regarding President Trump's decisions to remove experienced career intelligence officials from office.**

20. Recently, President Biden summarily fired 56 (all but two) Trump-appointed U.S. attorneys on February 10, 2021, ***a full month before*** President Trump, during his term, fired all of the remaining Obama-appointed U.S. Attorneys on March 13, 2017.

    a. Did you author an op-ed or a letter decrying President Biden's political move by firing 54 top law enforcement officials?
    b. Was the termination of 54 U.S. Attorneys "destructive of our nation's ideals"?
    c. Did the termination of 54 U.S. Attorneys "put us all at risk"?
    d. Those districts now operate with an Acting United States Attorney. In an op-ed to the *Washington Post* on March 20, 2020, you criticized the use of acting heads, within the Intelligence Community, stating that:

        > Now both are gone, to be replaced by as-yet-unnamed acting heads who will undoubtedly know less and who will be more beholden to the intelligence community's politicized leadership. The next acting heads might or might not be gone themselves in a matter of months if the president's nominee is ultimately confirmed. In the meantime, who manages the critical security tasks, including watch-listing and ensuring that the government-wide counterterrorism structure remains well integrated?

        Are the Acting U.S. Attorneys "more beholden" to the DOJ, which is currently under the leadership of Merrick Garland, Lisa Monaco and Vanita Gupta?

    e. Are you concerned about the direction of law enforcement and criminality within the community given the lack of leadership at the U.S. Attorney Offices nationwide?

**RESPONSE (20(a)-(e)): The President and Attorney General have been clear that politics is to play no role in decisions about investigations and prosecutions. I am confident that the message they conveyed is being respected and followed by the Acting U.S. Attorneys as they await the Senate confirmation of presidentially-appointed U.S. Attorneys.**

21. DOJ recently announced they will never subpoena reporter records.[8] If confirmed as the head of the National Security Division, how do you plan to conduct investigations into leaks of classified information given this new policy?

**RESPONSE: The government has an important responsibility to safeguard classified information, the unauthorized disclosure of which, by definition, could harm U.S. national security. The Attorney General recently issued new guidance governing the use of compulsory process to obtain information from, or records of, members of the news media. If confirmed, I will ensure that the National Security Division fully complies with this policy. The Department is still empowered, under the new guidance, to discharge its duty to protect classified information and, where appropriate, to conduct investigations into**

[8] https://www.justice.gov/ag/page/file/1413001/download

**unlawful disclosures. The new guidance expressly "does not … affect the Department's traditional ability to use compulsory legal process to obtain information from or records of, for example, a government employee (rather than a member of the news media) who has unlawfully disclosed government information."**

22. Are you planning to engage early on reauthorizing Section 702 of the FISA Amendments Act?

**RESPONSE: Section 702 of the FISA Amendments Act is a critical national security tool. If confirmed, I will seek expeditiously to engage with leadership in the Department and the Intelligence Community, as well as members of this Committee and others in Congress, on issues related to the reauthorization of this vital authority.**

23. Will the National Security Division continue the very successful China Initiative, to fight Chinese espionage, under your leadership, if confirmed?

**RESPONSE: I am aware of the China Initiative generally, but because I am not currently at the Department, I am not familiar with how it is structured or implemented. If confirmed, I am committed to leading the National Security Division to continue to prioritize countering threats from China, and I look forward to learning more about existing efforts and opportunities to do more. I would welcome the opportunity to engage with this Committee on ways to build upon the important work that began under my predecessor.**

24. Do terrorists like the Boston Marathon bomber deserved the death penalty?

**RESPONSE: Because the case referred to in this question is currently being litigated, it would not be appropriate for me to comment.**

25. Are "incels" a national-security threat?

**RESPONSE: Recent intelligence community assessments have made clear that the United States faces a heightened threat from domestic violent extremism stemming from a wide range of groups and ideologies. The White House's "National Strategy for Countering Domestic Terrorism" notes that, among other categories, "domestic terrorists may be motivated to violence by single–issue ideologies related to . . . involuntary celibate–violent extremism, as well as other grievances – or a combination of ideological influences." If confirmed as Assistant Attorney General for National Security, I will prioritize confronting all forms of domestic violent extremism. I agree with the Attorney General that the role of the Department of Justice is to investigate and prosecute acts of violence and other crimes, regardless of associated ideology.**

26. Do you believe legal gun purchases have caused the violent crime spike?

**RESPONSE: I do not have a sufficient factual basis to answer this question.**

27. Do rogue gun dealers constitute a substantial factor in the amount of crimes committed with firearms?

**RESPONSE: I do not have a sufficient factual basis to answer this question. In general, I believe that laws regulating the purchase and sale of firearms should be enforced, and those who violate these laws should be prosecuted.**

28. Is Micah Johnson a black racially motivated violent extremist, as the FBI has said?

**RESPONSE: I am not sufficiently familiar with the relevant facts to provide an answer.**

29. Should China be sanctioned for the Microsoft Exchange cyber attack?

**RESPONSE: In a statement issued on July 19, 2021, the United States, together with its allies publicly attributed "with a high degree of confidence that malicious cyber actors affiliated with PRC's [Ministry of State Security] conducted cyber espionage operations utilizing the zero-day vulnerabilities in Microsoft Exchange Server disclosed in early March 2021." In that same statement, the United States made clear that "both this incident and the PRC's broader malicious cyber activity with senior PRC Government officials … threaten security, confidence, and stability in cyberspace." The Department does not have the authority to sanction entities or individual actors, therefore I would defer to the agencies with those authorities to determine whether sanctions would be an appropriate response to this event. However, as a general matter, I would support an all-tools approach to state-sponsored malicious cyber activities, which may include the use of sanctions in appropriate circumstances.**

30. What should the Department be doing to thwart attacks which utilize drones/UAVs?

**RESPONSE: I understand that drones are increasingly becoming a relatively inexpensive and accessible tool that can allow actors to engage in nefarious activity or even conduct attacks from the air. If confirmed, I will work with Department leadership and other appropriate agencies to address any threat while protecting civil liberties.**

31. Is it important for the FBI defensive briefing policy to be free of political and media influences in making the decision who to brief?

**RESPONSE: Yes.**

32. Is it legal for police to stop and frisk someone based on a reasonable suspicion of involvement in criminal activity?

**RESPONSE: The Supreme Court held in *Terry v. Ohio*, 392 U.S. 1 (1968), that it is constitutional for police to stop and frisk someone based on a reasonable suspicion of involvement in criminal activity. Further questions of legality would depend on the laws of the jurisdiction in question.**

33. Do you agree with Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a "living constitution"?

**RESPONSE: I am not familiar with Judge Jackson's statements.**

34. As a former prosecutor do you believe it is 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: The federal government is responsible for investigating and prosecuting federal crimes.**

35. 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 Criminal Division front-office staff?

**RESPONSE: If confirmed, I would allow a member of the Federalist Society to serve on the National Security Division's front-office staff.**

    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.**

36. 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.**

37. Do you agree with the propositions that some clients don't deserve representation on account of their:

    a. Heinous crimes?

**RESPONSE: No.**

    b. Political beliefs?

**RESPONSE: No.**

    c. Religious beliefs?

**RESPONSE: No.**

38. Should judicial decisions take into consideration principles of social "equity"?

**RESPONSE: Judicial decisions should be based on the facts and the law and the interests of justice.**

39. Is climate change real?

**RESPONSE: Yes, climate change is real. According to NASA, the overwhelming scientific consensus is that the Earth's climate is warming and that climate-warming trends are extremely likely due to human activities. https://climate.nasa.gov/scientific-consensus/**

40. Is gun violence a public-health crisis?

**RESPONSE: Yes. I agree with the President, who described gun violence as a public-health crisis.**

41. Is racism a public-health crisis?

**RESPONSE: According to the CDC, racism can "affect the well-being of millions of Americans."**

42. Is the federal judiciary systemically racist?

**RESPONSE: Based on my experience, I believe there are ways in which the justice system, like many institutions, has been affected by the enduring legacy of slavery and racism in this country. In my experience, however, the individuals who make up the judicial branch strive to treat all people involved in the justice system fairly and without bias.**

43. On October 26, 2020, you organized a group of 83 former D.C. federal prosecutors to sign a letter supporting changes to address racial bias. Specifically, the letter "called for implicit-bias training for prosecutors and for a new focus on alternatives to incarceration."

    a. Do you plan to mandate implicit-bias training within the National Security Division?
    b. How will implicit-bias training improve the work within the National Security Division?
    c. Do you plan to ask National Security Division prosecutors to focus on "alternatives to incarceration"?
    d. Please provide some examples of "alternatives to incarceration" that you think is appropriate for defendants being prosecuted within the National Security Division.

**RESPONSE (43(a)-(d)): In October 2020, I helped lead an effort by former members of the United States Attorney's Office for the District of Columbia to express our support for a working group of Black Assistant U.S. Attorneys in the office, who had proposed a set of reforms to address challenges in our criminal justice system. Because I am not presently at the Justice Department, I am not familiar with the specific training for Department employees. If confirmed, I would welcome the opportunity to learn more about available training and to support appropriate training to improve the work of the National Security Division. I would expect individuals in the National Security Division involved in prosecution decisions or sentencing recommendations—including whether to seek a term of imprisonment or alternatives to incarceration—to act in a manner that is consistent with the facts and the law, Department policy, and the obligation to seek justice.**

44. Is the federal judiciary affected by implicit bias?

**RESPONSE: I believe that based on our experiences we all develop attitudes or stereotypes that may affect our understanding, actions, and decisions in an unconscious manner. Public officials must seek to avoid allowing any improper bias to influence the execution of their responsibilities.**

45. Is the national security division of the DOJ impacted by implicit bias?

**RESPONSE: I believe that based on our experiences we all develop attitudes or stereotypes that may affect our understanding, actions, and decisions in an unconscious manner. Public officials must seek to avoid allowing any improper bias to influence the execution of their responsibilities.**

46. Assuming that you are confirmed, how will your implicit bias impact the manner in which you carry out your role as the head of the National Security Division?

**RESPONSE: I believe that based on our experiences we all develop attitudes or stereotypes that may affect our understanding, actions, and decisions in an unconscious manner. If confirmed, I will seek to avoid allowing any improper bias to influence the execution of my responsibilities.**

**If confirmed, I will support the implementation of the President's Executive Order directing federal agencies to conduct an internal review and devise plans to address unequal barriers to opportunity in agency policies and programs.**

47. Do you have implicit bias? How do you know if it's implicit?

**RESPONSE: I believe that based on our experiences we all develop attitudes or stereotypes that may affect our understanding, actions, and decisions in an unconscious manner. If confirmed, I will seek to avoid allowing any improper bias to influence the execution of my responsibilities. I agree with the Attorney General that, "every human being has biases. That's part of what it means to be a human being. And the point of examining our implicit biases is to bring our conscious mind up to our unconscious mind and to know when we're behaving in a stereotyped way."**

48. You criticized former Director of National Intelligence, John Ratcliffe, for allegedly "cherry-pick[ing] pieces of classified information, to fit his political narratives." You have made a number of political statements since the election of President Trump, in addition to signing three highly charged "DOJ Alumni Letters." How are your politically charged statements different from former Director Ratcliffe's?

**RESPONSE: This question cites an article I co-authored on the website *Just Security*. The quoted sentence reads in full: "If he is to keep the promises he made to the Senate, Ratcliffe will have to safeguard the independence of the Intelligence Community, and fend off the president, who seeks to use every tool at his disposal, even cherry-picked pieces of classified intelligence information, to fit his political narratives." This sentence stated that President**

**Trump, not Director Ratcliffe, had "cherry-picked pieces of classified intelligence information."**

**My prior statements, including letters I signed as a former Department of Justice official, were based on my best understanding of the relevant facts and the law.**

49. During your hearing before the Senate Judiciary Committee, you stated that you were supportive of the nature in which the Trump Administration took the fight to ISIS over the past several years. In your expert opinion, within the realm of the National Security Division, what else did the Trump Administration correctly handle?

**RESPONSE: I admire and support the work of the career professionals in the National Security Division. Their efforts reflect their dedication, expertise, and commitment to the rule of law. I believe the National Security Division was highly effective in advancing our national security under the leadership of Assistant Attorney General John Demers.**

50. Why should the Biden Administration close Guantanamo Bay?

    a. You previously stated that Guantanamo Bay hasn't been closed "because of the politics around the Guantanamo issue." Please identify the "misinformation about Guantanamo" that you referred to in your interview.

**RESPONSE (50 and 50(a)): I agree with the assessments of the President and Secretary of Defense Austin that the detention facility at Guantanamo Bay should be closed, including because of its use as a recruiting tool for terrorists and its high costs of operation. In an interview in 2016, I expressed my view that political considerations, rather than national security concerns, impeded the government's ability to close the facility.**

51. Is threatening Supreme Court Justices right or wrong?

**RESPONSE: It is wrong to threaten anyone with physical harm or violence, including Supreme Court Justices.**

52. How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?

**RESPONSE: In distinguishing between attacks and mere criticism, I would refer to legal precedents defining "true threats" not entitled to the protections of the First Amendment.**

53. Do you think the Supreme Court should be expanded?

**RESPONSE: I do not have a developed view on the question.**

54. What is the difference between defunding the police and "the divestment/reinvestment approach to policing?

**RESPONSE: I do not have a sufficient factual basis to answer this question.**

55. You have advocated that law enforcement officers receive better "training" in the wake of the George Floyd protests last summer. What kinds of additional "training" do you envision these officers receiving?

**RESPONSE: I believe it is important that law enforcement officers receive adequate training to carry out all aspects of their responsibilities. In the statement this question references, my co-authors and I referred to de-escalation techniques as among the important tools needed to ensure responsible and just policing.**

56. Which country is a bigger threat to our national security—Russia or China?

**RESPONSE: Russia and China each present a significant national security threat through their actions, ranging from military conflict to cyberattacks and from espionage to malign foreign influence operations. China remains a leading threat to the integrity of our commercial and military technologies through its use of legal and illegal means to advance its own technological capabilities. Russia presents a significant cyber threat as it refines and employs its espionage, influence, and attack capabilities. Russia also presents one of the most serious intelligence threats to the United States. If confirmed, I will work with Department leadership and the Intelligence Community to ensure that our efforts are prioritized to address these serious national security threats.**

57. Is the Cuban Communist Party a threat to national security?

**RESPONSE: I am not in government at this time and do not know the current state of intelligence reporting regarding this issue. I believe that support for democracy and human rights must be core components of our efforts to support the Cuban people and their ability to determine their own future.**

58. How do you understand the difference, if any, between freedom of religion and freedom of worship?

**RESPONSE: I do not have a view on this question.**

59. Do you believe that an individual retains an "absolute zone of privacy"?

**RESPONSE: The Constitution and other laws generally protect important aspects of individual privacy, such as privacy in the home and the right to be free from unreasonable searches or seizures.**

60. Do you believe potential voter fraud or other elections abnormalities are concerns that the Justice Department should take seriously?

**RESPONSE: The Department of Justice should take all credible allegations of voter fraud or election fraud seriously.**

61. If the Justice Department determines that the prosecution of an individual is meritless and dismisses the case, is it appropriate for a District Judge to question the Department's motivations and appoint an amicus to continue the prosecution? Please explain why or why not.

**RESPONSE: I understand that federal courts have broad authority to appoint amici if they determine that participation of an amicus would aid in the consideration of a case or controversy.**

62. Over the course of your career, how many times have you spoken at events sponsored or hosted by the following liberal, "dark money" groups?

    a. American Constitution Society
    b. Arabella Advisors
    c. Demand Justice
    d. Fix the Court
    e. Open Society Foundation

**RESPONSE: I am not aware that I have ever spoken at an event sponsored or hosted by the listed organizations.**

63. Do you agree that the First Amendment is more often a tool of the powerful than the oppressed?

**RESPONSE: I believe the First Amendment guarantees rights for all Americans.**

64. What fact-checking organization(s) should the United States government trust to accurately assess information?

**RESPONSE: The Department of Justice, the Federal Bureau of Investigation, and other law enforcement and intelligence partners gather facts that may be used in its investigations and prosecutions. Beyond that, I cannot comment on fact-checking organizations.**

65. Do you believe that the average citizen is capable of serving as his or her own fact-checker without aid from social media or the media?

**RESPONSE: On some issues, a person may be able to determine the accuracy of certain facts (e.g. whether it is raining outside) without reference to outside sources. On other issues, it may be helpful for a person to consult other sources of information, such as reliable media outlets.**

Do you believe that the United States government should partner with social media companies to "identify disinformation campaigns and to weed out fake news planted by foreign intelligence services?"

a. Should the United States government team up with social media companies to identify and silence perceived disinformation campaigns and "fake news" from:
    iii. National Republican Platforms?
    iv. Conservative news organizations?
    v. Individual Conservative influencers or reporters?
    vi. Children espousing conservative viewpoints?
b. Should President Biden (or his senior officials) encourage the creation of "lists" containing the names of individuals who spread "disinformation"?
c. How is the aforementioned act different from the activities of communist China?

**RESPONSE (66-66(c)): I support efforts by social media companies to combat misinformation campaigns from foreign adversaries on their platforms, and I believe the federal government can play an important role in those efforts by providing companies with information about these activities. During the prior administration, for example, the FBI launched a Foreign Influence Task Force to identify and counteract malign foreign influence operations targeting the United States. I do not believe the federal government should encourage social media companies to remove speech based on partisan political considerations.**

66. Is the failure to teach Critical Race Theory in elementary schools a national security threat?

**RESPONSE: In my experience, decisions regarding elementary school curricula do not raise national security concerns.**

67. Is the individual right to keep and bear arms a national security threat?

**RESPONSE: In general, access to weapons in the United States may increase the threat of violence from terrorism. Any effort to prevent and disrupt terrorism that may implicate constitutional protections—including rights related to speech, association, privacy, or bearing arms—must be consistent with the Constitution and the law.**

68. On June 10, 2020, you signed a letter to Inspector General Horowitz criticizing the actions of then-Attorney General Bill Barr and President Trump for an event you described as a "photo op" in Lafayette Square on June 1, 2020 and demanding an immediate investigation into the events. An Inspector General Report released on June 8, 2021, found the following:

> that the USPP had the authority and discretion to clear Lafayette Park and the surrounding areas on June 1. The evidence we obtained did not support a finding that the USPP cleared the park to allow the President to survey the damage and walk to St. John's Church. Instead, the evidence we reviewed showed that the USPP cleared the park to allow the contractor to safely install the antiscale fencing in response to destruction of property and injury to officers occurring on May 30 and 31. Further, the evidence showed that the USPP did not know about the President's potential movement until mid- to late afternoon on June 1—hours after it had begun developing its operational plan and the fencing contractor had arrived in the park.[9]

a. Do you accept the results of the independent Inspector General investigation?
b. Do you regret your disproved comments?
c. What commitments can you give me that you will not similarly jump to conclusions as the Assistant Attorney General for the National Security Division evaluating cases before you like you did when evaluating the clearing of Lafayette Square?

**RESPONSE (69(a)-(c)): I am not sufficiently familiar with the above-referenced report of the Department of Interior Inspector General to comment on the scope of its review or its conclusions. If I am confirmed, I will evaluate all law enforcement matters before me based on the law and all available evidence, and without regard to political considerations.**

[9] Office of the Inspector General, Department of the Interior, "Review of U.S. Park Police Actions at Lafayette Park," June 8, 2021, available at: https://www.doioig.gov/reports/review-us-park-police-actions-lafayette-park

69. Does illegal immigration impose costs on border communities?

**RESPONSE: I am not sufficiently familiar with all of the information that would be necessary to provide an informed answer to this question.**

70. Is illegal immigration a national-security threat?

**RESPONSE: The United States has important interests in securing our borders. I agree with Secretary Mayorkas. He stated that the United States will "not waver in our values and our principles as a Nation. Our goal is a safe, legal, and orderly immigration system that is based on our bedrock priorities: to keep our borders secure, address the plight of children as the law requires, and enable families to be together."**

71. When was the last time you visited the U.S.-Mexico border?

**RESPONSE: I last visited the U.S.-Mexico border in July 2019 in my capacity as a director of Human Rights First.**

72. When was the last time you visited the U.S.-Mexico border outside of a port of entry?

**RESPONSE: I have not visited the U.S.-Mexico border outside of a port of entry.**

73. The Justice Department Inspector General's report on Crossfire Hurricane exposed serious flaws in the Department's FISA application policy and process. The Foreign Intelligence Surveillance Court has also made its frustration with the Department's shortcomings very clear. What steps will you take to make sure that the errors and mistakes that occurred with the Carter Page FISA warrant applications and Woods Procedure never happen again?

**RESPONSE: For decades since its enactment, FISA has proven to be an indispensable tool for protecting our national security. It is vital that the American public, Congress, and the courts have confidence in its use. The legitimacy of the FISA process depends on the government holding itself to the highest standards in providing the Court with complete and accurate information. I understand that the Department of Justice, including the Federal Bureau of Investigation, has taken steps to address issues identified by Inspector General Horowitz and recommendations based on his recent report. I am not currently in the Department and am not aware of the specific steps, but I have read in public filings that this work is ongoing and both the Inspector General and the FISA Court are carefully monitoring the progress. Additionally, I am aware that the FISA Court commissioned a review from an amicus curiae for further recommendations and that the government generally adopted those recommendations. If confirmed, I will make the implementation of these reforms, and FISA integrity generally, a top priority, working with Department leadership and counterparts at FBI and the rest of the Intelligence Community.**

74. Last year, it was reported that the DOJ's National Security Division determined that AJ+, a subsidiary of Al Jazeera Media, must register under FARA. To date, AJ + has ignored this mandate and Al Jazeera has doubled-down on its activities by launching "Rightly," a media platform aimed at conservative Americans. Will you commit to enforcing FARA compliance for AJ+ and Rightly?

**RESPONSE: The National Security Division oversees enforcement of the Foreign Agents Registration Act, which Congress passed to promote transparency and accountability regarding entities or individuals who work on behalf of foreign principals to influence U.S. public opinion and policy. Because I am not at the Department, I do not have information related to any pending enforcement actions. If confirmed, I will ensure the Division's important work in this area is appropriately resourced, and I will make sure we bring enforcement actions to compel registration where appropriate.**

75. Earlier this year, I reintroduced the Foreign Agents Disclosure and Registration Enhancement Act which authorizes the Attorney General to issue civil investigative demands for the production of information, increases penalties for noncompliance, requires the development and implementation of a comprehensive enforcement strategy, among other things. Will you commit to supporting this bill?

**RESPONSE: If confirmed, I look forward to working with you on this bill and to supporting the important work of the National Security Division in this area.**

76. On June 29, 2021, I wrote to the Justice Department about a recent National Security Division hire, Susan Hennessey. In that letter, I noted that Ms. Hennessey expressed a clear partisan bias against Special Counsel Durham's investigation. As just one of many examples, she stated,

> 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 has become characteristic of Barr's legacy, but unclear to me why Durham would want to go along with it.

I have concerns about any potential role she may have on Special Counsel Durham's inquiry in light of her public comments. If you are confirmed, will you ensure that she is recused from the Durham inquiry if she currently has a role? If not, why not?

**RESPONSE: Ms. Hennessey is highly qualified, and I have confidence in her integrity and abilities. It is my understanding from public reporting that Special Counsel Durham is conducting an independent investigation. If confirmed, I would seek to ensure that every member of the National Security Division strictly abides by the ethics rules, including those governing recusals.**

77. If you are confirmed, will you inform this committee whether Ms. Hennessey had, or has, any authorization to access any aspect of the Durham inquiry, including records, and whether she has used that authorization? If not, why not?

**RESPONSE: I am not at the Department and I do not familiar with the policies governing access to records. As stated above, my understanding from public reporting is that Special Counsel Durham is conducting an independent investigation. If confirmed, I will ensure the National Security Division cooperates with any ongoing investigations and that all of the Division's law enforcement work is free of improper political influence or bias.**

78. 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 March 2021 by the White House Office of Presidential Personnel about being nominated to serve as Assistant Attorney General for National Security. I participated in a vetting and screening process, and in May I received a formal notification that the President would nominate me, which he did on May 27, 2021.**

79. 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: I am not aware of talking with any officials from or anyone directly associated with the organization Demand Justice during my selection process.**

a. Did anyone do so on your behalf?

**RESPONSE: I am not aware that anyone on my behalf talked with any officials from or anyone directly associated with the organization Demand Justice during my selection process.**

80. 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: I am not aware of talking with any officials from or anyone directly associated with the organization the American Constitution Society during my selection process.**

a. Did anyone do so on your behalf?

**RESPONSE: I am not aware that anyone on my behalf talked with any officials from or anyone directly associated with the organization the American Constitution Society during my selection process.**

81. During your selection process did you talk with any officials from or anyone directly associated with the website Lawfare, including but not limited to Benjamin Wittes or Susan Hennessy? If so, what was the nature of those discussions?

**RESPONSE: During my selection process, I spoke with Susan Hennessey. We discussed opportunities to serve in government. I also spoke with Benjamin Wittes and discussed his decision to write an article sharing his views on Ms. Hennessey. In addition, I communicated with former Department officials, Jack Goldsmith and David Kris, who I understand are also both affiliated with Lawfare.**

**I am not aware of talking with any other officials from or anyone directly associated with Lawfare during my selection process.**

a. Did anyone do so on your behalf?

**RESPONSE: I am not aware that anyone on my behalf talked with any officials from or anyone directly associated with Lawfare during my selection process.**

82. 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: I am not aware of talking with any officials from or anyone directly associated with the listed organizations during my selection process.**

a. Did anyone do so on your behalf?

**RESPONSE: I am not aware that anyone on my behalf talked with any officials from or anyone directly associated with the listed organizations during my selection process.**

83. 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: I am not aware of talking with any officials from or anyone directly associated with the Open Society Foundation during my selection process.**

a. Did anyone do so on your behalf?

**RESPONSE: I am not aware that anyone on my behalf talked with any officials from or anyone directly associated with the Open Society Foundation during my selection process.**

84. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.

**RESPONSE: I do not have a record of those specific dates. The conversations I had occurred between March and May of 2021.**

85. Please explain, with particularity, the process whereby you answered these questions.

**RESPONSE: The Department of Justice received these questions on July 21, 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 26, 2021.**

**Post-Hearing Questions for the Record**
**Matthew G. Olsen**
**Submitted July 21, 2021**

**Senator John Cornyn**

1. Pursuant to 12(c) of the Senate Judiciary Committee Questionnaire ("SJQ") you are required to identify "any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials." In reviewing your record, there were public letters—on matters of policy and legal interpretation that you endorsed—that were omitted from your SJQ. Do you believe that you met the requirements of 12(c) in your SJQ?

**RESPONSE: In response to question 12(c), I did my best to identify any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that I had issued or provided or that others presented on my behalf to public bodies or public officials. I included numerous references to legal briefs submitted in judicial proceedings and to my testimony before Congress. However, I did not understand this question to include the open letters I had signed.**

**It appears from your question that I misunderstood the intended scope of question 12(c). I appreciate the opportunity to correct that now. I have attached the five open letters I signed, which were published online.**

2. On May 11, 2020, former Department of Justice attorneys signed a public statement on the Michael Flynn case. The public statement criticized the administration's stance on the Michael Flynn case, and "call[ed] upon Congress to formally censure Attorney General Barr for his repeated assaults on the rule of law in doing the President's personal bidding."
   a. Did you sign this letter?
   b. If so, why was this letter omitted from your SJQ?

**RESPONSE: Please see my response to Question 1.**

3. On February 16, 2020, former Department of Justice attorneys signed a public letter regarding the "Events Surrounding the Sentencing of Roger Stone."
   a. Did you sign this letter?
   b. If so, why was this letter omitted from your SJQ?

**RESPONSE: Please see my response to Question 1.**

4. On May 6, 2019, former federal prosecutors signed a public letter stating that "but for the OLC memo, the overwhelming weight of professional judgment would come down in favor of prosecution" of President Trump.
   a. Did you sign this letter?
   b. If so, why was this letter omitted from your SJQ?

**RESPONSE: Please see my response to Question 1.**

5. On October 1, 2020, former Department of Justice attorneys signed a public letter regarding "Protecting Free and Fair Elections." In that letter, former DOJ attorneys claimed, among other things, that Attorney General Barr had "weaponiz[ed] the DOJ in the service of Trump's personal interests, thereby doing grave damage to the rule of law."
   a. Did you sign this letter?
   b. If so, why was this letter omitted from your SJQ?
   c. Do you believe that Attorney General Barr, in his service to our country, undermined the rule of law?

**RESPONSE: Please see my response to Question 1.**

6. On June 10, 2020, former Department of Justice attorneys signed a public letter calling for Inspector General Michael Horowitz to open a probe into Attorney General Barr's and the DOJ's response to the summer protests and riots.
   a. Did you sign this letter?
   b. If so, why was this letter omitted from your SJQ?

**RESPONSE: Please see my response to Question 1.**

**Post-Hearing Questions for the Record**
**Matthew G. Olsen**
**Submitted July 21, 2021**

**Senator Tom 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. In September 2020, the Department of Justice ordered Al Jazeera's U.S.-based platform, AJ+, to register as a foreign agent for the Government of Qatar. To date, AJ+ has failed to register under the Foreign Agents Registration Act. If confirmed, will you commit to enforcing the Department's September 2020 ruling?

**RESPONSE: The National Security Division oversees enforcement of the Foreign Agents Registration Act, which Congress passed to promote transparency and accountability regarding entities or individuals who work on behalf of foreign principals to influence U.S. public opinion and policy. Because I am not at the Department, I do not have information related to any pending enforcement actions. If confirmed, I will ensure the Division's important work in this area is appropriately resourced, and I will make sure we bring enforcement actions to compel registration where appropriate.**

4. 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 July 21, 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 26, 2021.**

5. Did any individuals outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. If government officials assisted with writing or drafting your answers, please also identify the department or agency with which those officials are employed.

**RESPONSE: No individual outside of the federal government wrote or drafted answers to these questions or the written questions of other Committee members. See my answer to Q4. above.**

**Post-Hearing Questions for the Record**
**Matthew G. Olsen**
**Submitted July 21, 2021**

**Senator Mazie K. Hirono**

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:

   a. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?

**RESPONSE: No.**

   b. Have you ever faced discipline, or entered into a settlement related to this kind of conduct?

**RESPONSE: No.**

2. Last month, Professor Anming Hu stood trial on non-espionage charges under the Justice Department's China Initiative. According to media reports, the FBI presented false information about Hu to university officials and others to cast Hu as a Chinese military operative. Hu was not convicted but he is just one of hundreds of academics and scientists, most of whom are Asian, who are being targeted under the China Initiative. Critics charge that some cases amount to racial profiling and are occurring at a time of increased xenophobia and a rise in anti-Asian hate incidents.

   a. Are you aware that Attorney General Garland has stated that although the Justice Department will counter hacking and other illegal activity by China, it will take care to avoid negatively stereotyping Asian Americans and citizens of China?

   b. If confirmed, how will you ensure that the National Security Division counters the real threats posed by China without targeting Chinese Americans and Chinese citizens in the U.S. based simply on their ethnicity?

**RESPONSE (2a and 2b): I am aware of and agree with the Attorney General's statements. My first job at the Department was in the Civil Rights Division, and I take very seriously the challenges of discrimination and racial and ethnic bias. I believe any effort to focus investigative resources based on race or ethnicity would not only be inconsistent with the values of the Department, but would also significantly harm our security interests by undermining the AAPI community's trust in the Department and by failing to address the actual serious threats we face. It is imperative for the Department to be thoughtful about how it describes threats and about the potential impacts that those words can have on our communities. For example, in describing espionage threats posed by China, I would strive to make clear that such threats originate from the Chinese government—not Chinese citizens in general, and certainly not American citizens of Chinese origin or descent.**

**Post-Hearing Questions for the Record**
**Matthew G. Olsen**
**Submitted July 21, 2021**

**Senator Mike Lee**

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: I have not had occasion to consider any potential amendments or alterations to the Religious Freedom Restoration Act (RFRA), and I do not anticipate having such a role if I am confirmed as Assistant Attorney General for National Security. If I am confirmed, I will ensure that the National Security Division carries out its mission in a manner that upholds and secures the right of all Americans.**

2. Do you believe that hateful speech alone, without any attendant conduct, should be considered a crime?

**RESPONSE: The Supreme Court has made clear that speech alone can only rarely constitute a crime, such as in instances involving true threats or depictions of child sexual abuse. *See, e.g.*, *Virginia v. Black*, 538 U.S. 343 (2003); *New York v. Ferber*, 458 U.S. 747 (1982). The Supreme Court has not recognized hate speech as among the limited categories of speech that are wholly outside the First Amendment's protections. Hateful speech alone is therefore not a crime. However, hateful speech that includes true threats of violence may be punishable by law.**

3. 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: Although the National Security Division does not enforce anti-trafficking or child pornography laws, I fully support enforcement of these statutes.**

4. 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: In the event that the President takes a position that I believe to be contrary to the law, I would look to the Attorney General and other Department leadership for guidance. The Attorney General has made clear his respect for the rule of law and the**

**independence of the Justice Department. Ultimately, if I were convinced that I could not faithfully discharge my duties to uphold the Constitution and the law, I would resign.**

5. 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 the Attorney General stated during his confirmation hearing, prosecutors and other government agencies may exercise discretion about the allocation of limited enforcement resources. However, the executive branch cannot decide to abandon enforcement of a law entirely based on a policy disagreement.**

6. 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, I will swear an oath to support and defend the Constitution of the United States, and my decisions as Assistant Attorney General would be in keeping with this oath and in furtherance of the Department's mission. The Attorney General and Deputy Attorney General have stated they expect the same of all Department employees and I would have the same expectation of those serving in the National Security Division.**

7. 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: As noted above, if I am confirmed, I will take an oath to support and defend the Constitution of the United States. My decisions as Assistant Attorney General would be in keeping with this oath and in furtherance of the Department's mission. All Department employees also take an oath to support and defend the Constitution of the United States and work on behalf of the American people. If an employee violates this oath, I would address the misconduct and implement measures to prevent future misconduct from reoccurring.**

8. Recent reports by the Department of Justice's Inspector General found that the government filed inaccurate applications with the FISA Court in the Crossfire Hurricane investigation, which among other things excluded relevant exculpatory evidence, and the FBI failed to follow Woods Procedures in a number of other cases. These have led many Americans, including myself, to conclude that the federal government has abused its authority under FISA. What will you do to stop the government from abusing its authority under FISA and to guarantee that government representations to the FISA Court are accurate and contain relevant exculpatory evidence?

**RESPONSE: For decades since its enactment, FISA has proven to be an indispensable tool for protecting our national security. It is vital that the American public, Congress, and the**

**courts have confidence in its use. The legitimacy of the FISA process depends on the government holding itself to the highest standards in providing the Court with complete and accurate information. I understand that the Department of Justice, including the Federal Bureau of Investigation, has taken steps to address issues identified by Inspector General Horowitz and recommendations based on his recent report. I am not currently in the Department and am not aware of the specific steps, but I have read in public filings that this work is ongoing and both the Inspector General and the FISA Court are carefully monitoring the progress. Additionally, I am aware that the FISA Court commissioned a review from an amicus curiae for further recommendations and that the government generally adopted those recommendations. If confirmed, I will make the implementation of these reforms, and FISA integrity generally, a top priority, working with Department leadership and counterparts at FBI and the rest of the Intelligence Community.**

9. Under the now expired Section 215 business records collection authorities, the warrant requirement for collection of business records is "relevant to an authorized investigation," which is far less stringent than probable cause. If these authorities are reauthorized, would you support raising the warrant requirement to probable cause?

**RESPONSE: Because I am not currently at the Department, I do not have all the information I would need to offer an informed view of this issue. As a general matter, prior to its expiration, Section 215 could not be used to obtain information such as the contents of communications, the production of which would require a warrant or order based on probable cause. Rather, Section 215 could only be used to obtain items or information that could be obtained through a grand jury subpoena or court order in an analogous criminal context. *See* 50 U.S.C. § 1861(c)(2)(D). If confirmed, I would work with Congress to address these or any other concerns regarding reauthorization of this authority.**

10. Do you believe the President has inherent authority to surveil American citizens without a warrant? What limits, if any, do you think there are on that authority?

**RESPONSE: Congress has enacted legislation specifically governing the circumstances in which the government may conduct electronic surveillance of American citizens. In the context of national security investigations and foreign intelligence collection, the Foreign Intelligence Surveillance Act (FISA) regulates electronic surveillance of U.S. persons, including U.S. persons who are overseas. The President is obligated to adhere to FISA in any such collection.**

11. In the Senate, Senator Leahy and I have offered an amendment to reform the FISA process by strengthening the amicus curiae provisions and requiring the government to disclose relevant exculpatory evidence to both the FISA Court and amici. This amendment passed the Senate by a vote of 77 to 19. Would you support amendments to FISA to allow greater participation by amici in FISC proceedings?

**RESPONSE: I have not had an opportunity to carefully study the amendment referred to in the question. Under current law, the FISC is empowered to appoint an amicus in any**

**matter the Court deems appropriate and must generally appoint an amicus in any matter that presents a novel or significant interpretation of law. I believe amici play an important role in the current FISA process and help preserve public confidence. If confirmed, I would seek to fully understand how the current system is operating in this respect before forming a view on legislation.**

12. Do you believe that the federal government should be able to collect Americans' web browsing or internet search history without a probable cause warrant?
    a. If yes, under what authorities, in what circumstances, and with what limitations?

**RESPONSE (12-12(a)): It is essential that in all cases the government meets the predicates for the legal authority needed to obtain information. Under current law, my understanding is that the government typically is not required to obtain a warrant for non-content information. Based on my prior experience, including as a federal prosecutor, my general view is that the existing procedures strike an appropriate balance between providing important investigative tools and protecting Americans' privacy. If confirmed, I will ensure that the National Security Division complies with any present or future statutory requirements, abides by Department policy, and works with Congress in considering any proposed legislative reforms.**

13. Do you believe that the federal government should be able to collect Americans' GPS and cell site location information without a probable cause warrant?
    a. If yes, under what authorities, in what circumstances, and with what limitations?

**RESPONSE: In *Carpenter v. United States*, the Supreme Court held that a warrant is required in a criminal investigation to collect historical cell site location information over multiple days. The Department of Justice's practices must be consistent with *Carpenter*. Because I am not currently in the Department, I am not aware of the ways in which the Department has interpreted and applied *Carpenter* to other circumstances.**

14. From 2011 to 2014, you served as Director of the National Counterterrorism Center. We now know that multiple law enforcement and intelligence agencies have been exploiting a loophole to circumvent the Constitution and Congress by simply buying information that would otherwise require a court order to obtain. When you were Director of the NCTC, did you ever approve or authorize the purchase and/or use of information about people in the United States without a warrant?

**RESPONSE: NCTC's use of information concerning United States persons is generally governed by its Attorney General-approved Guidelines, which permit NCTC to access and acquire United States person information for the purpose of determining whether the information is reasonably believed to constitute terrorism information and thus may be retained, used, and disseminated in accordance with NCTC's mission and other applicable laws.**

15. During your time at Uber, did the government ever ask Uber for information about a customer who is a U.S. person?

**RESPONSE: Yes. Uber recently published its 2020 Government Transparency Report, in which it stated: "Uber is dedicated to protecting the privacy of our users and supporting the growth of cities. Our Government Transparency Report demonstrates our commitment to advancing these goals when it comes to responding to requests for user information.**
**In this report, Uber is sharing an overview of information that we provided to government regulators, airports, law enforcement agencies, and public health officials in the US and Canada between January 1 and December 31, 2020."**
**https://www.uber.com/us/en/about/reports/transparency/**

a. If yes, were any of those requests made pursuant to a gag order?

**RESPONSE: Uber's User Notice Policy concerning law enforcement requests for information is published at: https://www.uber.com/legal/en/document/?name=guidelines-for-law-enforcement&country=united-states&lang=en#kix.ph0d6lp1mcpx**

16. Do you think customers of Uber and other companies have a reasonable expectation of privacy in their location and other data?

**RESPONSE: Uber's privacy notice is published is published at: https://www.uber.com/legal/en/document/?name=privacy-notice&country=united-states&lang=en. Information about Uber's policies on government requests for user data is published at: https://help.uber.com/riders/article/requesting-data-from-uber-?_csid=vNrLlNjGSUzESXDA8lA_2w&nodeId=f1ba2cfb-2bd0-4d49-9e68-f980cdbc8829&state=ABQwSJUUpPGHoBRWJMtjpmyyg4h03fw536RNYOwHadg%3D**

**Post-Hearing Questions for the Record**
**Matthew G. Olsen**

**Submitted July 21, 2021**

**Senator Jon Ossoff**

1. Last Congress, Senators Lee and Leahy offered an amendment to amend the Foreign Intelligence Surveillance Court (FISC) amicus provisions that were passed in the 2015 USA FREEDOM Act. Their amendment would create a presumption that the FISC must appoint an amicus in cases that raise First Amendment or other civil liberties concerns, as well as cases that address new technologies or target political candidates or the news media. The Senate passed the amendment 77 to 19.

    a. Do you believe the Lee-Leahy amendment would improve the FISC process? Please be as direct, precise, and clear as possible.

**RESPONSE: I have not had an opportunity to carefully study the amendment referred to in the question. Under current law, the FISC is empowered to appoint an amicus in any matter the Court deems appropriate and must generally appoint an amicus in any matter that presents a novel or significant interpretation of law. As a general matter, I believe amici play an important role in the current FISA process and help preserve public confidence. If confirmed, I would seek to fully understand how the current system is operating in this respect before forming a view on legislation.**

2. It has been reported that in 2017 and 2018 the Department of Justice subpoenaed private companies, including Apple and an internet service provider, to acquire phone and email records of Members of Congress, including members of the House Permanent Select Committee on Intelligence, as well as Congressional staff and family members of Members of Congress.

    a. Under what circumstances do you believe it is appropriate for the Department of Justice to order the disclosure of such records pertaining to Members of Congress, and, if confirmed, will you provide promptly to the Senate Judiciary Committee all records related to these subpoenas, which represent a potentially grave threat to the separation of powers and the confidentiality of legislative deliberations and Congressional oversight?

**RESPONSE: Based on the Attorney General's public statements, I understand that he and the Deputy Attorney General have started a process to evaluate and strengthen the Department's policies and procedures for obtaining records related to members of Congress. Additionally, I understand that the Attorney General has referred the specific matter your question references to the Department's Inspector General. If I am confirmed, I will ensure that the National Security Division cooperates fully in that investigation. I will also work to ensure that this Committee receives information**

**responsive to its oversight requests, consistent with any applicable legal constraints and the need to protect the integrity of law enforcement investigations.**

b. The Attorney General has stated that he will issue regulations prohibiting the collection of journalists' records in national security leak investigations. Do you support this policy?

**RESPONSE: The Attorney General has recently issued a memorandum that bars prosecutors and investigators from collecting journalists' records in leak investigation as well as in other types of investigations, subject to narrow exceptions. If I am confirmed, I will ensure that the National Security Division adheres strictly to this policy.**

c. In your view, should there be a similar policy with respect to Members of Congress?

**RESPONSE: As noted in response to Question 2(a), I understand the Department has initiated a process to evaluate and strengthen its policies and procedures for obtaining records related to members of Congress. I believe that efforts by the Executive Branch to obtain records from Members of Congress may raise substantial separation-of-powers concerns and that any policy developed by the Department should take those concerns into account.**

3. The Supreme Court held in *Carpenter v. United States* that law enforcement officials need a warrant in order to collect historical cell site location information in criminal cases because an extensive and detailed record of a person's physical movements can reveal intimate personal information.

a. If confirmed, will you share with this Committee any guidance the Department of Justice has issued to prosecutors about how and whether to apply this *Carpenter* standard in contexts—for example, the collection of GPS data, other location or pattern-of-life data collected from mobile devices or device applications, data purchased from private parties such as so-called "data brokers," or the collection of cell site information in national security cases? And if there is no such guidance, will you work to produce it and brief the Committee on the progress of such production?

**RESPONSE: Because I am not currently at the Department, I am not familiar with the current guidance regarding the *Carpenter* decision. The Attorney General has stated that he will direct the Department's Office of Legislative Affairs to work with this Committee to determine what information the Department can provide on this subject, consistent with its longstanding policies and practices. If confirmed, I will work with Department leadership to understand the Department's current guidance, to identify if additional guidance is needed, and to share the best information possible with this committee.**

b. It has been reported that Federal agencies may be circumventing the requirements established by the *Carpenter* decision, as well as statutory restrictions established by the Electronic Communications Privacy Act, by buying detailed geolocation information from so-called "data brokers." In your view, does this practice violate Americans' expectations of privacy and is it consistent with the spirit and letter of the law as established by Congress and affirmed by the Court in *Carpenter v. United States*?

**RESPONSE: I am not familiar with the current practices of federal agencies in this area. If confirmed, I will work to ensure that the National Security Division complies with the law, including in a manner consistent with the Supreme Court holding in *Carpenter*. The Assistant Attorney General for National Security is also the Department's primary liaison to the intelligence community. In that capacity, I look forward to working with the Director of National Intelligence, who has stated that she intends to develop and disclose, to the extent possible, the legal frameworks governing the collection of information.**

c. If confirmed, will you disclose to this Committee all relevant information regarding the DOJ's purchase of location information and other personal data from private parties such as "data brokers" and a full accounting of how the National Security Division is using such data?

**RESPONSE: Because I am not currently at the Department, I am not sufficiently familiar with current practices to know the types of information that might feasibly be shared with this Committee. I am committed to be a true partner to this Committee in its oversight role. If confirmed, I will work with Department leadership to share the best information possible regarding this and other matters of legislative interest.**

**Post-Hearing Questions for the Record**
**Matthew G. Olsen**

**Senator Ben Sasse**

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.**

**Post-Hearing Questions for the Record**
**Matthew G. Olsen**
**Submitted July 21, 2021**

**Senator Thom Tillis**

1. What are your qualifications to serve as Assistant Attorney General for the National Security Division?

**RESPONSE: I believe my experience has prepared me to serve as Assistant Attorney General for National Security. For more than two decades I served as a leading government official on national security, law enforcement, and intelligence matters. From 2011-2014, I served as the Director of the National Counterterrorism. Prior to leading NCTC, I was the General Counsel for the National Security Agency.**

**For 18 years, I worked at the Department of Justice as a career attorney and in a number of leadership positions. I began my public service career as a trial attorney in the Civil Rights Division. For over a decade, I was a federal prosecutor in the U.S. Attorney's Office for the District of Columbia. I also served as Special Counsel to the Director of the Federal Bureau of Investigation, supporting the post-9/11 transformation of the FBI.**

**I also bring extensive experience in the Division I have been nominated to lead. In 2006, I helped establish the National Security Division and served as the first career Deputy Assistant Attorney General for National Security, managing intelligence activities and implementing Congress's landmark changes to the Foreign Intelligence Surveillance Act. In 2009, I also served as the Acting Assistant Attorney General for National Security.**

**At every stage of my career, I have been guided by the values of the Department of Justice: devotion to the Constitution, to the search for the truth, and to the pursuit of equal justice under the law. If I am confirmed, I will follow the facts and the law, and I will work relentlessly to advance the security of our nation.**

2. Please explain what will be your agenda as Assistant Attorney General, and what are your top priorities if you are confirmed?

**RESPONSE: As I have stated in testimony, I would have three main priorities if I am confirmed.**

**First, as the Attorney General's stated, addressing the threats posed by domestic terrorism must be a top priority. The National Security Division has a significant role to play to combat these threats. Domestic terrorism is a persistent and evolving threat, requiring an urgent, whole-of-government response. I would also seek to ensure that the National Security Division continues to combat the threats of international terrorist groups, like ISIS and al-Qaida. If confirmed, I will work with Justice Department leadership to remain vigilant against all of these threats, without regard to ideology.**

**Second, the National Security Division plays a critical role in safeguarding our nation's infrastructure and public and private networks against cyberattacks by our adversaries, especially hostile nation state actors. If confirmed, I will work alongside leadership in the Justice Department, the Department of Homeland Security, and the Intelligence Community, as well as with foreign and private sector partners, to deter, disrupt, and prosecute those responsible for these types of attacks.**

**Third, I would focus on the Division's responsibility to administer the Foreign Intelligence Surveillance Act, including in an oversight capacity. It is imperative that the government maintain the trust of the public, of the Congress, and of the FISA Court in the accuracy and integrity of the FISA process. If confirmed, I will work to ensure that the intelligence activities carried out on behalf of the American public are consistent with our Constitution, our laws, and our values.**

3. What are the most pressing cybersecurity threats facing the United States? How will you apply your cybersecurity experience in both the public and private sectors to address this national security threat?

**RESPONSE: If confirmed, I look forward to fully supporting the Administration's national security work to address the significant cybersecurity threats we face, including threats to critical infrastructure and the challenges posed by ransomware. My experience in both the public and private sectors has provided me with a deep appreciation of the challenges that the federal government and businesses face operating in a dynamic threat environment, and of the importance of cooperation between the public sector and the private sector in confronting these challenges. I have also gained valuable management experience in both the public and private sectors in leading large, diverse teams driven by a common mission.**

**Post-Hearing Questions for the Record**
**Matthew G. Olsen**
**Submitted July 21, 2021**

**Senator Ted Cruz**

1. Do you personally own any firearms? If so, please list them.

**RESPONSE: No.**

2. Have you ever personally owned any firearms?

**RESPONSE: No.**

3. Have you ever used a firearm? If so, when and under what circumstances?

**RESPONSE: Yes. In 2011, I received firearms training while employed at the National Security Agency.**

**Senator Chuck Grassley, Ranking Member**
**Questions for the Record**
**Judge Florence Pan**
**Judicial Nominee to the U.S. District Court for the District of Columbia**

1. **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 the term "super precedent" to describe any of its decisions. If confirmed, I will apply all binding precedents of the Supreme Court and the District of Columbia Circuit.

2. **Should law firms undertake the pro bono prosecution of crimes?**

   Response: I am not aware of any precedent for law firms to undertake the pro bono prosecution of crimes. The prosecution of crimes is a governmental function.

3. **Do you agree with Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a "living constitution"?**

   Response: I do not use labels such as "living Constitution" to describe my view of the Constitution. I believe that the Constitution is an enduring document that Americans can rely upon to safeguard fundamental rights. In addition, the Constitution has been interpreted by the Supreme Court to apply to issues and facts of first impression.

4. **Should a judge yield to social pressure when deciding the outcome of cases?**

   Response: No.

5. **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 precedent for a private party to prosecute a federal crime. The prosecution of crimes is a governmental function.

6. **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: Yes.

7. **Absent a traditional conflict of interest, should paying clients of a law firm be able to prevent other paying clients from engaging the firm?**

Response: I have not worked at a law firm except as a summer associate. I am not familiar with how law firms determine which clients to represent, and I do not have an opinion on this matter.

8. **Should paying clients be able to influence which pro bono clients engage a law firm?**

Response: Please see my response to Question 7.

9. **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.

10. **Should judicial decisions take into consideration principles of social "equity"?**

Response: Judicial decisions should reflect a good faith application of the governing law to the facts of the case that is before the court.

11. **Is it ever appropriate for a judge to publicly profess political positions on campaigns and/or candidates?**

Response: No.

12. **Is threatening Supreme Court Justices right or wrong?**

Response: Threatening Supreme Court Justices is wrong.

13. **How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?**

Response: The answer to this question would depend on the context of the particular comment at issue. Generally, criticism of an opinion focuses on the analysis and the reasoning of the opinion at issue.

14. **Do you think the Supreme Court should be expanded?**

Response: As a sitting judge and as a nominee, it would not be appropriate for me to comment on whether the Supreme Court should be expanded.

15. **Should a defendant's personal characteristics influence the punishment he or she receives?**

Response: 18 U.S.C. § 3553(a)(1) provides that a sentencing court "shall consider" the "history and characteristics of the defendant."

16. **If the Justice Department determines that the prosecution of an individual is meritless and dismisses the case, is it appropriate for a District Judge to question the Department's motivations and appoint an amicus to continue the prosecution? Please explain why or why not.**

Response: The Justice Department has prosecutorial discretion to dismiss criminal cases. Federal Rule of Criminal Procedure 48(a) provides that "[t]he government may, with leave of court, dismiss an indictment, information or complaint." An Advisory Committee Note states that "[t]his provision will permit the filing of a nolle prosequi only by leave of court. This is similar to the rule now prevailing in many States." Thus, the applicable rule requires the court to grant leave before a case may be dismissed. A court has discretion to determine what information should be considered before it grants the government leave to dismiss a case.

17. **What is the legal basis for a nationwide injunction? What considerations would you consider as a district judge when deciding whether to grant one?**

Response: A district court has discretion in fashioning suitable relief and defining the terms of an injunction. "Injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano* v. *Yamasaki*, 442 U.S. 682, 702 (1979). Moreover, "the scope of injunctive relief is dictated by the extent of the violation established . . . ." *Id.* I would follow the precedents of the Supreme Court and the District of Columbia Circuit in considering whether to grant any injunction.

18. **What legal standard would you apply in evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?**

Response: If confirmed, I will apply the precedents of the Supreme Court and the District of Columbia Circuit in considering challenges under the Second Amendment. *See, e.g., Heller v. District of Columbia*, 554 U.S. 570 (2008); *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017); *Heller v. District of Columbia* (*Heller II*), 670 F.3d 1244 (D.C. Cir. 2011).

19. **In your view, is a personal philosophical or religious objection to the death penalty on the part of the President a valid justification to abandon the defense of a death sentence on direct appeal?**

Response: As a sitting judge and as a nominee, it would not be appropriate for me to comment on the propriety of how the Executive Branch might choose to exercise its prosecutorial discretion.

20. **In your view, is a personal philosophical or religious objection to the death penalty on the part of a District Judge a valid justification not to impose a death sentence?**

Response: A District Judge must take an oath to faithfully and impartially discharge and perform all the duties incumbent upon him or her as a judge under the Constitution and laws of the United States. Personal philosophical or religious views should not influence a judge's application of the law.

21. **Do you believe potential voter fraud or other election abnormalities are concerns that the Justice Department should take seriously?**

Response: As a sitting judge and as a nominee, it would not be appropriate for me to comment on the policy priorities of the Justice Department.

22. **Do state school-choice programs make private schools state actors for the purposes of the Americans with Disabilities Act?**

Response: As a sitting judge and as a nominee, it would not be appropriate for me to comment on an issue that may arise in litigation before the court. The District of Columbia has a School Choice Incentive Program, and I am not aware of any precedents in this jurisdiction that have addressed this issue.

23. **Does illegal immigration impose costs on border communities?**

Response: I have not studied the issue of illegal immigration and its impact on border communities. I therefore am not able to answer this question.

24. **When was the last time you visited the U.S.-Mexico border?**

Response: I have never visited the U.S.-Mexico border.

25. **When was the last time you visited the U.S.-Mexico border outside of a port of entry?**

Response: Please see my response to Question 24.

26. **Do Blaine Amendments violate the Constitution?**

Response: In *Espinoza v. Montana Dept. of Revenue*, 591 U.S. ___, 140 S. Ct. 2246 (2020), the Supreme Court considered a scholarship program that was administered in accordance with a Blaine Amendment -- Article X, section 6, of the Montana Constitution, which contains a "no-aid" provision barring government aid to sectarian schools. Montana's administrative rule prohibited families from using the scholarships at religious schools. The Supreme Court held that the administrative rule discriminated against schools and parents based on the religious character of the school; and that the rule failed strict scrutiny and violated the Free Exercise Clause of the First Amendment. The Court held that, under the Supremacy Clause, where there is a conflict between a state constitution's no-aid provision and the Free Exercise Clause, the state court should "disregard" the no-aid provision and decide the case "conformably to the Constitution of the United States."

27. **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 previously was nominated by President Obama on April 28, 2016, but the nomination expired. On February 15, 2021, I submitted an application to the District of Columbia Federal Law Enforcement Nominating Commission. I interviewed with that commission on February 27, 2021. On March 23, 2021, I was contacted by the White House Counsel's Office and was informed that I was under consideration. Since that time, I have been in communication with White House staff and officials from the Office of Legal Policy at the Department of Justice. On March 30, 2021, President Biden announced his intent to nominate me, and on June 15, 2021, my nomination was submitted to the Senate.

28. **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.

a. **Did anyone do so on your behalf?**

Response: No.

29. **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.

a. **Did anyone do so on your behalf?**

Response: No.

30. **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.

a. **Did anyone do so on your behalf?**

Response: No.

31. **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.

    a. **Did anyone do so on your behalf?**

       Response: No.

32. **List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.**

    Response: Please see my response to Question 27.

33. **Please explain, with particularity, the process whereby you answered these questions.**

    Response: On July 21, 2021, the Office of Legal Policy at the Department of Justice provided these questions to me. I reviewed the questions and drafted my responses. The Office of Legal Policy reviewed my responses and provided limited feedback before I finalized them. The answers are my own.

**Nomination of The Honorable Florence Y. Pan to be United States District Judge for the District of Columbia Questions for the Record**
**Submitted July 21, 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 sitting judge and as a nominee, it would not be appropriate for me to comment on whether a Supreme Court precedent was "rightly" decided. If confirmed, I will apply all Supreme Court precedents without regard to any personal opinion about whether any such precedent was rightly decided.

4. **Is the Second Amendment right to keep and bear arms an individual right belonging to individual persons, or a collective right that only belongs to a group such as a militia?**

   Response: The Supreme Court held in *District of Columbia v. Heller,* 554 U.S. 570 (2008), that the Second Amendment protects an individual 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*, 588 U.S. ___, 139 S. Ct. 2191 (2019), the Supreme Court held that in a felon-in-possession prosecution under 18 U.S.C. § 922(g), the government must prove that the defendant knew he was a felon at the time that he possessed the firearm. *Greer* considered the standard for appellate courts to order new trials or plea hearings for people convicted under Section 922(g) who initially failed to invoke *Rehaif*. The Supreme Court held that such a defendant may obtain relief under *Rehaif* only if the defendant demonstrates a "substantial possibility" that he or she could produce evidence on remand that the defendant did not, in fact, know his or her felon status, such that the defendant would not be convicted again.

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*, the Supreme Court held that defendants convicted of drug-trafficking offenses involving "Tier 3" quantities of crack cocaine are not eligible for resentencing under the Fair Sentencing Act and the First Step Act. Although Tier 3 quantities are smaller than Tier 1 and Tier 2 quantities, the First Step Act applies retroactively only to people sentenced for a "covered offense," which is defined as any offense whose statutory penalties were "modified by section 2 or 3 of the Fair Sentencing Act." Sections 2 and 3 of the Fair Sentencing Act modified the quantities for Tier 1 and Tier 2 offenses, but not Tier 3 offenses. Thus, the statute does not allow re-sentencing of defendants convicted of offenses involving the smallest amounts of crack cocaine.

7. **Please describe what you believe to be the Supreme Court's holding in *Jones v. Mississippi*, 593 U.S. _____ (2021).**

   Response: The petitioner in *Jones* was a defendant who was convicted of murder as a juvenile, and was sentenced to life without parole. Jones argued that the Supreme Court's decisions in *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 577 U.S. ___, 136 S. Ct. 718 (2016), required the sentencing judge to find that Jones was incapable of rehabilitation before imposing a sentence of life without parole. The Supreme Court rejected this argument, ruling that those cases require only that the sentencing court "consider youth as a mitigating factor" when deciding whether to impose a life-without-parole sentence.

8. **Please describe what you believe to be the Supreme Court's holding in *Tandon v. Newsom*, 593 U.S. _____ (2021).**

   Response: In *Tandon*, the Supreme Court enjoined California from enforcing COVID-19 restrictions as applied to religious, in-home gatherings. The Court held that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise." Even though California's COVID-19 rules limited both secular and religious in-home gatherings to three or fewer households, religious in-home gatherings had to be exempted from that limitation because some businesses were not subject to the same limitation.

9. **Please describe what you believe to be the Supreme Court's holding in *Sanchez v. Mayorkas*, 593 U.S. _____ (2021).**

   Response: In *Sanchez*, the Supreme Court held that noncitizens who have been granted Temporary Protected Status are not eligible for an "adjustment of status" to obtain lawful

permanent residency without leaving the country. The relevant statute, 8 U.S.C. § 1255(a), allows in-country adjustment of status for those who were "inspected and admitted or paroled in the United States." The Court ruled that "Section 1255 generally requires a lawful admission before a person can obtain [lawful permanent resident] status. Sanchez was not lawfully admitted, and his [Temporary Protected Status] does not alter that fact. He therefore cannot become a permanent resident of this country."

10. **What is your view of arbitration as a litigation alternative in civil cases?**

Response: Where the parties agree to arbitrate, arbitration is often a good alternative to litigation. Arbitration generally allows the parties to achieve a swifter, more efficient, and less costly resolution of their dispute.

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 July 21, 2021, the Office of Legal Policy at the Department of Justice provided these questions and the questions of other members of the Committee to me. I reviewed the questions and drafted my responses. The Office of Legal Policy reviewed my responses and provided limited feedback before I finalized them. The 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 other individual assisted with writing or drafting my answers.

**SENATOR TED CRUZ**
**U.S. Senate Committee on the Judiciary**

**Questions for the Record for Florence Y. Pan, to be United States District Judge for the District of Columbia**

## 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. **You granted a motion for pretrial release for a schizophrenic man who neglected to take his medication, and then shot at police officers—resulting in the injury and partial paralysis of one of the officers. The Montgomery County Police criticized this ruling, stating that the man "is clearly demonstrated to be a threat to people in the community, whether they are law enforcement officers or residents." What was the basis for this ruling?**

   Response: When I made the ruling in question, I was applying the D.C. bail statute, D.C. Code § 23-1322, which favors release. At the time that the motion for pre-trial release was filed, the circumstances of the defendant had changed dramatically. My recollection is that he was back on his medication, and had maintained a perfect disciplinary record over a substantial period of time at the jail. Moreover, he had been shot in the encounter with the police and had become physically disabled. My recollection is that I placed the defendant on house arrest with a detailed plan for his supervision by the Pretrial Services Agency.

2. **During your confirmation hearing in 2016, you responded the following to Senator Tillis, "I think that would be inappropriate as a judge to do anything but follow the law. I think that judges are bound by the law, they swear an oath to uphold the law, and they should faithfully apply the law to the facts that are before them. So I would not agree with any type of philosophy that would yield to social pressure or any – any other factors in decision making by a judge."**

   **Do you agree with what you said before, and if so, do you consider yourself a textualist or an originalist? If not, what's the difference between those philosophies and your own philosophy?**

   Response: I agree with my prior statement. I do not use labels such as "textualist" or "originalist" to describe my view of the law. I believe that the text is the starting point and the foundation of all constitutional and statutory interpretation. I believe that the original intent and the original public meaning of the provision in question are important considerations in interpreting the Constitution.

3. **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 trial judge for the past 12 years on the District of Columbia Superior Court, my judicial philosophy has been to be well prepared, to be open-minded, to give all litigants a meaningful opportunity to be heard, and to apply the law to the facts of each case that comes before me. I do not identify with any particular Supreme Court Justice in terms of judicial philosophy. I believe that a judge should follow precedent and should

decide only those matters that are necessary to the resolution of the case. I believe that judges should set aside their personal views and opinions, and even-handedly apply the law.

4. **Does the Constitution's meaning evolve and adapt to new circumstances even if the document is not formally amended? If so, when?**

Response: I believe that the Constitution is an enduring document that Americans can rely upon to safeguard fundamental rights. In addition, the Constitution has been interpreted by the Supreme Court to apply to issues and facts of first impression.

**Questions for the Record for Florence Pan**
**From Senator Mazie K. Hirono**

1. **As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:**

   a. **Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

      Response: No.

   b. **Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

      Response: No.

**Senator Mike Lee**
**Questions for the Record**
**Florence Pan, D.D.C.**

1. **How would you describe your judicial philosophy?**

Response: As a trial judge for the past 12 years on the District of Columbia Superior Court, my judicial philosophy has been to be well prepared, to be open-minded, to give all litigants a meaningful opportunity to be heard, and to apply the law to the facts of each case that comes before me.

2. **What sources would you consult when deciding a case that turned on the interpretation of a federal statute?**

Response: In interpreting a federal statute, I would begin with the text. If the plain meaning of the language in the statute were clear, that would be dispositive. I would also rely on precedents of the Supreme Court and the District of Columbia Circuit. If there were no such precedents, I would look to canons of statutory construction, the structure of the statute, precedents from other courts, and legislative history.

3. **What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?**

Response: In interpreting a constitutional provision, I would first examine the text of the provision. I would rely on the precedents of the Supreme Court and the District of Columbia Circuit. I also would consider the original intent and original public meaning of the provision.

4. **What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?**

Response: The text and the original meaning of a constitutional provision play very important roles in interpreting the Constitution. The text is the starting point of any analysis of a constitutional provision. The Supreme Court has often placed great weight on original meaning 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: Please see my response 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: The plain meaning of a statute or constitutional provision generally refers to the public understanding of the relevant language at the time of enactment. The Supreme Court, however, has recognized and relied upon the evolution of social norms in certain contexts, such as in considering cruel and unusual punishment under the Eighth Amendment. *See Trop v. Dulles*, 356 U.S. 86 (1958) (Eighth Amendment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."). If confirmed, I would be bound by the precedents of the Supreme Court and the District of Columbia Circuit, regardless of whether that precedent relied on original public meaning.

6. **What are the constitutional requirements for standing?**

Response: Article III limits the exercise of federal court jurisdiction to cases or controversies. To establish standing to bring a case, a plaintiff must demonstrate (1) that they personally have suffered an actual or threatened injury; (2) that the injury is fairly traceable to the challenged conduct of the defendant; and (3) that the injury is likely to be redressed by a favorable decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

7. **Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?**

Response: In *McCulloch v. Maryland*, 17 U.S. 316, 418 (1819), the Supreme Court held that under the Necessary and Proper Clause, congressional power encompasses implied and incidental powers that are "conducive" to the "beneficial exercise" of an enumerated power. Chief Justice Marshall wrote, "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."

8. **Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?**

Response: When evaluating the constitutionality of a law that was enacted without reference to a specific enumerated power, I would follow the precedents of the Supreme Court and the District of Columbia Circuit. I would carefully consider the arguments of the parties and my own independent legal research.

9. **Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?**

Response: The Supreme Court has held that some rights are not expressly enumerated in the Constitution, but are nevertheless protected under the Due Process Clause of the Fifth and Fourteenth Amendments. Such rights are "deeply rooted in

the Nation's history and traditions" and "implicit in the concept of ordered liberty." *See Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

10. **What rights are protected under substantive due process?**

Response: Some of the rights that the Supreme Court has held are protected under the doctrine of substantive due process include: The right to use contraception; the right of interracial couples to marry; the right to an abortion; the right to engage in intimate sexual conduct; and the right of same-sex couples to marry.

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, I will not rely on my personal beliefs in considering the scope of substantive due process protections. I would note that in footnote four of *United States v. Carolene Products Co*, 304 U.S. 144, 152 n.4 (1938), Justice Harlan Fiske Stone distinguished between statutes dealing with economic and social-welfare legislation and those that implicate the essence of ordered liberty. Justice Stone wrote that there may be a "narrower scope for operation of the presumption of constitutionality" where non-economic constitutional rights are concerned.

12. **What are the limits on Congress's power under the Commerce Clause?**

Response: The Supreme Court has held that, under the Commerce Clause, Congress may regulate the channels of interstate commerce, the instrumentalities of interstate commerce, and activities that substantially affect interstate commerce. *See 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 strict scrutiny is warranted when the government classifies people based upon "traditional indicia of suspectness," including those that pertain to "an immutable characteristic determined solely by accident of birth." *See Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974); *see also United States v. Carolene Products, Co.*, 304 U.S. 144, 152 n.4 (1938). The Supreme Court has determined that race, religion, national origin, and alienage are suspect classes subject to strict scrutiny.

14. **How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?**

Response: Checks and balances and separation of powers are important structural protections that prevent the excessive accumulation of power in any one branch of the government.

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 reviewing whether the governmental action was lawful, I would rely on the precedents of the Supreme Court and the District of Columbia Circuit. For example, Justice Robert H. Jackson's concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), provides a framework for evaluating the exercise of unenumerated executive powers.

16. **What role should empathy play in a judge's consideration of a case?**

Response: In considering a case, a judge should apply the governing law to the facts of the case that is before the court. A judge should not allow his or her personal views or emotions to influence his or her rulings.

17. **What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?**

Response: An error in constitutional interpretation is a bad outcome, whether it results in the invalidation or the upholding of a statute. Upholding a statute, however, validates the independent judgment of a coordinate branch of government, and therefore is less disruptive than overturning a statute.

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: One reason that fewer statutes were struck down between 1789 and 1857 is that Congress passed far fewer statutes during that period of time. The downside of "aggressive" exercise of judicial review is that it results in the overturning of laws that have been passed and approved by democratically elected officials in the legislative and executive branches of the government. The downside of judicial passivity is that it suggests a failure by the courts to uphold their obligation to review legislation to ensure that it comports with the requirements of the Constitution.

19. **How would you explain the difference between judicial review and judicial supremacy?**

Response: I understand judicial review to describe the routine process of courts considering and ruling upon claims that challenge the lawfulness of legislation or government conduct. I understand judicial supremacy to refer to the principle that the Supreme Court's interpretation of the Constitution is authoritative.

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 a sitting judge and as a nominee, it would not be appropriate for me to comment on how elected officials should fulfill their duties. The rule of law, however, requires all members of society 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: It is the duty of a judge to apply the law to the facts of the case before the court. In this respect, a judge does not employ force or will, but only uses judgment to interpret the law, as it was written by the legislative branch and approved by the executive. Officials in the legislative and executive branches may seek to implement the will of the people who elected them, through legislation and policy initiatives. That is not the function of a judge.

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 trial judge, it is my duty to apply binding precedents. If confirmed, I will apply all precedents of the Supreme Court and the District of Columbia Circuit. If a party raises a good faith challenge to a precedent, I am nevertheless bound to apply the precedent. Only the Court of Appeals sitting en banc or the Supreme Court would have the authority to overrule the precedent.

23. **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: Group identity is not one of the factors that may be considered in imposing a sentence under 18 U.S.C. § 3553(a).

24. **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 familiar with this quote, or the context in which it was made. I equate the concept of equity with fairness.

25. **Is there a difference between "equity" and "equality?" If so, what is it?**

Response: I understand "equity" to mean fairness. I understand "equality" to mean treating people in the same way.

26. **Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 24)?**

Response: I am not aware of any Supreme Court decision that has considered or applied the Equal Protection Clause to the precise definition of "equity" from the above quote.

27. **How do you define "systemic racism?"**

Response: I understand "systemic racism" to refer to a form of racism that is embedded through laws and regulations within a society or an organization.

28. **How do you define "critical race theory?"**

Response: I understand "critical race theory" to refer to a body of legal scholarship that seeks to critically examine the law as it intersects with issues of race.

29. **Do you distinguish "critical race theory" from "systemic racism," and if so, how?**

Response: I understand "critical race theory" to be an academic subject. I understand "systemic racism" to be a label that seeks to describe a form of racism.

30. **In 2012, you granted supervised release to a defendant who allegedly fired a gun at several police officers, injuring one. The Montgomery County Police criticized your decision, saying "[t]his man is clearly demonstrated to be a threat to the people in the community, whether they are law enforcement officers or residents . . . [w]e are disappointed with the judge's decision to release him back into the community." Please explain your decision in that case.**

Response: The defendant was mentally ill and had not been taking his medication when the incident occurred. When I made the ruling in question, I was applying the D.C. bail statute, D.C. Code § 23-1322, which favors release. At the time that the motion for pre-trial release was filed, the circumstances of the defendant had changed dramatically. My recollection is that he was back on his medication, and had maintained a perfect disciplinary record over a substantial period of time at the jail. Moreover, he had been shot in the encounter with the police and had become physically disabled. My recollection is that I placed the defendant on house arrest with a detailed plan for his supervision by the Pretrial Services Agency.

31. **Given the disturbing rise in violent crime and murder we are seeing throughout the country, will you commit to prioritize protecting public safety if confirmed as a federal judge?**

Response: Public safety is an important consideration and a priority to me in all criminal cases.

**Senator Ben Sasse**
**Questions for the Record**
**U.S. Senate Committee on the Judiciary**
**Hearing: "Nominations"**
**July 21, 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 trial judge for the past 12 years on the District of Columbia Superior Court, my judicial philosophy has been to be well prepared, to be open-minded, to give all litigants a meaningful opportunity to be heard, and to apply the law to the facts of each case that comes before me.

2. **Would you describe yourself as an originalist?**

   Response: I do not use labels such as "originalist" to describe my view of the law. I believe that original public meaning is an important consideration in interpreting the Constitution.

3. **Would you describe yourself as a textualist?**

   Response: I do not use labels such as "textualist" to describe my view of the law. I believe that the text is the starting point and the foundation of all constitutional and statutory interpretation.

4. **Do you believe the Constitution is a "living" document? Why or why not?**

   Response: I do not use labels such as "living document" to describe my view of the Constitution. I believe that the Constitution is an enduring document that Americans can

rely upon to safeguard fundamental rights. In addition, the Constitution has been interpreted by the Supreme Court to apply to issues and facts of first impression.

**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 admire Justice Sandra Day O'Connor and Justice Ruth Bader Ginsburg, who were the first women appointed to the Supreme Court. They have been important role models for me. Each of them overcame many barriers and challenges in their professional lives, and they were exemplary public servants.

**6. Was Marbury v. Madison correctly decided?**

Response: As a sitting judge and as a nominee, I do not think it would be appropriate for me to comment on the "correctness" of a Supreme Court precedent. If confirmed, I will apply all binding Supreme Court precedents, without regard to any personal opinions about their "correctness." However, there are a small number of constitutional decisions that are foundational to our system of justice. *Marbury v. Madison* is one of those decisions.

**7. Was Lochner v. New York correctly decided?**

Response: As a sitting judge and as a nominee, I do not think it would be appropriate for me to comment on the "correctness" of a Supreme Court precedent. If confirmed, I will apply all binding Supreme Court precedents, without regard to any personal opinions about their "correctness."

**8. Was Brown v. Board of Education correctly decided?**

Response: As a sitting judge and as a nominee, I do not think it would be appropriate for me to comment on the "correctness" of a Supreme Court precedent. If confirmed, I will apply all binding Supreme Court precedents, without regard to any personal opinions about their "correctness." However, there are a small number of constitutional decisions that are foundational to our system of justice. *Brown v. Board of Education* is one of those decisions.

**9. Was Bolling v. Sharpe correctly decided?**

Response: Please see my response to Question 7.

**10. Was Cooper v. Aaron correctly decided?**

Response: Please see my response to Question 7.

**11. Was Mapp v. Ohio correctly decided?**

Response: Please see my response to Question 7.

**12. Was Gideon v. Wainwright correctly decided?**

Response: As a sitting judge and as a nominee, I do not think it would be appropriate for me to comment on the "correctness" of a Supreme Court precedent. If confirmed, I will apply all binding Supreme Court precedents, without regard to any personal opinions about their "correctness." However, there are a small number of constitutional decisions that are foundational to our system of justice. *Gideon v. Wainwright* is one of those decisions.

**13. Was Griswold v. Connecticut correctly decided?**

Response: Please see my response to Question 7.

**14. Was South Carolina v. Katzenbach correctly decided?**

Response: Please see my response to Question 7.

**15. Was Miranda v. Arizona correctly decided?**

Response: Please see my response to Question 7.

**16. Was Katzenbach v. Morgan correctly decided?**

Response: Please see my response to Question 7.

**17. Was Loving v. Virginia correctly decided?**

Response: As a sitting judge and as a nominee, I do not think it would be appropriate for me to comment on the "correctness" of a Supreme Court precedent. If confirmed, I will apply all binding Supreme Court precedents, without regard to any personal opinions about their "correctness." However, there are a small number of constitutional decisions that are foundational to our system of justice. *Loving v. Virginia* is one of those decisions.

**18. Was Katz v. United States correctly decided?**

Response: Please see my response to Question 7.

**19. Was Roe v. Wade correctly decided?**

Response: Please see my response to Question 7.

**20. Was Romer v. Evans correctly decided?**

Response: Please see my response to Question 7.

**21. Was United States v. Virginia correctly decided?**

Response: Please see my response to Question 7.

**22. Was Bush v. Gore correctly decided?**

Response: Please see my response to Question 7.

**23. Was District of Columbia v. Heller correctly decided?**

Response: Please see my response to Question 7.

**24. Was Crawford v. Marion County Election Board correctly decided?**

Response: Please see my response to Question 7.

**25. Was Boumediene v. Bush correctly decided?**

Response: Please see my response to Question 7.

**26. Was Citizens United v. Federal Election Commission correctly decided?**

Response: Please see my response to Question 7.

**27. Was Shelby County v. Holder correctly decided?**

Response: Please see my response to Question 7.

**28. Was United States v. Windsor correctly decided?**

Response: Please see my response to Question 7.

**29. Was Obergefell v. Hodges correctly decided?**

Response: Please see my response to Question 7.

**30. 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 Constitution?**

Response: An appellate court, sitting en banc, may overrule a precedent of the court. Rule 35 of the Federal Rules of Appellate Procedure provides that an "en banc rehearing is not favored and ordinarily will not be ordered unless (1) en banc consideration is

necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance."

**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: Please see my response 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: This is not a factor that may be considered in imposing a sentence under 18 U.S.C. § 3553(a).

**Questions from Senator Thom Tillis**
**for Florence Y. Pan**
**Nominee to be United States District Court Judge for the District of Columbia**

1. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   Response: Yes.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: I understand "judicial activism" to describe when a judge advances a personal agenda or relies on personal opinions and preferences in deciding cases. Judicial activism is not appropriate.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: I believe that impartiality should be expected and required of any judge.

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: When faithfully applying the law, the outcome is not always the most desirable. Nevertheless, a judge's duty is to faithfully apply the law in every instance. It is the legislature's job to amend the law if the outcomes of the law's application are undesirable.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No.

7. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

   Response: If confirmed, I will apply all applicable precedents of the Supreme Court and the District of Columbia Circuit in considering challenges under the Second Amendment. *See, e.g., Heller v. District of Columbia*, 554 U.S. 570 (2008); *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017); *Heller v. District of Columbia* (*Heller II*), 670 F.3d 1244 (D.C. Cir. 2011).

**8. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?**

Response: If confirmed, I will apply all applicable precedents of the Supreme Court and the District of Columbia Circuit in evaluating challenges under the Second Amendment. The Supreme Court considered a challenge to COVID-19 restrictions that burdened constitutional rights in *Tandon v. Newsom*, 593 U.S. ___ (2021). The Court applied strict scrutiny to those restrictions and granted an injunction against enforcing the restrictions with respect to persons exercising their rights under the Free Exercise Clause.

**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 will follow the precedents of the Supreme Court and the District of Columbia Circuit with respect to claims of qualified immunity. The Supreme Court has held that government officials are entitled to qualified immunity unless they have violated a plaintiff's "clearly established" statutory or constitutional rights.

**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 judge and as a nominee, it would not be appropriate for me to comment on whether the law of qualified immunity provides sufficient protection for law enforcement officers. If confirmed, I will apply all applicable legal precedents. Whether additional protections are needed is a matter for the legislature to consider.

**11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?**

Response: Please see my response to Question 10.

**12. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?**

Response: As a judge on the District of Columbia Superior Court for the past 12 years, and as an Assistant United States Attorney for the 10 years before that, I have never had occasion to consider or to apply the Supreme Court's cases regarding patent eligibility. I do not have any opinion on these cases.

**13. How would you apply current patent eligibility jurisprudence to the following hypotheticals. Please avoid giving non-answers and actually analyze these hypotheticals.**

**a.** ***ABC Pharmaceutical Company*** **develops a method of optimizing dosages of a substance that has beneficial effects on preventing, treating or curing a disease or condition for individual patients, using conventional technology but a newly-discovered correlation between administered medicinal agents and bodily chemicals or metabolites. Should this invention be patent eligible?**

Response: As a nominee, I do not think it would be appropriate for me to analyze how hypothetical cases should be resolved because similar issues may come before the court if I am confirmed. As a judge on the District of Columbia Superior Court for the past 12 years, and as an Assistant United States Attorney for the 10 years before that, I have not had the opportunity to review the patent cases that would be relevant to analyzing this hypothetical. But as a judge with substantial experience on the bench, I have often encountered new areas of the law. When that happens, I become deeply familiar with the applicable law before rendering a decision, by thoroughly reviewing the authorities cited by the parties and by doing independent legal research. If confirmed, I will give the same careful attention to any patent cases that come before me.

**b.** ***FinServCo*** **develops a valuable proprietary trading strategy that demonstrably increases their profits derived from trading commodities. The strategy involves a new application of statistical methods, combined with predictions about how trading markets behave that are derived from insights into human psychology. Should *FinServCo's* business method standing alone be eligible? What about the business method as practically applied on a computer?**

Response: Please see my response to Question 13a.

**c.** ***HumanGenetics*** **Company wants to previewatent a human gene or human gene fragment as it exists in the human body. Should that be patent eligible? What if *HumanGenetics* Company wants to patent a human gene or fragment that contains sequence alterations provided by an engineering process initiated by humans that do not otherwise exist in nature? What if the engineered alterations were only at the end of the human gene or fragment and merely removed one or more contiguous elements?**

Response: Please see my response to Question 13a.

**d.** ***BetterThanTesla ElectricCo*** **develops a system for billing customers for charging electric cars. The system employs conventional charging technology and conventional computing technology, but there was no previous system combining computerized billing with electric car charging. Should *BetterThanTesla's* billing system for charging be patent eligible standing alone? What about when it explicitly claims charging hardware?**

Response: Please see my response to Question 13a.

**e. *Natural Laws and Substances, Inc.* specializes in isolating natural substances and providing them as products to consumers. Should the isolation of a naturally occurring substance other than a human gene be patent eligible? What about if the substance is purified or combined with other substances to produce an effect that none of the constituents provide alone or in lesser combinations?**

Response: Please see my response to Question 13a.

**f. A business methods company, *FinancialServices Troll,* specializes in taking conventional legal transaction methods or systems and implementing them through a computer process or artificial intelligence. Should such implementations be patent eligible? What if the implemented method actually improves the expected result by, for example, making the methods faster, but doesn't improve the functioning of the computer itself? If the computer or artificial intelligence implemented system does actually improve the expected result, what if it doesn't have any other meaningful limitations?**

Response: Please see my response to Question 13a.

**g. *BioTechCo* discovers a previously unknown relationship between a genetic mutation and a disease state. No suggestion of such a relationship existed in the prior art. Should *BioTechCo* be able to patent the gene sequence corresponding to the mutation? What about the correlation between the mutation and the disease state standing alone? But, what if *BioTech Co* invents a new, novel, and nonobvious method of diagnosing the disease state by means of testing for the gene sequence and the method requires at least one step that involves the manipulation and transformation of physical subject matter using techniques and equipment? Should that be patent eligible?**

Response: Please see my response to Question 13a.

**h. Assuming *BioTechCo's* diagnostic test is patent eligible, should there exist provisions in law that prohibit an assertion of infringement against patients receiving the diagnostic test? In other words, should there be a testing exemption for the patient health and benefit? If there is such an exemption, what are its limits?**

Response: As a sitting judge and as a nominee, it would not be appropriate for me to comment on whether the law should include the provisions posited. This is a matter that should be addressed by the legislature.

**i. *Hantson Pharmaceuticals* develops a new chemical entity as a composition of matter that proves effective in treating TrulyTerribleDisease. Should this new chemical entity be patent eligible?**

Response: Please see my response to Question 13a.

**j. *Stoll Laboratories* discovers that superconducting materials superconduct at much higher temperatures when in microgravity. The materials are standard superconducting materials that superconduct at lower temperatures at surface gravity. Should *Stoll Labs* be able to patent the natural law that superconductive materials in space have higher superconductive temperatures? What about the space applications of superconductivity that benefit from this effect?**

Response: Please see my response to Question 13a.

**14. Based on the previous hypotheticals, do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?**

Response: If confirmed, I will apply the Supreme Court's precedents to the best of my ability, regardless of any personal opinion about their clarity or consistency. Because I am not yet familiar with patent law, I am unable to discuss how I would apply the Supreme Court's ineligibility tests.

Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Myrna Perez
Nominee to the Court of Appeals for the Second Circuit
July 21, 2021

1. **At your hearing, you were asked about unenumerated rights, and specifically how judges identify rights that are not explicitly named in the Constitution.**

   **a. According to the Supreme Court, in what circumstances are unenumerated rights protected?**

   Response: Unenumerated rights are most commonly protected under the doctrine known as substantive due process. For example, in *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997), the Supreme Court said that substantive due process protects "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."

   **b. Does the Fourteenth Amendment protect against infringement of unenumerated rights?**

   Response: Yes. The Supreme Court has held that it does.

   **c. Do you agree with Justice Kagan's view that, while unenumerated rights are protected in certain circumstances, courts should "make sure [they are] not interfering inappropriately with the decisions that really ought to belong to the American people?"**

   Response: Yes. There are co-equal branches of government, including two branches that are ultimately accountable to the people. If I were confirmed as a Circuit Judge, I would be bound by Supreme Court precedent on unenumerated rights, including *Washington v. Glucksberg*, 521 U.S. 702 (1997). The executive and legislative branches are ultimately accountable to people, which courts must always be mindful of.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Myrna Pérez
Nominee to be United States Circuit Judge for the Second Circuit Court of Appeals

1. **In his introduction for you before your testimony before the Judiciary Committee, Senator Schumer praised "the righteousness of the causes [you] will follow" if confirmed to the bench.**

    a. **Do you know what Senator Schumer meant by this?**

    Response: No.

    b. **Did you discuss any such causes with Senator Schumer?**

    Response: No.

    c. **Which causes will you "follow" if confirmed?**

    Response: If confirmed, I will uphold the Constitution and the rule of law.

    d. **Are those causes any different, or more righteous, than other judicial nominees that have come before you?**

    Response: I am hopeful that all judicial nominees do their best to uphold the Constitution and the rule of law.

2. **Your nomination has been celebrated as historic because of your career advocating for voting rights. Yet, during your hearing, you consistently said your career as an advocate will have no effect on how you will rule if confirmed as a judge. It seems to me either my colleagues and outside activist groups are wrong about what kind of judge you will be, or you are hiding the true nature of how you will view your role as a judge. What can you say to assure me that your testimony was true, and that you will not seek to impose your views on issues you advocated on when they come before you?**

    Response: I have spent the better part of the last two decades protecting a constitutionally-designed framework that has different people playing different roles. One role is that of an advocate, another role is that of a judge. The framework I have worked so hard to defend does not work if people do not perform their respective roles.

3. **Senator Durbin stated that your article titled "The GOP Campaign to Make Elections Less Free" was submitted in May, before you were a nominee.**

    a. **Is this true?**

Response: Yes.

**b. Did you have any contact with editors or anyone associated with Sojourners after you submitted your article in May?**

Response: Yes, but not in connection with this article until the evening I learned it was published.

**4. When exactly did you submit this article to Sojourners?**

Response: It was initially submitted May 13, 2021, and was signed off with edits on May 28, 2021.

**5. Senator Durbin said he read your article and that he agreed with it and would happily deliver it as a speech on the Floor of the Senate. That's troubling to me, as Senator Durbin is a politician and a Democrat, and you are a nominee to be an apolitical federal judge.**

**a. What is the difference between the role of a Senator and a federal judge?**

Response: As a policy advocate, I have engaged with policymakers. Senators work in the legislative branch as lawmakers. Judges, however, adjudicate cases and controversies—they do not make laws.

**b. Do you think it's a good thing for litigants who will come before you that have different views than you that a partisan politician said that agrees with your views completely?**

Response: If confirmed, I will cease playing the part of advocate in our legal system. By accepting this nomination, I am pledging that if confirmed, I will impartially and objectively follow the law irrespective of any personal views I hold. If confirmed, litigants who come before me will know that I have taken an oath to provide equal justice under the law.

**6. When did you go into vet with the Office of Legal Policy and when did you begin your background investigation with the FBI?**

Response: I began the vetting process with the Office of Legal Policy on or around March 30, 2021 and began my paperwork for the FBI vet a few days after that.

**7. Regardless of when you officially went into vet, according to your SJQ you were in talks for this seat starting in early March. You have been in regular communication with the administration since the end of March. Regardless of when you submitted your Sojourners article, you engaged in the following public advocacy during your vetting process:**

- ***CT needs to restore voting rights to formerly incarcerated people*, CTPost, June 6, 2021.**
- ***New York Still Needs More Reform*, N.Y.L.J., Apr. 22, 2021.**
- **Texas *Republicans Move Swiftly on Voter Suppression Bills*, Brennan Center, Mar. 30, 2021.**
- **June 3, 2021: Panelist, "Advocating for the Rule of Law: Free and Fair Elections**
  **Panel," New York State Bar Association (Virtual).**
- **May 27, 2021: Panelist, "Voting Rights in America: Ensuring Fair and Full Voting for All," League of Women Voters of Ridgefield (Virtual).**
- **May 26, 2021: Panelist, "The For the People Act: A Bold Step Forward for Voting Reform," Lawyers Committee for Civil Rights Under Law (Virtual).**
- **May 25, 2021: Panelist, "Can Business Help Strengthen Democracy? What solutions move the needle?," Stanford Graduate School of Business (Virtual).**
- **May 25, 2021: Panelist, "Game of Votes: Will the States Enthrone the Vote, or**
  **Flush It Down the Other 'Throne,'" NEO Philanthropy (Virtual).**
- **May 20, 2021: Panelist, Fireside Chat & "Breaking the Glass Ceiling" Award Ceremony, The Leadership Institute for Women of Color Attorneys (Virtual).**
- **May 13, 2021: Panelist, "The Right on which All Others Rest: Defending the Sacred Human Right to Vote," Justice Revival (Virtual).**
- **May 6, 2021: Speaker, City of Berkeley Redistricting Commission Training, Redistricting Partners (Virtual).**
- **May 2, 2021: Panelist, Voting Rights Discussion, Girl Scouts Troop 12912 (Virtual).**
- **April 29, 2021: Panelist, "Community Empowerment: Voting Rights," (Virtual,**
  **on the platform Clubhouse).**
- **April 22, 2021: Panelist, "Free the Ballot," Women Donor's Network (Virtual).**
- **April 21, 2021: Moderator, "A Conversation on Democracy and Belonging," Othering and Belonging Conference (Virtual).**
- **April 13, 2021: Speaker, "State Legislation and What Corporations Can Do," Committee for Economic Development: Committee Sustaining Democratic Institutions (Virtual).**

**a. Why did you engage in these politically charged activities while under active consideration for a seat on the Second Circuit?**

Response: The bulk of my legal career has focused on nonpartisan voter protection and engagement. My practice has required that I work with people and organizations from various backgrounds—including those with various political affiliations.

**b. Did you stop to consider what message that would send about your perceived impartiality when you were nominated weeks later?**

Response: The bulk of my legal career has focused on nonpartisan voter protection and engagement. My practice has required that I work with people and organizations from various backgrounds—including those with various political affiliations.

**8. During your hearing you refused to commit to recusing yourself from cases concerning legislation that you have advocated for the passage of and have called "necessary." You also said during your hearing you needed litigants before you to feel like you hadn't pre-judged their case. How could a litigant coming before you challenging legislation that you already have a position on feel like she will get a fair hearing before you?**

Response: If confirmed, I commit that I will scrupulously review 28 U.S.C. § 455 and confer with the relevant ethics officers regarding appropriate issues for recusal.

**9. During your hearing, you said you loved the Constitution, and how it gave everyone a right to "life, liberty, and the pursuit of happiness."**

**a. At what stage of life does the constitutional right to life apply and why?**

Response: As a judicial nominee, it would be inappropriate for me to comment on this question because a case or controversy implicating these matters may come before me and I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments.

**b. How do judges go about enforcing the rights to life, liberty, and the pursuit of happiness?**

Response: Judges interpret laws. I believe that our representative democracy and the checks and balances in our three-branch system help promote and protect all rights.

**c. Joseph Lochner was a German immigrant seeking a better life for his family through hard work and freedom of contract. Was *Lochner v. New York* a vindication of his rights to life, liberty, and the pursuit of happiness? If not, why not?**

Response: If confirmed to the Second Circuit, I would be duty-bound to follow all Supreme Court and Second Circuit precedent. As I testified, *Lochner* was largely overturned in *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937).

**10. How many states engage in voter suppression?**

Response: As a judicial nominee, it would be inappropriate for me to respond to this question because a case or controversy implicating these matters may come before me and I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments.

**11. Is all gerrymandering bad? If not, why not?**

Response: If confirmed, I would be bound to follow all Supreme Court and Second Circuit precedent on questions related to gerrymandering, including *Rucho v. Common Cause*, 588 U.S. _ (2019), and others.

**12. Does Florida gerrymander?**

Response: As a judicial nominee, it would be inappropriate for me to respond to this question because a case or controversy implicating these matters may come before me and I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments. If confirmed, I would be bound to follow all Supreme Court and Second Circuit precedent on questions related to gerrymandering, including *Rucho v. Common Cause*, 588 U.S. _ (2019), and others.

**13. Does Texas gerrymander?**

Response: As a judicial nominee, it would be inappropriate for me to respond to this question because a case or controversy implicating these matters may come before me and I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments. If confirmed, I would be bound to follow all Supreme Court and Second Circuit precedent on questions related to gerrymandering, including *Rucho v. Common Cause*, 588 U.S. _ (2019), and others.

**14. Does Illinois gerrymander?**

Response: As a judicial nominee, it would be inappropriate for me to respond to this question because a case or controversy implicating these matters may come before me and I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments. If confirmed, I would be bound to follow all Supreme Court and Second Circuit precedent on questions related to gerrymandering, including *Rucho v. Common Cause*, 588 U.S. _ (2019), and others.

**15. Does New York gerrymander?**

Response: As a judicial nominee, it would be inappropriate for me to respond to this question because a case or controversy implicating these matters may come before me and I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments. If confirmed, I would be bound to follow all Supreme Court and Second Circuit precedent on questions related to gerrymandering, including *Rucho v. Common Cause*, 588 U.S. _ (2019), and others.

**16. Does Maryland gerrymander?**

Response: As a judicial nominee, it would be inappropriate for me to respond to this question because a case or controversy implicating these matters may come before me and I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments. If confirmed, I would be bound to follow all Supreme Court and Second Circuit precedent on questions related to gerrymandering, including *Rucho v. Common Cause*, 588 U.S. _ (2019), and others.

**17. Recently, some people who had previously called Voter ID requirements a form of "voter suppression" have expressed willingness to include Voter ID requirements in upcoming election reform legislation.**

**a. Do you think these changes in position are because of an underlying change in views of the legitimacy of ID requirements, or do you think they reflect a reaction to public polling data?**

Response: I am unaware of which people you are referencing and do not have any knowledge as to why, if any, positions on voter ID have changed.

**b. Are Voter ID requirements voter suppression?**

Response: The Supreme Court held in *Crawford v. Marion County*, 553 U.S. 181 (2008), that photo ID laws for voting were not per se unconstitutional. If confirmed, I'd follow all binding Supreme Court and Second Circuit precedent, including *Crawford*.

**18. Do you agree with Vice President Harris that rural voters may not be able to comply with Voter ID requirements because they don't have access to "Xerox" machines?**

Response: As an advocate, I identified instances and individuals who may not be able to comply with a state's photo identification requirements. I have no awareness or knowledge of the statement the question attributes to the Vice President.

**19. What is your understanding of originalism?**

Response: "The theory that the U.S. Constitution should be interpreted according to the intent of those who drafted and adopted it." *Black's Law Dictionary* 1126 (7th ed. 1999).

**20. What is your understanding of how an originalist views the Bill of Rights and subsequent Constitutional Amendments?**

Response: I have not studied this issue and do not have an understanding to offer.

**21. Do you know any originalists who ignore the Bill of Rights?**

Response: I have not studied this issue.

**22. Do you know any originalists who believe black Americans should be counted as 3/5 of a vote?**

Response: I have not studied this issue.

**23. Do you know any originalists who believe women should not be able to vote?**

Response: I have not studied this issue.

**24. Which areas of constitutional law has the Supreme Court instructed lower courts to interpret using original public meaning?**

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. 570, 605 (2008).

**25. Which areas of constitutional law has the Supreme Court instructed lower courts to interpret using the living constitution?**

Response: I am not aware of an instruction like that being issued by the Supreme Court to lower courts.

**26. If confirmed, are you willing to interpret the Constitutional according to its original public meaning when the Supreme Court has mandated you do so?**

Response: If confirmed, I would interpret the Constitution consistent with the precedent set out by the Supreme Court and the Second Circuit.

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

Response: No.

**28. Justice Scalia once said at Villanova Law School, "There is no such thing as a 'Catholic judge. The bottom line is that the Catholic faith seems to me to have little effect on my work as a judge . . . . Just as there is no 'Catholic' way to cook a hamburger, I am hard pressed to tell you of a single opinion of mine that would have come out differently if I were not Catholic." Do you agree with Justice Scalia? What do you view as the role of religion for a federal judge?**

Response: I am unfamiliar with this quotation attributed by the question to Justice Scalia, but I do agree that judges are duty bound to resolve cases and controversies by applying the relevant law and precedent to the record and the facts before the court.

**29. You wrote movingly about Chuck Colson following his death. Mr. Colson was a great man and a great Christian and I appreciate the work you have done with his excellent organization, Prison Fellowship. But Mr. Colson, of course, had a Christian faith that compelled him to fight for human rights beyond those of prisoners including, very notably, the unborn. Mr. Colson said in 1996 of the baptism of former abortionist Bernard Nathanson:**

> **This is the way the abortion war will ultimately be won: through Jesus Christ changing hearts, one by one. No amount of political force, no government, no laws, no army of Planned Parenthood workers, can ever stop that. It is the one thing absolutely invincible. That simple baptism, held without fanfare in the basement of a great cathedral, is a reminder that a holy Baby, born in a stable 20 centuries ago, defies the wisdom of man. He cannot be defeated.**
>
> **Do you agree with Chuck Colson?**
>
> Response: In my personal capacity, I am on record as agreeing with a belief that the sacrament of baptism is a reminder that a holy baby, born in a stable 20 centuries ago, defies the wisdom of man and cannot be defeated. I am unfamiliar with the statement in the question attributed to Chuck Colson.

**30. You have spoken many times in admiration for Justice Brennan. Brennan famously would tell his law clerks that the most important thing about the court was "how to count to five." That is with five votes you get a majority to change the law. In the wake of the *Fulton v. Philadelphia* opinion there are now five Justices who have said publicly that *Employment Division v. Smith* was wrongly decided.**

**a. In hearing a religious exemption claim, should lower courts apply *Smith* even though five Justices have said that it was wrongly decided?**

Response: Lower courts are bound by vertical stare decisis and should apply existing Supreme Court precedent.

**b. If not, what does this say about Justice Brennan's legal realist approach about "the number five"?**

Response: Lower courts are bound by vertical stare decisis and should apply existing Supreme Court precedent.

**31. You have said that "no responsible person in my area will say that voter fraud never happens because that's not true. It's extraordinarily rare, it is in vanishingly small numbers."[1] Yet you have also criticized some states' response to voter fraud, saying**

[1] Speaker, "Speakers on the Square: Politics and Social Media," New York University, Dec. 2, 2020. Available at https://www.nyu.edu/alumni/events-programs/past-virtual-events/speakers-on-the-square.html

**those responses are not proportional to the size of the problem. What is an acceptable amount of voter fraud that states should accept, in your view?**

Response: In my role as a policy advocate, I would make comments directed at the public or elected officials who have responsibility for enacting laws. The question posed is best answered by legislatures. The role of a judge is to adjudicate cases and controversies, not to make law.

**32. When discussing voter integrity laws being proposed and passed in state legislatures, you have said that politicians were seeing "the writing on the wall, and rather than compete for votes they are trying to manipulate and change the rules of the game so that people who will not vote for them have a hard time voting."[2]**

**a. Do you believe reforming, or getting rid of the Electoral College, qualifies as changing the rules of the game?**

Response: As a judicial nominee, it would be inappropriate for me to respond to this question because a case or controversy implicating these matters may come before me and I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments.

**b. Do you support abolishing or reforming the Electoral College?**

Response: As a judicial nominee, it would be inappropriate for me to respond to this question because a case or controversy implicating these matters may come before me and I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments.

**c. Do you believe that abolishing or reforming the filibuster qualifies as changing the rules of the game?**

Response: As a judicial nominee, it would be inappropriate for me to respond to this question because a case or controversy implicating these matters may come before me and I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments.

**d. Do you support abolishing or reforming the filibuster?**

Response: As a judicial nominee, it would be inappropriate for me to respond to this question because a case or controversy implicating these matters may come before me and I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments.

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[2] Speaker, "The State of Race," WGBH, March 23, 2021. Available at https://www.youtube.com/watch?v=QZS610_ndOA&ab_channel=GBH

**33. You have also said that some of these voter integrity laws are a reaction to politicians' anxiety over the "Browning of America."**

**a. Are you aware that black and Hispanic voters voted for President Trump in higher numbers in 2020 than they did in 2016?**

Response: I have seen news reports indicating that Black and Latino voters voted for President Trump in higher numbers in 2020 than they did in 2016.

**b. How do you reconcile that with your theory of anxiety over the "Browning of America?"**

Response: If confirmed, I would consider each case based on the facts and record before me, carefully applying relevant precedent. I would put aside personal theories or explanations for phenomena and look to the facts and the record put before me.

**34. In June 2020 testimony before the House Committee on the Judiciary, you mentioned the problem of "cyber suppression content—social media posts with disinformation or deceptive practices that could cause a voter to be disenfranchised."[3] Do you believe that social media companies censoring people and viewpoints from one political ideology is cyber suppression?**

Response: It is the province of the legislature to set the policies regulating social media companies.

**35. Do you believe property damage caused during rioting should be prosecuted to the fullest extent of the law?**

Response: If confirmed, and a case before me involved someone convicted of property damage, I would adjudicate the matter fairly and impartially. Decisions about what charges should be brought in a criminal context is the province of prosecutors.

**36. Under the Supreme Court's First Amendment jurisprudence, can someone shout "fire" in a crowded theater?**

Response: The Supreme Court has held that "the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

**37. How many criminal trials have you participated in to full disposition?**

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[3] *Hearing on State COVID-19 Voting Procedures Before the H. Comm. On Judiciary*, 116th Cong., June 3, 2020 (testimoy of Myrna Pérez) (SJQ Attachments Part 1 12c at 912).

Response: None. My practice has been complex civil litigation.

**38. How many criminal appeals have you argued?**

Response: None. My practice has been complex civil litigation.

**39. How many securities-law matters have you participated in?**

Response: None. My practice has been complex civil litigation.

**40. How many complex commercial litigation matters have you participated in?**

Response: None. My practice has been complex civil litigation.

**41. How many insurance litigation matters have you participated in?**

Response: None. My practice has been complex civil litigation.

**42. How many mass-tort litigation matters have you participated in?**

Response: As a summer associate at O'Melveny and Myers, I researched a matter for a mass tort litigation, but I was not an attorney at the time nor do I remember the specifics of the matter.

**43. How many employment-discrimination matters have you participated in?**

Response: As a litigation fellow at Relman Colfax (then, Relman and Dane), I performed legal research and worked on discovery on at least one employment discrimination matter that I later heard settled.

**44. How many immigration matters have you participated in?**

Response: None. My practice has been complex civil litigation.

**45. What standard should courts apply in allowing discovery in Administrative Procedure Act litigation?**

Response: If confirmed, I would be bound by existing Supreme Court and Second Circuit precedent on this topic, including *Dep't of Commerce v. New York*, 139 S. Ct. 2551 (2019), and *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971), and others.

**46. 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: If confirmed, I would be bound by any controlling Supreme Court and Second Circuit precedent as to the interpretative method to be used for evaluating the constitutional provision at issue.

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

Response: A judge is duty bound to apply the law to the case in question regardless of personal feelings. If confirmed, I would faithfully discharge that duty.

**48. Should judicial decisions take into consideration principles of social "equity"?**

Response: Judicial decisions should take into consideration only those factors relevant to applicable law in the case and controversy before the Court.

**49. Are legal doctrine and practice best understood as an objective and defensible scheme of human association? Or are they better understood as of instrumental use for political ends?**

Response: I have not studied this issue and am not aware of how legal doctrine and practice is best understood.

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

Response: "Legal formalism" is defined by Black's Law Dictionary as "The theory that law is a set of rules and principles independent of other political and social institutions." *Black's Law Dictionary* 904 (7th ed. 1999).

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

Response: I have never used the term "formalist" to describe myself. If confirmed, I would objectively and impartially review the arguments of the parties, the record before me, and all relevant statute and precedent and apply the law to the facts and record before me.

**52. Can the Supreme Court mandate formalism on lower courts?**

Response: I am not aware of the Supreme Court mandating academic theories upon lower courts, but where the Supreme Court has created binding precedent that a constitutional provision should be evaluated according to particular interpretive guidelines, I will faithfully apply that precedent.

**53. Can an appeals court mandate formalism on trial courts?**

Response: I am not aware of the appellate courts mandating academic theories upon lower courts, but where the Second Circuit has created binding precedent that a

constitutional provision should be evaluated according to particular interpretive guidelines, I will faithfully apply that precedent.

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

Response: The Supreme Court has noted that the doctrine of stare decisis "permits society to presume that bedrock principles are founded in the law, rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact." *Vasquez v. Hillery*, 474 U.S. 254, 265-266 (1986).

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

Response: "Legal realism" is defined by Black's Law Dictionary as "The theory that the law is based not on formal rules or principles, but instead on judicial decisions that should derive from social interests and public policy." *Black's Law Dictionary* 907 (7th ed. 1999).

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

Response: I have never used the term "legal realist" to describe myself. If confirmed, I would objectively and impartially review the arguments of the parties, the record before me, and all relevant statute and precedent. I would apply the law to the facts and record before me.

**57. Do you agree that all lawyers are, at some level, legal realists?**

Response: I agree that all lawyers should not ask courts to do something outside of what they can do.

**58. The Second Circuit is in many ways a commercial court. Are you familiar with the Law and Economics movement?**

Response: Black's Law Dictionary defines "law and economics" as "a discipline advocating the economic analysis of the law, whereby legal rules are subject to a cost-benefit analysis to determine whether a change from one legal rule to another will increase or decrease allocative efficiency and social wealth." *Black's Law Dictionary* 890 (7th ed. 1999). I have not studied it formally, but have a high-level awareness of it as an academic discipline and am familiar with cost-benefit analytical methods.

**59. What value, if any, do you see in Law and Economics?**

Response: Insights from law and economics have been incorporated into many fields of law, including anti-trust law. If confirmed, I would apply all binding Supreme Court and Second Circuit precedent, including those that incorporated insight from law and economics theories.

**60. Is the practice of judicial review defensible absent the existence of neutral legal principles?**

Response: There are numerous established standards of judicial review.

**61. What is the purpose of criminal sentencing under the law?**

Response: The purposes of criminal sentencing as outlined in 18 U.S.C. 3353(a)(2) are:
(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.

**62. What is the purpose of criminal sentencing from a moral perspective?**

Response: The purposes of criminal sentencing as outlined in 18 U.S.C. 3353(a)(2) are:
(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.

**63. What, if anything, do you think is the relationship between morality and the law when it comes to punishing criminals?**

Response: In sentencing, a defendant is entitled to equal justice under the law. Discrimination in sentencing based on a person's background like ethnicity, race, or religion would violate the law and morality.

**64. What is the relationship between morality and the law generally?**

Response: If confirmed, I would objectively and impartially review the arguments of the parties, the record before me, and all relevant statutes and precedent and apply the law to the facts and record before me. My personal views would be set aside.

**65. What is your understanding of the original meaning of the Cruel and Unusual Punishment Clause?**

Response: I have not studied the original meaning nor the legislative history of the Cruel and Unusual Punishment Clause. If confirmed, I would objectively and impartially apply all relevant precedent to the law to the facts and record before me.

**66. Do you think law firms should allow paying clients to influence which pro bono clients they take?**

Response: Decisions about what clients a private law firm should accept and under what terms, conditions, or circumstances are decisions for the law firm to make.

**67. Do you think law-firm clients should use their financial position to influence which pro bono clients their attorneys take?**

Response: Decisions about what clients a private law firm should accept and under what terms, conditions, or circumstances are decisions for the law firm to make.

**68. 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, conditions, or circumstances are decisions for the law firm to make.

**69. 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 do not deserve representation on account of their identity.

**70. Do you agree with the Supreme Court that the principle of church autonomy goes beyond a religious organization's right to hire and fire ministers? Please describe your view on whether and/or how the Supreme Court has placed limits on church autonomy.**

Response: If confirmed, I would apply all relevant Supreme Court and Second Circuit precedent as to questions of church autonomy, including *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*, 565 U.S. 171 (2012), and *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020).

**71. What level of scrutiny applies to a Second Amendment challenge in the Second Circuit?**

Response: The Second Circuit is bound by relevant Supreme Court precedent as to the scrutiny level of Second Amendment cases, including *Heller*. There is a Second Circuit Second Amendment case, *New York State Rifle & Pistol Association v. Corlett,* that has been granted cert by the Supreme Court. If confirmed, I would follow faithfully all binding Supreme Court and Second Circuit precedent without reservation.

**72. One of the federal courts' important functions is reading statutes and regulations, determining what they mean, and determining how they apply to the facts at hand.**

**a. How would you determine whether statutory or regulatory text was ambiguous?**

Response: I would first look to the text of the statute, and consider the arguments of the parties.

**b. Would you apply different standards to determining whether statutory text and regulatory text were ambiguous? If so, how would the ambiguity standards differ?**

Response: I would first look to the text of the statute or regulation and any relevant precedent, including *Kisor v. Willkie*, 588 U.S. _ (2019) and *Auer v. Robbins*, 519 U.S. 452 (1997). I would carefully consider the arguments of the parties, and scrupulously apply the law to the facts and record of the case before me.

**c. When interpreting ambiguous text, what tools would you use to resolve the ambiguity?**

Response: I would examine any relevant precedent for interpreting the text, review the context of the text, apply the relevant canons of construction, and consult any legislative or other history as necessary.

**d. When interpreting ambiguous text, how would you handle two competing and contradictory canons of statutory interpretation?**

Response: I would examine any relevant precedent for interpreting the text, review the context of the text, apply the relevant canons of construction, and consult any legislative or other history as necessary.

**73. Is climate change real?**

Response: If confirmed, and if a case came before me that required me to evaluate claims regarding the existence of climate change, I would scrupulously review the facts and record of the case and apply any binding Supreme Court and Second Circuit precedents.

**74. Do people have implicit racial bias?**

Response: I believe that humans have implicit biases, and if I were confirmed, I would strive to ensure that all persons receive equal justice under the law.

**75. Does human life begin at conception?**

Response: If confirmed, and if a case came before me that required me to evaluate when human life begins, I would scrupulously review the facts and record of the case and apply all Supreme Court and Second Circuit precedents.

**76. 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 work ethic, ability, and temperament. I would welcome applicants with diverse experiences and personal and professional backgrounds.

**77. The Blackstone Legal Fellowship "prepares Christian law students for careers marked by integrity, excellence, and leadership." Blackstone "is a program of Alliance Defending Freedom. ADF is the world's largest legal organization committed to protecting religious freedom, free speech, and the sanctity of life." Would you hire a Blackstone Fellow to serve in your chambers as a law clerk?**

Response: I would hire law clerks based upon work ethic, ability, and temperament. I would welcome applicants with diverse experiences and personal and professional backgrounds.

**78. Please explain, with detail, the process by which you became a circuit-court nominee.**

Response: In late February 2021, a member of Senator Schumer's staff reached out to provide me a link to the Senator's judicial application, which I completed. In early March 2021, I had multiple conversations with a member of Senator Schumer's screening committee. On March 12, 2021, I spoke with a member of Senator Schumer's staff. On March 13, 2021, I met with Senator Schumer. On March 29, 2021, I was contacted by an official from the White House Counsel's Office to set up an interview with attorneys from that office, which took place the following day. Since March 30, 2021, I have been in contact with officials at the Office of Legal Policy at the Department of Justice and the White House Counsel's Office. On June 14, 2021, I spoke with White House Counsel Dana Remus. On June 15, 2021, my nomination was submitted to the Senate.

**79. Have you had any conversations with individuals associated with the group Demand Justice—including, but not limited to, Brian Fallon or Chris Kang—in connection with this or any other potential judicial nomination? If so, please explain the nature of the conversations.**

Response: I spoke with Chris Kang on a few occasions to get his advice on the judicial nomination process.

**a. To your knowledge, has anyone had such conversations on your behalf?**

Response: Generally speaking, I am not aware of the content of conversations I was not in. As I stated above, I spoke with Chris Kang myself to better understand the judicial nomination process.

**80. Have you had any conversations with individuals associated with the American Constitution Society—including, but not limited, to Russ Feingold—in connection with this or any other potential judicial nomination? If so, please explain the nature of the conversations.**

Response: No.

**a. To your knowledge, has anyone had such conversations on your behalf?**

Response: Generally speaking, I am not aware of the content of conversations I was not in.

**81. Please explain with particularity the process by which you answered these questions.**

Response: These questions were provided to me by the Office of Legal Policy at the Department of Justice. I reviewed the questions, researched any relevant case law as needed, and drafted answers. I provided my answers to attorneys from the Office of Legal Policy who reviewed my answers and provided me with feedback. The final answers are my own.

**82. Do these answers reflect your true and personal views?**

Response: Yes.

Nomination of Myrna Pérez
to be United States Circuit Judge for the Second Circuit Questions for the Record
Submitted July 21, 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. **You've repeatedly said that elections should be "free, fair, and accessible." Should elections also be secure?**

   Response: Yes. As part of the materials I submitted with my Senate Judiciary questionnaire, I included a report I authored on suggestions as to how to make elections more secure.

4. **You've repeatedly said that elections should be "free, fair, and accessible." Should foreign citizens be allowed to vote in our elections?**

   Response: Existing law precludes foreign nationals from voting in federal elections.

5. **You've repeatedly said that elections should be "free, fair, and accessible." Should people who are underage be allowed to vote in our elections?**

   Response: Eligibility for elections is set by state and federal law (and sometimes, local law in local elections). The 26th Amendment says: "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of race." If a case came before me that required me to evaluate claims regarding whether people who are underage should be allowed to vote in our elections, I would scrupulously review the facts and record of the case and apply Supreme Court and Second Circuit precedents.

6. **You've repeatedly said that elections should be "free, fair, and accessible." Should illegal aliens be allowed to vote in our elections?**

   Response: Existing law precludes foreign nationals from voting in federal elections.

7. **You've repeatedly said that elections should be "free, fair, and accessible." Are there any people who should not have "free and fair" access to vote in our elections?**

   Response: Persons who do not meet the lawful eligibility requirements should not be voting in elections.

8. **You said during your hearing that *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954) was rightly decided. What do you believe to be the Supreme Court's holding in *Brown*?**

   Response: *Brown* held that de jure racial segregation of public schoolchildren violated the 14th Amendment's Equal Protection Clause.

9. **You refused during your hearing to say whether *Brnovich v. Democratic National Committee*, 594 U.S. _____ (2021) was rightly decided. What do you believe to be the Supreme Court's holding in *Brnovich*?**

   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. *Brnovich* held that Arizona's out-of-precinct ballot rejection policy and H.B. 2023 do not violate Section 2 of the Voting Rights; the Court also held that Arizona did not enact H.B. 2023 with a racially discriminatory purpose.

10. **You refused during your hearing to say whether *Shelby County v. Holder*, 570 U.S. 529 (2013) was rightly decided. However, you have openly criticized the case, and wrote in 2018 that *Shelby County v. Holder* is a "violation of the promise that our country makes," and you also called it "unprincipled." What did you mean when you said that *Shelby County v. Holder* is a "violation of the promise that our country makes"?**

    Response: I stated during my hearing, that if confirmed, I would faithfully and without reservation apply the law and precedent relevant to the case before me—including *Shelby County v. Holder*—irrespective of any personal beliefs I may have. It is true that as an advocate, I have frequently commented that the Constitution promises Americans that when they step into the ballot box, they will be free from racial discrimination, and a strong Voting Rights Act is one of the ways in which we as a country make good on that promise. As I stated during my hearing, I am fully capable of separating my role as an advocate with my role as a judge if confirmed.

11. **You refused during your hearing to say whether *Shelby County v. Holder*, 570 U.S. 529 (2013) was rightly decided. However, you have openly criticized the case, and wrote in 2018 that *Shelby County v. Holder* a "violation of the promise that our country makes," and you also called it "unprincipled." What do you believe to be the Supreme Court's holding in *Shelby County*?**

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 and Second Circuit precedent, including *Shelby County*, if confirmed. *Shelby County* held that the coverage formula for preclearance contained in Section 4(b) of the Voting Rights Act of 1965 was not constitutionally permissible given the record before Congress.

12. **You refused during your hearing to say whether *Roe v. Wade*, 410 U.S. 113 (1973) was rightly decided. What do you believe to be the Supreme Court's holding in *Roe*?**

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 and Second Circuit precedent, including *Roe*, if confirmed. *Roe* held that the 14th Amendment Due Process clause provided privacy rights that protected a woman's ability to choose to have an abortion.

13. **When asked why you refuse to say whether some Supreme Court cases were rightly decided while being willing to comment on other cases, you said that you are comfortable commenting on cases like *Brown v. Board of Education* because "it will not happen that a case of the permissibility of *de jure* segregation in schools would make its way before [you if confirmed,] and as such [you are] comfortable that [you] would not be violating [your] code of ethics by commenting on it." What do you believe "*de jure* segregation" means?**

Response: "De jure segregation" means "Segregation that is permitted by law." *Black's Law Dictionary* 1362 (7th ed. 1999).

14. **Does the Constitution ever allow the government to segregate Americans in schools— even for a short time—based on their race?**

Response: As a judicial nominee, it would be inappropriate for me to comment on this question because I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments. I would apply all binding precedent of the Supreme Court and the Second Circuit, including *Brown v. Board of Education.*

15. **Does the Constitution ever allow the government to segregate Americans in any context based on their race?**

Response: As a judicial nominee, it would be inappropriate for me to comment on this question because I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments. I would apply all binding precedent of the Supreme Court and the Second Circuit, including the appropriate standard of

scrutiny laid out by the Supreme Court. The Supreme Court has held that all race-based classifications are subject to strict scrutiny. *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995).

16. **During your confirmation hearing, you said that it is important "to ensure that any prospective litigant before me knows that they are getting an impartial and fair hearing where they will not be prejudged and where they will be given the opportunity to present their case." You have spent your career as an activist, and even less than 24 hours before your confirmation hearing, you published an article entitled, "The GOP Campaign to Make Elections Less Free." If you are confirmed as a judge and any challenge to an election policy supported by Republicans comes before you, how are those litigants supposed to feel "that they are getting an impartial and fair hearing where they will not be prejudged"?**

Response: If confirmed, I would take an oath to administer the law in an impartial manner, without regard to a litigant's background. In every case, I would scrupulously review the facts and record of the case and apply Supreme Court and Second Circuit precedents.

17. **Less than 24 hours before your confirmation hearing, you published an article entitled, "The GOP Campaign to Make Elections Less Free." You wrote to the Committee that you "did not see or approve the title of the article before it was published." I asked you whether you agree with that title, or whether you believe that the GOP is campaigning to make elections "less free," but you responded only that your article "does not mention any political party and that is because [you are] an advocate for the right to vote and [you] would criticize any politician who would impede that right, irrespective of their political party." Do you believe that the Republican Party is currently waging a "campaign to make elections less free"?**

Response: As an advocate, I am on record as having said that certain politicians are pursuing policies that would make it harder for some Americans to vote. If confirmed, I would take an oath to administer the law in an impartial manner, without regard to a litigant's background. In every case, I would scrupulously review the facts and record of the case and apply Supreme Court and Second Circuit precedents.

18. **Less than 24 hours before your confirmation hearing, you published an article entitled, "The GOP Campaign to Make Elections Less Free." You wrote to the Committee that you "did not see or approve the title of the article before it was published." I asked you whether you agree with that title, or whether you believe that the GOP is campaigning to make elections "less free," but you responded only that your article "does not mention any political party and that is because [you are] an advocate for the right to vote and**

**[you] would criticize any politician who would impede that right, irrespective of their political party." Did you suggest a particular title when you submitted the piece for publication? If so, what title did you suggest?**

Response: I thought the article would be entitled, "Voters Want to Vote: Unprecedented state-level legislation aims to disenfranchise Americans." My records do not refresh my recollection as to who suggested that title.

19. **Less than 24 hours before your confirmation hearing, you published an article entitled, "The GOP Campaign to Make Elections Less Free." You wrote to the Committee that you "did not see or approve the title of the article before it was published." I asked you whether you agree with that title, or whether you believe that the GOP is campaigning to make elections "less free," but you responded only that your article "does not mention any political party and that is because [you are] an advocate for the right to vote and [you] would criticize any politician who would impede that right, irrespective of their political party." After the article was published, did you object to the use of that title?**

Response: As was discussed at the hearing, publications routinely assign titles to articles without involvement of the author, which occurred here. In the evening before my hearing, I learned of the publication of this article. I attempted to gather certain facts regarding the publication's circumstances since I believed the title of the article would be "Voters Want to Vote: Unprecedented state-level legislation aims to disenfranchise Americans," however, I was unable to do so given the lateness of the hour. Thereafter, I promptly notified the Committee of the article's publication.

20. **Less than 24 hours before your confirmation hearing, you published an article entitled, "The GOP Campaign to Make Elections Less Free." You wrote to the Committee that you "submitted [the article] for publication before [you were] a nominee for the Second Circuit Court of Appeals." On what date did you submit the article for publication?**

Response: It was initially submitted May 13, 2021, and was signed off with edits on May 28, 2021.

21. **On what date did you first speak with representatives of the Biden administration about the potential that you might be nominated for the Second Circuit Court of Appeals?**

Response: I understand that I was beginning the vetting process for potential consideration as a nominee to the Second Circuit on March 29, 2021.

22. **On what date did the Biden administration inform you that President Biden would nominate you for a position on the Second Circuit Court of Appeals?**

Response: June 14, 2021.

23. **Do you currently have any other articles or writings pending publication?**

Response: Not that I can recall.

24. **Under what circumstances is it appropriate for a federal district court to issue a nationwide injunction that applies to more than the parties before the court?**

Response: If confirmed, and if confronted with a question about the appropriateness of nationwide injunctions, I would scrupulously review and apply Supreme Court and Second Circuit precedents as to nationwide injunctions, including *Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020).

25. **During your confirmation hearing, when I asked you whether a murderer can fairly be called a "murderer" because they have been convicted of murder, you responded, "Irrespective of what their label was, sir, I would be on record as an advocate as trying to advocate for their right to vote if the criminal justice system had deemed them to be fit to be living amongst us." Do you believe that violent felons who are serving a portion of their prison sentence on home confinement or in a halfway house should be allowed to vote?**

Response: The Brennan Center's institutional position is that individuals who the criminal justice system has indicated are safe enough to be living and working in the community should have their voting rights restored, and that has been the policy I have advocated for while employed by the Brennan Center. If confirmed, and if a case came before me that required me to evaluate claims regarding whether an individual with a criminal record has the right to vote, I would scrupulously review the facts and record of the case and apply Supreme Court and Second Circuit precedents.

26. **During your confirmation hearing, when I asked you whether a murderer can fairly be called a "murderer" because they have been convicted of murder, you responded, "Irrespective of what their label was, sir, I would be on record as an advocate as trying to advocate for their right to vote if the criminal justice system had deemed them to be fit to be living amongst us." Do you believe that there are any categories of crimes that should make a person ineligible to vote after completing their prison term?**

Response: The Brennan Center's institutional position is that individuals who the criminal justice system has indicated are safe enough to be living and working in the community should have their voting rights restored, and that has been the policy I have advocated for while employed by the Brennan Center. If confirmed, and if a case came before me that required me to evaluate claims regarding whether an individual with a

criminal record has the right to vote, I would scrupulously review the facts and record of the case and apply Supreme Court and Second Circuit precedents.

27. **During your confirmation hearing, when I asked you whether a murderer can fairly be called a "murderer" because they have been convicted of murder, you responded, "Irrespective of what their label was, sir, I would be on record as an advocate as trying to advocate for their right to vote if the criminal justice system had deemed them to be fit to be living amongst us." Should violent criminals be allowed to vote while they are in prison?**

Response: The Brennan Center's institutional position is that individuals who the criminal justice system has indicated are safe enough to be living and working in the community should have their voting rights restored, and that has been the policy I have advocated for while employed by the Brennan Center. The question of whether state law should permit Americans to vote while incarcerated, as is the policy in Maine and Vermont, should be answered by the legislative branch.

28. **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 a law-abiding citizen's rights to keep and bear arms in the home. The Supreme Court extended the *Heller* ruling to the states. *See McDonald v. City of Chicago*, 561 U.S. 742 (2010).

29. **What is the scope of the right protected by the Second Amendment?**

Response: The scope of the right to keep and bear arms is an issue making its way through the courts. As such, it would be inappropriate for me to comment. If confirmed, I would follow all Supreme Court and Second Circuit precedents, including *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

30. **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 a *Rehaif* error is not a basis for plain-error relief in a felon-in-possession case unless the defendant first makes a sufficient argument or representation on appeal that they would have presented evidence at trial that they did not in fact know he was a felon.

31. **Please describe what you believe to be the Supreme Court's holding in *Terry v. United States*, 593 U.S. _____ (2021).**

Response: *Terry* held that a person convicted of a crack offense is eligible for a sentence reduction under the First Step Act only if the crack offense triggered a mandatory minimum sentence.

32. **Please describe what you believe to be the Supreme Court's holding in *Jones v. Mississippi*, 593 U.S. _____ (2021).**

Response: *Jones* held that a sentence of life imprisonment without parole for a juvenile does not require a finding that the juvenile is permanently incorrigible.

33. **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 that treat a secular activity more favorably than a comparable religious activity are not neutral and generally applicable, thus triggering strict scrutiny under the Free Exercise Clause.

34. **Please describe what you believe to be the Supreme Court's holding in *Sanchez v. Mayorkas*, 593 U.S. _____ (2021).**

Response: The granting of Temporary Protected Status under 8 U.S.C. §1254a does not qualify as an admission under 8 U.S.C. §1255 for adjustment to lawful permanent resident status.

35. **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 cost-effective tool to resolving disputes in a timely manner.

36. **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 21, 2021, these questions were provided to me by the Office of Legal Policy at the Department of Justice. I reviewed the questions, researched any relevant case law, and drafted answers. I provided my answers to attorneys from the Office of Legal Policy who reviewed my answers and provided me with feedback. The final answers are my own.

37. **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: On June 21, 2021, these questions were provided to me by the Office of Legal Policy at the Department of Justice. I reviewed the questions, researched any relevant case law, and drafted answers. I provided my answers to attorneys from the Office of Legal Policy who reviewed my answers and provided me with feedback. The final answers are my own.

Senator Ted Cruz
U.S. Senate Committee on the Judiciary
Questions for the Record for Myrna Pérez, Nominee for United States Circuit Judge for the Second Circuit

## I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

## II. Questions

1. **According to your Senate Judiciary Committee Questionnaire, your nominations process began in February of this year.**

   **a. Is it correct, then, that you referred to my amicus brief on behalf of 10 other Senators in *Brnovich v. DNC* as "outrageous and harmful" while you were under consideration for nomination to the Second Circuit? If so, do you believe these comments were appropriate for a person under consideration for nomination to the federal bench?**

   Response: While I was under consideration as a candidate, I continued to have job responsibilities advocating for my clients in my practice area of voting rights. As an advocate, my role was to zealously advance the interests of my client in all available fora. Moreover, given my specific practice area, I was required to be highly sensitive to threats to the right to vote. If confirmed, I would cease to hold the role of advocate and would take on the role of judge. Judges are duty-bound to set aside personal policy views, if any, and instead impartially and objectively apply the law to the record and facts in the case or controversy before them. I would faithfully discharge that duty and apply relevant precedent, including the Supreme Court's holding in *Brnovich v. DNC*.

   **b. This month, you published an article entitled "The GOP Campaign to Make Elections Less Free." Did you write this article while you were under consideration for nomination to the Second Circuit. If so, do you believe writing this article was appropriate for a person under consideration for nomination to the federal bench?**

   Response: I drafted and submitted that article before I was a nominee. I did not approve the article title, nor was I even aware of the article title until it was published. As an advocate, my role was to zealously advance the interests of my client in all available fora. If confirmed, I would cease to hold the role of advocate and would take on the role of judge. Judges are duty-bound to set aside personal policy views, if any, and instead impartially and objectively apply the law to the record and facts in the case or controversy before them. I would faithfully discharge that duty and apply relevant precedent.

   **c. In March, you stated on a virtual panel that many of the voting laws being passed across the country were due to "anxiety over the browning of the America, and people having anxiety of the fact that certain folks in power are not going to be able to stay in power." Did you make these comments while you were under consideration for nomination to the Second Circuit? If so, do you believe these comments were appropriate for a person under consideration for nomination to the federal bench?**

Response: Without more information, I am unable to provide context for that remark, but in March of 2021 I was an advocate. As an advocate, my role was to zealously advance the interests of my client in all available fora. Moreover, given my specific practice area, I was required to be attune to issues of racial disparities. If confirmed, I would cease to hold the role of advocate and would take on the role of judge. Judges are duty-bound to set aside personal policy views (if any) and instead impartially and objectively apply the law to the record and facts in the case or controversy before them. I would faithfully discharge that duty and apply relevant precedent.

2. **Do you believe that a litigant in a voting rights case will perceive you as unbiased and neutral if they are aware of the comments described in question 1? If so, explain your basis for that belief.**

Response: I have spent the better part of the last two decades protecting a constitutionally-designed framework that has different people playing different roles. One role is that of an advocate, another role is that of a judge. The framework I have worked so hard to defend does not work if people do not perform their respective roles. I have no information or belief as to what a hypothetical litigant may perceive of me. If confirmed, I would faithfully discharge my duty to impartially and objectively apply the relevant law to the facts and record in front of me.

3. **On July 13, you sent a letter to the Committee notifying us that *Sojourners* had published an article that you wrote before your nomination entitled "The GOP Campaign to Make Elections Less Free."**

   a. **After your nomination but prior to your being aware that your article would be published, did you communicate in any way with any representative at *Sojourners* asking them not to publish your article?**

   Response: No.

   b. **After learning that your article would be published, but prior to publication, did you communicate in any way with any representative at *Sojourners* asking them not to publish your article?**

   Response: No.

   c. **After your article was published, did you communicate in any way with any representative at *Sojourners* asking them to retract the publication?**

   Response: No.

   d. **You stated in your letter to the Committee that you "did not see or approve the title of the article before it was published." Did you communicate in any way with any representative at *Sojourners* asking them to alter the headline?**

Response: No. I would note that prior to publication, I did believe the piece would be entitled, "Voters Want to Vote: Unprecedented state-level legislation aims to disenfranchise Americans."

**e. You stated in your letter to the Committee that you "did not see or approve the title of the article before it was published." Do you believe that the headline appropriately reflects the content of the article?**

Response: No. The article does not mention either political party. As an advocate, I would be critical of any politician—irrespective of their political party—who advanced policies that improperly interfered with the right to vote.

4. **When introducing you at your confirmation hearing, Senator Schumer stated that you have dedicated your career to "voting rights" and that you "chose the legal profession as a means to achieve that noble goal." Was this accurate—did you choose the legal profession as a means to achieve a policy goal? If not, explain how this statement was inaccurate.**

Response: The right to vote keeps us free. It protects us from tyranny. It is preservative of all other rights. I chose the career of a voting rights attorney to protect the country I care so much about.

5. **When introducing you at your confirmation hearing, Senator Schumer stated that you have the personality that will "help [you] persuade fellow members of the Second Circuit to the righteousness of the causes that [you] will follow." Do you agree with Senator Schumer that, if confirmed, your role as a judge will be to persuade fellow judges on the "righteousness" of "causes"? If not, why not?**

Response: I interact—personally and professionally— with all sorts of people and I strive to find common ground to build upon in my interactions generally. I believe that all people are created in God's likeness and image and I keep that at the front of my brain when I am interacting with people—even people with whom I have disagreements.

6. **Please explain the holding and reasoning of the majority in *Washington v. Glucksberg*.**

Response: In *Washington v. Glucksberg*, the Supreme Court held that there was no fundamental liberty interest that protected access to assisted suicide under the Due Process Clause of the 14th Amendment. As such, a Washington State law making it a crime to assist an individual seeking to commit an assisted suicide was subject to rational basis review. 521 U.S. 702 (1997).

7. **Is the Supreme Court's test outlined in *Washington v. Glucksberg* for determining whether an asserted liberty interest is fundamental under the Constitution binding precedent?**

Response: Yes.

8. **Senator Kennedy questioned you about the standard a Federal Judge should use when creating new rights under the constitution. You mentioned that you will be guided by precedent. Senator Kennedy then asked you about what your standard would be when there is no precedent, and you replied that "there is always precedent." Is it your position that there are no constitutional cases of first impression? If not, please answer Senator Kennedy's question.**

Response: The judiciary has been interpreting the Constitution since at least *Marbury v. Madison* was decided in 1803. Even when there is no binding precedent squarely on all fours with a particular question presented, there will be something helpful when addressing a case or controversy from any or all of the following: nonbinding, but persuasive opinions, judicial frameworks, analogous scenarios, canons of construction, or interpretative guidelines. With respect to the specific question Senator Kennedy asked, I would also note that federal judges are bound by the *Washington v. Glucksberg* test. A federal judge considering whether there were new enumerated rights under the Due Process clause would need to consider whether the claimed right was "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 (1997) (internal italics omitted).

9. **At your confirmation hearing, you were asked about the following statement you made at an event you participated in just two months ago:**

> **If you are one of these people who think that we were at our best when our country was first founded and didn't include women or people of color or people without property in the electoral process, this is probably not a conversation for you.**

**While under oath, you told Senator Grassley that the comment was made in response to hostile and inappropriate comments in the chat. However, this appears to be false given the statement of Marilyn Carroll, the host of the event, who explained that all the Q&A questions from the audience would be funneled to her, and she would select questions from the pool to then ask you.**

**Please provide any evidence supporting your assertion that your remarks were made in response to hostile and inappropriate written comments, including but not limited to, a transcript of those comments.**

Response: As I testified, I was speaking at an event via video. Comments before and during the event made plain that there were confrontational audience members. There were comments over one of the written communication options that were visible to me that were not conducive to a constructive and civil conversation. The clip, around the 56:24 minute mark, shows me in fact referencing these written comments, and also shows me explaining to those making the remarks that irrespective of any disagreement we may

have, I would fight for their right to free, fair, and accessible elections because I thought our democracy works best when it includes all the diverse voices in our country.

10. **When I questioned you about whether you believe felons should be allowed to vote, you said that the canons of judicial ethics preclude you from answering my question because you may later judge such a case. Later, Senator Cotton questioned you similarly, and you said that you would be "on the record, as an advocate, of trying to advocate for the right to vote if the criminal justice system had deemed them to be fit to be living amongst us." Either this answer violates the canons of judicial ethics or you were not truthful when you invoked the judicial canons in response to my question. Did your answer to Senator Cotton violate the canons of judicial ethics?**

Response: My response to Senator Cotton acknowledged that in my work at the Brennan Center, I have publicly advocated for restoring voting rights to persons living and working in the community with criminal convictions—the policy position of the Brennan Center. In contrast to the response to Senator Cotton, our exchange on this topic involved my personal beliefs, and a deviation from the Brennan Center policy (specifically, voting while incarcerated), both of which could implicate the canons of judicial ethics.

11. **In the amicus brief you filed in *Brnovich v. DNC*, you argued that Arizona's law "would permit states to return to similar Jim Crow-era restrictions[.]" Do you believe that minorities living in Arizona are now living under a Jim Crow-style system?**

Response: As an advocate, I made an argument in a brief before the Supreme Court. The Supreme Court gets to "say what the law is." *Marbury v. Madison*, 5 U.S. 137 (1803). The Supreme Court upheld the Arizona policies at issue in the case, and *Brnovich* case is now precedent that I would follow faithfully and without reservation.

12. **After *Brnovich*, what is the standard for reviewing a section 2 vote-denial claim?**

Response: The Supreme Court in *Brnovich v. DNC* expressly declined to set forth a test for Section 2 vote denial claims, but instead provided a non-comprehensive list of "guideposts" to consider. 141 S. Ct. 2321 (2021).

13. **Is it appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns? Please explain.**

Response: The President has the duty to "take Care that the Laws be faithfully executed" pursuant to Article II, Section 3 of the Constitution.

14. **Please describe the difference between living constitutionalism and originalism.**

Response: There is no one consensus definition as to these academic labels. At least one definition of originalism, from Black's Law Dictionary is "The theory that the U.S. Constitution should be interpreted according to the intent of those who drafted and

adopted it." *Black's Law Dictionary* 1126 (7th ed. 1999). The same edition of the Black's Law Dictionary does not define "living constitutionalism," but in the past I have explained the concept to lay audiences using a quote from Justice William Brennan, said at the "Text and Teaching Symposium" at Georgetown University on October 12, 1985: "The genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs." When interpreting the Constitution, I would first look at the text of the Constitution and the binding precedent of the Supreme Court or Second Circuit. If I needed to go beyond those sources to rule on a case, I would look at the interpretive canons of construction, the contextual structure in which the text was found, the legislative history, and any relevant case law in other circuits. In so doing, I would be bound by the record put before me by the parties.

15. **Was the Supreme Court's decision in *Dred Scott v. Sandford* an example of living constitutionalism? Why or why not?**

Response: Labels such as "living constitutionalism" are inchoate and changing, but *Dred Scott v. Sandford* was effectively overturned by the Reconstruction Amendments. The fact that we have had more than two dozen amendments since the Constitution was first ratified in 1788 meets at least one reasonable definition of "living."

16. **Please provide three examples of cases where the opinion for the Supreme Court employs living constitutionalism as its interpretive methodology.**

Response: I am not aware of any Supreme Court holding that justified its ruling on account of the term "living constitutionalism."

17. **Given your previous comments, I understand that your judicial philosophy is more closely aligned with Justice Brennan's philosophy of a living constitution than any other justice's philosophy. If this is incorrect, please name the Justice whose judicial philosophy is most analogous with yours.**

Response: I have not studied the 230 years of Supreme Court jurisprudence this country has had in a way that allows me to conclude which Justice's philosophy is most analogous to what academics and courtwatchers would label mine as if I am confirmed. Justice Sandra Day O'Connor 's appointment to the Supreme Court had a big impact on me as a young girl growing up in Texas.

18. **With whose judicial philosophy to you more closely align, Justice Brennan or Justice Scalia?**

Response: I have spent the better part of last two decades working at the Brennan Center, which is a living memorial to Justice Brennan. I have not studied the cases, interviews, and public comments of Justice Brennan or Justice Scalia in a way that allows me to conclude which Justice's philosophy is most analogous to what academics and courtwatchers would label mine as if I am confirmed, In terms of my own judicial

philosophy, if confirmed, I would approach constitutional questions by first looking at the text at issue and the binding precedent of the Supreme Court and Second Circuit. If those sources do not resolve a question, I would look to precedent from the Supreme Court involving relevant constitutional topics, and persuasive precedent from other circuits, the contextual structure of the text, the canons of construction, and relevant contemporaneous history.

19. **Please state and describe one aspect of living constitutionalism with which you disagree?**

Response: There is no consensus definition of "living constitutionalism." I very much believe in the importance of the rule of law, fidelity to precedent, and that the text of the Constitution is the most probative evidence of its meaning.

20. **Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

Response: The Supreme Court gets to say what the law is. *Marbury v. Madison*, 5 U.S. 137 (1803). While *Dred Scott v. Sandford* was overturned through the amendment process, other cases get overturned on occasion outside the amendment process, for example, *Brown v. Board of Education* overturned *Plessy v. Ferguson*.

21. **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 a law-abiding citizen's rights to keep and bear arms in the home. The Supreme Court extended the *Heller* ruling to state regulations. *See McDonald v. City of Chicago*, 561 U.S. 742 (2010).

22. **Is the criminal justice system systemically racist?**

Response: I have not performed qualitative or quantitative research on this topic. If confirmed, I would impartially and objectively apply all laws to the parties before me without regard to a party's race or ethnicity.

23. **Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?**

Response: As a judicial nominee, it would be inappropriate for me to comment on the constitutionality of factors to be considered in making political appointments.

Questions for the Record for Myrna Pérez
From Senator Mazie K. Hirono

1. **As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:**

   a. **Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

      Response: No.

   b. **Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

      Response: No.

Senator Mike Lee
Questions for the Record
Myrna Pérez, Second Circuit Court of Appeals

1. **What sources would you consult when deciding a case that turned on the interpretation of a federal statute?**

   Response: I would first look at the text of the statute and the binding precedent of the Supreme Court and Second Circuit. If I needed to go beyond those sources to rule on a case, I would look at the interpretive canons of construction, the contextual structure in which the text was found, the legislative history, and any relevant case law in other circuits. In so doing, I would be bound by the record put before me by the parties.

2. **What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?**

   Response: I would first look at the text of the Constitution and the binding precedent of the Supreme Court and Second Circuit. If I needed to go beyond those sources to rule on a case, I would look at the interpretive canons of construction, the contextual structure in which the text was found, the legislative history, and any relevant case law in other circuits. In so doing, I would be bound by the record put before me by the parties.

3. **What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?**

   Response: Where the Supreme Court has created binding precedent that a constitutional provision should be interpreted based on the text and original meaning, I will faithfully apply that precedent. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570, 576-600 (2008).

4. **If a constitutional provision is ambiguous, and there is no controlling precedent, would it be appropriate to consult—as Justice Stephen Breyer contends—"the values" underlying the provision's language?**

   Response: I am unfamiliar with the context of the Justice Breyer quote provided. If the constitutional provision is ambiguous, and there was no controlling precedent, I would look at the contextual structure in which the text was found, use the relevant canons of construction, consult the legislative history, and research any relevant case law in other circuits or guidance the Supreme Court has provided for other constitutional provisions. In so doing, I would be bound by the record put before me by the parties.

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: I would first look at the text of the statute and the binding precedent of the Supreme Court and Second Circuit. If I needed to go beyond those sources to rule on a case, I would look at the contextual structure in which the text was found, use any relevant canons of construction, consult the legislative history, and review any relevant case law in other circuits. In so doing, I would be bound by the record put before me by the parties.

**6. 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: "Plain meaning" is defined as "The meaning that would be attributed to a document (usu. by a court) based on a commonsense reading of the words, giving them their ordinary sense and without reference to extrinsic indications of the author's intent." *Black's Law Dictionary* 995 (7th ed. 1999).

**7. If confirmed, would you consult legislative history when interpreting ambiguous statutory terms?**

Response: I would first look at the text of the statute and the binding precedent of the Supreme Court and Second Circuit. If I needed to go beyond those sources to rule on a case, I would look at the contextual structure in which the text was found, use any relevant canons of construction, consult the legislative history, and review any relevant case law in other circuits. In so doing, I would be bound by the record put before me by the parties.

**8. If confirmed, would you look to the underlying purpose of a Congressional statute to construe ambiguous provisions?**

Response: I would first look at the text of the statute and the binding precedent of the Supreme Court or Second Circuit. If I needed to go beyond those sources to rule on a case, I would look at the contextual structure in which the text was found (including any express "purpose" section in the statute), use any relevant canons of construction, consult the legislative history, and review any relevant case law in other circuits. In so doing, I would be bound by the record put before me by the parties.

**9. Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?**

Response: The Supreme Court affirmed in *McCulloch v. Maryland*, 17 U.S. 316 (1819) that Congress can rely on the Necessary and Proper Clause to enact laws based on the enumerated powers in Article I, Section 8 even if the specific act taken is not enumerated in that Section.

**10. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?**

Response: I would look to Supreme Court and Second Circuit precedent to evaluate the constitutionality of the law. If there were no binding precedent that addressed the issue, I would look to other instructive or helpful law, for example, precedents in other circuits or evaluative methods the Supreme Court has laid out for other provisions.

**11. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?**

Response: The Supreme Court has determined that the Constitution protects certain rights that are not specifically enumerated in its text. These rights include the right to privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965) and the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967).

**12. What rights are protected under substantive due process?**

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997), the Supreme Court said that substantive due process protects "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."

**13. 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, I would faithfully and without reservation apply the law and precedent relevant to the facts and the record the parties put before me—irrespective of any personal beliefs I may have.

**14. How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?**

Response: Checks and balances and separation of powers are two of the ingenious frameworks set forth by our Constitution. They promote and foster key constitutional values like self-governance and democracy.

**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 study the relevant constitutional text and look to Supreme Court and Second Circuit precedent to determine the law that applied to the question before me.

**16. What role should empathy play in a judge's consideration of a case?**

Response: A judge is duty-bound to apply the law to the case in question regardless of personal feelings. If confirmed, I would faithfully discharge that duty.

**17. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?**

Response: Both are undesirable outcomes that a judge should seek to avoid.

**18. How would you explain the difference between judicial review and judicial supremacy?**

Response: In my many years as an academic and practicing lawyer, I have never heard anyone describe the term "judicial supremacy." Judicial review means "A court's power to review the actions of other branches or levels of government, esp. the court's power to invalidate legislative and executive actions as being unconstitutional." *Black's Law Dictionary* 852 (7th ed. 1999).

**19. 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 swear an oath to uphold the Constitution.

**20. 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: A judge's job is to determine "what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

**21. 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: If confirmed, I would be bound by Supreme Court and Second Circuit precedent. If there were no binding precedent that addressed the issue, I would look to other instructive or helpful law, for example, precedents in other circuits or evaluative methods the Supreme Court has laid out for other provisions.

**22. Do you believe it is ever appropriate to look past jurisdictional issues if they prevent the court from correcting a serious injustice?**

Response: No.

**23. When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?**

Response: 18 U.S.C. § 3553(a) specifies the factors a federal judge shall consider when imposing a sentence. No sentencing judge should discriminate when sentencing based on race, gender, nationality, sexual orientation, or gender identity.

**24. 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 was not previously aware of the above definition. If a case involving the definition of "equity" came before me, I would look first to Supreme Court and Second Circuit precedent to define it. If confirmed, my personal views on the executive's definition of equity would not factor into any case.

**25. Is there a difference between "equity" and "equality?" If so, what is it?**

Response: "Equity" is defined as "Fairness; impartiality; evenhanded dealing," and "The body of principles constituting what is fair and right; natural law." *Black's Law Dictionary* 560 (7th Ed. 1999). "Equality" is defined as "The state of being equal; esp., likeness in power or political status. *Black's Law Dictionary* 556 (7th Ed. 1999).

**26. Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 24)?**

Response: The 14th Amendment's text includes the phrase "equal protection," not "equity" or "equality."

**27. How do you define "systemic racism?"**

Response: I am not aware of any consensus definition of the phrase, but I am aware that there is much public discussion and debate over the issue. If confirmed, any personal views I have on the topic would be put aside.

**28. How do you define "critical race theory?"**

Response: My understanding is that there is not one consensus definition of "critical race theory." Black's Law Dictionary defines "Critical Race Theory" as "A reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities." *Black's Law Dictionary* 382 (7th ed. 1999).

**29. Do you distinguish "critical race theory" from "systemic racism," and if so, how?**

Response: I have not researched or studied the differences between systemic racism and critical race theory.

**30. At the hearing, I asked you whether you would adopt a Living Constitutionalist approach to interpreting the Constitution, and you demurred, stating that you would look at the provision in question, precedent, canons, etc. For the record, please distinguish your approach to constitutional interpretation from Justice Brennan's "Living Constitutionalist" theory of interpretation.**

Response: I have spent most of my professional career at the Brennan Center, created 25 years ago as a living memorial to Justice Brennan, and I have spoken about him in that capacity. In terms of my own judicial philosophy, if confirmed, I would approach constitutional questions by first looking at the text at issue and the binding precedent of the Supreme Court and Second Circuit. If those sources do not resolve a question, I would look to precedent from the Supreme Court involving relevant constitutional topics, persuasive precedent from other circuits, the contextual structure of the text, the canons of construction, and relevant contemporaneous history.

**31. Justice Brennan once said that "The Law is not an end in itself, nor does it provide ends; it is preeminently a means to serve what we think is right." Do you agree with this statement? If not, with what aspects of the statement do you disagree?**

Response: I believe the constitutional frameworks of the rule of law, separation of powers, and federalism allow us to protect and live out constitutional ideals like equal justice under the law, democracy, and freedom of religion.

**32. In your hearing testimony, you stated that you believed the Constitution was an "enduring" document, and listed several "great values of . . . equal justice under the law, liberty, the right to free exercise, [and] all of those important attributes of the American experience are still relevant in guiding us today[]." Do you believe every provision of the Bill of Rights is an "enduring" Constitutional provision? If not, which provisions of the Bill of Rights do you think we should not be guided by today?**

Response: I believe the Constitution, including its existing amendments, have endured.

**33. Do you believe the Second Amendment is an "enduring" provision of the Constitution? If not, how do you distinguish it from "the right to free exercise," which you listed as a "great value?"**

Response: I believe the Constitution, including its existing amendments, have endured.

**34. Do you believe there is a meaningful difference between the terms "enduring" and "unchanging" when referring to a constitutional provision?**

Response: Webster's Encyclopedic Unabridged Dictionary of the English Language defines "enduring" as "lasting, permanent". *Webster's Encyclopedic Unabridged Dictionary of the English Language* 472 (1989 edition). Webster's Encyclopedic Unabridged Dictionary of the English Language offers as an antonym to "change; changing" the words "remain" and "permanence." *Webster's Encyclopedic Unabridged Dictionary of the English Language* 246 (1989 edition). Whatever debates there may be over the difference between the words "enduring" and "unchanging," it is indisputable that in 2021 we have had more than two dozen amendments since the Constitution was ratified in 1788; women have the right to vote; African Americans are recognized as 5/5 of a person under the law, and *Brown v. Board of Education* overruled *Plessy v. Ferguson*.

**35. In your hearing testimony, you stated that the label "Originalist" is "inchoate and constantly shifting." Merriam Webster's dictionary defines "originalism" as "a legal philosophy that the words in documents and especially the U.S. Constitution should be interpreted as they were understood at the time they were written." Similarly, the National Constitution Center explains that "Originalists believe that the constitutional text ought to be given the original public meaning that it would have had at the time that it became law." I agree with these definitions, as would the vast majority of people who describe**

**themselves as Originalists. Do you agree or disagree with "Originalism" as a theory of constitutional interpretation as so defined by either Merriam Webster's dictionary or the National Constitution Center?**

Response: As I testified, academic labels like "originalism" do not have one consensus definition. For example, the Black's Law Dictionary I took to law school, and keep in my home today, defines "originalism" as "The theory that the U.S. Constitution should be interpreted according to the intent of those who drafted and adopted it." *Black's Law Dictionary* 1126 (7th ed. 1999). As such, the approach and methodology I would undertake is more revealing than any label. When interpreting the Constitution, I would first look at the text of the Constitution and the binding precedent of the Supreme Court and Second Circuit. If I needed to go beyond those sources to rule on a case, I would look at the interpretive canons of construction, the contextual structure in which the text was found, the legislative history (including contemporaneous definitions), and any relevant case law in other circuits. In so doing, I would be bound by the record put before me by the parties.

**36. You mentioned at the hearing that you—having never been a judge—do not have a personal judicial philosophy, but will nonetheless possess a judicial philosophy once confirmed. Have you given any thought to what kind of judicial philosophy you will have if confirmed, or do you anticipate developing one immediately upon being confirmed?**

Response: I do not know what, if any, labels courtwatchers and academics will ascribe to my judicial opinions if confirmed. I do know that, if confirmed, my method will be to first look at the text at issue and the binding precedent of the Supreme Court and Second Circuit. If those sources do not resolve a question, I would look to precedent from the Supreme Court involving relevant constitutional topics, persuasive precedent from other circuits, the contextual structure of the text, the canons of construction, and relevant contemporaneous history.

**37. If you do not feel comfortable identifying with a particular judicial philosophy, what insight can you provide into how you would interpret cases of first impression?**

Response: If confirmed, I would approach cases of first impression by first looking at the text at issue, precedent from the Supreme Court involving relevant constitutional topics, persuasive precedent from other circuits, the contextual structure of the text, the canons of construction, and relevant contemporaneous history.

**38. You mentioned that you believe that the Constitution is "enduring." Are there any provisions in the Constitution that "endure"—in their historic form—despite "societal evolution," or should each provision of the Constitution be amenable to reinterpretation where it fails to reflect or adapt to current social norms?**

Response: Pursuant to *Marbury v. Madison*, it is the duty of the Supreme Court to "say what the law is." *Marbury v. Madison*, 5 U.S. 137 (1803). If confirmed, I would be bound to follow all U.S. Supreme Court and Second Circuit precedent.

**39. You said that your past—and biased—activism will not impede your ability to dutifully and faithfully apply precedent that you once criticized. Does this assertion mean that you will not be subject to the effects of implicit or unconscious bias?**

Response: Humans have implicit or unconscious bias. I will ensure that any implicit or unconscious bias does not permeate my methodology or approach to the law.

**40. Without asking your opinion on the merits of the *Roe v. Wade*, can you articulate the judicial theory that was used in *Roe* to discover the right to abortion in the Constitution? Does that constitutional theory or judicial philosophy align with your own?**

Response: The Supreme Court held in *Roe v. Wade* that the "right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." 410 U.S. 113, 153 (1973). If confirmed, I would be duty-bound to objectively apply the Supreme Court's precedent in *Roe* and subsequent cases like *Planned Parenthood v. Casey*, and others, without regards to any personal views I have as to the merits of the constitutional theory or judicial philosophy underlying the decision.

**41. Do you believe that Rhode Island's voter ID law (Rhode Island State Law 1719-24.2), which requires voters to present valid identification prior to voting at the polls, is comparable to any Jim Crow-era vote suppression measure? If so, which measure, and how is it similar?**

Response: As a nominee, it is inappropriate for me to comment because I do not want to leave a prospective litigant with the mistaken impression that I have pre-decided a relevant issue. If confirmed, I will follow all binding Supreme Court and Second Circuit precedent, including *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).

**42. Do you believe that Florida's voter ID law (Florida Statutes 101.043), which requires voters to present valid identification prior to voting at the polls, is comparable to any Jim Crow-era vote suppression measure? If so, which measure, and how is it similar?**

Response: As a nominee, it is inappropriate for me to comment because I do not want to leave a prospective litigant with the mistaken impression that I have pre-

decided a relevant issue. If confirmed, I will follow all binding Supreme Court and Second Circuit precedent, including *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).

**43. In a May 27, 2021 virtual panel on "Voting Rights in America: Ensuring Fair and Full Voting for All," you said "if you are one of these people who think that we were at our best when our country was first founded and didn't include women or people of color or people without property in the electoral process, this is probably not the conversation for you." When I asked you about this statement, you testified that you "were trying to de-escalate folks who were disrupting a conversation via chat." Now that you've had time to review those remarks, do you stand by that characterization?**

Response: Yes. As I testified, I was speaking at an event via video. Comments before and during the event made plain that there were confrontational audience members. There were comments over one of the written communication options that were visible to me that were not conducive to a constructive and civil conversation. The clip, around the 56:24 minute mark, shows me in fact referencing these written comments, and also shows me explaining to those making the remarks that irrespective of any disagreement we may have, I would fight for their right to free, fair, and accessible elections because I thought our democracy works best when it includes all the diverse voices in our country.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
July 21, 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: I have spent most of my professional career at the Brennan Center, created 25 years ago as a living memorial to Justice Brennan, and I have spoken about him in that capacity. In terms of my own judicial philosophy, if confirmed, I would approach constitutional questions by first looking at the text at issue and the binding precedent of the Supreme Court and Second Circuit. If those sources do not resolve a question, I would look to precedent from the Supreme Court involving relevant constitutional topics, persuasive precedent from other circuits, the contextual structure of the text, the canons of construction, and relevant contemporaneous history.

2. **Would you describe yourself as an originalist?**

   Response: I have never used the term "originalist" to describe myself. In terms of my own judicial philosophy, if confirmed, I would approach constitutional questions by first looking at the text at issue and the binding precedent of the Supreme Court and Second Circuit. If those sources do not resolve a question, I would look to precedent from the Supreme Court involving relevant constitutional topics, persuasive precedent from other circuits, the contextual structure of the text, the canons of construction, and relevant contemporaneous history.

3. **Would you describe yourself as a textualist?**

Response: While I have never publicly used the term "textualist" to describe myself, I do believe that the text of a statute is the most probative evidence as to its meaning. If confirmed, I will follow Supreme Court and Second Circuit precedent when interpreting the text of any statute at issue before me.

**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 Second 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: There is no justice whose entire body of cases I can say I wholesale endorse. Justice Sandra Day O'Connor's appointment to the Supreme Court had a big impact on me as a young girl growing up in Texas.

**6. Was Marbury v. Madison correctly decided?**

Response: Yes. As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. However, there may be some cases for which it is highly unlikely that the precedent established would be challenged in future cases. *Marbury v. Madison*, and its holding that the Supreme Court has the power of judicial review, is one of those exceptions.

**7. Was Lochner v. New York correctly decided?**

Response: If confirmed to the Second Circuit, I would be duty-bound to follow all Supreme Court and Second Circuit precedent. As I testified, *Lochner* was largely overturned in *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937).

**8. Was Brown v. Board of Education correctly decided?**

Response: Yes. As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. However, there may be some cases for which it is highly unlikely that the precedent established would be challenged in future cases. *Brown v. Board of Education*, and its holding that de jure segregation in public schools is illegal, is one of those exceptions.

**9. Was Bolling v. Sharpe correctly decided?**

Response: Yes. As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. However, there may be some cases for which it is highly unlikely that the precedent established would be challenged in future cases. *Bolling v. Sharpe*, and its holding that the de jure segregation in D.C. public schools is illegal, is one of those exceptions.

**10. Was Cooper v. Aaron 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.

**11. Was Mapp v. Ohio 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.

**12. Was Gideon v. Wainwright 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.

**13. 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.

**14. Was South Carolina v. Katzenbach 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.

**15. Was Miranda v. Arizona 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.

**16. Was Katzenbach v. Morgan 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.

**17. Was Loving v. Virginia correctly decided?**

Response: Yes. As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. However, there may be some cases for which it is highly unlikely that the precedent established would be challenged in future cases. *Loving v. Virginia*, and its holding that Virginia's law banning interracial marriage was illegal, is one of those exceptions.

**18. Was Katz v. United States 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.

**19. Was Roe v. Wade 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.

**20. Was Romer v. Evans 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.

**21. Was United States 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.

**22. Was Bush v. Gore 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.

**23. Was District of Columbia v. Heller 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.

**24. Was Crawford v. Marion County Election Bord 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.

**25. Was Boumediene v. Bush 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.

**26. Was Citizens United v. Federal Election Commission 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.

**27. Was Shelby County v. Holder 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.

**28. Was United States v. Windsor 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.

**29. Was Obergefell v. Hodges 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.

**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: The Second Circuit is generally bound by stare decisis until decisions are overruled by an en banc panel or the Supreme Court. Pursuant to Rule 35 of the Federal Rules of Appellate Procedure, en banc panels are heard when a majority of the circuit judges who are in regular active service and who are not disqualified believe that: "(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance."

**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: The Second Circuit is generally bound by stare decisis until decisions are overruled by an en banc panel or the Supreme Court. Pursuant to Rule 35 of the Federal Rules of Appellate Procedure, en banc panels are heard when a majority of the circuit judges who are in regular active service and who are not disqualified believe that: "(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance."

**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.

For Ms. Myrna Pérez:

**1. You serve in the senior leadership of the Brennan Center for Justice and have worked there since 2006. On its website, the Center, named for former Supreme Court Justice William Brennan, describes how the Center "was founded . . . as a living memorial to his ideals" and prominently features the following quotation from the late Justice: "For the genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs." Do you subscribe to Justice Brennan's philosophy? Do you agree with his words quoted above?**

Response: I love that we have a Constitution that has endured since our country's founding notwithstanding the trials and tests our country has faced and I love that the values our Constitution effectuates are timeless and relevant today.

**2. Are there any legal views adopted publicly by the Brennan Center with which you disagree? If so, please identify them.**

Response: The Brennan Center positions fall into four buckets: (1) those I personally agree with, (2) those I do not personally agree with, (3) those I have not reached a personal viewpoint on, and (4) those that I do not know about because it was not in my area of expertise. As a judicial nominee, it would be inappropriate to sort Brennan Center positions into any of these buckets because I would not want to give a prospective litigant the mistaken impression that I have prejudged a matter. Moreover, irrespective of my personal views on a topic, I would faithfully and impartially apply the relevant law to the facts and record before me.

3. **In a January 2021 discussion with the League of Women Voters in Norwalk, Connecticut, you suggest that the current makeup of the federal bench leads you to believe that "the courts won't save us." Please explain this statement, including by identifying who you meant by "us" and what function the federal judiciary would serve by "sav[ing] us."**

   Response: If we are to have a government "of the people, by the people, and for the people," the people need to be participatory in our democracy. In my role as an advocate, I have reminded the public of their role and obligations in their own self-governance.

4. **In a May 2021 tweet, you asserted: "We need solutions to this assault on democracy: The For the People Act and the John Lewis Voting Rights Advancement Act. These federal bills would rollback or block many of these restrictions. Congress must pass them immediately." Given your advocacy for these pieces of legislation, is it fair to assume that you believe all provisions of these bills are constitutional?**

   Response: It is fair to presume that I would not advocate for legislation that I knew to be unconstitutional, but it is also true that with pieces of legislation I have supported in my role as an advocate, there are provisions that I am more familiar with and others I may not have studied in depth.

Questions from Senator Thom Tillis
for Myrna Pérez
Nominee to be United States Circuit Judge for the Second Circuit

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 can mean a court going beyond the case and controversy the court was called to decide or a judge ignoring precedent because of personal views on public policy. If confirmed, I would follow precedent of the Supreme Court and Second Circuit and apply the law to the record in the case and controversy in front of me.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: Impartiality is an expectation that is mission critical for a judge.

4. **Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

   Response: Legislative bodies decide policy. Judges adjudicate cases and controversies, and their personally desired policy outcomes would have no impact on their decision making.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: Judges are duty-bound to faithfully and impartially interpret the law. Our constitutional framework depends on the different branches of government performing their roles, and my abiding commitment to that framework would mean that I would impartially and objectively apply the law to the facts and record of the case and controversy before me.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: A judge must apply the law to the record and facts of the case and controversy before her or him without regard to any personal politics or policy preferences.

7. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

Response: If confirmed, I would faithfully apply Supreme Court and Second Circuit precedent when deciding any cases involving the Second Amendment, including *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

**8. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?**

Response: The values and ideals of the Constitution matter the most in times of crisis. I would begin by reviewing the arguments of the parties and researching Supreme Court and Second Circuit precedent. I would then apply the law to the specific facts and record 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 Second Circuit precedent when considering qualified immunity cases, including *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018) and *Mullenix v. Luna*, 577 U.S. 7 (2015).

**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 law enforcement officers have sufficient protection under current qualified immunity jurisprudence is a policy question for legislatures. If confirmed, I would follow all Supreme Court and Second 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 legislative branch. If confirmed, I would follow all Supreme Court and Second Circuit precedent regarding qualified immunity.

**Senator Chuck Grassley, Ranking Member**
**Questions for the Record**
**Judge Karen McGlashan Williams**
**Judicial Nominee to the U.S. District Court for the District of New Jersey**

1. **You have presided over naturalization ceremonies in your role as a Magistrate Judge. During the ceremonies, you've frequently delivered a version of the following statement:**

> **[t]his morning's ceremony we greet Americans who although they were born in 18 different countries have chosen to be forever more known as Americans. What does it mean to now be an American citizen? First it means that you may now Pledge Allegiance to the Flag of the United States of America and to the Republic for which it stands. Your allegiance can no longer be to the land of your ancestors. You are now part of the fabric of America, part of this increasingly multi-cultural conglomerate of people.**

**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 comment of the editorial board member referenced above. However, when conducting naturalization ceremonies, I believe that referring to the pledge of allegiance is a way to mark the transition from prior citizenship to United States citizenship.

2. **In the context of federal case law, what is super precedent? Which cases, if any, count as super precedent?**

Response: I have never used the term "superprecedent" in an opinion I have written as a magistrate judge. However, Black's Law Dictionary (11th ed. 2019) defines superprecedent as "A precedent that defines the law and its requirements so effectively that is prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation." I would include *Marbury v. Madison, McCulloch v. Maryland, Brown v. Board of Education, and Loving v. Virginia* as cases that satisfy this definition.

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 stop and frisks do not violate the Constitution under certain circumstances. Should I be confirmed as a district judge I will adhere to Supreme Court and Third Circuit precedent.

4. **Should law firms undertake the pro bono prosecution of crimes?**

Response: In the twelve years that I have served as a magistrate judge, I have never presided over a criminal matter prosecuted by a private law firm.

5. **Do you agree with Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a "living constitution"?**

Response: I am not familiar with the statement attributed to Judge Jackson in 2013. I believe the United States Constitution is an enduring document that has and will continue to serve the people of the United States well.

6. **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 lack any frame of reference that would allow me to posit a response to this question. I am simply unaware of any such practice.

7. **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 a magistrate judge, I have hired and will continue to hire law clerks based on their qualifications and have never excluded any person from consideration based on their affiliation with any organization. Should I be confirmed as a district judge, I will continue my hiring practices.

8. **Absent a traditional conflict of interest, should paying clients of a law firm be able to prevent other paying clients from engaging the firm?**

Response: This appears to be a matter of attorney-client relationship which is governed by the Rules of Professional Conduct.

9. **Should paying clients be able to influence which pro bono clients engage a law firm?**

Response: Please refer to my response to Question 8.

10. **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 believe that when making decisions about whether to represent a client in a civil matter, a lawyer should be guided by the Rules of Professional Conduct and attorney ethics.

11. **You participated in an event hosted by the Department of Homeland security in honor of Women's Month on April 6, 2015. You highlighted multiple women and their accomplishments who you admired during your "coming of age" in the 1980s. These notable women include: Constance Baker Motely, Bella Abzug, Shirley Chisholm, Faye Wattleton, Geraldine Ferraro, Oprah Winfrey, and Madonna. These iconic women seem to range from liberal to extremely liberal. Which women on the conservative side of the spectrum do you admire?**

Response: I would not characterize the women that I chose to highlight as "liberal to extremely liberal". I chose these women in light of the prevalence of their work in my life in the 1980's. There were many other women who could have been recognized for their outstanding accomplishments during that time frame.

12. **Do you admire any of the following women who rose to prominence in the 1980s? Why or why not?**

    a. **Justice Sandra Day O'Connor**

    Response: In 1981, I was aware of and still admire Justice O'Connor for becoming the first female Associate Justice of the Supreme Court.

    b. **Prime Minister Margaret Thatcher**

    Response: I was aware of and admired Prime Minister Thatcher for becoming the first woman to hold the position of Prime Minister of the United Kingdom.

    c. **Professor Lillian BeVier**

    Response: I am not familiar with Professor Lillian BeVier.

13. **Should judicial decisions take into consideration principles of social "equity"?**

Response: Judicial decisions should only take into consideration the facts and law presented by the cases and controversies presented.

14. **Is climate change real?**

Response: I am aware of the extensive debate surrounding "climate change" and cognizant that such a matter could culminate in litigation. Consequently I believe it would be inappropriate for me to give my opinion about whether and to what extent "climate change" is real.

15. **Is racism a public-health crisis?**

Response: I am not sufficiently knowledgeable about what constitutes a public-health crisis to analyze whether "racism" could be described as such.

16. **Is gun violence a public-health crisis?**

Response: I am not sufficiently knowledgeable about what constitutes a public-health crisis to analyze whether "gun violence" could be described as such.

17. **Is the federal judiciary systemically racist?**

Response: I am uncertain as to the definition of "systemic racism" as I am aware of varying definitions ascribed to that term. However, as a magistrate judge, I diligently, faithfully, and impartially adhere to the duty of my office to treat everyone who appears before me fairly and with respect.

18. **Is threatening Supreme Court Justices right or wrong?**

Response: It is wrong to threaten anyone.

19. **How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?**

Response: I would describe an "attack" as behavior or comments that engender physical conduct or aggressive verbiage directed at the judge herself independent of any judicial decision making. On the other hand, I would describe criticism as verbiage that is limited to the judge's legal analysis or decision rendered.

20. **Do you think the Supreme Court should be expanded?**

Response: I think this is a policy question within the purview of the legislative and executive branches and as such I have not considered the issue.

21. **How does implicit bias impact you in your day to day role as a judge, particularly as it pertains to your:**

    a. **Decisions regarding pre-trial detention?**

Response: Being aware of my own implicit bias enables me to ensure that the decisions I reach are fair and impartial in the application of the Bail Reform Act and 18 U.S.C. § 3142(g) factors to consider.

b. **Decisions regarding sentencing?**

Response: Being aware of my own implicit bias enables me to ensure that the sentences I have imposed are grounded in the sentencing guidelines and 18 U.S.C. § 3553(a) factors and applied fairly and impartially.

22. **If the Justice Department determines that the prosecution of an individual is meritless and dismisses the case, is it appropriate for a District Judge to question the Department's motivations and appoint an amicus to continue the prosecution? Please explain why or why not.**

Response: No.

23. **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: Fed. R. Civ. Pro. 65 Injunctions and Restraining Orders guides the application and analysis for injunctive relief. If confirmed as a district judge I will adhere to Supreme Court and Third Circuit precedent if presented with this issue.

24. **What legal standard would you apply in evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?**

Response: If I am confirmed as a district judge, I have a duty to adhere to Supreme Court precedent. To this end, the Supreme Court has decided that there is "an individual right to keep and bear arms" and that right is fundamental. *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago,* 561 U.S. 742 (2010).

25. **In your view, is a personal philosophical or religious objection to the death penalty on the part of the President a valid justification to abandon the defense of a death sentence on direct appeal?**

Response: If confirmed as a district judge, I would be duty bound to impose sentences in accordance with the penalties deemed appropriate by Congress particularly when circumstances require the imposition of a sentence at the conclusion of a jury trial when the jury has imposed the death penalty.

26. **In your view, is a personal philosophical or religious objection to the death penalty on the part of a District Judge a valid justification not to impose a death sentence?**

Response: No, judges must be fair and impartial. Should I be confirmed as a district judge, I have a duty to apply Supreme Court and Third Circuit precedent without regard to my personal views.

27. **Do Blaine Amendments violate the Constitution?**

Response: In *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), the Supreme Court found that the state laws violated the First Amendment. If confirmed as a district judge, I will diligently, faithfully, and impartially adhere to Supreme Court and Third Circuit precedent.

28. **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 March 2019, I submitted my resume to an Advisory Group for Senator Booker. In July 2019, I interviewed with the Advisory Group. On December 15, 2020, I was interviewed by members of Senator Booker's staff. On December 21, 2020, I interviewed with Senator Booker. On January 11, 2021, I interviewed with Senator Menendez and members of his staff. On February 19, 2021, I interviewed with attorneys from White House Counsel's Office. Since that time, I have been in contact with officials from the Office of Legal Policy at the Department of Justice.

29. **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

a. **Did anyone do so on your behalf?**

Response: Not to my knowledge.

30. **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.

a. **Did anyone do so on your behalf?**

Response: Not to my knowledge.

31. **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.

    a. **Did anyone do so on your behalf?**

        Response: Not to my knowledge.

32. **List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.**

    Response: On February 19, 2021, I had one interview with attorneys from the White House Counsel's office regarding my nomination. I have been in contact with individuals from White House Counsel and the Justice Department since that time.

33. **Please explain, with particularity, the process whereby you answered these questions.**

    Response: Upon receiving the written questions from the Office of Legal Policy, I reviewed each and every question submitted to me by the members of the committee. I then began drafting my responses to the questions and independently researching the substance of any question that I believe required reference to a case or subject matter presented in the question.

**Nomination of The Honorable Karen McGlashan Williams to be United States District Judge for the District of New Jersey**
**Questions for the Record**
**Submitted July 21, 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 sitting magistrate judge, I do not believe it is proper for me to comment on any decisions rendered by the Supreme Court. Should I be confirmed as a district judge, I will diligently, faithfully, and impartially adhere to Supreme Court and Third Circuit precedent when applying the law to the facts of any matter before me.

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: If I am confirmed as a district judge, I have a duty to adhere to Supreme Court precedent. To this end, the Supreme Court has decided that there is "an individual right to keep and bear arms" and that right is fundamental. *District of Columbia v. Heller,* 554 U.S. 570 (2008*), McDonald v. City of Chicago,* 561 U.S. 742 (2010). If confirmed, I will diligently, faithfully, and impartially adhere to Supreme Court and Third Circuit precedent when applying the law to the facts of any matter before me.

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,* the Supreme Court held that the two defendants who had been convicted of felon-in-possession offenses were not entitled to the retroactive application of the plain-error relief based on the government's failure to establish the *mens rea* requirement clarified by the Court in *Rehaif v. United States*, 588 U.S____.

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,* a case involving a defendant's request for reduction of a sentence under the First Step Act, the Supreme Court held that "crack offenders who did not trigger a mandatory minimum" do not qualify for relief under the Act.

7. **Please describe what you believe to be the Supreme Court's holding in *Jones v. Mississippi*, 593 U.S. _____ (2021).**

   Response: In *Jones,* a case involving a mandatory life sentence for a juvenile homicide offender, the Supreme Court held that consistent with its precedent, a sentencer must "follow a certain process -considering an offender's youth and attendant characteristics – before imposing a life without-parole sentence… and does not impose a formal factfinding requirement …or a finding of fact regarding a child's incorrigibility." Citing, *Miller v. Alabama*, 567 U.S. 460 (2012), *Montgomery v. Louisiana*, 577 U.S. 190, 211 (2016).

8. **Please describe what you believe to be the Supreme Court's holding in *Tandon v. Newsom*, 593 U.S. _____ (2021).**

   Response: In *Tandon*, a case involving at-home religious exercise during the COVID-19 pandemic, the Supreme Court held: The "applicants are entitled to an injunction pending appeal" after determining the likelihood of success on the merits of the case in light of its analysis of the facts of the case and applying its precedential decisions on the Free Exercise Clause.

9. **Please describe what you believe to be the Supreme Court's holding in *Sanchez v. Mayorkas*, 593 U.S. _____ (2021).**

   Response: In *Sanchez,* a case seeking judicial review of United States Citizenship and Immigration Services decision, the Supreme Court held that Temporary Protected Status does not enable a noncitizen to obtain lawful permanent residence based on his unlawful entry into the United States.

10. **What is your view of arbitration as a litigation alternative in civil cases?**

    Response: The District of New Jersey has a robust local rule adopting arbitration as an alternative to litigation. Moreover, "Arbitration as a form of alternative dispute resolution has been the subject of judicial attention in the district since the 1984 Third Circuit Judicial Conference…" In the twelve years that I have served as a magistrate

judge I have observed the efficiency that referral to the district's arbitration program provides to civil litigants.

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 receiving the written questions from the Office of Legal Policy, I reviewed each and every question submitted to me by the members of the committee. I then began drafting my responses to the questions and independently researching the substance of any questions that I believe required reference to a case or subject matter presented in the question.

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 Karen McGlashan Williams, to be United States District Judge 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. **Judge Williams, in 2011, you oversaw the detention hearing of a man who had been previously convicted of Second Degree Sexual Assault in Rhode Island in 1996. You agreed to release the defendant back into the community if he would stay with his parents, limit travel to approved areas, and follow other normal restrictions. That man would later be convicted for child sexual assault of a 4 year old boy.**

   **a. Do you regret this decision?**

   Response: In an effort to identify the case described in this question I have reviewed all of my calendar entries for the Calendar year 2011 to no avail. Further, I do not recall any defendant who I placed on pre-trial supervision pending trial violating his conditions of release by committing the reprehensible act of sexually assaulting a four year old.

   **b. What is your approach to bond, detention, and sentencing determinations?**

   Response: In considering whether a defendant should be detained pending trial, and in the absence of a rebuttable presumption, in accordance with the Bail Reform Act, the defendant is entitled to the presumption of innocence and must be released prior to trial unless no conditions or combination of conditions exist which will "reasonably assure" the appearance of the defendant or "reasonably assure" the safety of any other person in the community. In considering whether to set conditions of release or detain a defendant prior to trial, I am guided by the factors Congress has set forth in 18 U.S.C. §3142(g). Similarly, as a magistrate judge my sentencing determinations have been limited to misdemeanor offenses and guided by the factors set forth in 18 U.S.C. §3553(a). If confirmed as a district judge, I will diligently, faithfully, and impartially adhere to all relevant federal statutes regarding bail and sentencing.

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 magistrate judge, I have an obligation to decide matters presented diligently, faithfully, and impartially. If confirmed as a district judge, I will continue to address cases and controversies presented by reviewing the facts of each case as they are presented, ascertaining and applying the appropriate legal standard, and rendering a decision on the matter without regard to my personal views. In addition, I have not studied the jurisprudence of any individual Supreme Court Justice. My admiration is for the Supreme Court itself and the judicial independence reflected in its opinions, concurrences and dissents.

**Questions for the Record for Karen McGlashan Williams**
**From Senator Mazie K. Hirono**

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:

   a. **Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

      Response: No.

   b. **Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

      Response: No.

**Senator Mike Lee**
**Questions for the Record**
**Karen Williams, D.N.J.**

1. **How would you describe your judicial philosophy?**

Response: As a magistrate judge, I have an obligation to decide matters presented to me diligently, faithfully, and impartially. I fulfill this duty by reviewing the facts of each case as they are presented, ascertaining and applying the appropriate legal standard, and rendering a decision on the matter without regard to my personal views. Should I be confirmed as a district judge, I will diligently, faithfully, and impartially discharge the duties of the office.

2. **What sources would you consult when deciding a case that turned on the interpretation of a federal statute?**

Response: As a magistrate judge, I employ a three-step process when deciding any matters before me. To this end, when interpreting a federal statute I begin by reviewing the statutory language at issue. If the plain meaning is unambiguous my analysis is complete and the plain meaning is applied to the facts presented. If the statutory language is ambiguous, and there is no binding precedent from the Supreme Court or Third Circuit then I consider persuasive authority and apply the canons of interpretation. Should I become a district judge, I will employ the same approach to statutory interpretation.

3. **What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?**

Response: Should I be confirmed as a district judge, I would review and apply Supreme Court and Third Circuit precedent when interpreting a constitutional provision.

4. **What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?**

Response: Should I be confirmed as a district judge, I would review and apply Supreme Court and Third Circuit precedent if a case before me requires me to determine the role of text and original meaning 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: Please refer to my response to question 2 above.

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: Should I be confirmed as a district judge, I have a duty to apply binding Supreme Court and Third Circuit precedent to any matter before me.

6. **What are the constitutional requirements for standing?**

Response: In *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), the Supreme Court instructs that "Over the years, our cases have established that the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an 'injury in fact'…Second, there must be a causal connection between the injury and the conduct complained of…Third, it must be 'likely', as opposed to merely speculative that the injury will be redressed by a favorable decision." (internal citations omitted)

7. **Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?**

Response: In *McCulloch v. Maryland*, 17 U.S. 316, 411-412 (1819), the Supreme Court held the Constitution gives the federal government certain implied powers, as may be "necessary and proper" to carry out the business of the government.

8. **Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?**

Response: Should I be confirmed as a district judge, I will adhere to Supreme Court and Third 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 certain rights, although not specifically identified in the Constitution, are indeed protected by the Constitution. See for example, the right to marry who we choose as explained in *Loving v. Virginia*, 388 U.S. 1 (1967), and the right to privacy in our marriages as explained in *Griswold v. Connecticut*, 381 U.S. 479 (1965). Should I be confirmed as a district judge, I will adhere to Supreme Court and Third Circuit precedent.

10. **What rights are protected under substantive due process?**

Response: The rights protected under substantive due process are those deemed fundamental by the Supreme Court. For example, in *Washington v. Glucksberg*, 521 U.S. 702 (1997) the Supreme Court reiterated that the "Due Process Clause 'protects

individual liberty against certain government actions regardless of the fairness of the procedures used to implement them". The Court further underscored that substantive due process includes the right to marry, to have children, to direct the education and upbringing of one's children; and to marital privacy. (internal citations omitted). Should I be confirmed as a district judge, I will adhere to Supreme Court and Third Circuit precedent.

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: Should I be confirmed as a district judge, my determinations relating to substantive due process will be in accordance with Supreme Court and Third Circuit precedent and not based on any personal beliefs I may have.

12. **What are the limits on Congress's power under the Commerce Clause?**

Response: In *U.S. v. Lopez*, 514 U.S. 549 (1995), although the Supreme Court recognized the broad power of Congress to "legislate under the Commerce Clause", it held that the Gun-Free School Zones Act of 1990 exceeded Congress' Commerce Clause authority. Further, in *Lopez*, the Supreme Court noted that it has "identified three broad categories of activity that Congress may regulate under its Commerce power" including the use of channels of interstate commerce, the instrumentalities of interstate commerce and activities having a substantial relation to interstate commerce. (internal citations omitted).

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 alienage, race and ancestry are suspect classes and any regulation of same must survive strict scrutiny. *Graham v. Richardson*, 403 U.S. 365 (1971), *McLaughlin v. Florida*, 379 U.S. 184 (1964), *Oyama v. California*, 332 U.S. 633 (1948).

14. **How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?**

Response: The Constitution is structured to ensure the balance of power between the separate and independent branches of government to serve the people in accordance with each branch's ascribed power.

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: Should I be confirmed as a district judge and be presented with the issue identified in this question, I will adhere to my duty to apply Supreme Court and Third Circuit precedent in any decision I would render.

16. **What role should empathy play in a judge's consideration of a case?**

Response: Although empathy is an admirable humanitarian quality, it has no role in judicial decision making. As a magistrate judge empathy has not played a role in my judicial decision making. Should I be confirmed as a district judge, empathy will not play a role in my judicial decision making.

17. **What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?**

Response: Invalidating a law that is constitutional or upholding a law that is unconstitutional equally violate the principles of justice.

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 never undertaken an analysis of the Supreme Court's power of judicial review of federal statutes and therefore have not formed a belief about the change in the Supreme Court jurisprudence as described in this question. However, should I be confirmed as a district judge, I will continue to fulfill my duty to adhere to Supreme Court and Third Circuit precedent.

19. **How would you explain the difference between judicial review and judicial supremacy?**

Response: I would explain the differences between judicial review and judicial supremacy by referencing Black's Law Dictionary (11th ed. 2019) which defines these terms as follows:

Judicial review: "A court's power to review the actions of other branches or levels of government; esp., the courts' power to invalidate legislative and executive actions as being unconstitutional."

Judicial supremacy: "The doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding, on the coordinate branches of the federal government and the states."

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: I think the rule of law dictates that no one is above the law. Therefore, everyone, including elected officials, is bound by 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: This phrase reminds me that it is important to keep in mind that (1) judicial independence allows judges the ability to render fair and impartial decisions and (2) the necessity of the interdependence of all three branches of government.

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: It is the duty of a lower court judge to adhere to precedent without regard to her own independent analysis of the issue(s) presented.

23. **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: As a magistrate judge, I adhere to my duty to apply 18 U.S.C. § 3553(a) when making sentencing determinations. An individual defendant's group identity does not have a role in sentencing. If I am confirmed as a district court judge, I will diligently, faithfully, and impartially adhere to the sentencing guidelines.

24. **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 familiar with the definition captured in this question. In addition, I have not undertaken the task of developing a working definition of equity. However, as a magistrate judge, it is my duty to ensure that everyone who appears before me is treated with respect and that my decisions reflect my diligent efforts, as well as fair and impartial determinations. Should I be confirmed as a district judge, I will continue to conduct myself in accordance with these principles.

25. **Is there a difference between "equity" and "equality?" If so, what is it?**

Response: I have not considered whether there is a difference between equity and equality. However, Merriam Webster's Collegiate Dictionary (11th ed. 2007) defines equity as "justice according to natural law or right, specifically freedom from bias or favoritism." Whereas, equality is defined as "the quality or state of being equal."

26. **Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 24)?**

Response: If confirmed as a district judge, I will diligently, faithfully, and impartially adhere to Supreme Court and Third Circuit precedent if called upon to interpret or apply the Fourteenth Amendment to a matter before me.

27. **How do you define "systemic racism?"**

Response: I am aware of various definitions being proffered on the phrase "systemic racism". I have not had any occasion to adopt any definition or espouse one of my own. As a sitting magistrate judge, I am diligent with respect to treating each and every person who appears before me respectfully and impartially. If confirmed as a district judge, I will continue to treat all who appear before me in the same manner.

28. **How do you define "critical race theory?"**

Response: Please refer to my response to Question 27.

29. **Do you distinguish "critical race theory" from "systemic racism," and if so, how?**

Response: Please refer to my response to Question 27.

**Senator Ben Sasse**
**Questions for the Record**
**U.S. Senate Committee on the Judiciary**
**Hearing: "Nominations"**
**July 21, 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 magistrate judge, I have an obligation to decide matters presented to me diligently, faithfully, and impartially. I fulfill this duty by reviewing the facts of each case as they are presented, ascertaining and applying the appropriate legal standard, and rendering a decision on the matter without regard to my personal views. Should I be confirmed as a district judge, I will diligently, faithfully and impartially discharge the duties of the office.

2. **Would you describe yourself as an originalist?**

   Response: No.

3. **Would you describe yourself as a textualist?**

   Response: No.

4. **Do you believe the Constitution is a "living" document? Why or why not?**

   Response: I believe that the Constitution is an enduring document that has enabled all three branches of government to serve the people of the United States of America in accordance with their respective powers.

**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 individual Supreme Court Justice, My admiration is for the Court itself and the judicial independence reflected in its opinions, concurrences and dissents.

**6. Was Marbury v. Madison correctly decided?**

Response: Generally, as a sitting magistrate judge, I do not believe it is proper for me to comment on any decisions rendered by the Supreme Court. However, there are a limited number of cases that are so ingrained in our jurisprudence that the decisions rendered by the Supreme Court will endure and are extremely unlikely to be presented for any further legislative, executive or judicial review. *Marbury v. Madison* is one of these cases. Should I be confirmed as a district judge, I will adhere to Supreme Court precedent.

**7. Was Lochner v. New York correctly decided?**

Response: As I previously stated, generally as a sitting magistrate judge, I do not believe it is proper for me to comment on any decisions rendered by the Supreme Court. Should I be confirmed as a district judge, I will adhere to Supreme Court precedent.

**8. Was Brown v. Board of Education correctly decided?**

Response: Generally, as a sitting magistrate judge, I do not believe it is proper for me to comment on any decisions rendered by the Supreme Court. However, there are a limited number of cases that are so ingrained in our jurisprudence that the decisions rendered by the Supreme Court will endure and are extremely unlikely to be presented for any further legislative, executive or judicial review. *Brown v. Board of Education* is one of these cases. Should I be confirmed as a district judge, I will adhere to Supreme Court precedent.

**9. Was Bolling v. Sharpe correctly decided?**

Response: Please refer to my response to Question 7.

**10. Was Cooper v. Aaron correctly decided?**

Response: Please refer to my response to Question 7.

**11. Was Mapp v. Ohio correctly decided?**

Response: Please refer to my response to Question 7.

**12. Was Gideon v. Wainwright correctly decided?**

Response: Please refer to my response to Question 7.

**13. Was Griswold v. Connecticut correctly decided?**

Response: Please refer to my response to Question 7

**14. Was South Carolina v. Katzenbach correctly decided?**

Response: Please refer to my response to Question 7.

**15. Was Miranda v. Arizona correctly decided?**

Response: Please refer to my response to Question 7.

**16. Was Katzenbach v. Morgan correctly decided?**

Response: Please refer to my response to Question 7.

**17. Was Loving v. Virginia correctly decided?**

Response: Generally, as a sitting magistrate judge, I do not believe it is proper for me to comment on any decisions rendered by the Supreme Court. However, there are a limited number of cases that are so ingrained in our jurisprudence that the decisions rendered by the Supreme Court will endure and are extremely unlikely to be presented for any further legislative, executive or judicial review. *Loving v. Virginia* is one of these cases. Should I be confirmed as a district judge, I will adhere to Supreme Court precedent.

**18. Was Katz v. United States correctly decided?**

Response: Please refer to my response to Question 7.

**19. Was Roe v. Wade correctly decided?**

Response: Please refer to my response to Question 7.

**20. Was Romer v. Evans correctly decided?**

Response: Please refer to my response to Question 7.

**21. Was United States v. Virginia correctly decided?**

Response: Please refer to my response to Question 7

**22. Was Bush v. Gore correctly decided?**

Response: Please refer to my response to Question 7.

**23. Was District of Columbia v. Heller correctly decided?**

Response: Please refer to my response to Question 7.

**24. Was Crawford v. Marion County Election Bord correctly decided?**

Response: Please refer to my response to Question 7.

**25. Was Boumediene v. Bush correctly decided?**

Response: Please refer to my response to Question 7.

**26. Was Citizens United v. Federal Election Commission correctly decided?**

Response: Please refer to my response to Question 7.

**27. Was Shelby County v. Holder correctly decided?**

Response: Please refer to my response to Question 7.

**28. Was United States v. Windsor correctly decided?**

Response: Please refer to my response to Question 7.

**29. Was Obergefell v. Hodges correctly decided?**

Response: Please refer to my response to Question 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: An appellate court can only review its own precedent either *en banc* or if necessitated by action taken by the Supreme Court.

**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: Please refer to my response 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: As a magistrate judge, I adhere to my duty to apply 18 U.S.C. § 3553(a) when making sentencing determinations. An individual defendant's racial or ethnic identity does not have a role in sentencing. If I am confirmed as a district judge, I will diligently, faithfully, and impartially adhere to the sentencing guidelines.

**Questions from Senator Thom Tillis**
**for Karen McGlashan Williams**
**Nominee to be United States District Judge for the District of New Jersey**

1. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   Response: Yes

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: Black's Law Dictionary (11th ed. 2019) defines "judicial activism" as "a philosophy of judicial decision making whereby judges allow their personal views about public policy, among other factors, to guide their decisions…." As a sitting magistrate judge, I have not and do not render decisions based on my personal views. Should I be confirmed as a district judge, I will not allow my personal views to enter into my judicial decision making process.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: I believe impartiality is an expectation for judges.

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: Yes, faithfully interpreting the law sometimes results in an undesirable outcome for a party. However, I reconcile any perceived undesirable outcome with the knowledge that I diligently, faithfully, and impartially apply the law.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No. As a magistrate judge, I have not interjected my own politics or policy preferences when interpreting and applying the law. Should I be confirmed as a district judge, I will not interject my own politics or policy preferences when interpreting and applying the law.

7. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

Response: If I am confirmed as a district judge, I have a duty to adhere to Supreme Court precedent. To this end, the Supreme Court has decided that there is "an individual right to keep and bear arms" and that right is fundamental. *District of Columbia v. Heller,* 554 U.S. 570 (2008), *McDonald v. City of Chicago,* 561 U.S. 742 (2010). I will diligently, faithfully, and impartially apply this law to any case before me on the matter.

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: During this unprecedented time of the COVID-19 pandemic, the Supreme Court has addressed a number of issues that arose as a result of measures instituted by government officials in response to the pandemic. *See e.g. Roman Catholic Diocese of Brooklyn v. Cuomo,* 141 S. Ct. 63 (2020). If I am confirmed as a district judge, I will adhere to Supreme Court and Third Circuit precedent.

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 magistrate judge, I have employed a three-step process when analyzing legal issues presented in any case before me. I review the language at issue, I ascertain whether there is binding precedent from the Supreme Court and/or the Third Circuit, I then apply the facts to the established law. If confirmed as a district judge, I will utilize the same approach. To this end, in *Pearson v. Callahan*, 555 U.S. 223 (2009), the Supreme Court reiterated that "The doctrine of qualified immunity protects government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known" citing *Harlow v. Fitzgerald*, 457 U.S. 800 818 (1982). In addition, the Court confirmed that the *Saucier* method mandates a two-step sequence for resolving government officials' qualified immunity claims. *Saucier v. Katz,* 533 U.S. 194 (2001). Should I be confirmed as a district judge, I will diligently, faithfully, and impartially adhere to Supreme Court and Third Circuit precedent on this and every other issue.

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: If confirmed, as a district judge I have a duty to adhere to Supreme Court and Third Circuit precedent.

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 matter for the legislative and executive branches to address as part of their policy making function. In my current role and if confirmed as a district judge, I will diligently, faithfully, and impartially adhere to Supreme Court and Third Circuit precedent.

**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: Generally, as a sitting magistrate judge it is improper for me to comment on Supreme Court jurisprudence. I can say that as a magistrate judge I have not yet heard any patent eligibility cases. However, over the past twelve years serving the District of New Jersey I have regularly confronted areas of the law that I was not previously familiar with. When presented with a new area of law, I have considered the facts, the record before me, the arguments of the parties and conducted my own independent legal research to reach a conclusion. I would do the same if a patent eligibility case came before me as a district judge.

**13. How would you apply current patent eligibility jurisprudence to the following hypotheticals. Please avoid giving non-answers and actually analyze these hypotheticals.**

**a. *ABC Pharmaceutical Company* develops a method of optimizing dosages of a substance that has beneficial effects on preventing, treating or curing a disease or condition for individual patients, using conventional technology but a newly-discovered correlation between administered medicinal agents and bodily chemicals or metabolites. Should this invention be patent eligible?**

Response: Generally, as a sitting magistrate judge, it is improper for me to analyze hypotheticals particularly where the issue concerns pharmaceuticals. The District of New Jersey leads the nation in pending patent litigation and has a significant number of cases that relate to pharmaceutical patents. However, in the twelve years that I have been a magistrate judge I approach cases and controversies that come before me by diligently considering the facts, faithfully applying the law and impartially reaching a conclusion.

**b. *FinServCo* develops a valuable proprietary trading strategy that demonstrably increases their profits derived from trading commodities. The strategy involves a new application of statistical methods, combined with predictions about how trading markets behave that are derived from insights into human psychology. Should *FinServCo's* business method standing alone be eligible? What about the business method as practically applied on a computer?**

Response: Generally, as a sitting magistrate judge, it is improper for me to analyze hypotheticals. However, in the twelve years that I have been a magistrate judge I approach cases and controversies that come before me by diligently considering the facts, faithfully applying the law and impartially reaching a conclusion.

**c. *HumanGenetics* Company wants to patent a human gene or human gene fragment as it exists in the human body. Should that be patent eligible? What if *HumanGenetics* Company wants to patent a human gene or fragment that contains sequence alterations provided by an engineering process initiated by humans that do not otherwise exist in nature? What if the engineered alterations were only at the end of the human gene or fragment and merely removed one or more contiguous elements?**

Response: Please refer to my response to b.

**d. *BetterThanTesla ElectricCo* develops a system for billing customers for charging electric cars. The system employs conventional charging technology and conventional computing technology, but there was no previous system combining computerized billing with electric car charging. Should *BetterThanTesla's* billing system for charging be patent eligible standing alone? What about when it explicitly claims charging hardware?**

Response: Please refer to my response to b.

**e. *Natural Laws and Substances, Inc.* specializes in isolating natural substances and providing them as products to consumers. Should the isolation of a naturally occurring substance other than a human gene be patent eligible? What about if the substance is purified or combined with other substances to produce an effect that none of the constituents provide alone or in lesser combinations?**

Response: Please refer to my response to b.

**f. A business methods company, *FinancialServices Troll,* specializes in taking conventional legal transaction methods or systems and implementing them through a computer process or artificial intelligence. Should such implementations be patent eligible? What if the implemented method actually improves the expected result by, for example, making the methods faster, but doesn't improve the functioning of the computer itself? If the computer or artificial intelligence implemented system does actually improve the expected result, what if it doesn't have any other meaningful limitations?**

Response: Please refer to my response to b.

**g. *BioTechCo* discovers a previously unknown relationship between a genetic mutation and a disease state. No suggestion of such a relationship existed in the**

**prior art. Should *BioTechCo* be able to patent the gene sequence corresponding to the mutation? What about the correlation between the mutation and the disease state standing alone? But, what if *BioTech Co* invents a new, novel, and nonobvious method of diagnosing the disease state by means of testing for the gene sequence and the method requires at least one step that involves the manipulation and transformation of physical subject matter using techniques and equipment? Should that be patent eligible?**

Response: Please refer to my response to b.

**h. Assuming *BioTechCo's* diagnostic test is patent eligible, should there exist provisions in law that prohibit an assertion of infringement against patients receiving the diagnostic test? In other words, should there be a testing exemption for the patient health and benefit? If there is such an exemption, what are its limits?**

Response: Please refer to my response to b.

**i. *Hantson Pharmaceuticals* develops a new chemical entity as a composition of matter that proves effective in treating TrulyTerribleDisease. Should this new chemical entity be patent eligible?**

Response: Please refer to my response to a.

**j. *Stoll Laboratories* discovers that superconducting materials superconduct at much higher temperatures when in microgravity. The materials are standard superconducting materials that superconduct at lower temperatures at surface gravity. Should *Stoll Labs* be able to patent the natural law that superconductive materials in space have higher superconductive temperatures? What about the space applications of superconductivity that benefit from this effect?**

Response: Please refer to my response to b.

**14. Based on the previous hypotheticals, do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?**

Response: As a sitting magistrate judge, and if confirmed as a district judge, I will diligently, faithfully, and impartially adhere to Supreme Court and Third Circuit precedent.

July 7, 2021

The Honorable Richard Durbin
Chairman
Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington D.C. 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley:

We write to express our strong support for the nomination of United States Magistrate Judge Sarah A.L. Merriam to the United States District Court for the District of Connecticut.

We have been privileged to serve as federal prosecutors within the United States Attorney's Office for the District of Connecticut. Many of us have held leadership positions in the Department of Justice ("DOJ"), and our collective experience covers the breadth of DOJ's law enforcement responsibilities. We remain deeply committed to the principles that sustain DOJ's work: fidelity to the rule of law, independence, and fairness to all litigants. During our DOJ careers and beyond, we have had the opportunity to interact with Judge Merriam as colleagues, adversaries, and litigants in her courtroom. We know that Judge Merriam subscribes to these fundamental principles.

As a young lawyer, Judge Merriam quickly distinguished herself in Connecticut's legal community as an insightful advocate, a highly skilled writer, and a congenial member of the bar. After several successful years in private practice, Judge Merriam entered public service as an Assistant Federal Defender with the Office of the Federal Defender for the District of Connecticut. In that role, Judge Merriam represented indigent individuals who were charged with federal crimes.

As an Assistant Federal Defender, Judge Merriam performed the essential work of securing the Constitution's protections for persons accused of and convicted of crimes. Those of us who prosecuted Judge Merriam's clients found her to be a capable and collegial adversary. Always protective of her clients' interests, Judge Merriam also demonstrated a respect for the Government's prerogatives and an appreciation for the challenges faced by law enforcement. She was a practical and credible colleague. For these reasons, Judge Merriam was selected to lead the Federal Defender's response to the Fair Sentencing Act, which rendered hundreds of defendants

eligible for sentence reductions. That effort required close coordination with the United States Attorney's Office. Judge Merriam's credibility with federal prosecutors, her high level of organization and her practical approach to problem solving resulted in efficient, just dispositions for hundreds of people.

As a United States Magistrate Judge, Judge Merriam has brought an even-handed and accessible approach to the federal bench. Many of us have benefited from her intellect and the thorough consideration she gives to each case before her. While Judge Merriam is ever mindful of the human consequences of her decisions, she applies the law fairly and properly without regard to personal preference.

In sum, as experienced former federal prosecutors, we strongly recommend your favorable consideration of Judge Merriam's nomination to the United States District Court for the District of Connecticut. She is a highly qualified and competent jurist, who will serve with distinction and honor.

Respectfully Submitted,

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Liam Brennan
James T. Cowdery
Thomas V. Daily
Deirdre M. Daly
Christopher F. Droney
James I. Glasser
Edward T. Kang
Elizabeth Latif
Ethan Levin-Epstein
Stephen V. Manning
Joseph W. Martini
Christopher M. Mattei
Douglas P. Morabito
Thomas J. Murphy
Lisa E. Perkins
Stephen Reynolds
Alina M. Reynolds
David A. Ring
Mark D. Rubino
Michael R. Sklaire
James R. Smart
Brian Spears
Stanley A. Twardy
Elliot Warren
M. Quentin Williams

July 13, 2021

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United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Senator Chuck Grassley
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We have had the opportunity to observe Judge Merriam since she was a young lawyer clerking for a district judge in Connecticut and then working at a prominent boutique law firm in Hartford. From early in her career she displayed a distinctive diligence and aptitude. She quickly distinguished herself as serious and very smart, but also curious and collegial.

While she excelled in private practice, Sarah often spoke about her interest in a career in public service, which she realized as a lawyer in the federal Public Defender's office. There Sarah developed a reputation for representing her clients zealously, diligently, and effectively. She also became a go-to resource for those of us in private practice when we faced nuanced procedural and sentencing issues. Although there were lawyers in the District with more years of experience than Sarah, few shared her depth of knowledge about federal criminal practice or her responsiveness and generosity.

For the past six years, Judge Merriam has served as a United States Magistrate Judge in Connecticut. Not surprisingly, she has continued to distinguish herself. Judge Merriam displays not a hint of arrogance. She treats the lawyers and litigants who appear before her with courtesy and respect. She is collegial and maintains a sense of humor. Notably, she easily relinquished her role as an advocate and became an impartial arbiter who approaches each case and every issue with dispassionate fairness.

All of the foregoing is by way saying that we encourage the Senate to quickly confirm Judge Merriam. As a law clerk, a private practitioner, a public defender, and now a magistrate judge, Judge Merriam has been a significant and valuable part of the life of the District Court in Connecticut. As a United States District Judge she will be a rare asset to the District and the judiciary as a whole.

/s/

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cc: Members of the Senate Judiciary Committee

July 7, 2021

The Honorable Richard Durbin
Chairman
Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington D.C. 20510

The Honorable Charles Grassley
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In sum, as experienced former federal prosecutors, we strongly recommend your favorable consideration of Judge Merriam's nomination to the United States District Court for the District of Connecticut. She is a highly qualified and competent jurist, who will serve with distinction and honor.

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AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

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July 13, 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 Sarah A.L. Merriam to the United States District Court for the District of Connecticut*

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 Sarah Merriam, who has been nominated by the President to the United States District Court for the District of Connecticut. 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 Merriam is **"Well Qualified"** to serve on the United States District Court for the District of Connecticut.

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 Sarah A.L. Merriam (*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*)

July 13, 2021

Senator Dick Durbin
United States Senate
135 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:

The undersigned are lawyers who have spent decades appearing in federal courts throughout the country, including in Connecticut where we maintain law offices. We are also former advisors and appointees of Republican officials and have been involved in the selection and vetting of judges. Today we write in unqualified support of the nomination of Magistrate Judge Sarah Merriam to serve as a judge on the United States District Court for the District of Connecticut.

We have had the opportunity to observe Judge Merriam since she was a young lawyer clerking for a district judge in Connecticut and then working at a prominent boutique law firm in Hartford. From early in her career she displayed a distinctive diligence and aptitude. She quickly distinguished herself as serious and very smart, but also curious and collegial.

While she excelled in private practice, Sarah often spoke about her interest in a career in public service, which she realized as a lawyer in the federal Public Defender's office. There Sarah developed a reputation for representing her clients zealously, diligently, and effectively. She also became a go-to resource for those of us in private practice when we faced nuanced procedural and sentencing issues. Although there were lawyers in the District with more years of experience than Sarah, few shared her depth of knowledge about federal criminal practice or her responsiveness and generosity.

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All of the foregoing is by way saying that we encourage the Senate to quickly confirm Judge Merriam. As a law clerk, a private practitioner, a public defender, and now a magistrate judge, Judge Merriam has been a significant and valuable part of the life of the District Court in Connecticut. As a United States District Judge she will be a rare asset to the District and the judiciary as a whole.

/s/

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/s/

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Stamford, CT 06901
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cc: Members of the Senate Judiciary Committee

ELEANOR HOLMES NORTON
DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEES
CHAIR, HIGHWAYS AND TRANSIT
AVIATION
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS AND EMERGENCY MANAGEMENT
WATER RESOURCES AND THE ENVIRONMENT

COMMITTEE ON OVERSIGHT AND REFORM
SUBCOMMITTEES
CIVIL RIGHTS AND CIVIL LIBERTIES
GOVERNMENT OPERATIONS

Congress of the United States
House of Representatives
Washington, DC 20515-1501

Statement of Congresswoman Eleanor Holmes Norton
Senate Committee on the Judiciary
Hearing on Jia Cobb and Florence Pan

July 14, 2021

Chairman Durbin and Ranking Member Grassley, I appreciate the opportunity to submit this statement in strong support of Jia Cobb and Florence Pan for the U.S. District Court for the District of Columbia, both of whom I recommended to President Biden. I am especially pleased that the President has given me senatorial courtesy for judges on the U.S. District Court for D.C., the U.S. Attorney for D.C., the U.S. Marshal for the D.C. Superior Court and the U.S. Marshal for the U.S. District Court for D.C.

Jia Cobb possesses all the necessary qualities to be an exceptional federal judge, including intelligence, temperament and integrity. She will also bring much-needed racial and professional diversity to the federal bench.

Ms. Cobb is a partner at Relman Colfax PLLC, where she has practiced for 11 years. Relman Colfax is a plaintiff-side civil rights law firm. Ms. Cobb litigates civil rights cases in federal courts across the country, including here in the District. Ms. Cobb's practice has focused on housing discrimination and criminal justice misconduct, but she litigates other types of civil rights cases as well.

Prior to her current position, Ms. Cobb practiced law at the D.C. Public Defender Service for six years. In this role, she represented indigent criminal defendants at all stages of litigation and tried dozens of cases to verdict as lead or sole attorney.

Ms. Cobb is a *magna cum laude* and Phi Beta Kappa graduate of Northwestern University and a *cum laude* graduate of Harvard Law School, where she served as a Coordinating Editor of the Harvard Law Review. After law school, Ms. Cobb clerked for Judge Diane Wood of the U.S. Court of Appeals for the Seventh Circuit.

In 2016, President Obama, upon my recommendation, nominated D.C. Superior Court Judge Florence Pan for the U.S. District Court for the District of Columbia. The nomination was approved by the Senate Judiciary Committee by a voice vote. However, by that point, the Senate had stopped confirming Obama-nominated judges, and Judge Pan's nomination expired.

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Judge Pan has the professional experience and academic credentials that one would expect of an exceptional federal judge. Since 2009, Judge Pan has as an Associate Judge on the D.C. Superior Court, where she has served in the Civil Division, Criminal Division and Family Court. The Senate confirmed Judge Pan's nomination to the Superior Court by voice vote. She previously served eight years as Assistant U.S. Attorney, working in both the federal and local trial courts and in the Appellate Division, and she served two years as the Deputy Chief of the Appellate Division. Like Ms. Cobb, Judge Pan would also further diversify this important court.

Judge Pan is a graduate of the University of Pennsylvania, *summa cum laude*, where she received two undergraduate degrees, including from the Wharton School. She is also a graduate with distinction from Stanford Law School. During law school, Judge Pan was Associate Editor of the Stanford Law Review and was student body president.

After law school, Judge Pan clerked for Judge Michael Mukasey on the U.S. District Court for the Southern District of New York and for Judge Ralph Winter on the U.S. Court of Appeals for the Second Circuit.

Again, I appreciate your considering these two exceptional nominees for the vacancies on the U.S. District Court for the District of Columbia, and I want to reiterate my gratitude to President Biden for granting me senatorial courtesy for certain federal nominees in the District of Columbia.

July 13, 2021

Senator Dick Durbin
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Senator Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley:

We are former federal prosecutors and alumni of the United States Attorney's Office for the District of Columbia. We are pleased to offer our support for the nomination of Jia M. Cobb to be a judge on the United States District Court for the District of Columbia.

Ms. Cobb possesses many qualities that we believe make her eminently qualified for this position. Her professional background has amply prepared her to be a federal judge. Ms. Cobb graduated with honors from Harvard Law School, where she was a Coordinating Editor for the Harvard Law Review, then clerked for the Honorable Diane Wood of the U.S. Court of Appeals for the Seventh Circuit. Ms. Cobb moved to the District of Columbia in 2006, and since then, she has established a reputation within our community as a top-notch trial lawyer in both the criminal and civil contexts. She worked for six years at the Public Defender Service for the District of Columbia, representing hundreds of indigent clients in a wide array of criminal matters. In 2012, Ms. Cobb transitioned to a role at Relman Colfax, PLLC, a boutique plaintiffs'-side civil rights law firm. During her time at Relman, she has represented multiple law enforcement officers in race discrimination and other civil rights cases.

As a public defender and as a civil rights law firm partner, Ms. Cobb has tried dozens of cases to verdict and has shepherded countless more to resolution. She has been exposed to a wide range of criminal and civil litigation, and we are confident that her professional experiences will allow her to make a seamless transition from litigator to judge.

Ms. Cobb also would bring much-needed diversity to the federal bench. Among its active judges, the D.C. District Court now has only two African American judges; and there are in fact only 39 African American women federal judges in the entire country. Remarkably, Ms. Cobb is a third-generation African American attorney. In the summer of 1930—decades before the civil rights movement—her paternal grandfather graduated from the University of Chicago Law School as one of the only African American students in his class. Her father also is a lawyer, and she has been inspired to follow in their footsteps.

Finally, while we remain grateful that prosecutors are represented on the federal bench and are confident that their experiences amply prepare them to preside fairly, we also recognize the import of the experiences of lawyers like Ms. Cobb. In particular, the perspectives of public

defenders and civil rights lawyers have been historically under-represented in our courts; Ms. Cobb would bring both. On the D.C. District Court, of the 13 active judges, seven have experience as former Assistant U.S. Attorneys, and four more served as government lawyers at the Department of Justice. Only two have experience as public defenders. Ms. Cobb has spent her entire career representing people at their most vulnerable; we know how important it is to have good lawyering on both sides of the courtroom, and we likewise know how valuable those perspectives will be as a presiding judge.

In sum, we stand in support of the Biden Administration's efforts to nominate diverse, well-qualified, and well-regarded lawyers like Ms. Cobb who also would bring professional diversity to our federal courts. We urge Ms. Cobb's swift consideration and confirmation.

Sincerely,

| | |
|---|---|
| Lionel Andre | 2001-2017 |
| Roy L. Austin, Jr. | 1995; 2002-2006; 2009 |
| Ademuyiwa Bamiduro | 2007-2016 |
| Jeremy Barber | 2006-2010 |
| Nicole L. Battle | 2015-2021 |
| Mervin A. Bourne, Jr. | 2008-2021 |
| Cormac Connor | 2007-2011 |
| Terry Eaton | 2008-2014 |
| Bianca Forde | 2015-2020 |
| Precious M. Gittens | 2002-2007 |
| Vanessa Goodwin | 2014-2017 |
| Angela Hart-Edwards | 2002-2009 |
| Jamila Hodge | 2006-2018 |
| June M. Jeffries | 1983-2008 |
| Akhi Johnson | 2013-2019 |
| Joshua Klein | 2008-2011 |
| James Marvin Perez | 2009-2016 |
| Priya Naik | 2015-2020 |
| Ari Redbord | 2007-2019 |
| Mona Sahaf | 2008-2014 |
| Anthony Saler | 2008-2020 |
| Jelahn Stewart | 1999-2018 |

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AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

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July 13, 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 Jia M. Cobb to the United States District Court for the District of Columbia*

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 Jia Cobb, who has been nominated by the President to the United States District Court for the District of Columbia. 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. Cobb is **"Well Qualified"** to serve on the United States District Court for the District of Columbia.

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*)
Jia M. Cobb (*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*)

ELEANOR HOLMES NORTON
DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEES
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AVIATION
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SUBCOMMITTEES
CIVIL RIGHTS AND CIVIL LIBERTIES
GOVERNMENT OPERATIONS

Congress of the United States
House of Representatives
Washington, DC 20515-1501

Statement of Congresswoman Eleanor Holmes Norton
Senate Committee on the Judiciary
Hearing on Jia Cobb and Florence Pan

July 14, 2021

Chairman Durbin and Ranking Member Grassley, I appreciate the opportunity to submit this statement in strong support of Jia Cobb and Florence Pan for the U.S. District Court for the District of Columbia, both of whom I recommended to President Biden. I am especially pleased that the President has given me senatorial courtesy for judges on the U.S. District Court for D.C., the U.S. Attorney for D.C., the U.S. Marshal for the D.C. Superior Court and the U.S. Marshal for the U.S. District Court for D.C.

Jia Cobb possesses all the necessary qualities to be an exceptional federal judge, including intelligence, temperament and integrity. She will also bring much-needed racial and professional diversity to the federal bench.

Ms. Cobb is a partner at Relman Colfax PLLC, where she has practiced for 11 years. Relman Colfax is a plaintiff-side civil rights law firm. Ms. Cobb litigates civil rights cases in federal courts across the country, including here in the District. Ms. Cobb's practice has focused on housing discrimination and criminal justice misconduct, but she litigates other types of civil rights cases as well.

Prior to her current position, Ms. Cobb practiced law at the D.C. Public Defender Service for six years. In this role, she represented indigent criminal defendants at all stages of litigation and tried dozens of cases to verdict as lead or sole attorney.

Ms. Cobb is a *magna cum laude* and Phi Beta Kappa graduate of Northwestern University and a *cum laude* graduate of Harvard Law School, where she served as a Coordinating Editor of the Harvard Law Review. After law school, Ms. Cobb clerked for Judge Diane Wood of the U.S. Court of Appeals for the Seventh Circuit.

In 2016, President Obama, upon my recommendation, nominated D.C. Superior Court Judge Florence Pan for the U.S. District Court for the District of Columbia. The nomination was approved by the Senate Judiciary Committee by a voice vote. However, by that point, the Senate had stopped confirming Obama-nominated judges, and Judge Pan's nomination expired.

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Judge Pan has the professional experience and academic credentials that one would expect of an exceptional federal judge. Since 2009, Judge Pan has as an Associate Judge on the D.C. Superior Court, where she has served in the Civil Division, Criminal Division and Family Court. The Senate confirmed Judge Pan's nomination to the Superior Court by voice vote. She previously served eight years as Assistant U.S. Attorney, working in both the federal and local trial courts and in the Appellate Division, and she served two years as the Deputy Chief of the Appellate Division. Like Ms. Cobb, Judge Pan would also further diversify this important court.

Judge Pan is a graduate of the University of Pennsylvania, *summa cum laude*, where she received two undergraduate degrees, including from the Wharton School. She is also a graduate with distinction from Stanford Law School. During law school, Judge Pan was Associate Editor of the Stanford Law Review and was student body president.

After law school, Judge Pan clerked for Judge Michael Mukasey on the U.S. District Court for the Southern District of New York and for Judge Ralph Winter on the U.S. Court of Appeals for the Second Circuit.

Again, I appreciate your considering these two exceptional nominees for the vacancies on the U.S. District Court for the District of Columbia, and I want to reiterate my gratitude to President Biden for granting me senatorial courtesy for certain federal nominees in the District of Columbia.

July 13, 2021

The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

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

Dear Chairman Durbin and Ranking Member Grassley:

We are 80 former senior officials of the United States Department of Justice who have served in administrations of both parties. We all care deeply about the Justice Department as an institution and about the caliber and integrity of the men and women who are entrusted with leading the Department and its critical components.

We also all personally know and/or have worked with Matt Olsen, President Biden's nominee to serve as the Assistant Attorney General for National Security, during his 22 years of government service as a federal prosecutor, as a leader in the Justice Department and as a senior official in the Intelligence Community. We have seen firsthand how Matt approaches his public service with absolute integrity and with unflinching commitment to the cause of justice and the interests of the American people. We are therefore proud to support his nomination, and we do so with enthusiasm and with firm conviction that his confirmation will enhance both our national security and the rule of law in our country.

Matt has been nominated to lead the National Security Division (NSD), a position that plays a vital role in the government's national security operations, integrating the Justice Department's law enforcement and intelligence components and coordinating its efforts against our foreign adversaries. Matt is perhaps uniquely qualified to serve in this role, having served as the Deputy Assistant Attorney General overseeing NSD's intelligence units when the division was first established in 2006 and then as the acting Assistant Attorney General during the presidential transition in 2009.

Matt's exceptional career of public service has garnered him the experience that will equip him to effectively handle the responsibilities of NSD from day one of his tenure. Starting with his work as a trial attorney in the Civil Rights Division of the Justice Department and through his years as a career prosecutor and senior national security official, Matt consistently demonstrated his commitment to justice and the rule of law and played a central leadership role in a number of important and complex challenges at the intersection of law and national security.

As a civil rights attorney, he worked to ensure equal voting rights for minority citizens. As a prosecutor in Washington, D.C. for over a decade, Matt handled a wide range of cases, including homicides and white-collar offenses, and was recognized with the Attorney General's Award for his advocacy work on a year-long racketeering trial. As senior counsel to FBI Director Robert S. Mueller, III, he supported the post-9/11 transformation of the FBI. In his roles as a national security official in the Justice Department and as the General Counsel of the National Security Agency, Matt led teams of national security attorneys and managed several sensitive programs and operations, working to ensure that the government exercised its authorities in a manner that was consistent with privacy interests and the rule of law.

In his last government post, Matt served as the Senate-confirmed Director of the National Counterterrorism Center (NCTC). In this role, he led an intelligence agency charged with integrating terrorism information and "connecting the dots" that allow the Intelligence Community to combat terrorist threats in the United States and around the world. He regularly briefed the President and senior national security officials on terrorist plots and strategic trends, and he played a key role in developing policies to meet the evolving terrorist threat. As President Obama stated when Matt stepped down as NCTC Director, "Most Americans may not know Matt Olsen's name, but every American is safer because of his service."

Since his departure from federal service in 2015, Matt has maintained his focus on justice and national security issues, teaching classes at Harvard Law School and the University of Virginia on national security law and policy. He has also worked in private-sector roles that have both drawn upon and enhanced the skill set he developed during his government service. As the Chief Trust and Security Officer of a global technology company, Matt has responsibility for safeguarding the company's data against cyber threats and building its security and investigative capabilities. This hands-on experience in the private sector will be an invaluable asset as he takes on the responsibility for confronting our foreign cyber adversaries at the National Security Division.

In addition to his professional experience, Matt brings a personality and character that will make him a tremendously effective leader, both inside the Department and within the national security inter-agency process. Matt leads by example – by the example of his work ethic, his integrity, and his single-minded focus on doing what is right for the cause of justice – and in the process, he inspires and brings out the best in those around him. That brand of leadership is exactly what the National Security Division needs as it faces today's complex and evolving threats.

Given Matt's sterling character and exceptional record of public service, we are honored to provide our unqualified and enthusiastic support for his nomination. We can think of nobody better equipped to lead the National Security Division in this critical period, and we respectfully request that this Committee and the Senate confirm him as the next Assistant Attorney General for National Security.

Kent Alexander
United States Attorney
Northern District of Georgia (1994-97)

Malcolm Bales
United States Attorney
Eastern District of Texas (2009-16)

Alan Bersin
United States Attorney
Southern District of California (1993-98)

Lanny Breuer
Assistant Attorney General
Criminal Division (2009-13)

Gregory Brower
United States Attorney
District of Nevada (2008-09)

Kenyen R. Brown
United States Attorney
Southern District of Alabama (2009-17)

Donna A. Bucella
United States Attorney
Middle District of Florida (1999-2001)

Mark Calloway
United States Attorney
Western District of North Carolina (1994-2001)

Don Cazayoux
United States Attorney
Middle District of Louisiana (2010-13)

Paul K. Charlton
United States Attorney
District of Arizona (2001-06)

Michael Chertoff
Assistant Attorney General
Criminal Division (2001-03)

Tristram J. Coffin
United States Attorney
District of Vermont (2009-15)

Paul Coggins
United States Attorney
Northern District of Texas (1993-2001)

Vincent H. Cohen, Jr.
United States Attorney
District of Columbia (2015)

James M. Cole
Deputy Attorney General (2010-15)

Kelly T. Currie
United States Attorney
Eastern District of New York (2015)

Steven M. Dettelbach
United States Attorney
Northern District of Ohio (2009-16)

Zach Fardon
United States Attorney
Northern District of Illinois (2013-17)

David Fein
United States Attorney
District of Connecticut (2010-13)

Wifredo Ferrer
United States Attorney
Southern District of Florida (2010-17)

Glenn Fine
Justice Department Inspector General (2000-11)

Alice Fisher
Assistant Attorney General
Criminal Division (2005-08)

Paul J. Fishman
United States Attorney
District of New Jersey (2009-17)

Patrick Fitzgerald
United States Attorney
Northern District of Illinois (2001-12)

Deborah R. Gilg
United States Attorney
District of Nebraska (2009-17)

Benjamin C. Glassman
United States Attorney
Southern District of Ohio (2016-19)

Wendy Goggin
United States Attorney
Middle District of Tennessee (1998-2000)

Jonathan L. Goldstein
United States Attorney
District of New Jersey (1974-77)

Booth Goodwin
United States Attorney
Southern District of West Virginia (2010-15)

Jamie S. Gorelick
Deputy Attorney General (1994-97)

Walt Green
United States Attorney
Middle District of Louisiana (2014-17)

Barry Grissom
United States Attorney
District of Kansas (2010-16)

Melinda Haag
United States Attorney
Northern District of California (2010-16)

Nancy Harr
United States Attorney
Eastern District of Tennessee (2015-17)

Karen P. Hewitt
United States Attorney
Southern District of California (2007-10)

David J. Hickton
United States Attorney
Western District of Pennsylvania (2010-16)

Dwight Holton
United States Attorney
District of Oregon (2010-11)

Walter Holton
United States Attorney
Middle District of North Carolina (1994-2001)

John Horn
United States Attorney
Northern District of Georgia (2015-17)

David Iglesias
United States Attorney
District of New Mexico (2001-06)

Marcos Daniel Jiménez
United States Attorney
Southern District of Florida (2002-05)

Brendan V. Johnson
United States Attorney
District of South Dakota (2009-15)

Peter Keisler
Assistant Attorney General
Civil Division (2003-07)
Acting Attorney General (2007)

David N. Kelley
United States Attorney
Southern District of New York (2003-05)

William C. Killian
United States Attorney
Eastern District of Tennessee (2010-15)

David S. Kris
Assistant Attorney General
National Security Division (2009-11)

Jessie Liu
United States Attorney
District of Columbia (2017-20)

Ronald C. Machen
United States Attorney
District of Columbia (2010-15)

Paul J. McNulty
United States Attorney
Eastern District of Virginia (2001-05)
Deputy Attorney General (2005-07)

Barbara L. McQuade
United States Attorney
Eastern District of Michigan (2010-17)

Zane David Memeger
United States Attorney
Eastern District of Pennsylvania (2010-16)

Gregory Miller
United States Attorney
Northern District of Florida (2002-08)

William Moschella
Assistant Attorney General
Office of Legislative Affairs (2003-06)
Principal Associate Deputy Attorney General (2006-08)

Michael B. Mukasey
Attorney General (2007-09)

Florence T. Nakakuni
United States Attorney
District of Hawaii (2009-17)

Charles Oberly
United States Attorney
District of Delaware (2010-17)

Thomas P. O'Brien
United States Attorney
Central District of California (2007-09)

Kevin O'Connor
United States Attorney
District of Connecticut (2002-08)
Associate Attorney General (2008-09)

David W. Ogden
Assistant Attorney General
Civil Division (1999-2001)
Deputy Attorney General (2009-10)

David O'Neil
Assistant Attorney General
Criminal Division (2014)

Carmen M. Ortiz
United States Attorney
District of Massachusetts (2009-17)

John C. Richter
United States Attorney
Western District of Oklahoma (2005-09)
Acting Assistant Attorney General
Criminal Division (2005)

Chuck Rosenberg
United States Attorney
Southern District of Texas (2005-06)
Eastern District of Virginia (2006-08)
DEA Administrator (2015-17)

Richard Rossman
United States Attorney
Eastern District of Michigan (1980-81)

J. Patrick Rowan
Assistant Attorney General
National Security Division (2008-09)

Scott Schools
United States Attorney
District of South Carolina (2001)
Northern District of California (2007-08)

Carter M. Stewart
United States Attorney
Southern District of Ohio (2009-16)

Jeffrey A. Taylor
United States Attorney
District of Columbia (2006-09)

Kevin W. Techau,
United States Attorney
Northern District of Iowa (2014-17)

G. Zachary Terwilliger
United States Attorney
Eastern District of Virginia (2018-21)

Anne Tompkins
United States Attorney
Western District of North Carolina (2005-10)

John W. Vaudreuil
United States Attorney
Western District of Wisconsin (2010-17)

Benjamin B. Wagner
United States Attorney
Eastern District of California (2009-16)

Kenneth L. Wainstein
United States Attorney
District of Columbia (2004-06)
Assistant Attorney General
National Security Division (2006-08)

Thomas Walker
United States Attorney
Eastern District of North Carolina (2011-16)

John Walsh
United States Attorney
District of Colorado (2010-16)

William H. Webster
United States Attorney
Eastern District of Missouri (1960-61)
FBI Director (1978-87)

Joseph Whitley
United States Attorney
Middle District of Georgia (1981-86)
Northern District of Georgia (1990-93)

Sally Yates
United States Attorney
Northern District of Georgia (2004, 2010-15)
Deputy Attorney General (2015-17)

Stephanie Yonekura
United States Attorney
Central District of California (2014-15)

July 13, 2021

The Honorable Dick Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

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

Re: Nomination of Matthew G. Olsen to be Assistant Attorney General, National Security Division, Department of Justice (PN610)

Dear Chairman Durbin and Ranking Member Grassley:

We write today to unanimously express our strong support for the nomination of Matt Olsen to serve as the Assistant Attorney General for National Security at the Department of Justice. We represent a bipartisan cross-section of former government officials and national security experts who have worked with Matt in his various roles in the government and industry.

In our view, Matt is an ideal candidate for this position because he brings to bear an unimpeachable track record of service to our nation and a deep background in national security and cybersecurity matters. These attributes will serve him well should the Senate see fit to confirm him to this position. In many ways, it would be hard to find another leader more qualified to protect our nation from terrorists and foreign adversaries like China, Russia, Iran, and North Korea, all of whom seek to take advantage of our nation across a range of areas, from attacks our citizens and businesses in both the physical and cyber domains, to espionage conducted in traditional and non-traditional ways.

Matt began his career in government service as a trial attorney in the Justice Department and as a federal prosecutor in the nation's capital, including as the head of the National Security Section of the U.S. Attorney's Office for the District of Columbia. Matt went on to serve as Special Counsel to the Director of the Federal Bureau of Investigation (FBI), and then to the National Security Division, where he helped set up the very component he is now nominated to lead, first heading up the Office of Intelligence as Deputy Assistant Attorney General, then as Acting Assistant Attorney General for National Security. Matt has also served in other key roles within the Justice Department, including in the Office of the Deputy Attorney General and the Office of the Attorney General, where he led the review of individuals detained at Guantanamo Bay. At each step of the way, Matt enjoyed the trust and confidence of both career lawyers and political appointees on both sides of the aisle because of his honesty, candor, and sheer intellectual firepower.

Matt's long record of distinguished service in the Department of Justice, including his leadership on critical national security issues, would be enough, standing alone, to qualify him for the position to which he has been nominated. But Matt went on from his time at DOJ to serve not only as General Counsel of the National Security Agency (NSA), but also as the Senate-confirmed Director of the National Counterterrorism Center (NCTC), where he played a critical role leading the government's efforts to protect our nation from terrorist threats by integrating and analyzing terrorism information and conducting strategic operational planning for counterterrorism activities.

Upon leaving government in 2015, Matt extended his experience into the private sector, serving as president and co-founder of IronNet Cybersecurity, a technology startup that provides software and services to protect companies and governments against advanced cyber threats. And he's since gone on to serve as the Chief Trust and Security Officer of Uber, where he leads the company's global physical security and cybersecurity teams. Just as he did in his time in government, in each of these positions, Matt earned the respect and trust of those around him, from the most junior employees he supervised to the executive leaders he worked with on a day-to-day basis.

Indeed, in all of these positions, Matt has been well known for his unflinching defense of doing the right thing and strongly protecting our nation's security under the laws and Constitution of the United States. Each of us, individually and as a group, believe that Matt's leadership is exactly what is needed to both keep our nation and its citizens safe, as well as to protect the privacy and civil liberties that we all cherish as Americans. As a senior government official, Matt repeatedly demonstrated his willingness to lean forward in protecting our nation while adhering to the rule of law, as well as his ability to make tough decisions under pressure, even when those decisions may not have been popular or politically beneficial. It was these traits, along with his genuine personality and leadership skills, repeatedly made Matt a trusted advisor and confidante to career officials and political leaders from both parties. Likewise, as a private sector leader, Matt enjoyed the confidence of business executives and investors alike, assuring them that protecting the security of their employees, customers, and partners while applying the strongest ethical standards possible would always be his number one priority.

In sum, we believe that Matt's extensive experience in both the public and private sectors makes him an excellent candidate to lead the Justice Department's National Security Division in today's critically important environment.

Thank you for the opportunity to write to you today; we look forward to answering any questions you may have.

Sincerely,

GEN (Ret) Keith Alexander
Former Director, National Security Agency & Founding Commander, U.S. Cyber Command

Javed Ali
Former Senior Director for Counterterrorism, National Security Council, The White House

Michael Allen
Former Special Assistant to the President and Senior Director for Counter-Proliferation Strategy, National Security Council, The White House

Dmitri Alperovitch
Former Special Advisor, Department of Defense

Charles W. Alsup
Associate Deputy Director of National Intelligence, Office of the Director of National Intelligence

Michael Bahar
Former Staff Director and General Counsel, Permanent Select Committee on Intelligence, United States House of Representatives

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Former Assistant Secretary for Policy, Department of Homeland Security

Jeremy Bash, Former Chief of Staff, Department of Defense

John B. Bellinger III
Former Legal Adviser, Department of State

Amb. Daniel Benjamin
Coordinator for Counterterrorism, Department of State

Peter Bergen
Vice President, New America

Megan Brown
Former Counsel to the Attorney General, Department of Justice

Stevan E. Bunnell
Former General Counsel, Department of Homeland Security

Robert J. Butler
Former Deputy Assistant Secretary of Defense for Cyber and Space Policy, Department of Defense

Senator Saxby Chambliss
Former Vice Chairman, Senate Select Committee on Intelligence

Anjali Chaturvedi
Former Chief, Organized Crime Strike Force and Assistant United States Attorney, Department of Justice

Jason Chipman
Former Senior Counsel to the Deputy Attorney General, Department of Justice

Frank Cilluffo
Former Special Assistant to the President for Homeland Security, The White House

James Clapper
Former Director of National Intelligence

David Coher
Former Legislative Director, Rep. Stephen Horn, United States House of Representatives

Kate Connelly
Former Deputy Chief, Criminal Division, United States Attorney's Office for the District of Columbia

Carrie Cordero
Former Counsel to the Assistant Attorney General for National Security, Department of Justice

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Former Special Assistant to the President & Senior Director, National Security Council, The White House

William P. Crowell
Former Deputy Director, National Security Agency

J. Michael Daniel
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Paula Doyle
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William Evanina
Former Director, National Counterintelligence Security Center

Karen S. Evans
Former Assistant Secretary, Cybersecurity, Energy Security and Emergency Response, Department of Energy

Guy L. Filippelli
Former Special Assistant to the Director, National Security Agency

Edward Fishman
Former Member, Policy Planning Staff, Office of the Secretary of State, Department of State

Richard Fontaine
Former Deputy Minority Staff Director, Committee on Armed Services, United States Senate

Michael Geffroy
Former General Counsel, Select Committee on Intelligence, United States Senate

Sarah Roland Geffroy
Former Chief Counsel, Permanent Select Committee on Intelligence, United States House of Representatives

Glenn S. Gerstell
Former General Counsel, National Security Agency

Ryan Gillis, Former Director of Cybersecurity Policy and Legislative Affairs, National Security Council, The White House

Michael J. Gottlieb
Former Associate Counsel to the President, The White House

Eric A. Greenwald
Former Special Assistant to the President and Senior Director for Cyber Security, National Security Council, The White House

Andrew Grotto
Former Senior Director for Cyber Policy, National Security Council, The White House

Davis Hake
Former Director for Federal Information Technology Security, National Security Council, The White House

General (Ret.) Michael Hayden
Former Director, Central Intelligence Agency

Aaron Hughes
Former Deputy Assistant Secretary of Defense for Cyber Policy, Department of Defense

Seamus Hughes
Senior Counterterrorism Advisor, Homeland Security and Governmental Affairs Committee, United States Senate

Joanne Isham
Former Deputy Director, National Geospatial Intelligence Agency

Jamil N. Jaffer
Former Associate Counsel to the President, The White House

Amy Jeffress
Counselor to the Attorney General for National Security and International Matters, Department of Justice

Frank R. Jimenez
Former General Counsel of the Navy, United States Navy

Clete D. Johnson
Former Senior Adviser for Cybersecurity and Technology, Office of the Secretary, Department of Commerce

Jeh Charles Johnson
Former Secretary of Homeland Security

Ely Kahn
Former Director of Cybersecurity Policy, National Security Council, The White House

Geof Kahn
Former Senior Advisor to the Chief Operating Officer, Central Intelligence Agency

Sean Kanuck
Former National Intelligence Officer for Cyber Issues, Office of the Director of National Intelligence

Neal Kumar Katyal
Former Acting Solicitor General, Department of Justice

Andy Keiser
Former Senior Advisor, Permanent Select Committee on Intelligence, United States House of Representatives

Christopher C. Krebs
Former Director, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security

David S. Kris
Former Assistant Attorney General for National Security, Department of Justice

Paul B. Kurtz
Former Senior Director for Cyber Security and Special Assistant to the President for Critical Infrastructure Protection, The White House

Richard H. Ledgett, Jr.
Former Deputy Director, National Security Agency

Vice Admiral (Ret) Mike LeFever, USN
Former Director, Strategic Operational Planning, National Counterterrorism Center

Michael Leiter
Former Director, National Counterterrorism Center

Dr. James A. Lewis
Former Head of U.S. Delegation, Wassenaar Arrangement Experts Group, Department of State

Rachel Carlson Lieber
Deputy General Counsel, Central Intelligence Agency

Andy Liepman
Former Deputy Director, National Counterterrorism Center

Jessie K. Liu
Former United States Attorney for the District of Columbia

David Loevinger
Former Deputy Assistant Secretary for Asia, Department of the Treasury

Letitia A. Long
Former Director, National Geospatial-Intelligence Agency

David Luckey
Former Director of Homeland Security and Counterterrorism Advisor to the Chairman, Committee on Homeland Security and Governmental Affairs, United States Senate

Jane H. Lute
Former Deputy Secretary, Department of Homeland Security

John Maguire
Former Senior Advisor, Select Committee on Intelligence, United States Senate

Dr. Michele L. Malvesti
Former Senior Director for Combating Terrorism Strategy, National Security Council, The White House

Sigal Mandelker
Former Under Secretary of the Treasury for Terrorism and Financial Intelligence, Department of the Treasury

Jeanette Manfra
Former Assistant Secretary for Cybersecurity, Cyber and Infrastructure Security Agency, Department of Homeland Security

David A. Martin
Former Principal Deputy General Counsel, Department of Homeland Security

Ellen McCarthy
Former Assistant Secretary of State, Bureau of Intelligence and Research, Department of State

Cheri F. McGuire
Former Director, National Cyber Security Division/US-CERT, Department of Homeland Security

Bruce W. McConnell
Former Deputy Under Secretary for Cybersecurity, Department of Homeland Security

Mike McConnell
Former Director of National Intelligence

Mary B. McCord
Former Acting Assistant Attorney General for National Security, National Security Division, Department of Justice

Brent McIntosh
Former Under Secretary for International Affairs, U.S. Department of the Treasury

Jenny Menna
Former Director, Director Stakeholder Engagement and Cyber Infrastructure Resilience Division, Department of Homeland Security

Dr. James N. Miller
Former Under Secretary of Defense for Policy, Department of Defense

Matthew Miller
Former Director of the Office of Public Affairs, Department of Justice

Michael Morell
Former Deputy Director and Acting Director, Central Intelligence Agency

Will Moschella
Former Principal Associate Deputy Attorney General, Department of Justice

Michael B. Mukasey
Former Attorney General of the United States

Rick "Ozzie" Nelson
Former Director, Office of Combatting Terrorism, National Security Council, The White House

James C. O'Brien
Former Special Presidential Envoy for Hostage Affairs, Department of State
Christopher Painter, Former Coordinator for Cyber Issues, Department of State

Farah Pandith
Special Representative to the Muslim Communities, Department of State

Leon Panetta
Former Secretary of Defense

Brian Parr
Former Special Agent in Charge, New York Field Office, United States Secret Service

General (Ret) David Petraeus
Former Director, Central Intelligence Agency

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Senior Counsel to the Deputy Attorney General, Department of Justice

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Former Counselor to the Secretary, Department of Homeland Security

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Former Chairman, Permanent Select Committee on Intelligence, United States House of Representatives

Paul Rosenzweig
Former Deputy Assistant Secretary for Policy, Department of Homeland Security

Norman T. Roule
Former Component Chief, Directorate of Operations, Central Intelligence Agency

J. Patrick Rowan
Assistant Attorney General for National Security, Department of Justice

Steve Ryan
Former Deputy Director, National Threat Operations Center, NSA

Teresa H. Shea
Former SIGINT Director, National Security Agency

Anne-Marie Slaughter
Former Director of Policy Planning, Department of State

Cliff Sloan
Former Special Envoy for Guantanamo Closure, Department of State

Bryan R. Smith
Former Budget Director, Permanent Select Committee on Intelligence, United States House of Representatives

Suzanne E. Spaulding
Former Under Secretary, National Protection and Programs Directorate, Department of Homeland Security

Matthew J. Spence
Former Deputy Assistant Secretary of Defense for Middle East Policy, Department of Defense

Charles M. Steele
Former Chief of Staff, National Security Division, Department of Justice

Michael B. Steinbach
Former Executive Assistant Director, National Security Branch, Federal Bureau of Investigation

Megan Stifel
Former Director for International Cyber Policy, National Security Council, The White House

Paul N. Stockton
Former Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs, Department of Defense

Andrew Tannenbaum
Former Deputy General Counsel, National Security Agency

Francis X. Taylor, BGen, USAF (Ret), Former Under Secretary, Office of Intelligence and Analysis, Department of Homeland Security

Vice Admiral Jan E. Tighe
USN Retired, Former Commander, Fleet Cyber Command

Kiersten E. Todt
Former Executive Director, Presidential Commission on Enhancing National Cybersecurity

Amira Valliani
Former Advisor to the Deputy National Security Advisor for Strategic Communications, National Security Council, The White House

Joseph J. Vealencis
Former Deputy Director of Legislative Affairs, Office of the Director of National Intelligence

Stephen R. Vina
Former Chief Counsel for Homeland Security, Homeland Security and Governmental Affairs Committee, United States Senate

Rob Walker
Major, U.S. Army (Retired)

Thomas Warrick
Former Deputy Assistant Secretary for Counterterrorism Policy, Department of Homeland Security

Matthew C. Waxman
Former Principal Deputy Director of Policy Planning, Department of State

William F. Wechsler
Former Deputy Assistant Secretary of Defense for Special Operations and Combatting Terrorism, Department of Defense

Joe Whitely
Former General Counsel, Department of Homeland Security

Major General (Ret) Brett T. Williams
Former Director of Operations, United States Cyber Command, Department of Defense

Admiral James A. Winnefeld, Jr, USN (retired)
Former Vice Chairman, Joint Chiefs of Staff, Department of Defense

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Former Deputy Secretary of Defense

Julie Meyers Wood
Former Assistant Secretary for Immigration and Customs Enforcement, Department of Homeland Security

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Former Special Representative to Muslim Communities, Department of State

Juan C. Zarate
Former Deputy Assistant to the President and Deputy National Security Advisor for Combatting Terrorism, National Security Council, The White House

Peter R. Zeidenberg
Deputy Special Counsel, Department of Justice

Lawrence K. Zelvin
Former Director, National Cybersecurity and Communications Integration Center, Department of Homeland Security

ELEANOR HOLMES NORTON
DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
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COMMITTEE ON OVERSIGHT AND REFORM
SUBCOMMITTEES
CIVIL RIGHTS AND CIVIL LIBERTIES
GOVERNMENT OPERATIONS

Congress of the United States
House of Representatives
Washington, DC 20515-1501

Statement of Congresswoman Eleanor Holmes Norton
Senate Committee on the Judiciary
Hearing on Jia Cobb and Florence Pan

July 14, 2021

Chairman Durbin and Ranking Member Grassley, I appreciate the opportunity to submit this statement in strong support of Jia Cobb and Florence Pan for the U.S. District Court for the District of Columbia, both of whom I recommended to President Biden. I am especially pleased that the President has given me senatorial courtesy for judges on the U.S. District Court for D.C., the U.S. Attorney for D.C., the U.S. Marshal for the D.C. Superior Court and the U.S. Marshal for the U.S. District Court for D.C.

Jia Cobb possesses all the necessary qualities to be an exceptional federal judge, including intelligence, temperament and integrity. She will also bring much-needed racial and professional diversity to the federal bench.

Ms. Cobb is a partner at Relman Colfax PLLC, where she has practiced for 11 years. Relman Colfax is a plaintiff-side civil rights law firm. Ms. Cobb litigates civil rights cases in federal courts across the country, including here in the District. Ms. Cobb's practice has focused on housing discrimination and criminal justice misconduct, but she litigates other types of civil rights cases as well.

Prior to her current position, Ms. Cobb practiced law at the D.C. Public Defender Service for six years. In this role, she represented indigent criminal defendants at all stages of litigation and tried dozens of cases to verdict as lead or sole attorney.

Ms. Cobb is a *magna cum laude* and Phi Beta Kappa graduate of Northwestern University and a *cum laude* graduate of Harvard Law School, where she served as a Coordinating Editor of the Harvard Law Review. After law school, Ms. Cobb clerked for Judge Diane Wood of the U.S. Court of Appeals for the Seventh Circuit.

In 2016, President Obama, upon my recommendation, nominated D.C. Superior Court Judge Florence Pan for the U.S. District Court for the District of Columbia. The nomination was approved by the Senate Judiciary Committee by a voice vote. However, by that point, the Senate had stopped confirming Obama-nominated judges, and Judge Pan's nomination expired.

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Judge Pan has the professional experience and academic credentials that one would expect of an exceptional federal judge. Since 2009, Judge Pan has as an Associate Judge on the D.C. Superior Court, where she has served in the Civil Division, Criminal Division and Family Court. The Senate confirmed Judge Pan's nomination to the Superior Court by voice vote. She previously served eight years as Assistant U.S. Attorney, working in both the federal and local trial courts and in the Appellate Division, and she served two years as the Deputy Chief of the Appellate Division. Like Ms. Cobb, Judge Pan would also further diversify this important court.

Judge Pan is a graduate of the University of Pennsylvania, *summa cum laude*, where she received two undergraduate degrees, including from the Wharton School. She is also a graduate with distinction from Stanford Law School. During law school, Judge Pan was Associate Editor of the Stanford Law Review and was student body president.

After law school, Judge Pan clerked for Judge Michael Mukasey on the U.S. District Court for the Southern District of New York and for Judge Ralph Winter on the U.S. Court of Appeals for the Second Circuit.

Again, I appreciate your considering these two exceptional nominees for the vacancies on the U.S. District Court for the District of Columbia, and I want to reiterate my gratitude to President Biden for granting me senatorial courtesy for certain federal nominees in the District of Columbia.

Asian Pacific American Bar Association

APABA DC

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***VIA ELECTRONIC MAIL***

April 14, 2021

The Honorable Charles E. Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
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The Honorable Richard J. Durbin
Chairman
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Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Bldg.
Washington, DC 20510

***Re:*** ***Letter in Support of the Confirmation of the Honorable Florence Y. Pan for District Judge of the U.S. District Court for the District of Columbia***

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Durbin, and Ranking Member Grassley:

The Asian Pacific American Bar Association of the Greater Washington, D.C. Area, Inc. ("APABA-DC"), a 501(c)(6) organization now in its 40th year, is the oldest and largest association of Asian Pacific American attorneys in the greater Washington, D.C. area. APABA-DC is pleased to support the Honorable Florence Y. Pan, who President Biden has nominated to serve on the U.S. District Court for the District of Columbia.

Judge Pan is well known to APABA-DC, thanks to her longstanding engagement in our organization's professional activities. She has participated in numerous APABA-DC programs, including our annual conference on clerkship and internship opportunities for law students, other substantive panel discussions, and historical re-enactments of Supreme Court cases that had an impact on the

legal rights of Asian Pacific Americans. She has also worked closely with other diverse bar associations in the District of Columbia, including the Hispanic Bar Association of D.C.

APABA-DC endorsed Judge Pan in 2009, when she successfully sought to become an Associate Judge of the D.C. Superior Court, and we endorsed her when she previously sought to become a District Judge on the U.S. District Court for the District of Columbia. In 2016, Judge Pan's nomination was unanimously approved by the Senate Judiciary Committee, but unfortunately, her nomination expired before a Senate vote. Judge Pan's confirmation to join the bench of the U.S. District Court at this time would contribute greatly to the administration of justice in the District of Columbia.

Judge Pan's professional qualifications are myriad. In her nearly 12 years on the D.C. Superior Court, she has served in the Family, Criminal, and Civil divisions. During her recent tenure in the Civil division, she has presided over roughly 400 cases, many of which have involved numerous parties and complex issues, similar to cases that are brought before the District Court. As a former federal prosecutor who practiced in the D.C. District Court for years, she is very familiar with this particular court and those who practice there. She is well versed in the federal and local rules of civil and criminal procedure, and knows how to run a courtroom and manage a busy docket.

Judge Pan demonstrates the kind of judicial temperament that one would want to see in a federal district judge. Through her interactions with a wide variety of parties, counsel, pro se litigants, and types of cases, Judge Pan appreciates that not only is it important to work hard and make the right rulings, but it is also important to appreciate the human element of each case, and to exercise judgment and empathy to ensure that all parties feel that the judicial process is fair, and that they have been heard.

Judge Pan has devoted her career to public service. She began her legal career with two prestigious federal court clerkships with the Honorable Michael B. Mukasey, U.S. District Court for the Southern District of New York, and then the Honorable Ralph K. Winter, U.S. Court of Appeals for the Second Circuit. She also gained valuable trial and appellate litigation experience during her 15 years at the Office of the United States Attorney for the District of Columbia,

where she rose to the position of Deputy Chief of the Appellate Division, and at the U.S. Department of Justice, Criminal Division.

Judge Pan's commitment to public service extends beyond her professional career. Through volunteering and mentoring, Judge Pan has demonstrated an impressive commitment to the Asian Pacific American community and to the larger D.C. community. Judge Pan has always made time to mentor law students and interns in the chambers of D.C. Superior Court judges, and she is actively involved in her children's school, where she recently formed a competitive debate team, now in its second year.

Judge Pan's personal background is compelling. Judge Pan's grandparents fled from mainland China to Taiwan in 1948, when the Communist Party came to power. Her parents emigrated to the United States from Taiwan in 1961. Judge Pan was born in New York, and raised in Tenafly, New Jersey, where she attended public schools. As a teenager, she worked at a Chinese restaurant owned by her aunt and uncle. She received her two undergraduate degrees, *summa cum laude*, from the University of Pennsylvania, and her law degree, with distinction, from Stanford Law School. Judge Pan has said that becoming a judge was particularly meaningful to her and her family, because her grandfather was a judge on an administrative court in China, before being forced to flee to Taiwan.

APABA-DC strongly believes that the federal courts should reflect the communities they serve. Judge Pan has served as a role model and mentor to many, especially to those in the Asian Pacific American community. Through her conduct, she demonstrates her recognition of the important role that judges play in their communities, on and off the bench. Judge Pan was the first Asian Pacific American to be appointed to any court in the District of Columbia, and if confirmed, she would be the first Asian Pacific American female judge to serve on the U.S. District Court for the District of Columbia. Considering the troubling rise of hate crimes and acts of discrimination targeting the Asian Pacific American community throughout the United States, including in the D.C. area, it is vitally important that the District Court reflect the diversity of the country and the local community, and that it include jurists who are sensitive and responsive to the needs and concerns of the Asian Pacific American community.

Asian Pacific American Bar Association

For all of these reasons, we urge the Senate Judiciary Committee and the Senate to confirm Judge Pan to become a judge of the U.S. District Court for the District of Columbia.

Thank you for your consideration of APABA-DC's comments in support of Judge Pan. Please contact us if we can provide further assistance.

Sincerely,

Erica Lai
President, 2020-2021

Asian Pacific American Bar Association *of the Greater Washington, D.C. Area, Inc.*
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AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

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July 13, 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 Florence Y. Pan to the United States District Court for the District of Columbia*

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 Florence Pan, who has been nominated by the President to the United States District Court for the District of Columbia. 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 Pan is **"Well Qualified"** to serve on the United States District Court for the District of Columbia.

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 Florence Y. Pan (*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*)

July 9, 2021

The Honorable Charles Schumer
Majority Leader
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Richard Durbin
Chairman, Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member, Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

**RE: Law Enforcement Support for Nomination of Myrna Pérez to the U.S. Court of Appeals for the Second Circuit**

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Durbin, and Ranking Member Grassley:

As members of law enforcement, across the political spectrum, we write to express our support for the confirmation of Myrna Pérez to serve on the United States Court of Appeals for the Second Circuit. The undersigned include current and former police chiefs, sheriffs, and federal, state, and local chief prosecutors from jurisdictions throughout the United States.

Ms. Pérez' distinguished legal career includes leading the Brennan Center for Justice's Voting Rights and Election Program, serving as the Civil Rights Fellow at Relman, Dane & Colfax, and clerking for the Honorable Anita B. Brody of the United States District Court for the Eastern District of Pennsylvania and Honorable Julio M. Fuentes of the United States Court of Appeals for the Third Circuit. For nearly two decades, Ms. Pérez' primary concern has been honoring the Constitution to ensure that our nation's democracy is inclusive, voting rights are protected, and elections are administered fairly.

As leaders in law enforcement, we are deeply concerned with the rule of law and view public safety as intrinsically linked with the public's confidence and trust in our nation's democracy. Ms. Pérez has spent her entire career as a civil rights attorney and public servant, frequently working alongside the law enforcement community in efforts to restore federal and state voting rights for ex-offenders disenfranchised by a felony conviction. We are confident that Ms. Pérez will bring diversity of thought and experience to the federal bench and that her conviction for what is fair and just will strengthen the integrity of our nation's judiciary.

We respectfully urge the Senate Committee on the Judiciary to swiftly advance Ms. Perez's nomination and for the Senate to confirm this exceptional nominee without delay.

Sincerely,

**Jim Bueermann**
Former President
National Police Foundation
Former Police Chief
Redlands, California

**Zachary W. Carter**
Former Corporations Counsel
New York, New York
Former U.S. Attorney
Eastern District of New York

**Steve Conrad**
Former Police Chief
Louisville, Kentucky

**Barry Grissom**
Former U.S. Attorney
Kansas

**Ronald Hampton**
Former Executive Director
National Black Police Association

**Peter Holmes**
City Attorney
Seattle, Washington

**John Hummel**
District Attorney
Deschutes County, Oregon

**James E. Johnson**
Former Corporation Counsel
New York, New York
Former Undersecretary for Enforcement
U.S. Department of the Treasury

**Joel Merry**
Sheriff
Sagadahoc County, Maine
Former President
Maine Sheriffs Association

**Melba Pearson**
Former President
National Black Prosecutors Association
Former Assistant State Attorney
Miami-Dade County, Florida

**Richard Pocker**
Former U.S. Attorney
Nevada

**Donald Raley**
Former Police Chief
Artesia, New Mexico

**Kathleen O'Toole**
Former Police Chief
Seattle, Washington
Former Police Commissioner
Boston, Massachusetts
Former Public Safety Secretary
Massachusetts

July 8, 2021

The Honorable Charles Schumer
Majority Leader
United States Senate
322 Hart Senate Office Building
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The Honorable Mitch McConnell
Minority Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Richard Durbin
Chairman, Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member, Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Durbin, and Ranking Member Grassley:

We, attorneys at more than a dozen law firms, write to convey our support for the confirmation of Myrna Pérez to serve on the United States Court of Appeals for the Second Circuit. Over more than a decade, we have worked with Myrna in a variety of matters across the country in both trial and appellate courts. Across our offices and practice specialties, and at numerous levels of seniority and experience, Myrna has earned our personal admiration and professional respect. And though we hold an array of ideological and jurisprudential views, we collectively have every confidence that she will be a fair jurist and exemplary addition to the federal judiciary.

Myrna is an excellent lawyer, combining the acumen to make complex and cutting-edge legal arguments with a penchant for developing a supportive and comprehensive factual record in her cases. She is also a tireless worker. Her constant attention to detail and preparation will serve her well on the bench, as we have little doubt that Myrna will scrutinize and probe both the law and facts in cases of all stripes. While our experience with Myrna has predominantly been in the area of voting rights and protections (which makes up only a portion of our respective practices), we are confident that the same skills, intellect, experience, judgment, and passion that she has brought to our mutual work on those causes will shine through as she addresses the broad range of cases that typically come before the Second Circuit.

Perhaps more than her admirable legal skills, Myrna is a valued partner, as evidenced by the many law firms and attorneys with whom she has collaborated successfully over the years. In addition to being a colleague of the highest integrity, she often provided mentorship and litigation opportunities to junior attorneys, helping to oversee and train them on our matters. Those same qualities will make her both a model leader and mentor to future law clerks as well as a fine colleague for the fellow judges with whom she will hopefully serve.

In conclusion, we strongly support Myrna's nomination and encourage her confirmation.

Sincerely,

Michael A. Glick
Madelyn A. Morris
Caroline Darmody
Robert A. Atkins
William B. Michael
Farrah R. Berse
Melina M. Meneguin Layerenza
R. Reeves Anderson
John A. Freedman
Steven L. Mayer
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July 6, 2021

The Honorable Charles Schumer
Majority Leader
United States Senate
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The Honorable Mitch McConnell
Minority Leader
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Washington, D.C. 20510

The Honorable Richard Durbin
Chairman, Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member, Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Durbin, and Ranking Member Grassley:

My name is Carl Wicklund. I have nearly 50 years of experience working in the criminal justice system. Prior to my recent retirement, I was the Director of the Community Justice Division of Volunteers of America (VOA) for Minnesota and Wisconsin. Before my tenure with VOA, I served as the Executive Director of the American Probation and Parole Association for 19 years, and it was in that capacity that I got to know and work with Myrna Pérez. I write to express my ardent support for her confirmation to the United States Court of Appeals for the Second Circuit.

I have known Myrna for approximately 12 years. I have witnessed up close her uncompromising integrity, her dedication to democracy and the rule of law, and her profound commitment to the service of others. These qualities, among many others Myrna possesses, would make her a phenomenal and fair jurist.

I first met Myrna in 2009 while we were involved in efforts to restore federal and state voting rights for ex-offenders who were disenfranchised by a felony conviction. In her capacity as a convener of a group of nationally representative criminal justice professionals, she ensured that the wide-ranging points of view of law enforcement, prosecutors, and correctional leaders were fairly presented and openly discussed. We worked together on written and oral testimonies for federal and state legislative hearings, and also developed advocacy letters and editorials explaining felony disenfranchisement and expounding on justifications for the restoration of voting rights for ex-offenders. As a fellow advocate in the struggle for voting rights, I can state with certainty that Myrna is among the most dedicated of public servants.

At a time of troubling polarization in this country, I feel compelled to share my observations of Myrna. I find that her dedication to the protection and restoration of voting rights transcends any political party allegiances. Her driving motivations have always been, and continue to be, principle and faith—not politics. It is precisely for this reason that she has built strong, lasting relationships with people across the political spectrum. She works exceptionally well with people

from a wide range of cultural and professional backgrounds, including members of the law enforcement community. In all her work, she approaches issues with independent judgement, a firm grasp of the facts, and an unwavering humanity.

Based on my experiences with Myrna, I enthusiastically encourage her confirmation to the United States Court of Appeals for the Second Circuit.

Sincerely,

Carl Wicklund

**State of Vermont**
**Office of the Secretary of State**
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**James C. Condos, Secretary of State**
**Christopher D. Winters, Deputy Secretary**

July 9, 2021

Senator Dick Durbin
United States Senate
711 Hart Senate Office Building
Washington, DC 20510

Senator Chuck Grassley
United State Senate
135 Hart Senate Office Building
Washington, DC 20510

**Re: Nomination of Myrna Pérez to the US Court of Appeals Second Circuit**

Dear Chairman Durbin and Ranking Member Grassley,

I am writing to offer my support for the nomination of Myrna Pérez to serve as a Justice on the United States Court of Appeals for the Second Circuit. Ms. Pérez is respected by those who work in the elections field because of her understanding of the law, her willingness to provide advice, but most importantly the high standards she sets for following the law.

As Vermont's Secretary of State for more than 10 years and a past President of the National Association of Secretaries of State, I have studied and used the work of Ms. Pérez and her team at the Brennan Center for Justice on many reforms we have implemented like automatic voter registration, same day registration or post-election audits among other advancements.

Vermont is a national leader in free, fair and accurate elections. Most recently we built off the success of the November General Election, using mail in voting during the pandemic, by permanently adding it to our Vermont state statutes. The passage of this legislation was supported across the aisle by Republicans, Democrats, Progressives and independents - and signed into law by Vermont's Republican Governor. These changes were possible by having reliable relationships with people like Myrna Pérez. We depend on her integrity and determination to find the best way to do what is fair for voters.

I believe Ms. Pérez would continue to use these characteristics and leadership traits to make an excellent Court of Appeals Judge. I am proud to support her.

Sincerely,

Jim Condos
Vermont Secretary of State

Cc: Senator Patrick Leahy
Senator Bernie Sanders
Congressman Peter Welch

VERMONT

Secretary of State
Kim Wyman

Legislative Building
PO Box 40220
Olympia, WA 98504-0220
Tel: 360.902.4151
sos.wa.gov

July 7, 2021
Senator Dick Durbin
United States Senate
711 Hart Senate Office Building
Washington, DC 20510

Senator Chuck Grassley
United State Senate
135 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley,

I am writing to express my support for the nomination of Myrna Pérez to serve as a Justice on the United States Court of Appeals for the Second Circuit. Beyond her reputation as a forthright, experienced, and intelligent voting rights lawyer, Ms. Pérez has the respect of election officials on both sides of the aisle.

As the Secretary of State of Washington for the last 8 years and now in my third term, I have had the opportunity to work with Ms. Pérez to better understand important election policy issues. Her work with the Brennan Center for Justice on topics like implementing Automatic Voter Registration and most recently, explaining the many components of H.R. 1 helped me make better decisions as the Chief Election Officer for the state of Washington. She provided invaluable, unbiased, and apolitical insight, which I also believe she will bring to the bench.

Washington state leads the country with voting and election advancements. The country looked to us when the global pandemic forced many states to use the accessible and secure vote by mail process because of our experience and success with it. Our state also uses other accessible measures like automatic voter registration, same day registration and public financing, just to name a few. We can put these cutting edge, forward thinking practices in place because of working relationships with people like Myrna Pérez. We have used her guidance and expertise to navigate the law, the process, and the implementation.

No matter what side of the discussion we were on, I knew she and her team would provide reliable analysis and application of the law above any desired ideological position. Most recently, my office helped our legislature craft legislation to re-enfranchise formerly incarcerated Washingtonians. Her assistance helped us craft laws that could be administered effectively by local election officials.

I have no doubt Ms. Pérez would make an excellent Court of Appeals Judge. I am honored to add my name in support.

Sincerely,

Kim Wyman
Washington Secretary of State

THE EPISCOPAL DIOCESE OF FLORIDA

THE RIGHT REVEREND SAMUEL JOHNSON HOWARD, D.D.

BISHOP OF FLORIDA

July 8, 2021

The Honorable Charles E.
Schumer Majority Leader
United States
Senate
Washington, DC
20510

The Honorable Mitch
McConnell Minority
Leader
United States
Senate
Washington, DC
20510

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

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

**Re: Letter in Support of Myrna Pérez, nominee for U.S. Court of Appeals for the Second Circuit**

325 N. MARKET STREET · JACKSONVILLE, FLORIDA 32202.2796
PHONE 904.356.1328 · FAX 904.355.1934 · WWW.DIOCESEFL.ORG

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Durbin, and Ranking Member Grassley:

This letter is written in strong support for the confirmation of Myrna Pérez to the United States Court of Appeals for the Second Circuit. In doing so, there is no regard given to the politics of the matter; my concerns and experience to share are solely regarding her integrity and ability.

My experience comes from working with Myrna for over a decade in the justice system. I first met Myrna while chairing the Project on Accountable Justice at Florida State University. Long involved in Florida's voting rights restoration effort, Myrna sought my advice and counsel on how to frame the issues of justice reform and effectively engage the religious community in this consideration.

We share Jesus' view that current and former prisoners should still be seen as beloved children of God, see Lk. 4 and Matt.25. For Myrna, restoring the right to vote to the formerly incarcerated models Christian forgiveness, and exercise of the right to vote is itself an act of repentance and investment in one's community. The Diocese of Florida has labored in the justice area for decades; a dozen churches in prisons, birth of the Kairos in prisons, and even employment efforts such as Operation New Hope.

In 2018, Myrna and the Brennan Center for Justice played a critical role in the successful effort to amend the Florida constitution to restore the right to vote to Floridians with past criminal convictions. She and her team helped bring together stakeholders from across the state with impacted individuals. Amendment 4, which passed by overwhelming bipartisan margins, marked a new beginning for democracy in our state and in the country. It was the biggest expansion of the franchise since ratification of the 26th Amendment, which lowered the voting age to 18. She advanced this cause in Florida without regard to the statistical reality that, in Florida, formerly incarcerated citizens are more likely to register to vote as Republicans than Democrats.

Myrna is, as a lawyer and individual of the highest integrity. She is thoughtful and sound in her judgement and committed to principles of justice that transcend politics. She embodies the true meaning of public service and would be an exceptional federal judge. This is an informed opinion.

Though currently serving in a religious capacity, that has not always been the case. Formerly I served as a county and circuit judge, prosecutor, Sheriff of Monroe County, assistant public defender, and was Republican nominee for Lt. Governor of Florida as running mate of Governor Martinez in 1990. In 1999, Governor Jeb Bush appointed me to serve as Florida's Everglades Czar.

I know firsthand that Myrna works well with all kinds of people. She is fair and open minded, and she is an active listener. She always strives to understand other perspectives and seeks to find common ground, even with people who hold significantly different views. Above all, I know Myrna to be a deeply moral and spiritual person, informed deeply by her faith.

Grounded in her faith, Myrna is an active community servant, committed to do justice, love kindness, and walk humbly. She has worked for the federal government and in the nonprofit sector for most of her career. She is president of her church council, sits on the boards of Crossroads Prison Ministries and Sojourners, and has served on the Board of Grace Community Services in Jersey City. She is a coordinator of a crew of volunteers to provide meals to food insecure persons in Jersey City, and spearheads other anti-hunger initiatives in her community. She is active in her son's Title I public school, and until the pandemic closed it, coordinated the school's beloved and popular after-school program.

I have no doubt that Myrna would serve with great distinction, if confirmed.

Truly and Faithfully,



Rev. Canon Dr. Allison DeFoor
Canon to the Ordinary

UNIVERSITY OF CALIFORNIA, IRVINE
BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO SANTA BARBARA • SANTACRUZ

Professor Richard L. Hasen
Chancellor's Professor of Law and Political Science

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July 8, 2021

The Honorable Charles E. Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

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

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

Re: Nomination of Myrna Pérez for United States Circuit Judge for the Second Circuit

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Durbin, and Ranking Member Grassley:

I write to give my highest recommendation for Myrna Pérez, whom President Biden has nominated for a position as Circuit Judge on the United States Court of Appeals for the Second Circuit, one of the most important judicial positions in the country.

I have known Ms. Pérez for over a decade through her work on voting rights and democracy issues at the Brennan Center for Justice at NYU School of Law. As someone who follows election law legislation and litigation very closely in my role as professor of law and political science and as editor of the *Election Law Blog*, I have observed Ms. Pérez as both a litigator and a public policy analyst and advocate. I have seen her shepherd cases from early stages of identifying witnesses and conducting discovery to drafting appellate briefs and participating in oral argument before federal appellate courts and other bodies. I have read reports she has authored, seen her testimony before legislative bodies, and been a co-panelist with her on a voting rights panel.

From all of my observations, I can say that Ms. Pérez's skills as a lawyer, advocate, and thinker are consistently excellent. She possesses a keen legal mind, understanding nuanced points of law and crafting fine-tuned legal arguments responsive to applicable legal standards and judicial precedent. She has deep respect for the rule of law and shows great appreciation for the role of the federal courts in both safeguarding rights and assuring fair procedures. She is an effective advocate for her clients' positions, and a champion of justice.

Ms. Pérez also has the right judicial temperament. Her work is measured and careful, always avoiding hyperbole and rancor that often infects discussions of voting issues. She will be a fair judge, considering all arguments and offering rulings consistent with constitutional and statutory imperatives. She will be committed to justice for all litigants before her, regardless of their backgrounds. And she will be a collegial judge, committed to working on appellate panels to achieve consensus where possible, and respectful disagreement when not.

In short, Ms. Pérez is an inspired choice for a Second Circuit judgeship. I urge her swift confirmation with broad bipartisan support.

Please let me know if you have any further questions.

Very truly yours,

Richard L. Hasen

Richard L. Hasen

July 9, 2021

The Honorable Dick Durbin
U.S. Senate Committee on the Judiciary
Room 711, Hart Senate Office Building
Washington, D.C. 20510

The Honorable Chuck Grassley
U.S. Senate Committee on the Judiciary
Room 135, Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley,

Thank you for your continued collaboration with the United States Hispanic Chamber of Commerce (USHCC). We appreciate and value the leadership of the U.S. Senate Committee on the Judiciary on issues important to the Hispanic business community.

**We write to express our support for Myrna Pérez to serve on the United States Court of Appeals for the Second Circuit and urge the U.S. Senate Committee on the Judiciary to unanimously approve this confirmation. We believe that this candidate's expertise and experience merits serious consideration during the vetting and appointment process. If confirmed, Ms. Pérez would be the only Latina on the bench of Second Circuit Court of Appeals and the first since Justice Sonia Sotomayor moved from that circuit to the U.S. Supreme Court. As of May 2020, Latinos/as constituted only 6% of appeals judge seats and 7% of district judges, according to the Minority Corporate Counsel Association.**

**Ms. Pérez has unmatched legal credentials, having argued in cutting edge and complex cases in both federal and state courts across the country. She has exemplary academic experience having been a professor at both Columbia and New York University law schools. Due to her vast knowledge in various legal spectrums, she frequently speaks on law related academic and bar association panels nationally.**

**Her commitment to service has deeply resonated with our members, specifically, her leading roles at some of the top institutions for higher education such as Columbia and New York University. She has obtained numerous recognitions such as the "Breaking the Glass Ceiling Award" from the Leadership Institute for Women of Color Attorneys, the "Above and Beyond Award" and "Certificate of Excellence" from the Government Accountability Office, and the "Robert F. Kennedy Award for Excellence in Public Service" from the John F. Kennedy School of Government at Harvard University. Ms. Pérez graduated from Yale College with a Bachelor of Arts in Political Science, she holds a Master's of Public Policy from the John F. Kennedy School of Government at Harvard University, and a Juris Doctor degree from Columbia Law School.**

The USHCC actively promotes the economic growth, development, and interests of more than 4.7 million Hispanic-owned businesses that aggregately contribute over $800 billion to the American economy every year. We also serve as a platform for our nationwide network of over 250 local Hispanic chambers of commerce.

The USHCC has confidence that success in the appointments process will evolve if our new government reflects who we are as a growing nation. Voices of diversity, especially Hispanics who account for 61 million of the U.S. population, will only help to effectuate the change needed to improve quality of life and ensure economic vitality for all Americans.

1424 K Street NW - Suite 401 - Washington, DC 20005 - Telephone (202) 842-1212 - Fax (202) 842-3221
www.ushcc.com

The USHCC firmly believes that having a strong Hispanic presence at every level of government will allow us to fully reflect our diversity in Hispanic communities, including gender, race, sexual orientation, religion, disability, and ethnicity. Our country will benefit from the wealth of talent and commitment that lies in the professional identities of many Hispanic public service professionals.

Our demographic accounts for approximately 20% of all Americans. However, in our modern history we have never been equitably represented in the Presidential Cabinet, our Court System, or other key political appointments. This Administration has the unique opportunity to change this and create a systemic paradigm shift of inclusion and equality in the highest ranks of our federal government.

We look forward to collaborating with you and the Office of Presidential Personnel to achieve this important goal. Furthermore, we are proud to provide necessary recommendations of qualified Hispanic professionals who are willing and ready to serve our country. If you have any questions about this candidate or the USHCC's efforts related to political appointments please do not hesitate to reach out to us at any time, we welcome the opportunity to have dialogue on this important process in American history.

Respectfully,

Ramiro A. Cavazos
President & CEO
U.S. Hispanic Chamber of Commerce

**CC:** Members of the U.S. Senate Committee on the Judiciary
Members of the Congressional Hispanic Caucus

1424 K Street NW - Suite 401 - Washington, DC 20005 - Telephone (202) 842-1212 - Fax (202) 842-3221
www.ushcc.com

July 12, 2021

The Honorable Charles Schumer
Majority Leader
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Richard Durbin
Chairman, Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member, Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Durbin and Ranking Member Grassley:

We are law professors and scholars from around the country who write to express our support for the confirmation of Myrna Pérez as a judge on the United States Court of Appeals for the Second Circuit. We are academics, and each of us has taught, litigated, researched, or worked with Ms. Pérez. She is an experienced attorney with impeccable legal credentials who will bring to the bench character, intellectual brilliance, impartiality, and good judgment. She is one of the nation's most respected voting rights attorneys. As demonstrated by her exemplary legal career, Myrna Pérez possesses the brilliance and experience to be a superb appellate jurist.

The first in her family to graduate from college, Ms. Pérez was a star student at Yale, Harvard, and Columbia. Since then, her work defending democracy has taken her to federal and state courthouses, legislatures, classrooms, and public events around the country. At Columbia and New York University law schools, two of the nation's leading institutions, her teaching has focused on public policy advocacy, civil rights lawyering, and election law. In addition, Ms. Pérez speaks frequently on academic and bar association panels. Across this wide range of fora, we have seen her excellence in arguing cutting-edge cases, her firm grasp of policy and legal doctrine, and her gifted ability to develop and pursue sophisticated advocacy strategies. She can clearly and persuasively communicate complex issues to a broad audience. These many strengths are especially important in a judge, and their combination would be a powerful contribution to the bench.

In addition to her work educating students and the broader public, Ms. Pérez, and the attorneys and researchers whom she leads, have produced definitive, widely respected research on voting laws, election administration, and their impact. Her research is widely cited in the media and by Members of Congress. It is rigorous, empirically sound, statistically grounded, and compelling. Just as significant, her research is published in service of the needs of disadvantaged communities – a perspective sorely needed on the federal bench.

Ms. Pérez's brilliance as an advocate and scholar is paired with her unwavering commitment to do justice and serve her community. Her deep faith has led her to focus her professional life on public service and to be an active community servant in her personal life. She is president of her church council, sits on the

boards of Crossroads Prison Ministries and Sojourners, and has served on the Board of Grace Community Services in Jersey City. She coordinates a crew of volunteers to provide meals to underserved communities in Jersey City and spearheads other anti-hunger initiatives in her community. She is active in her son's Title I public school and coordinated its beloved after school program prior to the pandemic.

In addition to her intellectual strength and her longstanding commitment to public service, we also know that Ms. Pérez's temperament makes her an excellent candidate for federal judicial service. She is down-to-earth, collegial, and gracious, and she treats everyone with the dignity and respect that we should expect from our highest public officials.

Ms. Pérez is a superbly qualified nominee to U.S. Court of Appeals for the Second Circuit, and we urge her speedy confirmation.

Respectfully,

Jessie Allen
Associate Professor
University of Pittsburgh School of Law

Emily Berman
Associate Professor of Law
University of Houston Law Center

Richard Briffault
Joseph P. Chamberlain Professor of Legislation
Columbia Law School

Jessica Bulman-Pozen
Betts Professor of Law
Columbia Law School

Alexandra Carter
Clinical Professor of Law
Columbia Law School

Wilfred U. Codrington III
Assistant Professor of Law
Brooklyn Law School

Joshua A. Douglas
Ashland, Inc.-Spears Distinguished Research Professor of Law
University of Kentucky J. David Rosenberg College of Law

Caroline Fredrickson
Distinguished Visitor from Practice
Georgetown Law

David A. Friedman
Professor of Law
Willamette University College of Law

Joseph Fishkin
Professor of Law
UCLA School of Law

Paul Gronke
Professor & Director of the Early Voting Information Center
Reed College

Helen Hershkoff
Herbert M. and Svetlana Wachtell Professor of Constitutional Law and Civil Liberties
NYU School of Law

Lawrence Lessig
Roy L. Furman Professor of Law and Leadership
Harvard Law School

Steven J. Mulroy
Bredesen Professor of Law
University of Memphis School of Law

Melissa Murray
Frederick I. and Grace Stokes Professor of Law & Faculty Director, Birnbaum Women's Leadership Network
NYU School of Law

Lynnise E.P. Pantin
Clinical Professor of Law
Columbia Law School

Jason Parkin
Professor of Law
City University of New York School of Law

David C. Parsley
E. Bronson Ingram Professor of Economics and Finance
Owen Graduate School of Management at Vanderbilt University

Eric Ruben
Assistant Professor of Law
SMU Dedman School of Law

Micah Schwartzman
Director of the Karsh Center for Law and Democracy & the Hardy Cross Dillard Professor of Law,
University of Virginia School of Law

Colleen F. Shanahan
Clinical Professor of Law
Columbia Law School

Daniel A. Smith
Professor & Chair of the Department of Political Science
University of Florida

Vincent M. Southerland
Assistant Professor of Clinical Law
NYU School of Law

Ciara Torres-Spelliscy
Professor of Law
Stetson University College of Law

Nicholas Stephanopoulos
Kirkland & Ellis Professor of Law
Harvard Law School

Ben Trachtenberg
Associate Dean for Academic Affairs & Isidor Loeb Professor of Law
University of Missouri

Adam Winkler
Connell Professor of Law
UCLA School of Law

Monica Youn
Associate Professor of English
University of California, Irvine

*All signatories are signing in their personal capacities and no endorsement of their current or former employers should be implied.

**CONGRESSIONAL HISPANIC CAUCUS**

July 9, 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

Dear Chairman Durbin and Ranking Member Grassley,

On behalf of the Congressional Hispanic Caucus (CHC), I write to emphasize the vital role that you and your committee play in the confirmation process and how it is a critical step in President Biden diversifying the judiciary. As our country faces unprecedented challenges, we have the rare opportunity to rebuild our country in a way that meets the needs of minority populations and reflects the image of our diverse American constituency.

As the CHC works to ensure there is robust Latino representation in the administration and federal courts, I write in support of President Biden's nomination of Myrna Pérez to the United States Court of Appeals for the Second Circuit.

Latinos represent the largest and second-fastest growing ethnic group in the nation, making up nearly 20 percent of the U.S. population. Yet, there has only been one Latina to have been on the bench of the Second Circuit appeals court and that is Justice Sonia Sotomayor who has since moved to the U.S. Supreme Court. As of May 2020, Latinos are just 6% of appeals judges and 7% of district judges, according to Minority Corporate Counsel Association.

Ms. Pérez's confirmation would be historic on several levels. If confirmed, Ms. Pérez would be the only female Hispanic member on the bench of the federal appeals court, and the second Latina to do so. With years of litigation experience in federal courts throughout the country, Ms. Pérez is eminently qualified to serve on the federal judiciary.

Ms. Pérez was born in San Antonio to an immigrant family from Mexico. She graduated from Yale University and received a M.P.P. from the Harvard Kennedy School and her J.D. from Columbia Law School. While an undergraduate student at Yale University, she interned for the Congressional Hispanic Caucus Institute (CHCI). In addition to being a lecturer-in-law, she serves as a Director of Voting Rights and Elections at the Brennan Center. Her dedication to research, advocacy, and litigation work on voting rights and election administration make her highly qualified for her post on the Second Circuit.

I respectfully request your thorough and swift confirmation of Myrna Pérez to the United States Court of Appeals for the Second Circuit.

Sincerely,

Raul Ruiz, M.D.
Chair, Congressional Hispanic Caucus

Not Printed at Government Expense

July 12, 2021

The Honorable Charles E. Schumer
Majority Leader
322 Hart Senate Office Building
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
317 Russell Senate Office Building
Washington DC 20510

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

**RE: Letter in Support of Myrna Pérez, nominee for U.S. Court of Appeals for the Second Circuit**

Dear Committee Members:

As religious leaders with a deep commitment to faith, justice, and our democracy, we write to you today in strong support of the nomination of Myrna Pérez as judge for United States Court of Appeals for the Second Circuit.

Our organizations collectively represent a broad spectrum of people of faith, united by the theological belief that every person is created in the image of God, and every person is worthy of dignity and respect. This core tenet has been foundational in our ongoing work to preserve and protect the principles of democracy and in our efforts to preserve voting rights for those who are most at risk in our society.

We have been extremely fortunate to have Myrna Pérez as a colleague and a partner in voting rights work where she demonstrated her commitment to contesting unfair patterns and practices that disproportionately impact marginalized communities. Through her work at the Brennan Center for Justice, she tirelessly fought to combat voter suppression efforts alongside clergy, civil rights advocates, and attorneys, in the last two elections.

Myrna Pérez has been a prominent and consistent champion for voting rights. She has been vocal about our need to ensure every person's voice is heard in our representative democracy. Her reputation as a litigator and as a brilliant legal scholar is unmatched. She has demonstrated her commitment to excellence over the course of her career; having attended and taught at the nation's top schools and having argued formidable cases in federal and state court houses across the country.

Myrna Pérez is a rare blend of superior scholarly expertise and strong moral character. She is a person of deep faith who has served on the Board of Directors for Sojourners, is the president of her church council and has served her community in numerous ways. Despite the demands of

her career, she has remained active in her hometown and coordinates a meal delivery program to those facing food insecurity in Jersey City while also spearheading other anti-hunger initiatives in her community.

Ms. Pérez has organized her life and her career around her commitment to ethical standards that are informed by the core principles of her faith. A judge should be principled, ethical and unwavering in their commitment to fairness. Myrna Pérez possesses each of those traits. She is also a person who would bring relatable, real-world experience to this job.

In light of the above, we are confident that Myrna Pérez would make an outstanding judge on United States Court of Appeals for the Second Circuit.

Sincerely,

**Rev. Adam Russell Taylor,** President, Sojourners

**Jim Wallis,** Inaugural McCourt School of Public Policy Chair and Founding Director of the Georgetown University Center for Faith and Justice

**Rev. Terrance M. McKinley,** Director of Racial Justice, Sojourners and Senior Pastor, Campbell AME Church

**Jonathan Wilson-Hartgrove,** Director, School for Conversion

**Rev. Dr. Jo Anne Lyon,** General Superintendent Emerita, The Wesleyan Church

**Rev. Jeffrey Haggray**, American Baptist Home Mission Societies

**Rev. Ron Stief,** Executive Director, National Religious Campaign Against Torture

**Rev. Dr. Timothy Boddie,** former General Secretary of the Progressive National Baptist Convention

**Max Fineberg,** Minister, Third Street Church of God

First Alaskans Institute

NATIVE PEOPLES ACTION

July 12, 2021

The Honorable Charles Schumer
Majority Leader
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Richard Durbin
Chairman, Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member, Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Re: Alaska Native Organizations and Individuals Letter of Support for Nomination of Myrna Pérez for the U.S. Court of Appeals for the Second Circuit

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Durbin, and Ranking Member Grassley:

We, the undersigned Alaska Native organizations and individuals, write to express our strongest support of Myrna Pérez's confirmation as a Judge on the United States Court of Appeals for the Second Circuit.

At first glance, it may seem unusual for organizations and individuals representing the First Peoples of Alaska to recommend the confirmation of a nominee for a federal appellate court that sits thousands of miles away in Connecticut, New York, and Vermont. But Ms. Pérez is a truly extraordinary candidate whose advocacy to secure equal access to the political process for all Americans has had a sweeping impact for Alaska Native voters in even the most remote villages.

For several years Ms. Pérez has bridged political divides to build consensus on improving access to the political process, working with policymakers of all political leanings and affiliations. Her efforts have had an exceptionally far reach. Through her advocacy before legislative bodies and the courts, her groundbreaking work has facilitated the participation of indigenous peoples in non-tribal elections throughout the United States. Her leadership and support for removing the most

basic obstacles to participation for many Native peoples, including language and literacy, is evidenced in the growing vibrancy of the Native vote.

Ms. Pérez is a champion of the sovereignty of Native Nations, the need to preserve their culture and language, and the importance of recognizing their contributions to our system of government. Her passion extends from her own personal story, as the daughter of Mexican immigrants. She is deeply respectful of the values of all Americans, whether they are newer arrivals or among America's First Peoples. Her substantial experience working with people of all races and ethnicities has helped her develop a keen understanding that will serve our country well on the federal bench.

The commitment that Ms. Pérez has to doing justice throughout her professional career is matched by her incomparable brilliance as a lawyer, policymaker and researcher. Equally important, her world revolves around her family and her devout faith. We could not ask for a finer candidate for any government office, much less an appointment to one of the most prestigious appellate positions on the federal bench.

It is our fervent hope that Ms. Pérez be swiftly confirmed, so she can bring her talent, wisdom, faithful commitment to the rule of law and her unparalleled judicial temperament to the Second Circuit.

We, the undersigned Alaska Native organizations and individuals, are proud to lend our support to Ms. Pérez's nomination.



Liz La quen náay Medicine Crow
(Haida/Tlingit)
President/Chief Executive Officer
First Alaskans Institute



Kendra Kloster
(Tlingit)
Executive Director
Native Peoples Action

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July 9, 2021

The Honorable Charles Schumer
Majority Leader
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Richard Durbin
Chairman, Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member, Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Durbin, and Ranking Member Grassley:

I am the U.S. Director for Movement.org, a global organization focused on catalyzing Christian leaders to spiritually and socially impact the cities in which they live, work, and do ministry. I previously served as the Lead Pastor at Christ Memorial Church in Holland, Michigan and as President and CEO of Prison Fellowship Ministries. In 2015, I was appointed to the Charles Colson Congressional Task Force on Federal Corrections, a bipartisan, blue ribbon panel that developed practical, data-driven recommendations to enhance public safety by creating a more just and efficient federal corrections system.

I write to express my strong support for the confirmation of Myrna Pérez to the United States Court of Appeals for the Second Circuit. In the many years I have known Myrna, she has consistently exhibited the highest moral character, exercised sound judgement, and lived out her profound commitment to uplifting the downtrodden. She is unrelenting in her pursuit of justice and would be a thoughtful and impartial jurist.

Through her work and her service to others, Myrna upholds the principle of *imago dei*—the idea that God created man and woman in His image. She believes that all people have value, that they are equal in the eyes of the Creator, and that no mistake or wrongful act could place one of God's children beyond redemption. We share the belief, deeply rooted in our faith, that current and former prisoners are beloved children of God, worthy of our society's forgiveness and of the blessings of democracy. I can think of no better moral foundation for a potential jurist.

I have worked closely with Myrna alongside a range of faith leaders representing diverse theological, spiritual, social, and political perspectives. Myrna has been a critical ally to the Prison Fellowship Ministries in seeking to restore voting rights to citizens with past criminal convictions. At her invitation, I have spoken on panels at Brennan Center events and

Congressional briefings. She always ensures that different experiences and beliefs are represented. She is an active listener who seeks common ground.

We also served together on the Board of Directors of the Crossroads Prison Ministry when I was the Chairman. I observed firsthand her intelligence, her heart, and her commitment to justice. On the Board, she was the consummate team player, working well with other members who reflected a range of views and approaches. Her abiding faith and deeply held belief in the dignity of all people always informed her considered judgment.

Myrna is an active community servant, committed to do justice, love kindness, and walk humbly. She has worked for the federal government and in the nonprofit sector for most of her career. She is president of her church council, sits on the board of Sojourners, and has served on the Board of Grace Community Services in Jersey City. She is a coordinator of a crew of volunteers to provide meals to food insecure persons in Jersey City, and spearheads other anti-hunger initiatives in her community. She is active in her son's Title I public school, and until the pandemic closed it, coordinated the school's beloved and popular after-school program.

Should she be confirmed as a federal judge, Myrna will encounter serious legal questions that affect real people. Myrna is open-minded, level-headed, and committed to the facts. Having worked and fellowshipped with her closely, I have absolute confidence she will apply the law equally and fairly and that she would be an exceptional jurist.

Sincerely,

Jim Liske
U.S. Director for Movement.org

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AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

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July 13, 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 Myrna Pérez to the United States Court of Appeals for the Second Circuit*

Dear Chairman Durbin and Ranking Member Grassley:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Myrna Pérez, who has been nominated by the President to the United States Court of Appeals for the Second Circuit. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. A substantial majority of the Standing Committee determined that Ms. Pérez is **"Qualified,"** and a minority is of the opinion that she is "Well Qualified" to serve on the United States Court of Appeals for the Second Circuit. The Standing Committee's rating means that, under our guidelines, Myrna Pérez satisfies the Standing Committee's very high standards with respect to integrity, professional competence, and judicial temperament and is qualified to perform all the duties and responsibilities required of a federal judge. The majority rating represents the Standing Committee's official rating.

Very truly yours,

Randall D. Noel
*Chair, Standing Committee*
*On the Federal Judiciary*

cc: Dana Remus, White House Counsel (*via email*)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
Myrna Pérez (*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*)




PRESIDENT
NAN ARON

CHAIR
PAULETTE MEYER

July 13, 2021

The Honorable Richard Durbin
Chairman
Senate Judiciary Committee

Dear Chairman Durbin:

On behalf of the Alliance for Justice (AFJ), a national association representing over 120 public interest and civil rights organizations, I write to express strong support for the confirmation of Myrna Pérez to serve as a judge on the United States Court of Appeals for the Second Circuit.

At a time when too many are working to undermine our democracy, we ask the Senate to confirm expeditiously Ms. Pérez, to the court of appeals, one of the nation's leading voting rights and elections experts. Our judiciary needs judges who will protect the rights of all Americans and our democracy. She believes that voting is fundamental and has spent her career working to ensure that every American can have an equal voice in elections. Moreover, if confirmed, she would be one of only two Latino judges serving on the Second Circuit, and the court's only sitting Latina, bringing critical demographic diversity to the judiciary.

Indeed, Ms. Pérez's legal career has been impressive, and she is eminently qualified to serve as an appellate judge; she has extensive experience litigating all aspects of complex cases in state and federal courts throughout the country. Ms. Pérez has served as counsel in at least 54 cases across the country, including before the U.S. Supreme Court and numerous federal circuit courts of appeal. She has also played a major role in the preparation of six *amici curiae* briefs to the Supreme Court.

Myrna Pérez was born in San Antonio to parents who immigrated from Mexico and was the first in her family to graduate from college. She received a B.A. from Yale University in 1996, a M.P.P from the Harvard Kennedy School in 1998 and graduated from Columbia Law School in 2003. After receiving her law degree, Ms. Pérez clerked for Judge Anita B. Brody on the U.S. District Court for the Eastern District of Pennsylvania, and for Judge Julio M. Fuentes on the U.S. Court of Appeals for the Third Circuit.

Excelling at every step of her career, Ms. Pérez joined the Brennan Center Voting Rights and Election Program in 2006 and has since been immersed in litigating and advocating for voting rights and fair elections. Recently, she was a leader in the effort to ensure that voters, in the middle of the COVID-19 pandemic, could vote in a safe and healthy manner.

Among her cases, Ms. Pérez represented Southwest Voter Registration and Education Project, among others, in a lawsuit against a Florida law that removed voters from rolls for minor discrepancies in registration records. The law disproportionately harmed Latino voters due to common naming conventions such as including accents and hyphens. Ms. Pérez helped the plaintiffs secure a preliminary injunction that allowed more than 14,000 otherwise eligible citizens to have their names placed back on the rolls in time for Florida's presidential primary. Ms. Pérez also successfully persuaded a panel of the Fifth Circuit Court of Appeals to uphold a district court ruling striking down a Texas photo ID law passed with the intent to discriminate against African American and Latino voters. Ms. Pérez also led the original challenge to the Texas law, which U.S. District Judge Nelva Gonzales Ramos described as "the strictest photo ID law in the country." She also participated, as an *amicus*, in a suit challenging the voting system in the Village of Port Chester as violating the Voting Rights Act by diluting Latino votes.

In addition to leading complex litigation, Ms. Pérez has authored reports on the disproportionately long wait times at polling locations for Black and Latino Americans, the impact of disproportionate allocation of election day resources, and the challenge of obtaining voter identification. Ms. Pérez also has significant experience in academia. From 2013 to 2015, she served as an Adjunct Professor of Clinical Law at NYU School of Law, where she taught a student seminar on Policy Advocacy and supervised student clinical work. She has been a lecturer-in-law at Columbia Law School since 2016, teaching seminars on election law and civil rights lawyering.

Further, Ms. Pérez has dedicated her non-working hours to serving others through volunteering, including feeding persons who are food insecure with Grace Community Services, teaching Bible studies to inmates with Crossroads Prison Ministries, and serving in various roles at Saint Matthew's Evangelical Lutheran Church, including Pride Coordinator and Congregation President.

Given her exemplary qualifications, the Senate should expeditiously confirm Myrna Pérez to the United States Court of Appeals for the Second Circuit.

Sincerely,

Nan Aron
President

July 12, 2021

The Honorable Charles Schumer
Majority Leader
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Richard Durbin
Chairman, Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member, Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Durbin, and Ranking Member Grassley:

I am the Director for the Division of Elections at the Colorado Department of State and have worked closely with and for Republican and Democratic Secretaries of State. I also serve on the executive board for the University of Minnesota's Humphrey School of Public Affairs election certification program. Formerly, I was President of the National Association of State Election Directors and served on the Executive Committee of the Government Coordinating Council, created by the United States Department of Homeland Security when election security was designated critical infrastructure.

I write in my personal capacity, not on behalf of the state of Colorado, to share my heartfelt support for the confirmation of Myrna Pérez to the United States Court of Appeals for the Second Circuit.

I have known Myrna for the better part of 15 years. During that time, we have frequently worked together to improve Colorado's election systems. We have also, on occasion, found ourselves on different sides of legal issues surrounding voting and election administration. Whether or not our positions have aligned, Myrna has always been deeply constructive, collaborative, thoughtful, and solution oriented. Having witnessed these and many of her other strengths firsthand, I firmly believe she has the appropriate temperament to be an exceptional federal judge.

Myrna and I began working together closely when I joined the Colorado Department of State as Director for the Division of Elections. At the time, Colorado was out of compliance with federal election law, most notably Sections 5 and 7 of the National Voter Registration Act (NVRA), and faced several threats of lawsuits. Myrna was in a strong position to sue our office. Doing so would have gained her publicity but might have also led to a worse overall outcome for voters. Instead of taking us to court, she offered her assistance. Myrna worked closely with us on ways to get into better compliance with the NVRA and other federal election laws. She devised strategies to help the state meet its legal obligations and used insights from other jurisdictions.

Throughout the entire process, Myrna was immensely helpful, conscientious, and devoted to the protection of voting rights. Her clear goal was to help us get into compliance—not score political points. She wanted to do what was best for our voters and best for democracy more broadly. By the end, she had become our friend and colleague, and her work to get Colorado into compliance would later inform strategies for other jurisdictions facing similar challenges.

Given my experience with Myrna, I feel uniquely suited to comment on the strengths that would make her an excellent jurist. Myrna is, first and foremost, an incredibly bright attorney. What's more, she is realistic, reasonable, and deeply respectful of different points of view. She holds herself to the highest professional standards and is focused solely on the betterment of our democratic process. I have found that these traits allow for agreement upon evidence-based, productive solutions to real-world problems.

Myrna has exactly the kind of personality, temperament, and intellect one needs to be an excellent federal judge. I can't think of someone more qualified or more prepared to undertake this responsibility. For all of these reasons, I strongly and respectfully urge her confirmation to the Second Circuit.

Sincerely,
Judd Choate

The Leadership Conference
on Civil and Human Rights

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July 13, 2021

The Leadership Conference

**SUPPORT THE CONFIRMATION OF MYRNA PÉREZ TO THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT**

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 220 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, we write to express our strong support for the confirmation of Myrna Pérez to the U.S. Court of Appeals for the Second Circuit.

Ms. Pérez's extensive experience and her pursuit of equal justice for all make her exceptionally qualified to serve on the Second Circuit. For 15 years, she has worked to defend the right to vote and safeguard our democracy as counsel for the Brennan Center for Justice at New York University School of Law (the Brennan Center). She now leads the Brennan Center's Voting Rights and Election Program, directing complex civil litigation, research, and policy advocacy and supervising a team of attorneys and researchers dedicated to this work. Additionally, Ms. Pérez has helped train future lawyers, teaching at both Columbia Law School and NYU School of Law. Previously, she served as a fellow at Relman Colfax, PLLC, where she worked on issues of fair housing, fair lending, disability, and employment discrimination. A graduate of Yale College, Harvard University's John F. Kennedy School of Government, and Columbia Law School, Ms. Pérez clerked for Judge Julio Fuentes of the U.S. Court of Appeals for the Third Circuit and Judge Anita Brody of the U.S. District Court for the Eastern District of Pennsylvania. She is also deeply committed to serving her community. For example, she serves on the board of Grace Community Services, a nonprofit that helps serve food-insecure people, and is a member of the Hispanic National Bar Association. An extremely accomplished lawyer, Ms. Pérez is eminently qualified to serve as a federal appellate judge.

Ms. Pérez's background in voting rights and election law is especially notable, as civil rights lawyers are broadly underrepresented on the federal bench.[1] At the Brennan Center, she has served as counsel in more than 50 cases in state and federal courts, including the U.S. Supreme Court and numerous federal circuit courts of appeal. She has prepared amicus briefs for Voting Rights Act cases before the U.S. Supreme Court[2] and directed legal teams in high-profile litigation involving the right to vote for millions of people.[3] As a legal academic and advocate, Ms. Pérez has studied and understands the importance of

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[1] *See* Buchanan, Maggie Jo. "**The Startling Lack of Professional Diversity Among Federal Judges**." *Center for American Progress*. June 17, 2020; "**Broadening the Bench: Professional Diversity and Judicial Nominations**." *Alliance for Justice*. February 6, 2014.

[2] *See, e.g., Brnovich v. Democratic Nat. Comm.*, No. 19-1257, 2021 U.S. LEXIS 670 (Jan. 25, 2021) (brief of the Brennan Center for Justice as amicus curiae supporting respondents, 2021 WL 260090); *Shelby County v. Holder*, 570 U.S. 529 (2013) (brief of the Brennan Center for Justice as amicus curiae supporting respondents, 2013 WL 417738).

[3] *See, e.g., Rick Scott for Senate v. Snipes,* No. CACE 18-026470 (Cir. Ct. 17th Jud. Cir., Broward Cnty., Fla. 2018); *Gruver v. Barton* (N.D. Fla., No. 1: 19-cv-121), consolidated with *Jones v. DeSantis,* 462 F. Supp. 3d 1196 (N.D. Fla. 2020), rev 'd sub nom *Jones v. Governor of Florida,* 975 F.3d 1016 (11th Cir. 2020).

The Leadership Conference

ensuring free and fair elections for all and protecting the right to vote.[4] It is vital that our judiciary reflects the diversity of the legal profession, including voting rights attorneys and other lawyers tasked with protecting and defending our democracy.

In addition to her impressive qualifications, Ms. Pérez's lived experience would also bring important perspectives to the judiciary. If confirmed, Ms. Pérez, a daughter of Mexican immigrants, would be the only Latina to serve on the Second Circuit[5] and the first Latina to serve on this court since the elevation of Associate Justice Sonia Sotomayor to the U.S. Supreme Court 12 years ago.[6] The Second Circuit is home to more than 4.9 million immigrants[7] and nearly 4.4 million Hispanic or Latino/a individuals.[8] It is important to have judges who share experiences and characteristics with the people their decisions impact. The legitimacy of courts and the decisions they make relies on public trust, and judicial diversity helps improve that trust as well as judicial decision-making.[9] Diversity also helps ensure that rulings reflect a wide variety of viewpoints, especially from perspectives and communities that have historically been excluded from the judiciary.[10]

Throughout her career, Ms. Pérez has demonstrated a strong commitment to safeguarding the most fundamental constitutional and legal rights and protections. Her record protecting access to the ballot box and strengthening our democracy is needed on the federal judiciary, and she is exceedingly qualified to serve on the Second Circuit.

We strongly urge the Senate to confirm Myrna Pérez to the Second Circuit. If you would like to discuss this matter further, please contact Lena Zwarensteyn, Senior Director of the Fair Courts Campaign, at (202) 466-3311. Thank you for your consideration.

Sincerely,

Wade Henderson
Interim President & CEO

Jesselyn McCurdy
Interim Executive Vice President of Government Affairs

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[4] *See, e.g.,* Goldfeder, Jerry and Pérez, Myrna. "New York Still Needs More Reform." *New York Law Journal.* April 22, 2021; Goldfeder, Jerry and Pérez, Myrna. "Protecting the Right to Vote." *New York Law Journal.* February 25, 2021; Pérez, Myrna and Lau, Tim. "How to Restore and Strengthen the Voting Rights Act." *Brennan Center for Justice.* January 28, 2021.
[5] "Biographical Directory of Article III Federal Judges, 1789-present." *Federal Judicial Center.* Accessed July 2021. Search includes all women judges for the Second Circuit whose race or ethnicity includes "Hispanic."
[6] *Id.*
[7] "2019 American Community Survey 1-Year Estimates." *United States Census Bureau.* Accessed July 2021. Search includes foreign-born population of Connecticut, New York, and Vermont.
[8] *Id.* Search includes residents of Connecticut, New York, and Vermont who identify as Hispanic or Latino/a.
[9] Sen, Maya. "Diversity, Qualifications, and Ideology: How Female and Minority Judges Have Changed, or Not Changed, Over Time." 2017 Wis. L. Rev. 367 (2017).
[10] *Id.*

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July 14, 2021

United States Senate
Washington, DC 20510

**Re: Support of Nomination of Myrna Pérez to the United States Court of Appeals for the Second Circuit**

Dear Senator:

On behalf of the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"), I urge you to support the nomination of Myrna Pérez to the United States Court of Appeals for the Second Circuit. The Lawyers' Committee is one of the nation's leading nonprofit civil rights legal organizations, founded in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combating racial discrimination and securing equal justice under law. For nearly sixty years, the Lawyers' Committee has been at the forefront of many of the most significant cases to advance racial equality and secure equal justice. Our mission and history make our organization uniquely qualified to comment on this nomination.

Myrna Pérez is a champion for equal justice and exceptionally well-qualified to serve as an appellate judge on the Second Circuit. As the Voting Rights and Elections Program Director at the Brennan Center for Justice at New York University School of Law, where she has spent the last fifteen years of her career, Ms. Pérez has led extensive voting rights litigation, research and advocacy across the country to protect the fundamental right to vote and ensure equal justice under the law. Ms. Pérez is a graduate of Columbia Law School, where she was a Lowenstein Public Interest Fellow. Before law school, she obtained her undergraduate degree in political science from Yale University and her master's degree in public policy from Harvard Kennedy School, where she was the recipient of the Robert F. Kennedy Award for Excellence in Public Service. Ms. Pérez was also a Presidential Management Fellow, serving as a policy analyst for the United States Government Accountability Office. After law school, Ms. Pérez went on to clerk for Judge Anita B. Brody of the United States District Court for the Eastern District of Pennsylvania and Judge Julio M. Fuentes of the United States Court of Appeals for the Third Circuit.

Our team has had the pleasure of litigating cases side-by-side with Ms. Pérez as co-counsel, and has worked with her on numerous committees, participated with her on panels, and engaged in countless hours of discussion on issues pertaining to civil rights in general and voting rights in particular. Throughout these interactions, our staff reports that Ms. Perez has exhibited acumen, strategic thinking, a deep knowledge of the law,

and a concern for the views of others that will serve her well on the bench. We are also aware of the time that Ms. Pérez devotes to helping others in her community in Jersey City, New Jersey. She is not only a great lawyer, but a good person.

As a civil rights attorney, Ms. Pérez would bring much-needed professional diversity to the federal appellate bench. Currently, no sitting federal appellate judge has primarily spent their career at a nonprofit civil rights organization.[1] Civil rights attorneys play an essential role in our legal system to ensure that all individuals' fundamental rights are protected, especially the rights of people of color, women, people with disabilities and LGBTQ+ people. The federal judiciary should reflect the diversity of the legal profession and include more judges who have experience representing and protecting the rights of people who are marginalized in our society.

To ensure the federal courts remain impartial, committed to the rule of law and trusted by the American public, the Senate must confirm highly qualified judges from across the legal profession that represent the vast racial and ethnic diversity present in the United States. Currently, the federal judiciary lacks racial, ethnic, and gender diversity. People of color are forty percent of the population but are only twenty-seven percent of federal judges.[2] Additionally, women make up roughly half of the population, but only thirty-three percent of active Article III judges.[3] On the Second Circuit, these trends continue as 70% of the sitting judges are white and 70% are male.[4] If confirmed, Ms. Pérez would be the only Latina serving on the Second Circuit, and the first Latina on the Second Circuit since Justice Sonia Sotomayor, who served on the court before she was confirmed to the U.S. Supreme Court in 2009.[5]

Ms. Pérez's extensive record and measured approach to the law make her preeminently qualified to serve on the United States Court of Appeals for the Second Circuit. In addition to her excellent litigation skills and expertise in voting rights, she is a lecturer in law at Columbia Law School and has served as an adjunct professor of clinical law at NYU School of Law. Ms. Pérez was a lead attorney in *Indiana State Conference of the NAACP v. Lawson*, where she successfully halted an Indiana law before an election

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[1] Maggie Jo Buchanan, *Pipelines to Power: Encouraging Professional Diversity on the Federal Appellate Bench*, AMERICAN PROGRESS (Aug. 13, 2020), https://www.americanprogress.org/issues/courts/reports/2020/08/13/489312/pipelines-power-encouraging-professional-diversity-federal-appellate-bench/.

[2] "Biographical Directory of Article III Federal Judges, 1789-present." *Federal Judicial Center*. https://www.fjc.gov/history/judges. Clark Neily, "Are a Disproportionate Number of Federal Judges Former Government Advocates?" *Cato Institute,* (September 18, 2019), https://www.cato.org/study/are-disproportionate-number-federal-judges-former-government-advocates#procedure-findings.

[3] *Id.* "Diversity of the Federal Bench," American Constitution Society, Diversity of the Fed. Bench (2020), https://www.acslaw.org/judicial-nominations/diversity-of-the-federal-bench/.

[4] *Id.*

[5] Joseph Choi, *Schumer recommends two voting rights attorneys for judicial seats*, THE HILL (Jun. 7, 2021), https://thehill.com/homenews/senate/557180-schumer-to-recommend-two-voting-rights-attorneys-for-judicial-seats.

that would have illegally removed eligible voters from voter rolls in the state.[6] Ms. Pérez also successfully worked on *Texas v. Holder*, where the U.S. District Court for the District of Columbia found that Texas's strict voter ID laws violated Section 5 of the Voting Rights Act.[7] In fact, Congress is well aware of Ms. Pérez's immense qualifications and unique expertise, as she has testified before Congress on multiple occasions on voting rights issues.[8] Ms. Pérez's commitment to upholding the fundamental right to vote and equal justice is exemplary as it is an essential duty of our federal judiciary, particularly for the United States Court of Appeals for the Second Circuit, which decides many cases impacting the rights of people of color and low-income people.

Thank you for your consideration of our support of the nomination of Myrna Pérez to serve on the United States Court of Appeals for the Second Circuit. My colleagues and I urge the Senate to swiftly confirm Ms. Pérez and welcome the opportunity to discuss her nomination with your office further. If you have any questions or concerns, please contact my colleague Erinn D. Martin, Policy Counsel, at emartin@lawyerscommittee.org.

Sincerely,



Damon T. Hewitt
President & Executive Director
Lawyers' Committee for Civil Rights Under Law
Washington, D.C.

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[6] *Victory for Voters: Court Blocks Controversial Indiana Law that Could Purge Eligible Voters*, THE BRENNAN CENTER FOR JUSTICE (Jun. 8, 2018), https://www.brennancenter.org/our-work/analysis-opinion/victory-voters-court-blocks-controversial-indiana-law-could-purge. *See Ind. State Conf. of the NAACP v. Lawson*, 326 F. Supp. 3d 646 (S.D. Ind. 2018).

[7] *Texas v. Holder*, The BRENNAN CENTER FOR JUSTICE (Mar. 12, 2012), https://www.brennancenter.org/our-work/court-cases/texas-v-holder. *See Tex. v. Holder*, 2012 U.S. Dist. LEXIS 206462, *1, *27 (D.D.C. 2012).

[8] *Hearing on Evidence of Current and Ongoing Voting Discrimination Before the Subcomm. on the Constitution, Civil Rights and Civil Liberties of the H. Comm. on the Jud.*, 116th Cong. 73 – 84 (Sept. 10, 2019) (Statement of Myrna Pérez, Director, Voting Rights and Elections Program, Brennan Center for Justice). *Hearing on Protecting the Right to Vote: Best and Worst Practices Before the Subcomm. on Civil Rights and Civil Liberties of the H. Comm. on Oversight and Reform*, 116th Cong. 6 - 8 (May 1, 2019) (Statement of Myrna Pérez, Deputy Director, Democracy Program, Brennan Center for Justice).

National Council of Jewish Women
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T: 202. 296. 2588

NCJW
National Council of Jewish Women

July 13, 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 Myrna Perez to the United States Court of Appeals for the Second Circuit.** Myrna Perez is widely considered one of our nation's top legal minds, particularly in the area of voting rights. She serves as director of the Brennan Center's Voting Rights and Elections Program, leading the program's research, advocacy, and litigation work nationwide. Perez has argued in cutting edge and complex cases in federal and state court houses across the country, taught at both Columbia and New York University law schools, and testified before Congress and several state legislatures. At every turn, Perez has dedicated her professional career to protecting our democracy and freedom to vote.

At NCJW we know that for our courts to work for all of us, they must reflect the communities they serve. Yet despite making up nearly 20 percent of the US population, Latinos make up only 8 percent of active federal judges in the nation. If confirmed, Perez would be the only Latina on the court and the first since Supreme Court Justice Sonia Sotomayor. The daughter of Mexican immigrants and the first in her birth family to graduate from college, Perez's real world experience and civil rights background would bring a valuable lens to the Second Circuit.

The importance of justice is a key part of Jewish tradition, and both our tradition and text include the need for unbiased judges as well as fair and impartial courts. This informs NCJW's efforts to ensure our federal courts are comprised of fair, qualified, and impartial judges who render decisions equally. Indeed Perez has demonstrated a commitment to civil and human rights throughout her career — and coupled with her extraordinary qualifications as a litigator and legal academic — NCJW has no doubt Perez will work tirelessly to ensure equal justice for all.

We look forward to having someone on the bench who has such a deep understanding of the law and its impact on people's lives, and urge you to support the nomination of Myrna Perez to the United States Court of Appeals for the Second Circuit.

Sincerely,

Jody Rabhan
Chief Policy Officer
National Council of Jewish Women




July 13, 2021

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin, Ranking Member Grassley, and Committee Members:

On behalf of our 1.5 million supporters nationwide, People For the American Way enthusiastically supports the nomination of Myrna Pérez to the Second Circuit Court of Appeals. She is an inspired choice who exemplifies the kind of jurist the American people need on our federal courts.

A graduate of Yale College, Harvard's Kennedy School of Government, and Columbia Law School, Pérez began her legal career with prestigious clerkships with federal district judge Anita Brody and Third Circuit judge Julio Fuentes. She then spent a year in private practice at the firm of Relman, Dane, and Colfax, where she focused on legal issues relating to fair housing, fair lending, disability, and employment discrimination. In 2006, she began working at the Brennan Center for Justice at NYU School of Law, where she has risen to the position of director of its Voting Rights and Election Program.

During these past 15 years at the Brennan Center, Pérez has dedicated her career to advancing the core right at the basis of all others: the right to vote. No individual right is mentioned more often in the United States Constitution than the right to vote. It is a subject of the Fourteenth, Fifteenth, the Nineteenth, the Twenty-Fourth, and the Twenty-Sixth Amendments. Its prominence in the Constitution reflects its importance in our society: Ultimately, it is the core right undergirding all others. Dedicating oneself to this core tenet of democracy is an act of service to the Constitution that Pérez would be tasked with protecting if she is confirmed.

Pérez would bring to the bench extensive experience as a litigator and an academic. She leads the Brennan Center's nationwide voting litigation, research, and policy advocacy. She manages a team that litigates complex civil matters related to election law and provides litigation counsel and advice to nonprofit clients, often in compressed timetables. She and the team she manages also conduct research, testify before legislative bodies, draft legislative and policy proposals, and publish legal scholarship. In addition, since 2016, Pérez has also taught classes on election law at Columbia Law School. Her career has been dedicated to expanding the rights of all people regardless of politics, power, and wealth.

Pérez would also bring much-needed personal diversity to the Second Circuit. Although it serves a three-state region that is nearly 20 percent Latinx, she would be only the second Latina ever to serve on that court, which has not had any Latina judges since Sonia Sotomayor was confirmed to the Supreme Court in 2009.

1101 15th Street, NW ♦ Suite 600 ♦ Washington, DC 20005
Telephone 202.467.4999 ♦ Fax 202.293.2672 ♦ E-mail pfaw@pfaw.org ♦ Web site http://www.pfaw.org

Myrna Pérez would bring to the bench a deep understanding of how the law impacts people's lives and a commitment to recognizing the rights of all people. We urge the Senate to confirm her to the Second Circuit.

Sincerely,



Marge Baker
Executive Vice President

**Senator Kirsten Gillibrand**
**Statement of Recommendation for Myrna Pérez, Nominee for the United States Court of Appeals for the Second Circuit**

Chairman Durbin, Ranking Member Grassley, and members of the Judiciary Committee, it is my honor and privilege to submit a statement of recommendation for Myrna Pérez, nominee for the United States Court of Appeals for the Second Circuit.

Ms. Pérez's connection to public service started at a young age. She grew up with a father who served in the Air Force and a mother who worked for the United States Postal Service. She, too, has a record of working in the best interests of her fellow Americans and an innate understanding of how the law can shape people's lives. Hers was also an immigrant family; Ms. Pérez's parents came to the United States from Mexico as children. Even as her parents taught her to be resilient and independent, she noticed the unique and innumerable racial, social, and linguistic challenges immigrants faced in pursuit of new opportunities.

Ms. Pérez, a graduate of Yale University, The Harvard Kennedy School, and Columbia Law School, was the first person in her family to graduate from college and has consistently used her education and career to study, defend, and advance civil rights. Following her graduation from Columbia Law School, she clerked for Hon. Anita B. Brody of the United States District Court for the Eastern District of Pennsylvania and for Hon. Julio M. Fuentes of the United States Court of Appeals for the Third Circuit, giving her keen insight into the role our judicial branch plays in shaping our society.

She also understands that for our laws and our government to work for the people, they must be shaped by the people. Ms. Pérez recognizes that the voting booth is the one place where everyone has an equal say in our country's future, and their place in it. As the director of the Brennan Center's Voting Rights and Elections Program, she leads nationwide research, advocacy and litigation efforts. As one of our nation's top voting rights and election lawyers, she has handled cases on discriminatory voter ID laws, voter roll purges, unlawful ballot rejection and the voting rights of formerly incarcerated people.

I join many of my colleagues in recognizing that this moment of great challenge to our voting rights and our democracy requires action like passing the For the People Act and protecting our elections with legislation like the Voter Empowerment Act, which I was proud to work on with the late Congressman and civil rights icon John Lewis. Congressman Lewis said "the right to vote is precious, almost sacred," and he was right.

I believe Ms. Pérez's experience in protecting the right to vote is more needed on the Second Circuit than ever before. If confirmed, Ms. Pérez would be the first Latina to serve on the Second Circuit since now-Justice Sonia Sotomayor. She would be a worthy successor and I am proud to recommend her for the bench.

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Denise.Cardman@Americanbar.org

59953492.v1

AMERICAN BAR ASSOCIATION
Standing Committee on the Federal Judiciary

Please reply to:
Randall D. Noel
Butler Snow LLP
6075 Poplar Avenue
Suite 500
Memphis, TN 38119
Randy.Noel@butlersnow.com

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 Karen McGlashan Williams to the United States District Court for the District of New Jersey*

Dear Chairman Durbin and Ranking Member Grassley:

The American Bar Association's Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Judge Karen Williams, who has been nominated by the President to the United States District Court for the District of New Jersey. As you know, the Standing Committee confines its evaluation to the qualities of integrity, professional competence, and judicial temperament. The Standing Committee is of the unanimous opinion that Judge Williams is **"Well Qualified"** to serve on the United States District Court for the District of New Jersey.

Very truly yours,

Randall D. Noel
*Chair, Standing Committee*
*On the Federal Judiciary*

cc: Dana Remus, White House Counsel (*via email*)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy, U.S. Department of Justice (*via email*)
The Honorable Karen McGlashan Williams (*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*)




**Kerri E. Chewning**
President

**Elizabeth J. Sher**
President-Elect

**Ricardo Solano Jr.**
First VicePresident

**Victor A. Afanador**
Second Vice President

**Susan M. Leming**
Secretary

**Rebekah Conroy**
Treasurer

**Edward T. Kole**
Immediate Past President

**Association of the**
**Federal Bar of New Jersey**
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@AFBNJ

The Honorable Charles E. Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

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

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

Re: Nomination of Karen M. Williams to the District Court for the District of New Jersey

Dear Honorable Senators:

I write as the President of the Association of the Federal Bar of New Jersey to express the Association's strong support for the confirmation of Karen M. Williams to serve as a United States District Judge for the District of New Jersey.

Karen Williams has served the District of New Jersey as a magistrate judge for twelve years. Her experience on the bench makes her perfectly suited to fill this critical vacancy in the District of New Jersey.

As a magistrate judge in the District of New Jersey, Judge Williams fills a vital role in the day-to-day management of litigation matters. On the civil side, she addresses the full spectrum of non-dispositive issues before the court including, case management, discovery disputes, and alternative dispute resolution. Magistrate Judge Williams also handles an array of criminal proceedings, including initial appearances and bail hearings.

Since Magistrate Judge Williams took the bench, she has implemented a practical and thoughtful approach to the management of litigation. In light of the significant caseload shouldered by the judges in this District, the bench is in need of efficient, fair, and practical jurists who can ensure that the objectives set forth in Rule 1 of the Federal Rules of Civil Procedure, which aspire to provide "just, speedy, and inexpensive determination" of proceedings, are met.

Magistrate Judge Williams meets and exceeds this directive on a daily basis. She has proven herself to be a practical and effective magistrate judge; her understanding and application of the Rules ensures that all litigants appearing before her have the opportunity to discover and present their case. Magistrate Judge Williams also has a wonderfully personable approach with litigants and lawyers and she is extremely effective at facilitating settlements. In sum, her experience on the bench over the last twelve years will prove invaluable for her continued service as an Article III judge.

Magistrate Judge Williams is committed to the bench and the bar in this District. She serves as an active member of the Advisory Board for the Association. Judge Williams zealously contributes to AFBNJ programs, routinely attends meetings, and serves as a panelist on CLE programs.





Judge Williams has also been instrumental in the District Court's Re-Entry program in the Camden Courthouse. The program is designed to help recently released federal inmates re-integrate successfully into society. Judge Williams dedicates hours of her time to this program assisting these individuals in getting a fresh start, which has a positive impact not only on their lives but on their families as well.

For these reasons, the Association provides it unfettered endorsement in support of Magistrate Judge Williams's confirmation to serve as a District Court Judge.

I extend my personal endorsement as well. As a practitioner with more than 20 years of litigation experience before the District Court in the District of New Jersey, and a former law clerk to District Judge Garrett E. Brown, Jr., I have the familiarity and perspective to personally attest that Magistrate Judge Williams has the perfect temperament and work ethic that make her very well-qualified to serve as an Article III jurist. I practice regularly in the Camden Courthouse and I have had the pleasure of appearing before Judge Williams in a number of my cases. I can say confidently that litigants and lawyers alike appreciate her candor, demeanor, and practical approach to litigation.

It is also notable that Judge Williams would be filling the vacancy left by the Honorable Jerome B. Simandle, U.S.D.J. Judge Simandle left behind a legacy of thoughtful decisions, which considered not only the law but the litigants as well. Judge Williams will carry that same fair and well-balanced approach as a District Judge. She will honor his memory well.

Magistrate Judge Williams possesses an enviable mix of practicality, fairness, frankness, decisiveness, and intelligence. As such, she is an excellent choice to serve the lawyers and litigants in the District of New Jersey.

Very respectfully yours,

KERRI E. CHEWNING
President

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GSBA
Garden State Bar Association
African American Lawyers for Justice

Garden State Bar Association
Post Office Box 1040
Newark, New Jersey 07101
GSBAPE@gmail.com
Tel. (973) 494-9700

June 12, 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 Karen McGlashan Williams to the United States District Court for the District of New Jersey**

Dear Chairman Durbin and Ranking Member Grassley:

The Garden State Bar Association ("GSBA") is pleased to issue this statement supporting President Biden's nomination of Hon. Karen M. Williams, U.S.M.J., to the District Court for the District of New Jersey.

Professionally, Judge Williams's whole career has been an accomplishment. She received her Bachelor of Science from the Pennsylvania State University in 1985 and her Juris Doctor from the Temple University Beasley School of Law in 1992. Thereafter, Judge Williams spent seventeen years in private practice in Atlantic City, New Jersey. On May 1, 2009, Judge Williams was appointed a United States Magistrate Judge—then described as her greatest professional accomplishment.

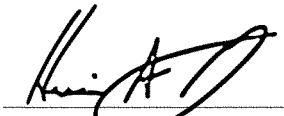
President Biden has selected a stellar nominee who reflects the values and diversity of New Jersey. Judge Williams is a highly qualified jurist with a long and distinguished legal career that demonstrates an unwavering commitment to justice. At the District Court, she will ensure equal justice under the law while working for the greater good with her commitment to service and fairness.

Service to humanity is a stronghold of excellence Judge Williams embodies. In 2013, the GSBA presented Judge Williams with its *Van Y. Clinton Award*, celebrating the accomplishments of this pioneering jurist. Repeatedly, Judge Williams has assisted the GSBA in its continuing legal education endeavors and broader initiatives to encourage more diversity and equity on the bench and in the legal community. We applaud Judge Williams for her decency, honesty, and dedication. Above all, she will continue to serve as an exemplary judge and an inspiration to our community.

Accordingly, we commend President Biden's nomination of the Hon. Karen M. Williams, U.S.M.J., to the U.S. District Court for the District of New Jersey.

Please do not hesitate to contact the GSBA if we may assist further.

Respectfully submitted,



Husain A. Gatlin, Esq.
President, 2021-2022 Term

**NEW JERSEY STATE BAR ASSOCIATION**

DOMENICK CARMAGNOLA, PRESIDENT
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May 28, 2021

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

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

Re: Nomination of Judge Karen Williams to the District Court for the District of New Jersey

Dear Chairman Durbin and Ranking Member Grassley:

The New Jersey State Bar Association commends the nomination of U.S. Magistrate Judge Karen Williams 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.

Judge Williams has been a distinguished member of the bench since 2009 where she has earned a reputation for fairness and impartiality. She has demonstrated her commitment to improving the legal community through her work as an adjunct professor and brings to the position the knowledge of a seasoned practitioner having worked in private practice for 17 years prior to joining the bench. Once confirmed, she will undoubtedly continue to be an asset to the U.S. District Court and people of our state.

Respectfully yours,

Domenick Carmagnola, Esq.
President

**UNITED STATES SENATE**
**COMMITTEE ON THE JUDICIARY**

**QUESTIONNAIRE FOR JUDICIAL NOMINEES**

**PUBLIC**

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

   Jia Michelle Cobb

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

   United States District Judge for the District of Columbia

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.

   Relman Colfax PLLC
   1225 19th Street, Northwest
   Suite 600
   Washington, District of Columbia 20036

   Arlington, Virginia

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

   1980; 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.

   2002 – 2005, Harvard Law School; J.D. (*cum laude*), 2005
   1998 – 2002, Northwestern University; B.A. (*magna cum laude*), 2002

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.

   2012 – present, 2004
   Relman Colfax PLLC (formerly Relman, Dane & Colfax PLLC and Relman and Associates PLLC)

1225 19th Street, Northwest
Suite 600
Washington, District of Columbia 20036
Partner (2019 – present)
Counsel (2015 – 2019)
Associate (2012 – 2015)
Summer Associate (Summer 2004)

2006 – 2012, 2004
Public Defender Service for the District of Columbia
633 Indiana Avenue, Northwest
Washington, District of Columbia 20004
Supervisor, Juvenile Section, Trial Division (2010 – 2012)
Staff Attorney, Trial Division (2006 – 2012)
Law Clerk, Special Litigation Division (Summer 2004)

2005 – 2006
United States Court of Appeals for the Seventh Circuit
Everett McKinley Dirksen United States Courthouse
219 South Dearborn Street
Chicago, Illinois 60604
Law Clerk to the Honorable Diane P. Wood

January 2004
Harvard Civil Rights Project
13 Appian Way
Cambridge, Massachusetts 02138
Intern (uncompensated)

2002, 2003
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York
Summer Associate (Summer 2003)
Sponsors for Educational Opportunity (SEO) Intern (Summer 2002)

Teaching Affiliations

September 2010, September 2011, and January 2011
Harvard Law School
1563 Massachusetts Avenue
Cambridge, Massachusetts 02138
Trial Advocacy Workshop Guest Instructor (uncompensated)

Fall 2011 Semester
American University, Washington College of Law
4300 Nebraska Avenue, Northwest
Washington, District of Columbia 20016
Adjunct Professor, Trial Advocacy

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

   I have not served in the military. I was not required to register for the selective service.

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

   American Academy of Achievement Delegate (2009)

   Heyman Fellowship (2006)

   J.D. from Harvard Law School conferred *cum laude* (2005)

   *Harvard Law Review* (Volumes 117 and 118, 2003 – 2005; Coordinating Editor, 2004 – 2005)

   John E. Thayer Scholarship, Harvard Law School (2004)

   Delta Sigma Theta Sorority, Inc., National Collegiate Member of the Year (2002)

   B.A. from Northwestern University conferred *magna cum laude* (2002)

   William M. McGovern Memorial Award, Northwestern University (2002)

   Phi Beta Kappa (2002)

   Lincoln Laureate Prize (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.

   District of Columbia Bar Criminal Law and Individual Rights Section, Elected Steering Committee Member (2016 – 2019)

10. **Bar and Court Admission**:

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

Michigan, 2006
District of Columbia, 2007

There have been no lapses in membership. I am a voluntary inactive member of the State Bar of Michigan because I do not practice in Michigan state courts.

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, 2015
United States Court of Appeals for the Fourth Circuit, 2015
United States Court of Appeals for the Seventh Circuit, 2006
United States District Court for the District of Colorado, 2015
United States District Court for the District of Columbia, 2012
United States District Court for the Eastern District of Michigan, 2015
United States District Court for the Western District of Michigan, 2014

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.

All Our Kids, Inc. (2017 – 2019)
Volunteer

Forensic Practice Group, Public Defender Service (2010 – 2012)
Member; Committee Member for Annual Forensic Science Conference

Delta Sigma Theta Sorority, Inc. (2002 – present)
Member (currently inactive)

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.

Delta Sigma Theta Sorority, Inc., is a national service organization that admits only women. I have taken no action to change that policy. To the best of my knowledge, none of the other organizations or groups 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.

In 2008, I wrote an article for Johns Hopkins University Center for Talented Youth's Imagine Magazine, which is published for middle school and high school students. The article was about my decision to be a public defender and day-to-day work. I am unable to locate a copy of the article.

With Lauren Sudeall and Amanda Teo, *Diversity on the Law Review*, The Harvard Law Record (2005). Copy supplied.

Supreme Court Term 2003 – Leading Cases, *General Dynamics Land Systems, Inc., v. Cline*, 118 HARV. L. REV 436 (2004). Copy supplied.

Recent Case, *Session v. Perry*, 117 HARV. L. REV. 2433 (2004). Copy supplied.

In 2004 or 2005, I wrote a profile on African-American law school deans for a magazine published by, to the best of my recollection, the National Black Law Students Association. I am unable to locate a copy of the article.

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.

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.

The following list reflects my best effort to identify responsive material. To compile this list, I searched my personal files and Internet sources. It is possible that there are trainings or other speaking events that I am unable to recall.

January 22, 2021: Panelist, "Litigating Race Discrimination in Employment in the BLM Era," Metropolitan Washington Employment Lawyers Association (MWELA) Brown Bag Webinar, Washington, District of Columbia. I was one of two featured participants for a discussion with MWELA members about current considerations for litigating race discrimination and sexual harassment cases. I have no notes, transcript, or recording. The address for MWELA is 2800 Eisenhower Avenue, Suite 210, Alexandria, Virginia 22314.

December 1, 2020: Guest Instructor, "Training on Opening Statements," Public Defender Service for the District of Columbia New Attorney Training, Washington, District of Columbia. I participated in a training for new attorneys and provided feedback and practice tips for delivering opening statements. I have no notes, transcript, or recording. The address for the Public Defender Service for the District of Columbia is 633 Indiana Avenue, Northwest, Washington, District of Columbia 20004.

December 6, 2019: Keynote Speaker, "Fair Housing and Families," Fair Housing Center of Southwest Michigan's Annual Luncheon, Benton Harbor, Michigan. The event was co-sponsored by the Southwestern Michigan Association of Realtors. PowerPoint supplied.

April 26, 2017: Presenter, "Familial Status Discrimination and Occupancy Standards," Fair Housing Center of Southwest Michigan's Annual Conference, Kalamazoo, Michigan. PowerPoint supplied.

April 21 – 22, 2017: Instructor, "Trial Bootcamp," Metropolitan Washington Employment Lawyers Association (MWELA), Washington, District of Columbia. I was a guest instructor for MWELA members participating in a mock trial and provided skills training and feedback on trial advocacy techniques. I have no notes, transcript, or recording. The address for MWELA is 2800 Eisenhower Avenue, Suite 210, Alexandria, Virginia 22314.

March 10, 2015: Instructor, "Group Sessions: Opening Statements," Public Defender Service for the District of Columbia Criminal Defense Trial Practice Institute (TPI), Washington, District of Columbia. TPI is a program for law students to help them develop effective trial advocacy skills and explore public defense work through a training program taught by practicing trial attorneys. I participated in a session on opening statements, and provided feedback and practice tips for delivering opening statements to the student participants. I have no notes, transcript, or recording. The address for the Public Defender Service for the District of Columbia is 633 Indiana Avenue, Northwest, Washington, District of Columbia 20004.

February 20, 2015: Panelist, "Dynamic Trial Techniques," Annual Conference for the Metropolitan Washington Employment Lawyers Association, Washington, District of Columbia. Draft outline of presentation supplied.

August 8, 2014: Presenter, "Discussion of Trial Strategy," Litigation Under the Fair Housing Act CLE, Tennessee Fair Housing Council, Knoxville, Tennessee. I participated as a presenter at a two-day CLE about litigating fair housing cases that included a mock trial. After the mock trial, I participated in a debriefing discussion about the mock trial with CLE participants. I have no notes, transcript, or recording. The address for the Tennessee Fair Housing Council is 107 Music City Circle, Nashville, Tennessee 37214.

August 7, 2014: Presenter, "Establishing Standing and Agency," "Selecting the Forum, Theories of Proof," and "Attorney's Fees," Litigation Under the Fair Housing Act CLE, Tennessee Fair Housing Council, Knoxville, Tennessee. PowerPoints and notes supplied.

June 2011: Panelist, "Cross Examining Law Enforcement Officials," Public Defender Service Summer Series, Washington, District of Columbia. I participated in a training for D.C. Superior Court Criminal Justice Act panel attorneys on techniques for cross-examining law enforcement officials at trial. I have no notes, transcript, or recording. The address for the Public Defender Service for the District of Columbia is 633 Indiana Avenue, Northwest, Washington, District of Columbia 20004.

November 2010: Panelist, "Cross Examination of Expert Witnesses," Deborah T. Creek Criminal Practice Institute, Washington, District of Columbia. I participated in a training for D.C. Superior Court Criminal Justice Act panel

attorneys on techniques for cross examining expert witnesses at trial. I have no notes, transcript, or recording. The address for the Public Defender Service for the District of Columbia is 633 Indiana Avenue, Northwest, Washington, District of Columbia 20004.

March 2008: Panelist, "Trying Cases in Family Court," D.C. Superior Court, Washington, District of Columbia. I participated in a training for attorneys practicing in the Family Court of the D.C. Superior Court about techniques for trying cases. I have no notes, transcript, or recording. I cannot recall who sponsored the panel. The address for the D.C. Superior Court is 500 Indiana Avenue, Northwest, Washington, District of Columbia 20004.

March 5 – 7, 2004, Co-Chair, "Aggressive Advocacy, Our Role in the Courtroom, the Corporation, and the Halls of Congress Fifty Years After *Brown v. Board of Education*," Harvard Law School Black Law Students Association (BLSA) Annual Spring Conference, Cambridge, Massachusetts. In 2004, I organized BLSA's annual Spring Conference. I did not speak on any panel, but it is possible that I gave welcome remarks or made an introduction of a conference participant. I have no notes, transcript, or recording, but press coverage is supplied. The address for Harvard Law School is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

June 26, 2002: Graduation Speaker, Northwestern University Commencement, Evanston, Illinois. I introduced the graduation speaker, Kofi Annan. To the best of my recollection, I read introductory remarks prepared by the University. I have no notes, transcript, or recording, but press coverage is supplied. The address for Northwestern University is 633 Clark Street, Evanston, Illinois 60208.

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 occasionally made statements to the press about my cases. The following list reflects my best effort to identify responsive material. To compile this list, I searched my personal files and Internet sources. It is possible that there are other instances in which I have made a statement to a reporter about a litigation matter, but cannot recall.

Peggy O'Hare, *Lawsuit targets apartments for restrictive policies against children*, San Antonio Express News, May 23, 2018. Copy supplied.

Tracy Jan, *Privately run prisoner transport company kept detainee shackled for 18 days in human waste, lawsuit alleges*, Wash. Post, Apr. 24, 2018. Copy supplied.

Andrew Giambrone, *Lawsuit: Man Suffered Diabetic Emergency After Being Jailed in D.C. Over Speeding Tickets*, Wash. City Paper Blog, Apr. 20, 2016. Copy supplied.

Wailin Wong, *Dyson Praises King's 'Radical Legacy,' Despite Flaws*, The Daily Northwestern, Jan. 10, 2001. Copy supplied.

Rebecca Orbach, *Northwestern U. holds school's first conference on diversity*, The Daily Northwestern, Nov. 8, 1999. Copy supplied.

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

I have not held any judicial office.

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

i. Of these cases, approximately what percent were:

| | |
|---|---|
| jury trials: | 0% |
| bench trials: | 0% |

ii. Of these cases, approximately what percent were:

| | |
|---|---|
| civil proceedings: | 0% |
| criminal proceedings: | 0% |

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

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

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

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

f. Provide a brief summary of and citations for all of your opinions where your

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

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

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

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

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held any judicial office.

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations**:

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

I have never held public office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

In 1998, I volunteered for Representative Jan Schakowsky's congressional campaign. I provided occasional assistance distributing literature and canvassing over the course of several weeks before and on the day of the election.

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

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

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

From September 2005 to September 2006, I served as a law clerk to the Honorable Diane P. Wood, United States Court of Appeals for the Seventh Circuit.

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

I have never practiced alone.

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

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Staff Attorney, Trial Division (2006 – 2012)
Law Clerk, Special Litigation Division (Summer 2004)

2012 – present, 2004
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Partner (2019 – present)
Counsel (2015 – 2019)
Associate (2012 – 2015)
Summer Associate (Summer 2004)

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

I have never served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

Following my clerkship in 2006, I joined the Public Defender Service for the District of Columbia as a staff attorney in the Trial Division. I spent about six years representing indigent defendants charged with criminal offenses in D.C. Superior Court at all stages of litigation. At PDS, I was counsel in more than 200 cases. I started my practice representing children in juvenile delinquency matters in Family Court and progressed to representing adult defendants charged with general, and then more serious, felonies. By the end of my time at the Public Defender Service, I was in the Felony 1 Practice Group, which is the highest level of practice at the Public Defender Service and handles homicides and other violent crimes. I was also part of the Agency's Forensic Practice Group, which provided support to lawyers on forensic science and other expert witness issues. In 2010, I was selected to be a supervisor for juvenile section attorneys. In that capacity, I supervised incoming attorneys practicing in Family Court, including by reviewing their work product and attending their trials.

In 2012, I joined Relman, Dane & Colfax PLLC (now Relman Colfax PLLC) as an associate. I became Counsel in 2015 and Partner in 2019. Relman Colfax is a national, plaintiff-side civil rights firm based in Washington, DC. At Relman, my practice has almost exclusively involved representing plaintiffs in civil rights cases in federal courts across the country, including in the areas of fair housing, disability discrimination, employment discrimination, and cases at the intersection of civil rights and criminal justice. I also file civil rights complaints for clients with federal administrative agencies—for example, the U.S. Department of Housing and Urban Development and the Equal Employment Opportunity Commission—although I do so much less frequently than I handle matters

in federal court.

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

From 2006 to 2012, as a staff attorney at the Public Defender Service for the District of Columbia, 100% of my practice involved representing indigent defendants in criminal cases.

Since 2012, my practice has focused on general civil rights litigation. Most of my docket has been fair housing and police-misconduct/criminal-justice related matters, but I litigate all types of discrimination and civil rights cases. I represent both individuals and non-profit organizations who have organizational standing to enforce civil rights statutes.

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.

More than 95 percent of my practice has been devoted to litigation. There have been some rare instances in which I have done investigatory or advisory work for clients outside of litigation.

From 2006 to 2012, as a staff attorney at the Public Defender Service for the District of Columbia, I appeared in court on a weekly, if not almost daily, basis.

Since 2012, as a civil rights litigator, I regularly appear in court, although not as frequently as I did as a public defender. I estimate that I have appeared in court between five to ten times per year as a civil rights litigator.

i. Indicate the percentage of your practice in:
   1. federal courts: 55%
   2. state courts of record: 45%
   3. other courts: 0%
   4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 60%
   2. criminal proceedings: 40%

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 35 cases to verdict over the course of my career,

approximately 15 of which have been jury trials. Some of the trials that I conducted were in juvenile court and I do not have access to those records, so I am providing my best estimate. In approximately 80 percent of the cases that I have tried, I was either lead counsel, sole counsel, or had a co-counsel, but trial responsibilities (for example, summations, the examinations of key witnesses, and trial strategy decisions) were equally divided. In approximately 20 percent of these trials, I was a junior, associate counsel.

i. What percentage of these trials were:
   1. jury: 45%
   2. non-jury: 55%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the United States Supreme Court.

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

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *The Ability Center of Greater Toledo, et al., v. Moline Builders, Inc., et al.*, 478 F. Supp. 3d. 606 (N.D. Ohio 2020) (Judge James G. Carr, presiding).

Since 2018 I have represented two non-profit organizations and an individual plaintiff in a Fair Housing Act design and construction case. The case, filed against builders, developers, designers, and engineers, alleges that a large, multi-family housing community is inaccessible to persons with disabilities. During the litigation, I was lead counsel managing fact and expert discovery and dispositive motions practice. Plaintiffs' expert identified more than one hundred violations at the property, including inaccessible front entrances to individual dwelling units. In May 2020, plaintiffs moved for partial summary judgment, seeking an order that the inaccessible front entrances violated the Fair Housing Act. Defendants

also moved for partial summary judgement, alleging that the Act does not require the front entrances to individual residential units to be accessible because defendants provided an alternate accessible entrance through the garage. The court agreed with plaintiffs and granted judgment in plaintiffs' favor, finding that the Fair Housing Act requires the front entrances of free-standing units to be accessible as public use areas. The Sixth Circuit had previously left this question open, and I am not aware of any other reported decisions on this issue. In May 2021, the parties settled the matter through a consent decree, over which the court will retain jurisdiction for a period of four years. In addition to the monetary terms of settlement, the consent decree requires defendants to remediate many of the housing community's inaccessible features to make them usable to persons with disabilities.

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2. *Kovari v. Brevard Extraditions, LLC, et al.*, 461 F. Supp. 3d 353 (W.D. Va. 2020) (Judge Michael F. Urbanski, presiding).

From 2018 to 2020, I was lead counsel representing a plaintiff in a 42 U.S.C. § 1983 case against private prison transportation companies. The corporate defendants contract with government entities to provide private extradition services. The plaintiff alleged that the defendants violated the Fourteenth Amendment by subjecting him to grossly inhumane conditions of confinement during his transport from Virginia to Texas, including by transporting him in a crowded van with no air conditioning or seatbelts, providing inadequate food and water, and refusing to regularly stop for restroom breaks. Defendants transported plaintiff over the course of 17 days, with 120 hours spent driving in the van and as many as 14 hours at a time on the road without stops. Plaintiff also alleged that defendants repeatedly ignored his requests for medical attention and access to prescription medication. After his transport, plaintiff had to be hospitalized. As lead counsel, I was responsible for coordinating all aspects of the litigation, including drafting the complaint, managing written discovery and case

investigation, deposing and supervising the depositions of witnesses, and briefing dispositive motions. During the litigation, the Court denied defendants' motion to dismiss, agreeing with plaintiff that defendants were state actors; denied a partial motion for summary judgment that defendants filed concerning the applicable statute of limitations for plaintiff's state law claims; and, after denying defendants' motion for summary judgment, allowed plaintiff's constitutional claims to proceed to trial. I believe that the court's decision denying defendants' motion for summary judgment on plaintiff's constitutional claims is the first reported decision allowing a conditions of confinement claim against a private prison transportation company—which has been the subject of much litigation—to proceed on a *Monell* theory of liability based on defendants' corporate policies, practices, and customs. The case subsequently settled.

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3. *CNY Fair Housing, Inc., et al. v. Waterbury, et al.*, Case No. 5:17-cv-868 (N.D.N.Y) (Judge Mae D'Agostino, presiding).

Since 2017 I have been lead counsel representing nine plaintiffs—a non-profit fair housing organization and eight women—in a case alleging gender discrimination (quid pro quo sexual harassment) under the Fair Housing Act. The case alleges that defendants, a landlord and related corporate entities, demanded sexual favors from women tenants in exchange for lower rents and other benefits of tenancy. Plaintiffs' investigation uncovered that the landlord had been subjecting women to harassment for decades, and that his behavior impacted approximately 50 properties that defendants own. The U.S. Department of Justice learned about defendants' alleged unlawful conduct from our complaint, filed a related case, and joined our enforcement efforts. As lead counsel, I was responsible for managing and supervising the litigation, which included drafting the complaint, handling all aspects of written discovery and depositions, coordinating case investigation with the Department of Justice, and conducting settlement negotiations. In 2019, after discovery, the parties settled the matter through a stipulated consent decree, over which the court will retain jurisdiction until 2024, a period of five years. The consent decree required the defendants to pay $400,000 and provided for significant injunctive relief, including a requirement prohibiting the landlord from having any contact with tenants and applicants and mandating that defendants retain an independent agent (approved by the organizational plaintiff) to manage their properties.

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4. *Hicks v. Ferreyra, et al.*, 396 F. Supp. 3d 594 (D. Md. 2019) (Judge Paul W. Grimm, presiding); interlocutory appeal decision reported at 965 F.3d 302 (4th Cir. 2020) (Judges Diana G. Motz, Barbara M. Keenan, Pamela A. Harris, presiding).

Since 2016 I have been lead counsel representing the plaintiff, a twenty-year veteran of the United States Secret Service, in a *Bivens* action. Plaintiff alleges that defendants, United States Park Police Officers, unlawfully stopped and detained him while he was on duty, despite having verified his identity and credentials, in violation of his Fourth Amendment rights. As lead counsel, I have been responsible for coordinating all aspects of the litigation, which included drafting the complaint, managing written discovery, deposing witnesses, and conducting and supervising dispositive motions briefing. The court denied defendants' motion to dismiss and, after discovery, denied defendants' qualified immunity defense at summary judgment. The defendants filed an interlocutory appeal, for which I was also lead counsel representing plaintiff. In their appeal, defendants challenged the court's qualified immunity ruling and claimed that the district court also erred by not considering sua sponte whether plaintiff's claims raised a new *Bivens* context. In a published opinion, issued without oral argument, the Fourth Circuit held, for the first time in the Circuit, that well-established forfeiture rules apply in the *Bivens* context, and thus a defendant waives arguments about the availability of a *Bivens* remedy if the argument is not raised before the trial court. It dismissed the remainder of defendants' appeal. The trial is scheduled to begin on July 6, 2021.

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5. *Drayton, et al. v. McIntosh County, et al.*, 2016 WL 3443919 (S.D. Ga.) (Judge Lisa Godbey Wood; the case is currently before Judge R. Stan Baker, presiding).

Since 2015 I have represented 54 plaintiffs, who are largely property owners or residents of a predominately African-American, Gullah-Geechee community on Sapelo Island in McIntosh County, Georgia. The community is accessible solely by boat or air, and the State of Georgia provides public ferry transportation between the Island and mainland Georgia. Plaintiffs alleged that defendants McIntosh County, the State of Georgia, and other related State government officials and entities discriminated against them on the basis of race in the provision of municipal services, in violation of the Fourteenth Amendment's Equal Protection Clause and Title VI. Plaintiffs also alleged that the State of Georgia violated the Americans with Disabilities Act because the public ferry, docks, and boarding facilities are not accessible to persons with disabilities. I am one of two partners on the case responsible for managing the day-to-day litigation and discovery, and was primarily responsible for litigating plaintiffs' ADA claims and related expert discovery. Discovery in the case involved approximately 100 depositions, ten expert witnesses, and multiple rounds of dispositive motions briefing. In October 2020, plaintiffs resolved their claims against the State defendants through a settlement agreement that requires the State defendants to make substantial remediations to the ferry and boarding facilities to make them accessible to persons with disabilities, including a complete demolition of the existing dock facilities to be rebuilt in accordance with applicable accessibility standards. The monetary value of the agreed-upon improvements is estimated to be several millions of dollars, and the State Defendants also paid plaintiffs $750,000. In March 2021, the Court denied in part and granted in part McIntosh County's motion for summary judgment, holding that many plaintiffs' claims alleging that the County discriminated in the provision of fire, emergency medical, waste disposal, and road maintenance services can proceed to trial.

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6. *Hardin v. Dadlani, et al.*, 221 F. Supp. 3d 87 (D.D.C. 2016) (Judge Reggie B. Walton, presiding).

From 2012 to 2017, I represented a plaintiff in a race discrimination in employment case alleging violations of 42 U.S.C. § 1981 and the D.C. Human Rights Act. The plaintiff, who is African American, had been hired by a manager to work at an upscale sports bar, but was fired immediately after meeting the defendant, who owned the establishment. In discovery, plaintiff amassed substantial evidence of the defendant's discrimination against African-American applicants and customers, and his professed desire for the bar to be a "white" establishment, including declarations from the defendant's former business partners and employees. I was one of two attorneys responsible for litigating the case, which included conducting written discovery, deposing witnesses, obtaining witness declarations, briefing summary judgment, and briefing and arguing motions in limine and pretrial matters, among other responsibilities. In January 2016, I tried the case before a jury as co-counsel. At trial, I examined approximately half of the witnesses (on both direct and cross examination) and delivered the closing and rebuttal arguments. At the conclusion of the seven-day trial, the jury rendered its verdict in favor of the plaintiff on all claims and awarded her $687,000 in damages ($175,000 in compensatory damages, and $512,000 in punitive damages after a bifurcated punitive damages phase of trial). After post-trial briefing, the court issued a published opinion upholding the jury's verdict and award of damages, finding that the plaintiff had presented substantial evidence of defendant's "blatant and pervasive discrimination" at trial.

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7. *Morgan v. Richmond Sch. of Tech.*, Case No. 312-cv-373 (E.D. Va.) (Judge John A. Gibney, presiding).

From 2012 to 2013, I was a member of the litigation team representing plaintiffs in a class action lawsuit against a for-profit vocational college alleging violations of the Equal Credit Opportunity Act, Title VI, and state law. In the lawsuit, seven named class representatives alleged that the for-profit college used deceptive practices to encourage students to take out large federal loans for an education that it knew to be inadequate, and committed fraudulent acts to secure federal funds, such as cutting and pasting student signatures on financial aid forms and altering records. As co-counsel in the case, I assisted in briefing dispositive motions, obtained declarations supporting Plaintiffs' claims in investigation, and conducted class certification discovery (both written discovery and depositions). After the completion of class certification discovery, the parties reached a settlement agreement. In July 2013, the court granted final approval to a $5 million class action settlement. The terms of settlement also required the school to maintain and disclose information about its students' success and assessments of the school by certain educational organizations, as well as to follow a refund policy adopted by an accrediting organization, among other terms.

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8. *United States v. Guevara*, 2010 CF3 10626 (D.C. Super. Ct.) (Judge Craig Iscoe, presiding).

From 2010 to 2011, I represented the defendant, who was charged, with a co-defendant, in an eight-count indictment with conspiracy, assault with intent to kill while armed, aggravated assault, and other serious offenses related to a stabbing. I was lead counsel for the defendant. In October 2010, I tried the case before a jury.

At trial, I cross-examined the complaining witness on significant discrepancies in his testimony concerning my client's alleged involvement in the stabbing, conducted other witness examinations, and delivered the closing argument. After an eight-day trial, the jury acquitted the defendant of the lead charges of the indictment, finding the defendant guilty of only one lesser count of making threats.

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(202) 799-4273

9. *United States v. Reid*, 2010 CF3 23810 (D.C. Super. Ct.) (Judge Ann O'Regan Keary, presiding).

From 2010 to 2011, I represented the defendant, who was charged, with co-defendants, in a multi-count indictment with burglary, theft, car theft, and other offenses. I was sole counsel for the defendant and handled every aspect of the case. After a pre-trial motions hearing, the court granted defendant's motions to suppress tangible evidence, statements, and identification testimony after finding that the police obtained the alleged evidence in violation of the Fourth Amendment. In May 2011, I tried the case before a jury over the course of approximately six days. The court granted defendant's motion for judgment of acquittal on a charge of theft before jury deliberations. The jury deadlocked on the remaining charges against my client, and the court declared a mistrial. The defendant subsequently pled to a subset of charges in the original indictment, with the government agreeing to dismiss the remaining charges against him. The court later granted defendant's motion to reduce his sentence.

Opposing counsel:

April Fearnley (former AUSA)
The Spiggle Law Firm
4830 31st Street, South
Suite A
Arlington, VA 22206

(202) 734-6112

10. *United States v. Price*, 2008 CF1 18280, (D.C. Super. Ct.) (Judge Frederick Weisburg, presiding).

From 2009 to 2012, I was co-counsel representing the defendant in a double homicide case. As co-counsel, I was largely responsible for pretrial motions practice. The defendant had been held without bond pending trial. Shortly before a scheduled trial date, the government disclosed information, which had been in its possession for years, that pointed to third-party perpetrators. We engaged in extensive litigation concerning our position that the government violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to timely disclose the exculpatory information, including by filing pretrial motions to dismiss the indictment or, in the alternative, to modify the defendant's bond condition pending trial and to compel *Brady* and *Giglio* material. The court ultimately granted our request to release the defendant pending trial given that the government's belated disclosure of exculpatory evidence required the trial to be continued for additional investigation. After the defendant's release, we continued preparing for trial, conducting our investigation to gather additional evidence supporting our belief that other individuals committed the crime, and filing pretrial motions, including motions for dismissal of the indictment. Before trial, the government dismissed all claims against the defendant.

Co-counsel:

Premal Dharia
565 Quincy Street, Northwest
Washington, DC 20011
(202) 430-5093

Edward Ungvarsky
114 North Alfred Street
Alexandria, VA 22314
(571) 207-9710

Opposing counsel:

David Saybolt
U.S. Attorney's Office
555 4th Street, Northwest
Washington, DC 20530
(202) 252-1900

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.)

Over the years, I have represented fair housing organizations and individuals in administrative complaints filed with the United States Department of Housing and Urban Development challenging occupancy policies that complainants allege are unnecessarily restrictive and serve to preclude families with children from renting housing in violation of the Fair Housing Act. These matters have settled through conciliation agreements requiring respondents to modify their occupancy policies, including by adopting occupancy policies that are no more restrictive than local occupancy codes. A representative example of the federal administrative matters that I have handled include: *Connecticut Fair Housing Center, et al. v. TGM Associates, L.P. et al.*, FHEO Case Numbers 05-14-1529; 05-14-1528-8; 01-14-0565-8 (August 20, 2015) ($195,000 HUD settlement in case involving restrictive occupancy policies); *Fair Housing Center of West Michigan, et al. v. AMP Residential, et al.*, HUD Conciliation Agreement, FHEO Case Number 05-16-4894-8, January 5, 2017) (more than $200,000 settlement award to fair housing organizations for resolution of an administrative complaint of familial status discrimination).

I have not performed any lobbying activities, and I am not and have never been a registered lobbyist.

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

    In the Fall 2011 semester, I taught a trial advocacy seminar for American University, Washington College of Law. I cannot locate a syllabus for the seminar, but recall that each class focused on a different aspect of trial—for example, developing trial theories, delivering opening statements, handling direct and cross examinations, preparing closing arguments, etc. One class would involve me and my co-instructor presenting on the topic, and in the next session the students would do a mock exercise and receive feedback. The seminar ended with a mock trial.

    In Fall 2010, Fall 2011, and Winter 2011, I was guest, visiting faculty for Harvard Law School's Trial Advocacy Workshop, a three-week trial advocacy course. For one of these weeks, I acted as a student advisor providing feedback and instruction to students on trial advocacy topics, and assisting them in their preparations for a mock trial. Course overview for Fall 2010 supplied. I have not been able to locate any materials for Fall 2011 or Winter 2011, but they would have been substantially similar in content to the materials supplied for Fall 2010.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all

anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

Upon leaving my firm, I would be entitled to receive any contributions that I have made to the Firm's Capital Fund and a pro rata share of any distributable net profits for the year. The timing of these payments would be based on firm policy and relevant ethical rules. I have also contributed to my Firm's 401(k) plan, which is administered by the American Bar Association.

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

    If confirmed, I do not have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       My sister is an attorney in the Special Litigation Division of the Public Defender Service for the District of Columbia. Although she rarely appears before the United States District Court for the District of Columbia, I would recuse myself from any matter in which she was involved in any capacity.

       If confirmed, I would also recuse myself from any matter handled by or involving Relman Colfax PLLC for a reasonable period of time. I would continue to recuse

myself from such matters until there were no longer any potential conflicts of interest or the appearance of any conflicts of interest.

Finally, in cases involving former clients that could present potential conflicts of interest, I would promptly inform the parties and ascertain their positions. I would consult and follow 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, as well as any other applicable statutes, rules, or canons.

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 encounter a matter that presents a potential conflict of interest, or creates the appearance of a potential conflict of interest, I would promptly inform the parties and ascertain their positions. I would consult and follow 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, as well as any other applicable statutes, rules, or canons.

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 devoted my entire legal career to serving the disadvantaged. As a public defender, 100 percent of my practice involved representing indigent criminal defendants. In my current practice, I litigate civil rights cases, largely on behalf of plaintiffs who do not have the resources to retain an attorney, including individuals who are incarcerated, on public assistance, or who otherwise have limited financial means.

26. **Selection Process**:

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

On February 15, 2021, I submitted a Judicial Candidate Questionnaire to Representative Eleanor Holmes Norton's District of Columbia Federal Law Enforcement Nominating Commission. I met with the Commission on March 4, 2021, and Representative Norton on March 12, 2021. Representative Norton recommended my nomination to the White House. I met with officials from the

White House Counsel's Office on March 17, 2021. Since March 20, 2021, I have been in contact with officials from the Department of Justice Office of Legal Policy. On June 15, 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).

   Sarah Ann Leilani Merriam

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

   United States District Judge for the District of Connecticut

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

   United States District Court for the District of Connecticut
   141 Church Street, Room 306
   New Haven, Connecticut 06510

   I reside in Milford, Connecticut.

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

   1971; Honolulu, Hawaii

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.

   2016 – 2018, Duke Law School; L.L.M. in Judicial Studies, 2018

   1998 – 2000, Yale Law School; J.D., 2000

   1997 – 1998, University of Connecticut School of Law; no degree received (transferred)

   1989 – 1993, Georgetown University, College of Arts and Sciences;
   B.A., *cum laude*, 1993

   1991 – 1992, University of Manchester (United Kingdom); no degree received (study abroad program)

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises,

partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2015 – present
United States District Court for the District of Connecticut
141 Church Street, Room 306
New Haven, Connecticut 06510
United States Magistrate Judge

2007 – 2015
Office of the Federal Defender
265 Church Street, Suite 702
New Haven, Connecticut 06510
Assistant Federal Defender

2007
Chris Dodd for President (campaign defunct)
No current address available
Connecticut Political Director

2006 – 2007
Chris Murphy for Congress (campaign defunct)
P.O. Box 127
Cheshire, Connecticut 06410
Campaign Manager

2003 – 2005
Cowdery, Ecker & Murphy, LLC
280 Trumbull Street, 22nd Floor
Hartford, Connecticut 06103
Associate

2002 – 2003
United States Court of Appeals for the Second Circuit
40 Foley Square
New York, New York 10007
Law Clerk to the Honorable Thomas J. Meskill (deceased)

2000 – 2002
United States District Court for the District of Connecticut
450 Main Street
Hartford, Connecticut 06103
Law Clerk to the Honorable Alvin W. Thompson

Summer 1999
Dickstein, Shapiro, Morin & Oshinsky (firm defunct)
2101 L Street, Northwest
Washington, District of Columbia 20037
Summer Associate

Summer 1999
Federal Trade Commission, Bureau of Consumer Protection, Enforcement Division
600 Pennsylvania Avenue, Northwest
Washington, District of Columbia 20580
Summer Associate

1998 – 1999
Connecticut Employees Union Independent/SEIU Local 511
110 Randolph Road
Middletown, Connecticut 06457
Political Director

Summer 1998
Bingham Dana LLP (firm defunct)
100 Pearl Street
Hartford, Connecticut 06103
Summer Associate

1997
Williams-Sonoma, West Farms Mall (store location closed)
500 West Farms Mall C228
Farmington, Connecticut 06032
Sales Clerk

1996 – 1997
Connecticut Employees Union Independent/SEIU Local 511
110 Randolph Road
Middletown, Connecticut 06457
Political Director

1994 – 1996
36 Liberty Street (address no longer valid)
Middletown, Connecticut 06457
Consultant, Self-Employed

1994
Bill Curry for Governor (campaign defunct)
621 Farmington Avenue
Hartford, Connecticut 06106
Field Coordinator/Deputy Field Director

1993 – 1994
Falk Family (current contact information unknown)
1722 Allard Road
Chapel Hill, North Carolina 27514
Live-in Nanny

Summer 1993
Gager & Henry (firm defunct)
No current address available
Office Assistant

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

   I have not served in the military. I was not required to register for the selective service.

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

   University of Connecticut School of Law:
   - Ranked first in first-year class (1997 – 1998)
   - Corpus Juris Secundum award in Contracts (May 1998)
   - Corpus Juris Secundum award in Criminal Law (May 1998)
   - Center for Computer-Assisted Legal Instruction (CALI) award for Contracts (May 1998)
   - Center for Computer-Assisted Legal Instruction (CALI) award for Criminal Law (May 1998)
   - Center for Computer-Assisted Legal Instruction (CALI) award for Legal Research & Writing (May 1998)
   - Offered membership on the Connecticut Law Review (Spring 1998)
   - Member of the Moot Court Board (Spring 1998)
   - Hyman Blumberg Scholarship (1997 – 1998)
   - Dean's Scholar (1997 – 1998)

   Georgetown University:
   - Second Honors (Spring 1993)
   - Dean's List (Fall 1992)
   - First Honors (Spring 1991)
   - Dean's List (Fall 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.

Connecticut Bar Association
Federal Practice Section, Member (2000 – 2019)
Young Lawyers Division, Member (2000 – 2005)
Young Lawyers Division Liaison to Federal Practice Section (2003 – 2005)

Federal Magistrate Judges Association
Bulletin Committee, Member (2018 – present)
Rules Committee, Member (2019 – present)

United States District Court for the District of Connecticut
Ad Hoc Committee on Highly Sensitive Documents, Member (2020 – present)
Ad Hoc Committee re: Revisions to Local Rule 32, Member
(approximately 2013 – 2014)
Ad Hoc Committee on Social Security Practices, Member (2015 – 2017)
Alternative Dispute Resolution Committee, Member (2017 – present)
Grievance Committee, Member (2014 – 2015)
Law Day Committee, Member (2015 – present)
Multi-Cultural Committee, Member (2016 – present)
Public Outreach Committee, Member (2015 – 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.

Connecticut, 2000

There have been no lapses in membership.

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

United States Court of Appeals for the Second Circuit, 2007
United States District Court for the District of Connecticut, 2003

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school.

Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Connecticut Bar Foundation, Life Fellow (2014 – present)

New Haven Inn of Court, Member (2015 – 2019)

Oliver Ellsworth Inn of Court, Member (2001 – 2004)

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 the organizations listed in response to 11a 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.

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.

Pioneer Women: Ellen Bree Burns and Joan Glazer Margolis, Judicature, Vol, 102, No. 3 (Fall/Winter 2018). Copy supplied.

Letter to the Editor, Hartford Courant, Nov. 3, 2007
Letter to the Editor, Hartford Courant, Aug. 15, 2004
Letter to the Editor, Hartford Courant, Dec. 14, 2003
Letter to the Editor, Hartford Courant, Oct. 3, 2003
Letter to the Editor, Hartford Courant, Apr. 23, 2003
Letter to the Editor, Hartford Courant, Sept. 22, 2001
Copies of all above letters supplied.

Letter to the Editor, Time Magazine, Winter 1996. I am unable to locate a copy.

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.

Public Hearing Testimony, Appropriations Committee, State of Connecticut Legislature, Apr. 9, 1997. Copy supplied.

Public Hearing Testimony, Transportation Committee, State of Connecticut Legislature, Feb. 24, 1997. Copy supplied.

In 1996 and 1997, I may have testified at other public hearings before committees of the Connecticut State Legislature, with regard to issues affecting state workers. However, a search of the State's legislative history database and Westlaw revealed only the two occasions indicated.

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

I have searched my calendar, files, and the internet in an effort to identify all events responsive to this question. Below are the events I have identified.

May 7, 2021: Speaker, Sixth Grade, Clinton Avenue School, New Haven, virtual presentation. I read a book about Susan B. Anthony to two separate sixth grade classes and answered their questions about being a judge as part of the Court's Law Day outreach program. I have no notes, transcript, or recording. The address of Clinton Avenue School is 293 Clinton Avenue, New Haven, Connecticut, 06513.

May 4, 2021: Panel Speaker, "Decorum and Advocacy in the Virtual Courtroom: A Judge's Perspective," Connecticut Bar Association, Young Lawyers' Division, virtual presentation. Outline supplied.

March 17, 2021: Panel Speaker, American Bar Association Diversity Outreach Program, Roger Park Middle School Social Justice Group, Danbury, Connecticut, virtual presentation. Outline supplied.

November 2, 2020: Speaker, Clerkship Informational Session, Washington University Law School, virtual presentation. The virtual presentation was on the attributes of successful law clerks. I have no notes, transcript, or recording. The address for Washington University Law School is 1 Brookings Drive, St. Louis, Missouri, 63130.

September 17, 2020: Speaker, Government Class, Hutchison High School, Fairbanks, Alaska, virtual class. Outline supplied.

September 10, 2020: Speaker, Government Class, Hutchison High School, Fairbanks, Alaska, virtual class. Outline supplied.

July 22, 2020: Speaker, "Celebrate with the Stars" Remarks in Honor of Judge Alvin W. Thompson, Connecticut Bar Association, virtual presentation. Recording available at https://youtube.com/playlist?list=PL8RQSHoDGFsagnWkDGb0hx1TXe1XsUnV4.

April 22, 2020, Speaker, Government Class, Hutchison High School, Fairbanks, Alaska, virtual class. Outline of class discussion topics supplied.

April 15, 2020: Speaker, Government Class, Hutchison High School, Fairbanks, Alaska, virtual class. Outline of class discussion topics supplied.

March 4, 2020: Panel Speaker, plenary session, American Psychology-Law Society annual conference, New Orleans, Louisiana. Outline supplied.

October 10, 2019: Speaker, Connecticut Trial Lawyers' Association, Women's Caucus Dinner, Madison, Connecticut. I made remarks regarding my experiences as a woman on the bench. I have no notes, transcript, or recording. The address for the Connecticut Trial Lawyers' Association is 150 Trumbull Street, 2nd Floor, Hartford, Connecticut, 06103.

April 3, 2019: Speaker, Yale Law School, New Haven, Connecticut. I was a guest speaker at a class entitled "Institution and Practice of the Federal District Court" taught by my colleague, Judge Robert N. Chatigny. I have no notes, transcript, or recording. The address of Yale Law School is 127 Wall Street, New Haven, Connecticut, 06511.

March 13, 2019: Panel Speaker, "Federal Court Discovery: A to Z," Connecticut Bar Association, Federal Practice Section and Young Lawyers Division, New

Haven, Connecticut. The panel was on discovery in federal court. I have no notes, transcript, or recording. The address for the Connecticut Bar Association is 30 Bank Street, New Britain, Connecticut, 06051.

January 14, 2019: Guest, Mock Trial Continuing Education Class, FCI Danbury, Danbury, Connecticut. I presided over a mock trial conducted by female inmate students in a continuing education program at FCI Danbury, then addressed the students briefly regarding their performances in the mock trial. I have no notes, transcript, or recording. The address of FCI Danbury is 33 ½ Pembroke Road, Danbury, Connecticut, 06811.

November 5, 2018: Speaker, Remarks in Honor of Paul F. Thomas, Richard C. Law Award Dinner, United States District Court, District of Connecticut, New Haven, Connecticut. Outline supplied.

May 1, 2018: Judge, Mock Trial, Metropolitan Business Academy, New Haven, Connecticut. I served as a judge for a high school mock trial held at the District Court. I have no notes, transcript, or recording, but press coverage supplied.

January 3, 2018: Panel Moderator, "What Do Lawyers Actually Do and What Makes a Good Lawyer," Quinnipiac University School of Law, North Haven, Connecticut. I moderated a panel for law students about the practice of law. I have no notes, transcript, or recording. The address of Quinnipiac University School of Law is 370 Bassett Road, North Haven, Connecticut, 06473.

November 8, 2017: Speaker, Connecticut Labor & Employment Women Biannual Dinner, Wethersfield, Connecticut. I made remarks regarding my experiences as a woman in the labor movement and on the bench. I have no notes, transcript, or recording. The address for Connecticut Labor & Employment Women is c/o Attorney Barbara Collins, 557 Prospect Avenue, 1st Floor, Hartford, Connecticut, 06105.

September 7, 2017: Panel Speaker, Connecticut Bar Association, Labor and Employment Law Section event, North Haven, Connecticut. The panel was on federal court mediation in labor and employment matters. I have no notes, transcript, or recording. The address of the Connecticut Bar Association is 30 Bank Street, New Britain, Connecticut, 06051.

June 20, 2017: Panel Speaker, National Student Leadership Conference, New Haven, Connecticut. The panel discussed the court system with high school students participating in a summer program at Yale University. I have no notes, transcript, or recording. The address of the National Student Leadership Conference is 320 West Ohio Street, Suite 4W, Chicago, Illinois, 60654.

May 5, 2017: Panel Speaker, Law Day presentation, High School in the Community, New Haven, Connecticut. Email providing outline of presentation

supplied.

April 26, 2017: Speaker, North Haven High School, National Honor Society Induction Ceremony, North Haven, Connecticut. Draft remarks supplied.

April 11, 2017: Speaker, Career Day, Edgewood School, New Haven, Connecticut. I spoke with students at an elementary school I attended about being a judge. I have no notes, transcript, or recording. The address of Edgewood School is 737 Edgewood Avenue, New Haven, Connecticut, 06515.

March 30, 2017: Presenter, Connecticut Criminal Defense Lawyers' Association, New Haven, Connecticut. A member of the United States Probation Office and I presented information on the Bail Reform Act. I have no notes, transcript, or recording. The address of the Connecticut Criminal Defense Lawyers' Association is P.O. Box 1766, Waterbury, Connecticut, 06721.

March 7, 2017: Panel Speaker, Clerkships, University of Connecticut School of Law, Hartford, Connecticut. The panel discussed clerkship opportunities with law students. I have no notes, transcript, or recording. The address of the University of Connecticut School of Law is 55 Elizabeth Street, Hartford, Connecticut, 06105.

October 17, 2016: Speaker, Edgewood School, New Haven, Connecticut. I spoke with students in several classes at an elementary school I attended about being a judge. I have no notes, transcript, or recording. The address of Edgewood School is 737 Edgewood Avenue, New Haven, Connecticut, 06515.

June 21, 2016: Panel Speaker, National Student Leadership Conference, New Haven, Connecticut. The panel discussed the court system with high school students participating in a summer program at Yale University. I have no notes, transcript, or recording. The address of the National Student Leadership Conference is 320 West Ohio Street, Suite 4W, Chicago, Illinois, 60654.

September 29, 2015: Speaker, Connecticut Trial Lawyers' Association, Women's Caucus Dinner, Hartford, Connecticut. I made remarks regarding my experiences as a woman on the bench. I have no notes, transcript, or recording. The address of the Connecticut Trial Lawyers' Association is 150 Trumbull Street, 2nd Floor, Hartford, Connecticut, 06103.

September 15, 2015: Speaker, Quinnipiac University School of Law. I spoke at a class taught by Professor Linda Meyer. I do not recall the subject matter of the class. I have no notes, transcript, or recording. The address of Quinnipiac University School of Law is 370 Bassett Road, North Haven, Connecticut, 06473.

June 26, 2015: Speaker, Investiture, United States District Court, District of Connecticut, New Haven, Connecticut. Unproofed transcript supplied.

June 10, 2015: Speaker, Graduation Ceremony, St. Thomas's Day School, New Haven, Connecticut. I made remarks to the graduating sixth grade class of my elementary school about advice for the next stages of their lives. I have no notes, transcript, or recording. The address of St. Thomas's Day School is 830 Whitney Avenue, New Haven, Connecticut, 06511.

April 2015 – present: Speaker, Naturalization Ceremonies, United States District Court for the District of Connecticut, New Haven, Connecticut. I conduct naturalization ceremonies in court on a regular basis. I have also conducted numerous off-site naturalization ceremonies at locations around the state of Connecticut. Standard script supplied.

2008 – 2014, Speaker and Panel Member, CJA Panel Trainings, Office of the Federal Defender, New Haven, Hamden, Hartford, and Bridgeport, Connecticut. When I was an Assistant Federal Defender, I spoke periodically at CJA panel training sessions focusing on topics such as the Sentencing Guidelines, cell site evidence, DNA evidence, and Second Circuit filing practices. I have no notes, transcript, or recording. The address of the Office of the Federal Defender is 265 Church Street, Suite 702, New Haven, Connecticut, 06510.

When I was employed by political campaigns, I gave political speeches as a matter of routine, on nearly a daily basis, to local Town Committees or groups of volunteers. Other than one article from 2006, which is supplied, I have been unable to locate any media coverage of any of those speeches. I do not have any notes or calendars that would provide specific dates and locations for such speeches. A summary description of my speeches in that capacity follows:

January 2007 – June 2007: Connecticut Political Director, campaign speeches, Dodd for President, Democratic Town Committees and volunteer gatherings in Connecticut. I have no notes, transcripts, or recordings. The Dodd for President campaign no longer has an address.

January 2006 – January 2007: Campaign Manager, campaign speeches, Murphy for Congress, Democratic Town Committees and volunteer gatherings in Connecticut's 5th Congressional District. I have no notes, transcripts, or recordings. The Murphy for Congress campaign no longer has an address.

January 1994 – November 1994: Field Coordinator/Deputy Field Director, campaign speeches, Curry for Governor, Democratic Town Committees and volunteer gatherings in Connecticut, primarily in the then-6th Congressional District. I have no notes, transcripts, or recordings. The Curry for Governor campaign no longer has an address.

June 1990 – September 1990: Field Coordinator, campaign speeches, Morrison for Governor, Democratic Town Committees and volunteer gatherings in Connecticut's 2nd Congressional District. I have no notes, transcripts, or

recordings. The Morrison for Governor campaign no longer has an address.

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

I have searched my files and other electronic databases in an effort to identify all items responsive to this question. I have located the publications below, but it is possible that there are a few interviews I was not able to identify.

Sopen B. Shah, Guidelines for Guidelines: Implications of the Confrontation Clause's Revival for Federal Sentencing, 48 J. Marshall L. Rev 1029, Summer 2015. Copy supplied.

Scott Benjamin, Congressional Campaign Manager Analyzes Micro-targeting, Patch.com, Dec. 1, 2014. Copy supplied. I discovered this article while performing an internet search to ensure that my responses to this question were complete. Although I recall Mr. Benjamin from 2006, I did not give him an interview in 2014, and I do not recall having made the statements attributed to me.

Hamden Hall Country Day School, Middle Schoolers Immersed in American Political System, Oct. 23, 2012. Copy supplied. I discovered this article while performing an internet search to ensure that my responses to this question were complete. Although I did attend the event referenced in the article, I did not participate in any interviews or give any remarks to the press.

Christian Nolan, Cracking Open Prison Doors, Conn. L. Tribune, Jan. 19, 2009. Copy supplied.

Nicole A. Bernabo, An Energetic and Passionate Young Lawyer Taking the Path Less Traveled: An Interview with Sarah Merriam, The Cross Examiner, Spring 2007. Copy supplied.

Local Democrats Like Dodd For President, Newtown Bee, Mar. 30, 2007. Copy supplied.

David Lightman, Murphy Draws House Attic; Office Lottery Gives Newcomer Political Siberia with View, Hartford Courant, Dec. 3, 2006. Copy supplied.

Thomas B. Scheffey, Upset Deconstructed; Relatively Young in Age, Murphy and Merriam Flex Their Political Prowess When it Counts, Connecticut Law Tribune, Nov. 27, 2006. Copy supplied.

Dave Collins, Lieberman, Lamont beginning final campaign drives, Associated Press, Nov. 5, 2006. Copy supplied.

Raymond Hernandez, Harsh Words Dominate New York Region's Congressional Races, N.Y. Times, Nov. 4, 2006. Copy supplied.

Scott Whipple, 5th District Resident Files Robo-call Complaint, Herald, Nov. 3, 2006. Copy supplied.

Adam Wittenberg, Moving on Up, Record-Journal, Oct. 31, 2006. Copy supplied.

Adam Wittenberg, New TV Ad Makes Bigger Waves in 5th, Record-Journal, Oct. 25, 2006. Copy supplied.

Walter Shapiro, Blue-state Backlash?, Salon, Oct. 23, 2006. Copy supplied.

Adam Wittenberg, Murphy, Johnson Continue Battle, Record-Journal, Oct. 21, 2006. Copy supplied.

Adam Wittenberg, Now It's Bickering Over "Robocalls" in 5th, Record-Journal, Oct. 19, 2006. Copy supplied.

Ad Questioned by Nonpartisan Watchdog Group; Murphy Stands by It, Record-Journal, Oct. 18, 2006. Copy supplied.

Adam Wittenberg, Johnson, Murphy Spar Over Homeland Security, Medicare, Record-Journal, Oct. 15, 2006. Copy supplied.

Murphy's Ad Irks Johnson Campaign, Record-Journal, Oct. 15, 2006. Copy supplied. Copy supplied.

David Lightman, Shays Hits Hard in Page Scandal; Invokes Chappaquiddick in Rebuking Farrell; Polls Show Issue Not Helping Democrats, Hartford Courant, Oct. 11, 2006. Copy supplied.

Scott Whipple, The Latest Battleground, Herald, Oct. 7, 2006. Copy supplied.

Michael Puffer, Johnson basks - in glow of credit - for tax breaks - Murphy: Super-rich benefit, Republican-American, Oct. 6, 2006. Copy supplied.

Scandal Resonates with Candidates in Race for 5th District House Seat, Record-Journal, Oct. 4, 2006. Copy supplied.

Paul Hughes, Johnson Campaign Continues to Stress Taxes, Terrorism, Republican-American, Oct. 4, 2006. Copy supplied.

Paul Hughes, Charlotte Koskoff Lost Her 1998 Challenge to Nancy Johnson by a Mere 1,587 Votes - and Her Campaign Manager then is the Candidate Now, Taking on Johnson Again, Republican-American, Oct. 4, 2006. Copy supplied.

Walter Shapiro, The Elephant in the Room, Salon, Oct. 4, 2006. Copy supplied.

Adam Wittenberg, Air War in the 5th District, Record-Journal, Aug. 13, 2006. Copy supplied.

Who Has Longer Connecticut Coattails?, CQ Politics, Aug. 8, 2006. Copy supplied.

Jeffrey B. Cohen, Sparks Fly in Race to Sway; Johnson, Murphy Come Out Swinging with TV Ads in Battle for U.S. House Seat, Hartford Courant, July 27, 2006. Copy supplied.

Adam Wittenberg, Following the Money in the 5th, Record-Journal, July 23, 2006. Copy supplied.

John Guilfoil, Connecticut's 5th District: The Seemingly Insurmountable Incumbent, Blogcritics.org Politics, June 26, 2006. Copy supplied.

Mark Pazniokas, Senator Holds Party in Limbo; Lieberman's Choice Risks Ripple Effect, Hartford Courant, June 18, 2006. Copy supplied.

Joseph Straw, 5th District Race Focuses on Money, New Haven Register, May 6, 2006. Copy supplied.

Chris Cillizza, Clash in Connecticut's 5th, Wash. Post, Apr. 27, 2006. Copy supplied.

George Moore, Nancy Fires Back Answers MoveOn.org Ad With One of Her Own, Herald, Apr. 27, 2006. Copy supplied.

Daniel E. Goren, Johnson Target of New Ad; Group Attacks Prescription Drug Plan Stance, Hartford Courant, Apr. 26, 2006. Copy supplied.

Bill Yelenak, 5th Dist. Funding Flows In, Record-Journal, Apr. 14, 2006. Copy supplied.

Protesters Picket at Rep. Johnson's Office, Hartford Courant, Jan. 16, 1997. Copy supplied.

I gave a series of interviews for television, radio, and print media in or about 1996 regarding the planned privatization of the operation of Connecticut's drawbridges. I have been unable to locate any of the reports online.

I also gave several interviews to the Torrington Register-Citizen, Hartford Courant, and Waterbury Republican-American from September 1995 to November 1995 in my role as campaign manager for a mayoral candidate in Torrington, Connecticut. I have been unable to locate any of the reports online.

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 am currently a United States Magistrate Judge for the District of Connecticut. The District Judges of the United States District Court for the District of Connecticut selected me for the position in December 2014. I was sworn in on April 3, 2015. The United States District Court is a court of general jurisdiction, and I hear all aspects of civil cases and most aspects of criminal cases. As an Article I Magistrate Judge, I do not have authority to hear felony criminal trials or to impose sentence in felony cases. I also do not review wiretap applications. I have authority to hear most other matters that come before the Court, though my decisions may be appealed to an Article III District Judge unless the parties have expressly consented to my jurisdiction.

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

I have presided over five cases that have gone to judgment after trial.

i. Of these cases, approximately what percent were:

| | |
|---|---|
| jury trials: | 20% |
| bench trials: | 80% |

ii. Of these cases, approximately what percent were:

| | |
|---|---|
| civil proceedings: | 100% |
| criminal proceedings: | 0% |

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

A list of all opinions and decisions published on Westlaw as of June 16, 2021, is supplied.

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. McCarter & English LLP v. Jarrow Formulas, Inc., No. 3:19CV01124(MPS), 2020 WL 2528508 (D. Conn. Mar. 3, 2020) (ruling on motion for prejudgment remedy); 2019 WL 10630388 (D. Conn. Aug. 23, 2019) (order on motion for early discovery)

McCarter brought a claim for nonpayment of approximately $2 million in legal fees against its former client, Jarrow, sounding in breach of contract, account stated, and unjust enrichment, and sought a prejudgment remedy. Jarrow filed counterclaims alleging overpayment and recoupment, unjust enrichment, breach of fiduciary duty, legal malpractice, unfair trade practices, and setoff. The claims arose out of McCarter's representation of Jarrow in a trial in Kentucky federal court, in which Jarrow was found liable on one count of willful misappropriation of trade secrets and subject to a substantial verdict. I conducted a multi-day evidentiary hearing on the motion for prejudgment remedy and entered an order granting the motion, in part. I also presided over certain other pretrial matters. The case remains pending before the District Judge.

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Counsel for defendant:
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2. Dominion Res. Servs., Inc. v. Alstom Power, Inc., No. 3:16CV00544(JCH), 2017 WL 3575892 (D. Conn. Aug. 18, 2017) (ruling on motion to quash and for protective order); 2017 WL 3228120 (D. Conn. July 31, 2017) (ruling on motion to quash and for protective order)

Dominion and Alstom had a contract regarding inspection by Alston of a boiler at a Dominion industrial facility, which required Alstom to maintain certain insurance. An industrial accident occurred at the facility killing and injuring

Dominion workers, who filed suit against Dominion. Dominion settled the claims brought by the workers. The Alstom insurance was used to cover part of the costs associated with that litigation and settlement. After those settlements, Dominion brought a claim against Alstom that it had not maintained the proper type of insurance, resulting in less insurance money being available to Dominion for the defense and settlement of the workers' cases.

I managed certain discovery and case management issues in the case from July 2017 to October 2017, and then conducted settlement discussions with the parties from July 2019 to November 2019. The matter was settled in full in February 2020.

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Counsel for defendant:
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Daigle Fisse & Kessenich, PLC
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Mark A. Milano
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3. World v. Semple, et al., No. 3:16CV00519(JCH)

Plaintiff, an inmate in the Connecticut Department of Correction, brought Eighth Amendment deliberate indifference claims. He alleged that defendants failed to diagnose an aggressive form of cutaneous t-cell lymphoma, misdiagnosing his condition as psoriasis. Plaintiff alleged that he did not receive a dermatologic consult for two years, and that a necessary biopsy was denied. His condition

worsened quickly. I held several in-person conferences, including one where I visited plaintiff in the hospital, and dozens of phone conferences. The parties reached a settlement in 2018 under which the State paid $1.3 million to plaintiff. I addressed a dispute after the settlement was finalized concerning the transfer of funds to plaintiff's counsel. After being granted compassionate release by the State, Mr. World passed away in 2020.

Unpublished recommended ruling on motion to reopen and for sanctions supplied.

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Kenneth James Krayeske
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4. Caporaso v. Donnelly, No. 3:16CV00521(SALM), 2019 WL 3886726 (D. Conn. Aug. 19, 2019) (ruling on defendants' motions in limine)

The homeowner plaintiff brought claims pursuant to 42 U.S.C. §1983 against police and fire personnel for unlawful entry and search, and for use of excessive force. The parties consented to Magistrate Judge jurisdiction, and I conducted a jury trial. The jury returned a verdict for defendants. Plaintiff filed an appeal, but the appeal was withdrawn. Judgment supplied.

Plaintiff's counsel:
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Defendants' counsel:
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David C. Yale
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5. Doe v. Hicks, No. 3:15CV01123(AVC), 2016 WL 5172814 (D. Conn. Sept. 21, 2016) (ruling on amended motion for sanctions); 2016 WL 6433828 (D. Conn. Oct. 31, 2016) (ruling on motion for reconsideration)

Ms. Doe brought suit against a hotel, its employee, and its parent company asserting claims for negligence and infliction of emotional distress. Ms. Doe was raped in her room while she was staying in the defendant hotel, and the Complaint alleged the hotel employees had reason to know she was in danger and failed to protect her. I handled case management and discovery issues at certain points in the case, and then managed the settlement efforts. After I ruled on a motion for sanctions, I requested that the matter be reassigned to another Magistrate Judge for continuing settlement efforts, to ensure the separation of the merits and settlement aspects of the case.

The parties reached a full and final settlement.

Counsel for plaintiff:
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Counsel for defendants:
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6. Goff v. Chivers, No. 3:15CV00722(SALM), 2017 WL 2174404 (D. Conn. May 17, 2017) (bench trial memorandum of decision); 2017 WL 2896022 (D. Conn. July 7, 2017) (ruling on motion for award of attorneys' fees)

Two plaintiffs brought claims pursuant to 42 U.S.C. § 1983 against state police officers. Plaintiff Goff was driving; plaintiff Gibson was her passenger. A traffic stop was made by Officer Chivers, and Ms. Goff was required to engage in a sobriety test, which she failed, and she was placed under arrest. Ms. Goff was not compliant during the arrest. Mr. Gibson remained in the car, watching Ms. Goff's interactions with Officer Chivers. At one point, Mr. Gibson stood up, and at another point he shouted to Officer Chivers. Officer Chivers ordered him to get back into the car, and he complied. After additional officers arrived, Mr. Gibson was arrested for interfering with the police. Ms. Goff brought a claim for excessive force during the course of her arrest; Mr. Gibson brought a claim for false arrest. (All other claims and other defendants were dismissed prior to the close of evidence.) The parties consented to Magistrate Judge jurisdiction, and I conducted a bench trial in this matter.

I found for defendant as to Ms. Goff's excessive force claim, and for plaintiff as to Mr. Gibson's false arrest claim, and awarded $38,500 in damages plus attorney's fees and costs. Judgment supplied.

Plaintiffs' counsel:
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John R. Williams & Associates, LLC
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New Haven, CT 06510
(203) 562-9931

Defendants' counsel:
Madeline A. Melchionne
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7. Moss v. Bisson, No. 3:13CV01241(SALM)

Plaintiff brought a claim under 42 U.S.C. § 1983 alleging use of excessive force by defendant, a police officer. Mr. Moss was arrested after leaving the scene of a motor vehicle accident. He alleged that Officer Bisson used excessive force when placing him in handcuffs, and that the handcuffs were too tight, injuring him. I conducted a bench trial at which both plaintiff and defendant testified.

I found for defendant, and entered judgment in her favor. Bench trial decision entered verbally on the record. Transcript of bench trial decision and judgment supplied.

Counsel for plaintiff:
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Counsel for defendant:
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8. NGE Cases: Boyd v. Arnone, et al., No. 3:11CV00824(SALM); Colon v. Semple, et al., No. 3:14CV00461(SALM); Harris v. Semple, et al., No. 3:15CV00165(SALM)

These three similar cases were referred to me for joint settlement purposes. Plaintiffs were incarcerated inmates in the Connecticut Department of Correction (DOC), and adherents of the Nation of Gods and Earths (NGE). The defendants were DOC personnel, including then-Commissioner Semple. Plaintiffs challenged the designation of NGE as a Disruptive Group. This designation resulted in the writings, materials, symbols, and attire associated with NGE being treated as contraband in DOC facilities, and any gatherings or observances being prohibited. The plaintiffs argued that NGE should be recognized as a belief system entitled to protection and recognition under the Religious Land Use and Incarcerated Persons Act (RLUIPA), similar state law provisions, and the Connecticut and United States Constitutions, and that its practice in DOC facilities should be permitted. All parties sought resolution of the dispute, without trial, and I assisted them in developing a mutually agreeable policy under which NGE would be removed from the Disruptive Groups list, and inmates would be permitted to select NGE on the "Request for Designation of Religion" form utilized by DOC. Because this represented a significant change in policy, Commissioner Semple personally participated in the settlement negotiations.

The parties reached a final settlement agreement in resolution of all three matters, detailing the observances that would be recognized and the materials that would be protected for NGE adherents. I supervised implementation of the Agreement and resolved a dispute that arose within the initial three-year supervision period. No judgment or opinion was published.

Plaintiffs' counsel:
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Defendants' counsel:
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9. Enfield Excessive Force Cases: Demski v. Enfield, et al., No. 3:14CV01568(VAB); F. Salas v. Enfield, et al., No. 3:14CV01883(WWE); R. Salas v. Enfield, et al., No. 3:14CV01895(WWE); Crowley v. Enfield, et al., No. 3:14CV01903(MPS); Olschafskie, et al. v. Enfield, et al., No. 3:15CV00067(MPS); McAlmond v. Enfield, et al., No. 3:15CV00158(JAM); Trowbridge v. Enfield, et al., No. 3:15CV00688(JAM); Avalos v. Enfield, et al., No. 3:15CV00902(VAB)

These cases brought excessive force claims against Enfield Police officers; a particular officer was involved in nearly all of the underlying incidents. The same attorneys appeared for each plaintiff, and defendants were consistently represented by the same counsel accompanied by the same insurance

representative. All of the cases were referred to me for settlement purposes. There was a great deal of variation in the cases, which ranged from comparatively minor incidents to allegations of permanent injury and even death.

Full settlements were reached in all of the listed cases. No judgment or opinion was published.

Plaintiffs' counsel:
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Defendants' counsel:
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Karsten & Tallberg, LLC
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Patrick D Allen
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10. Asbestos Cases: More than 40 cases were referred to me as part of this effort. The first-filed case in that group was Wood v. General Electric, et al., No. 3:14CV00193(MPS).

For several years, most cases asserting injury due to exposure to asbestos, generally related to the naval and shipbuilding industries in southeastern Connecticut, were referred to me for settlement purposes. I developed a streamlined system for identifying the key factors in each case that would affect the settlement value, and special procedures for settlement negotiations in these cases. I managed the settlement process in all of the cases. Some cases were resolved by telephone, some by full in-person settlement conferences, and others by written submissions.

Full settlements were reached in all of the cases. No judgments or opinions were published.

Dozens of attorneys appeared in these cases. I have provided below those who

appeared most often before me.

Counsel for plaintiffs included:
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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. In re Application for Search Warrant, No. 3:20MJ00855(SALM), 2020 WL 6875048 (D. Conn. Nov. 23, 2020)

Counsel for the government:
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Office of the United States Attorney
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2. Johnson v. Saul, No. 3:19CV01222(SALM), 2020 WL 6562402 (D. Conn. Nov. 9, 2020)

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Counsel for defendant:
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3. S.C. Johnson & Son, Inc. v. Henkel Corp., No. 3:19CV00805(AVC), 2020 WL 5640528 (D. Conn. Sept. 22, 2020)

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4. Poole v. Saul, 462 F. Supp. 3d 137 (D. Conn. 2020)

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Counsel for defendant:
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5. McCarter & English LLP v. Jarrow Formulas, Inc., No. 3:19CV01124(MPS), 2020 WL 2528508 (D. Conn. Mar. 3, 2020)

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6. Antech Diagnostics, Inc. v. Veterinary Oncology & Hematology Ctr., LLC, No. 3:16CV00481(AWT), 2018 WL 2254543 (D. Conn. May 17, 2018)

Counsel for plaintiff:
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Counsel for defendants:
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7. State Farm Ins. Co. v. Organek, No. 3:16CV00474 (SALM), 2018 WL 624635 (D. Conn. Jan. 30, 2018)

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8. Walsh v. St. Denis, No. 3:17CV01032(AWT), 2017 WL 4163662 (D. Conn. Sept. 20, 2017)

Counsel for plaintiff:
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Defendant did not appear; default judgment was entered.

9. United States v. Pearlman, No. 3:17CR00027(MPS), 2017 WL 7732811 (D. Conn. July 7, 2017)

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10. United States v. Lillemoe, No. 3:15CR00025(JCH), 2015 WL 9694385 (D. Conn. May 28, 2015)

Counsel for the government:
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e. Provide a list of all cases in which certiorari was requested or granted.

None.

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

D'Agostin v. Fitness Int'l, LLC, No. 3:20CV01657(KAD)(SALM), 2021 WL 1040486 (D. Conn. Mar. 18, 2021). The District Judge sustained, in part, an objection to my discovery ruling. See D'Agostin v. Fitness Int'l, LLC, No. 3:20CV01657(KAD), 2021 WL 1923786 (D. Conn. May 12, 2021).

Demars v. Berryhill, No. 3:18CV00432(SALM), 2019 WL 1434599 (D. Conn. Mar. 31, 2019), rev'd and remanded sub nom. Demars v. Comm'r of Soc. Sec., 841 F. App'x 258 (2d Cir. 2021). The Court of Appeals disagreed with my conclusion that substantial evidence supported the Commissioner of Social Security's decision denying benefits to plaintiff, and remanded for an award of benefits.

Magana v. Wells Fargo Bank, N.A., No. 3:17CV02176(JCH)(SALM), 2018 WL

3055787 (D. Conn. Mar. 2, 2018). My recommended ruling was adopted in large part. The District Judge agreed that the Complaint should be dismissed for failure to state a claim, but disagreed that this failure amounted to a lack of subject matter jurisdiction. See Magana v. Wells Fargo Bank, N.A., No. 3:17CV02176(JCH), 2018 WL 3055782 (D. Conn. May 4, 2018) ("The court views the issues discussed in Section III.A, not as questions of subject matter jurisdiction, but as grounds for dismissal for failure to state a claim upon which relief can be granted. Whether these shortcomings are construed as a failure to state a claim or a failure of subject matter jurisdiction, however, both approaches require dismissal in this case." (citations and quotation marks omitted)).

Hardaway v. City of Hartford, No. 3:16CV00115(JCH)(SALM), 2016 WL 10935186 (D. Conn. Aug. 1, 2016), subsequently aff'd in part sub nom. Hardaway v. Hartford Pub. Works Dep't, 708 F. App'x 45 (2d Cir. 2018). The District Court adopted my recommended ruling dismissing the complaint in this case. Plaintiff appealed, and the Second Circuit affirmed in large part, but reversed on the following issue: "[T]he district court erroneously dismissed Hardaway's third amended complaint by holding that the exhaustion requirement is a pleading requirement incumbent on a Title VII plaintiff, rather than an affirmative defense." Hardaway v. Hartford Pub. Works Dep't, 879 F.3d 486, 491 (2d Cir. 2018).

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 enter hundreds of routine orders and decisions on relatively minor issues every month in the form of docket orders. Those orders are not published. All of my substantial written rulings are marked upon upload to ECF as available for publication, but Westlaw does not publish all of them. Approximately 70 percent of my substantial written rulings are published on Westlaw. Those rulings that are not published on Westlaw remain accessible through the Court website and on the ECF system. If I issue a ruling that I believe could provide useful precedent, and it is not published by Westlaw, I send the opinion to Westlaw for publication.

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

None.

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

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.

    As a judge I follow the guidance of the Code of Judicial Conduct, and precedential decisions, in determining whether I should recuse myself from a matter. The central inquiry is whether my impartiality in a given matter might reasonably be questioned, or whether my involvement in the case would undermine public confidence in the integrity and impartiality of the Court. I have provided a recusal list to the Clerk's Office, and to my chambers staff, identifying a small group of attorneys who should not appear before me because I have, or in the past had, close personal relationships with them. Those cases are not assigned or referred to me.

    I have recused myself consistently in cases affecting the interests of any business, entity, or organization in which an immediate family member has a significant interest. To my knowledge, this issue has arisen only in connection with the law firm in which my father was formerly a partner. While he was a partner there, and for one year after his departure from the firm, I recused myself from all cases in which the firm appeared.

    I do not hear any matters in which I had any involvement as an attorney. Further, if I have personal, non-public knowledge of a case as a result of my service in the Office of the Federal Defender, even if I did not have an appearance in the matter, I recuse myself from the matter.

    Specific matters in which I have recused myself, or have been asked to recuse myself:

    In an unknown civil case (name and number unknown), a self-represented litigant

filed a motion for my recusal. The basis for the motion to recuse was that the litigant had been acquainted with my father, Dwight Merriam, who is an attorney. The litigant represented that his relationship with Dwight was a good one, and it did not appear to be a close or recent relationship. I researched case law and reviewed the Code of Conduct. I determined that mere acquaintance by a party with a relative of mine was not a basis for recusal, so I denied the request. I entered an order explaining my decision, and the litigant did not object further.

In Mpala v. Funaro, No. 3:13CV00252(SALM), a self-represented plaintiff filed two motions for my recusal on the basis that I was (a) an alumna of Yale Law School, which was not a defendant in the matter but where some of the events underlying the Complaint had occurred; (b) an "associate" of a potential witness in the case; and (c) a donor to Yale Law School. I conducted a factual inquiry, and then a legal inquiry. I determined that I did not have any relationship with the potential witness, who was an employee of the Law School. I do not donate to the Law School, and I am not involved in alumni activities. I then researched the question, and found case law indicating that mere association with a school does not give rise to a conflict of interest. I determined that the asserted bases for recusal were without merit, and my continued involvement in the case would not cause a reasonable person to question my impartiality, and I denied the request.

In Zaky v. United States, No. 3:15CV00600(AVC), I requested reassignment of the case to another Magistrate Judge, sua sponte. Mr. Zaky filed a petition for a writ of habeas corpus. His motion to proceed in forma pauperis was referred to me by the presiding judge. I briefly represented Mr. Zaky in the criminal matter underlying the habeas petition. Because I had previously represented Mr. Zaky in the underlying matter, I determined, without additional research, that the case presented an actual conflict. I immediately notified the presiding judge of the conflict, and the referral was vacated.

In McKinney v. New Haven Police Dept., No. 3:17CV01663(JCH), the plaintiff filed a motion to recuse me from considering a defense motion to enforce the putative settlement agreement reached at a settlement conference I had facilitated. Plaintiff asserted that my direct involvement in the settlement conference and his belief that I might be biased against him based on my conduct of that conference warranted recusal. I researched case law and reviewed the Code of Conduct. I found, based on case law, that recusal was not appropriate. I denied plaintiff's motion to recuse, and also denied defendants' motion to enforce the settlement agreement.

In Zaky v. Commissioner, No. 3:18CV01426(VAB), I requested reassignment of the case to another Magistrate Judge, sua sponte. Mr. Zaky filed an appeal of a denial of Social Security benefits. I am the Magistrate Judge assigned to handle preliminary matters in all new Social Security appeals, so the appeal was briefly assigned to me. Because I had previously represented Mr. Zaky, I determined, without additional research, that the case presented at least an apparent conflict. I

immediately notified the presiding judge of the conflict, and the referral was vacated.

In United States v. Braylovsky, No. 3:20CR00094(KAD), I requested reassignment of the case to another Magistrate Judge, sua sponte. I was presented with an ex parte investigatory application in this matter, and determined that the target of the investigation had graduated from high school with me. I reviewed the Code of Conduct. I determined that although I did not know the target well in high school, and had not had contact with him since 1989, the prior acquaintance could provide a reasonable basis to question my impartiality, and I recused myself from the matter.

In Milner v. Bristol, et al., No. 3:18CV01104(JAM), the self-represented plaintiff has filed several motions to recuse me and the trial judge from the case, to "appoint new judges" or to "remove presiding judges." Plaintiff contends that the judges assigned to his case (myself and a District Judge) are aware of violations of his Constitutional rights and have taken no action to address them. Plaintiff further asserts that the assigned judges have refused to rule on his motions. The matter remains pending. I have conducted preliminary research into relevant case law and reviewed the Code of Conduct. None of the pending motions related to transfer or recusal have been referred to me as of this writing. The District Judge has not acted on any of the motions. I have not identified any reason that would require my sua sponte recusal at this time.

In a sealed case (name and number unknown), I requested reassignment of the case to another Magistrate Judge, sua sponte. In or about 2019 I was presented with an ex parte investigatory application, possibly a search warrant, in an investigation into drug trafficking. The brother of a close friend was mentioned as a known drug customer of the target(s) of the investigation. I reviewed the Code of Conduct, and I determined that my personal relationship with a person connected to the investigation could create a conflict, and I recused myself from the matter.

In a sealed case (case name and number unknown), I requested reassignment of the case to another Magistrate Judge, sua sponte. In or about 2017 I was presented with an ex parte investigatory application, possibly a search warrant, in an investigation into a white collar criminal offense. Two of the targets of the investigation were personally known to me, having been social friends in the 1990s and early 2000s. I reviewed the Code of Conduct, and I determined that my past personal relationships with parties connected to the investigation could create a conflict, and I recused myself from the matter.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or

appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

None.

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

Connecticut Political Director, Chris Dodd for President (January 2007 – June 2007)
I coordinated campaign efforts in Connecticut early in the campaign.

Campaign Manager, Chris Murphy for Congress, CT-05 (January 2006 – January 2007)
I managed all aspects of the campaign.

Treasurer, Mantilla 2006, Secretary of the State of Connecticut (July 2005 – March 2007)
I served as the Treasurer on a volunteer basis, processing contributions and expenditures and filing necessary reports.

Campaign Volunteer, Harwinton Democrats (Fall 2005)
I assisted candidates for Board of Selectmen with campaign strategy.

Member, Platform Committee, Democratic National Convention (1996)
I participated in the discussion and approval of the platform presented at the Democratic National Convention.

Campaign Manager, Mary Jane Gryniuk for Mayor, Torrington, Connecticut (September 1995 – November 1995)
I managed all aspects of the campaign for approximately eight weeks.

Field Coordinator/Deputy Field Director, Bill Curry for Governor, Connecticut (January 1994 – November 1994)
I coordinated field activities in various regions of the state, and later helped to train, coordinate, and direct field activities statewide.

Field Coordinator, Second Congressional District, Bruce Morrison for Governor, Connecticut (June 1990 – September 1990)
I coordinated field activities in the Second Congressional District.

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

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

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

I served as a law clerk to two judges.

The Honorable Alvin W. Thompson
United States District Court for the District of Connecticut
September 2000 – September 2002

The Honorable Thomas J. Meskill
United States Court of Appeals for the Second Circuit
September 2002 – August 2003

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

I 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;

August 2003 – December 2005
Cowdery, Ecker & Murphy, LLC
280 Trumbull Street, 22nd Floor
Hartford, Connecticut, 06103
Associate

July 2007 – April 2015
Office of the Federal Defender
265 Church Street
New Haven, Connecticut, 06510
Assistant Federal Defender

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

I did not serve as a mediator or arbitrator prior to becoming a Magistrate Judge. As a Magistrate Judge, I regularly serve as a settlement judge and mediator. I have served in a settlement role in hundreds of cases.

b. Describe:

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

I have generally practiced in federal court, with only minimal experience in the state court system.

From 2003 to 2005, I was an associate in a small private practice. In that role I worked on a variety of civil and criminal matters. All of the criminal matters were in federal court, as were the majority of the civil matters. I worked on all aspects of these matters including discovery, client management, drafting of court submissions, and court appearances.

From 2007 to 2015, I was an Assistant Federal Defender. In that role, I represented defendants, targets, and witnesses in connection with federal criminal proceedings. I handled matters from initial appearance through guilty plea or trial, appeal, and post-conviction proceedings. I often coordinated defense efforts in multi-defendant cases. I appeared in court almost daily.

From 2015 to the present, I have served as a United States Magistrate Judge.

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

From 2003 to 2005, when I was in private practice, my clients included businesses and individuals, some of whom were plaintiffs and some of whom were defendants. I did not have any particular specialty.

From 2007 to 2015, when I was an Assistant Federal Defender, my clients were people who were financially unable to retain counsel able to take on their cases. Some of those clients were completely indigent, others were simply unable to afford the cost of retaining counsel in a complex federal criminal case. Cases were randomly assigned to me, and I had no particular area of specialty, though I did become very familiar with the Sentencing Guidelines, and often advised CJA and private counsel on Guidelines issues. I also provided training to other defense counsel on Second Circuit filing, DNA evidence, and cell site evidence.

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

During the time I was in private practice (August 2003 – December 2005), my practice was approximately 50 percent civil and 50 percent criminal, with

approximately 20 percent in state court and 80 percent in federal court. During the time I was a federal defender (July 2007 – April 2015), nearly 100 percent of my work was in criminal proceedings, with minimal work in civil proceedings, and 100 percent of my work was in federal court. I appeared in court occasionally when I worked in private practice; I appeared in court almost daily when I was a federal defender.

i. Indicate the percentage of your practice in:
   1. federal courts: 99%
   2. state courts of record: 1%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 5%
   2. criminal proceedings: 95%

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 two cases to final verdict after trial. In both I was associate counsel.

i. What percentage of these trials were:
   1. jury: 100%
   2. non-jury: 0%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

My practice before the Supreme Court of the United States is limited to a 2011 Petition for a Writ of Certiorari, on the issue of retroactivity of the Fair Sentencing Act, in the matter of Acoff v. United States of America, No. 10-10444. The petition was denied. Copy supplied.

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

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. United States v. Hamlett, No. 3:14CR00049(AWT) (D. Conn.)

I represented Mr. Hamlett from the time of his arrest through guilty plea, after which I withdrew because I was leaving the Office of Federal Defender, and my co-counsel took over the matter. Mr. Hamlett was charged with serving as the "getaway driver" for his father in the course of a bank robbery. He was initially detained by the Magistrate Judge, but later released after my appeal of the detention order to the District Judge. Mr. Hamlett indicated that he wished to go to trial, and we selected a jury. The day after jury selection Mr. Hamlett pled guilty to one count of aiding and abetting bank robbery. Mr. Hamlett was eventually sentenced to time served and three years of supervised release, due in large part to his successful compliance with the terms of pretrial release.

Representation: March 2014 – December 2014

Court and Judge: United States District Court, District of Connecticut, Hon. Alvin W. Thompson, U.S.D.J.

Co-counsel:
Paul F. Thomas
Duffy Law, LLC
129 Church Street, Suite 310
New Haven, CT 06510
(203) 946-2000

Deirdre A. Murray
Office of the Federal Public Defender
409-A Broad Street
New Bern, NC 28560
(252) 633-2970

Opposing counsel:
Douglas P. Morabito
Office of the United States Attorney
157 Church Street, 23rd Floor
New Haven, CT 06510
(203) 821-3700

Sarala Vidya Nagala
Office of the United States Attorney

157 Church Street, 24th floor
New Haven, CT 06510
(203) 821-3737

2. United States v. Thomas, No. 3:13CR00004(JBA) (D. Conn.)

I was co-counsel for Mr. Thomas, a Mashantucket tribal leader who was accused of theft of tribal funds. Mr. Thomas was alleged to have used a tribal credit card for approximately $100,000 in personal expenses, without reimbursing the tribe. Mr. Thomas was convicted after trial and sentenced principally to 18 months of imprisonment. The judgment was upheld on appeal. I was not involved in the appeal.

Representation: July 2013 – March 2015

Court and Judge: United States District Court, District of Connecticut, Hon. Janet B. Arterton, U.S.D.J.

Co-counsel:
Paul F. Thomas
Duffy Law, LLC
129 Church Street, Suite 310
New Haven, CT 06510
(203) 946-2000

Opposing counsel:
Christopher M. Mattei
Koskoff, Koskoff & Bieder, P.C.
350 Fairfield Avenue
Bridgeport, CT 06604
(203) 336-4421

Douglas P. Morabito
Office of the United States Attorney
157 Church Street, 23rd Floor
New Haven, CT 06510
(203) 821-3700

3. United States v. Rose, No. 3:12MJ00286(HBF) (D. Conn.)

Ms. Rose was arrested on a criminal complaint and charged with bank fraud, for allegedly writing checks to herself without authorization from her employer's account. Her offense was rooted in her addiction. After approximately 21 months in treatment, both inpatient and outpatient, Ms. Rose entered into a rare pretrial diversion agreement. She successfully completed the pretrial diversion period and more than four years after her arrest, the charges against her were officially dismissed.

Representation: December 2012 – April 2015

Court and Judge: United States District Court, District of Connecticut, Hon. Holly B. Fitzsimmons, U.S.M.J.

Opposing counsel:
Raymond F. Miller
Office of the United States Attorney
157 Church Street, 25th floor
New Haven, CT 06510
(203) 821-3700

4. United States v. Green, No. 3:12CR00193(VLB) (D. Conn.)

I represented Mr. Green as counsel, and later as stand-by counsel, in connection with his prosecution for tax fraud. Mr. Green filed a tax return that sought a refund of over $600,000, based on a theory that equated debt owed with taxes withheld. The IRS issued the refund, and then shortly thereafter demanded repayment. When repayment was not made, Mr. Green was indicted. His case was challenging because of his belief that the Court lacked jurisdiction over him. He repeatedly sought to proceed pro se, and I filed appropriate motions on his behalf to permit him to do so, with me serving as stand-by counsel. After numerous hearings and extensive briefing, his motion was granted. He proceeded to trial with my assistance as stand-by counsel. Mr. Green was convicted and sentenced principally to 51 months of imprisonment. He appealed, arguing through counsel, inter alia, that the Court should have denied his motion to proceed pro se. The Second Circuit affirmed. I was not involved in the appeal.

Representation: September 2012 – February 2014

Court and Judge: United States District Court, District of Connecticut, Hon. Vanessa L. Bryant, U.S.D.J.

Co-counsel:
Kelly M. Barrett
Office of the Federal Public Defender
265 Church Street, Suite 702
New Haven, CT 06510
(203) 498-4200

Opposing counsel:
Susan Wines
Office of the United States Attorney
157 Church Street, 23rd Floor
New Haven, CT 06510
(203) 821-3700

Sean Beaty
Office of the United States Attorney
157 Church Street, 24th Floor
New Haven, CT 06510
(202) 616-2717

5. United States v. Blackwelder, No. 3:12CR00061(AWT) (D. Conn.)

I represented Mr. Blackwelder, who was charged with nine counts of fraud and money laundering. He was accused of persuading friends and acquaintances to invest money with him on false pretenses, and then lying to cover up losses. He was a prominent member of his church community and the case therefore attracted a great deal of attention. Mr. Blackwelder pled guilty to two counts and was sentenced principally to 46 months of imprisonment. I filed an appeal of the sentence, contending, inter alia, that the sentencing court had improperly applied the sentencing enhancement for ten or more victims and had failed to adequately explain the sentence imposed. The government agreed to seek remand for further factfinding on the applicability of the ten or more victims enhancement, and for further consideration and explanation of the reasons for the sentence imposed. The case was remanded. On remand, the parties agreed to jointly recommend a sentence of 37 months, which was imposed.

Representation: March 2012 – December 2014

Courts and Judges: United States District Court, District of Connecticut, Hon. Ellen Bree Burns, U.S.D.J. (deceased); United States Court of Appeals, Second Circuit, Hon. Pierre N. Leval, Hon. Chester J. Straub, Hon. Reena Raggi

Opposing counsel:
Jonathan N. Francis
Office of the United States Attorney
157 Church Street, 25th Floor
New Haven, CT 06510
(203) 821-3700

6. United States v. Morin, No. 3:10CR00150(AWT), No. 3:12CR00051(AWT) (D. Conn.)

I represented Mr. Morin through both of his federal prosecutions for obtaining controlled substances by misrepresentation, and in connection with numerous pre-trial and supervised release violation proceedings. Mr. Morin was a Marine Corps veteran with a long history of addiction to pain medication. He had been arrested dozens of times on state charges before being charged federally. He relapsed and violated the conditions of his pre-trial release repeatedly. He pled guilty and was sentenced to one year in prison in the 2010 case. He was released in May 2011 and promptly reoffended. I learned that Mr. Morin had been prescribed opiate pain medication in the Bureau of Prisons, and released with a two-week supply of that medication, so that he continued to be an active addict

even upon release from prison. In October 2011 he was arrested on new federal charges related to obtaining opioid pain medications, this time including identity fraud. He pled guilty and was sentenced to a total of three years in prison.

Representation: February 2010 – March 2015

Court and Judge: United States District Court, District of Connecticut, Hon. Alvin W. Thompson, U.S.D.J.

Opposing counsel:
David J. Sheldon
Office of the United States Attorney
157 Church Street, 23rd Floor
New Haven, CT 06510
(203) 821-3700

7. United States v. Luis Soto, No. 3:09CR00200(AWT), No. 3:11CR00156(AWT) (D. Conn.)

I was co-counsel representing Mr. Soto, who was charged with three bank robberies; we went to trial on one count. I worked closely with Mr. Soto in preparing for trial. The government relied heavily on evidence relating to the location of the defendant's cell phone in relation to the site of the robbery and the locations of his alleged co-conspirators' cell phones on the day of the robbery. Before trial, we moved in limine to exclude this evidence on the grounds that it required expert testimony. The Court granted our motion. At trial, I successfully cross-examined the government's expert over the course of several hours. The expert conceded that he could not establish the defendant's whereabouts at the time of the robbery with certainty. Mr. Soto was convicted. He pled guilty to the remaining counts, and was sentenced principally to 15 years in prison.

Representation: December 2009 – March 2015

Court and Judge: United States District Court, District of Connecticut, Hon. Alvin W. Thompson, U.S.D.J.

Co-counsel:
Terence S. Ward
Federal Public Defender
10 Columbus Boulevard, 6th Floor
Hartford, CT 06106
(860) 493-6260

Opposing counsel:
David E. Novick
Office of the United States Attorney
157 Church Street, 25th Floor

New Haven, CT 06510
(203) 821-3700

Hon. Michael J. Gustafson
Connecticut Superior Court, GA23
121 Elm Street
New Haven, CT 06510
(203) 503-6800

8. United States v. Acoff, No. 3:09CR00073(SRU), No. 3:11CR00179(SRU), (D. Conn.), rev'd, 634 F.3d 200 (2d Cir. 2011), cert. denied, 564 U.S. 1013 (2011)

I represented the defendant, Mr. Acoff, beginning after his original guilty plea and sentencing. The Court had sentenced Mr. Acoff to a term of imprisonment of 18 months – well below the five-year mandatory minimum that applied at the time – concluding that the disparity between crack and powder cocaine sentences lacked foundation and the mandatory minimum sentence was unreasonable. The government appealed the sentence. While the appeal was pending, the Fair Sentencing Act of 2010 ("FSA") was enacted. Under the FSA, Mr. Acoff would not be subject to a mandatory minimum. I argued on appeal that the FSA should apply retroactively and the sentence should be affirmed. The Second Circuit reversed and remanded for resentencing in accordance with the mandatory minimum, but Judge Calabresi and Judge Lynch each wrote favorable concurring opinions. I filed a petition for a writ of certiorari to the Supreme Court, which was denied. In 2011, while the appeal was pending, Mr. Acoff was charged with possession of a firearm by a convicted felon; he pled guilty to that charge, which was consolidated with the 2009 case for sentencing purposes on remand. Mr. Acoff was sentenced to 60 months of imprisonment on the 2009 case and 42 months of imprisonment on the 2011 case, to be served concurrently.

Representation: April 2011 – April 2015

Courts and Judges: United States District Court, District of Connecticut, Hon. Stefan R. Underhill, U.S.D.J.; United States Court of Appeals, Second Circuit, Hon. Guido Calabresi, Hon. Gerard E. Lynch, Hon. J. Garvan Murtha

Co-counsel:
Thomas G. Dennis (retired)
Federal Public Defender
10 Columbus Boulevard, 6th Floor
Hartford, CT 06106-1976
(860) 493-6260

Successor counsel:
Charles F. Willson
Office of the Federal Public Defender
10 Columbus Boulevard, 6th Floor

Hartford, CT 06106-1976
(860) 493-6260

Opposing counsel:
Brian P. Leaming
Office of the United States Attorney
450 Main Street, Room 328
Hartford, CT 06103
(860) 947-1101

9. United States v. Haider, No. 3:09CR00017(JCH) (D. Conn.)

I represented Ms. Haider, who was charged with defrauding the government by exchanging SNAP "food stamp" benefits for cash and non-approved items. Ms. Haider and her co-defendant husband ran a small convenience store. Ms. Haider pled guilty, but contested the loss amount argued by the government. I filed a lengthy sentencing memorandum, including more than 200 pages of exhibits, challenging the government's theory of loss and demonstrating that the government's theory lacked merit. In response, the government filed a supplemental sentencing memorandum, adopting a new theory of loss. The Court eventually found the loss amount to be about 30% of the government's initial claim. Ms. Haider was sentenced to a term of probation.

Representation: December 2007 – July 2014

Court and Judge: United States District Court, District of Connecticut, Hon. Janet C. Hall, U.S.D.J.

Co-counsel – counsel for co-defendant husband:
Justin T. Smith
Office of the Public Defender, GA23
20 Franklin Square
New Britain, CT 06051
(860) 515-5370

Opposing counsel:
Henry K. Kopel
Office of the United States Attorney
157 Church Street, 23rd Floor
New Haven, CT 06510
(203) 821-3700

10. United States v. Tang, No. 3:08CR00030(JBA) (D. Conn.)

I represented Mr. Tang from the time of his arrest through his plea of guilty. Mr. Tang was charged with illegal possession and transport of firearms and explosives. He was simultaneously facing additional federal weapons and explosives charges in the Eastern

District of New York, and New York state charges related to an explosive device that seriously injured a man. Working closely with Mr. Tang's New York counsel, I negotiated a binding plea agreement that included a stipulated sentence, for all matters, of 20 years of imprisonment. Mr. Tang requested new counsel in advance of his sentencing, and I moved to withdraw. He was sentenced to 20 years in prison, and his appeal was dismissed.

Representation: January 2008 – December 2008

Court and Judge: United States District Court, District of Connecticut, Hon. Janet Bond Arterton, U.S.D.J.

Co-counsel:
George Farkas
32 Court Street, Suite 408
Brooklyn, NY 11201
(718) 541-8310

Terence S. Ward
Federal Public Defender
10 Columbus Boulevard, 6th Floor
Hartford, CT 06106
(860) 493-6260

Opposing counsel:
Henry K. Kopel
Office of the United States Attorney
157 Church Street, 23rd Floor
New Haven, CT 06510
(203) 821-3700

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.)

Significant Legal Activities:
Since my appointment as a Magistrate Judge, I have worked actively with others in the Court community to review and update court rules and practices, including the processing of Social Security appeals; management of prisoner litigation; and the filing and docketing of criminal investigatory materials.

Lobbying Activities:

In 1995, I assisted a variety of lobbyists with their work at the Connecticut State Capitol. The lobbyists I assisted were:
Barry Williams: I assisted him with all aspects of his lobbying work. His clients included the organization representing professional counselors and several labor unions, including Connecticut Employees Union Independent/SEIU Local 511.
Connecticut AFL-CIO: I assisted the government relations staff with lobbying activities.
Jim Leahy: I performed administrative work and occasionally assisted him in his lobbying work, mostly for the association representing physical therapists.

In 1996 and 1997, I served as the primary lobbyist for Connecticut Employees Union Independent/SEIU Local 511 at the State Capitol. In that role I met with legislators about legislation of interest to the union's membership, organized members to speak with legislators and testify at public hearings, and testified at public hearings myself.

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

    I have never taught a course. I have visited on a casual basis with classes at every level from elementary school through law school.

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

    None.

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

    No.

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

    See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in

detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

I do not expect that any particular persons, parties, categories of litigation, and financial arrangements are likely to present potential conflicts-of-interest when I first assume the position to which I have been nominated. I have not confronted many actual or potential conflicts of interest in my six years as a Magistrate Judge. The persons and entities that are most likely to present such a conflict are:

Former Clients.

My mother is or has recently been closely associated with the following entities: Connecticut Community Foundation; Pomperaug River Watershed Coalition; Naugatuck Community College Foundation; Jane Doe No More; and Westover School.

My stepfather is or has recently been closely associated with the following entities: Westside Medical Group; Connecticut Counseling Center; Audubon Bent of the River; Waterbury Symphony Orchestra.

My father is or has recently been closely associated with the following entities: Connecticut Legal Rights Project; Rivers Alliance of Connecticut. He is a solo practicing attorney, and occasionally serves as an expert witness.

I would recuse myself from any matter involving or directly affecting any immediate family member, or any organization in which an immediate family member has a significant role, including those listed above.

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

The Code of Conduct requires recusal from any cases in which close relatives are, or might become, parties, counsel, witnesses, or otherwise affected by the outcome of the proceeding.

If confirmed, I will continue to identify and address any actual or potential conflicts of interest in matters that come before me. I will review the Code of Conduct for United States Judges, and relevant case law, and determine in each

matter whether I should recuse myself. I will continue to recuse myself from any cases in which family members or others close to me are involved or could be affected, as well as any cases involving former clients.

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

As an Assistant Federal Defender, all of my clients were low-income or indigent and usually disadvantaged in other ways. I did not engage in pro bono representation for outside clients while employed with the Office of the Federal Defender. I did, however, do a great deal of work that was not directly related to my own caseload. One of my informal roles was to assist CJA Panel attorneys, who also represent indigent defendants, where doing so posed no conflict with Federal Defender cases. In particular, I regularly consulted with Panel attorneys on Sentencing Guidelines and criminal history issues. I also provided training for Panel attorneys on issues including cell site location evidence, DNA evidence, the Sentencing Guidelines, and Second Circuit appeals.

As a Magistrate Judge, I do not engage in pro bono legal work. However, I attempt to serve the community in other ways. I am an active member of the Public Outreach Committee. I volunteer on a regular basis to speak to school groups, to judge mock trials, to conduct naturalization ceremonies at remote locations, and to present at continuing education seminars.

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 sent a letter to Senator Blumenthal and Senator Murphy in early February 2021, indicating that I would be interested in being considered for the judicial vacancies in the District of Connecticut. I received information from Senator Blumenthal's office by email, including a questionnaire to be completed for review by an Advisory Committee appointed by the Senators. I submitted the questionnaire and requested materials to the Committee through a member of Senator Blumenthal's office. It is my understanding that the Advisory Committee recommended my nomination to the Senators, though I was never contacted directly by the Advisory

Committee. I was contacted by Senator Blumenthal's office to arrange an interview with Senator Blumenthal and Senator Murphy by Zoom, which occurred in March 2021. Senator Blumenthal's office then contacted me to inform me that my name had been provided to the White House Counsel's Office.

I received an email from the White House Counsel's Office on April 18, 2021, and was interviewed by attorneys from that Office on April 20, 2021. Since April 22, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 15, 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).

   Matthew Glen Olsen

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

   Assistant Attorney General for National Security, 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:
   Uber Technologies, Inc.
   1717 Rhode Island Ave., NW
   Washington, DC 20036

   Residence:
   Kensington, MD

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

   February 21, 1962
   Fargo, ND

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.

   Harvard Law School, 1985-1988
   J.D. – May 1988

   University of Virginia, 1980-1984
   B.A. – May 1984

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.

September 2018 – Present
Chief Trust & Security Officer
Uber Technologies, Inc.
1717 Rhode Island Ave., NW
Washington, DC 20036

January 2015 – Present
Lecturer
Harvard Law School
1563 Massachusetts Ave.
Cambridge, MA 01238

August 2017 – Present
Lecturer
University of Virginia
580 Massie Road
Charlottesville, VA 22903

April 2017 – Present
Director
Human Rights First
75 Broad St, 31st Floor
New York, NY 10004

August 2018 – Present
Director
Hart InterCivic, Inc.
15500 Wells Port Drive
Austin, TX 78728

December 2014 – January 2019
National Security Analyst
ABC News
77 West 66th Street
New York, NY 10023

September 2014 – September 2018
President
IronNet Cybersecurity, Inc.
8135 Maple Lawn Blvd.
Fulton, MD 20759

October 2017 – September 2018
Part-time consultant
WestExec Advisors
875 15th Street, N.W.
Washington, DC 2000

December 2017 – September 2018
Part-time consultant
Fairfax National Security Solutions
3701 North Harrison Street
Arlington, VA 22207

January 2015 – May 2017
Part-time consultant
IBM
11107 Sunset Hills Road
Reston, VA 20190

January 2017 – July 2017
Part-time consultant
Booz Allen Hamilton
8283 Greensboro Drive
McLean, VA 22102

September 2011 – September 2014
Director
National Counterterrorism Center
1500 McLean Drive
McLean, VA 22102

July 2010 – August 2011
General Counsel
National Security Agency
9800 Savage Road
Fort Meade, MD 20755

September 2006 – July 2010
Associate Deputy Attorney General (March 2010 – July 2010)
Special Counselor to the Attorney General (March 2009 – March 2010)
Acting Assistant Attorney General for National Security (January 2009 – March 2009)
Deputy Assistant Attorney General for National Security (September 2006 – January 2009)
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

December 1994 – September 2006
Assistant U.S. Attorney
United States Attorney's Office for the District of Columbia
555 4th Street, N.W.
Washington, D.C. 20001

May 2005 – September 2005
Special Counsel to the Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, D.C. 20535

January 1992 – December 1994
Trial Attorney
Civil Rights Division, Voting Section
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

January 1991 – September1992
Associate
Arnold & Porter
370 17th Street, 4400
Denver, CO 80202

September 1988 – August 1990
Law Clerk to the Honorable Norma Holloway Johnson
United States District Court for the District of Columbia
U.S. Courthouse
333 Constitution Avenue, N.W.
Washington D.C. 20001

Summer 1987
Law Clerk
Sierra Club Legal Defense Fund (now Earthjustice)
325 Fourth Street
Juneau, AK 99801

Summer 1986
Summer Associate
Schwalb, Donnenfeld, Bray, & Silbert
Washington, D.C. 20007

July 1984 – June 1985
News Aide
Washington Post
1301 K Street, N.W.
Washington DC 20071

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 have registered for selective service.

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

   Intelligence Community Seal Medallion, Office of the Director of National Intelligence (2016)

   Distinguished Senior National Intelligence Officer, President of the United States (2015)

   Defense Intelligence Director's Award, Department of Defense (2014)

   National Intelligence Distinguished Service Medal, Office of the Director of National Intelligence (2014)

   Seal Medal, Central Intelligence Agency (2014)

   Director's Distinguished Service Medal, National Security Agency (2011)

   Attorney General Distinguished Service Award, United States Department of Justice (2010)

Attorney General Award for Excellence in Furthering National Security, United States Department of Justice (2008)

Assistant Attorney General for National Security Award for Special Initiative, United States Department of Justice (2008)

John Marshall Award for Trial Advocacy, United States Department of Justice (2006)

Executive Office of United States Attorneys Directors Award, United States Department of Justice (2004 est.)

Special Achievement Awards, U.S. Attorney's Office for the District of Columbia, United States Department of Justice (multiple)

Phi Beta Kappa, University of Virginia (1984)

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

   District of Columbia Bar

10. **Bar and Court Admission**:

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

       District of Columbia, October 1991
       Active with no lapses

       Maryland, December 1988
       Inactive due to active membership in the District of Columbia

       Colorado, January 1991
       Withdrawn

    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 (1993)
       U.S. District Court, District of Columbia (July 2002) – inactive

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.

Foreign Policy for America, Advisory Board Member
2019 – Present

Center for a New American Security, Adjunct Senior Fellow
January 2017 – Present

National Security Institute Advisory Board Member
January 2017 – Present

Center for American Progress, Nonresident Senior Fellow
May 2019 – Present

Noblis Advisory Board Member
July 2015 – Present

Enlightenment Capital Advisory Board Member
January 2015 – Present

Wicker Federal Advisory Board Member
October 2020 – Present

American Inns of Court member
1994 – 2011 (est.)

University of Virginia Alumni Association
1984 – Present

North Chevy Chase Swim Club
2003– Present

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 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. Despite my searches, there may be other materials that I have been unable to identify, find, or remember. I have located the following:

*Homeland Security and the Counterterrorism Enterprise*, *in* BEYOND 9/11 HOMELAND SECURITY FOR THE TWENTY-FIRST CENTURY, (Chappell Lawson et al. ed., 2020).

*What the Intelligence Community Doesn't Know is Hurting the US*, THE CIPHER BRIEF, Sept. 21, 2020. Copy supplied.

*21 former security leaders: We oppose militarized DHS deployment in Portland,* USA TODAY, July 28, 2020. Copy supplied.

*Statement of Homeland and National Security Leaders*, JUST SECURITY, June 15, 2020. Copy supplied. https://www.justsecurity.org/70783/statement-of-homeland-and-national-security-leaders/

*Leading the Intelligence Community Will Be a Test for Ratcliffe*, JUST SECURITY. May 29, 2020. Copy supplied. https://www.justsecurity.org/70463/leading-the-intelligence-community-will-be-a-test-for-ratcliffe/

*Former Intelligence Chiefs: Trump's Removal of Experts is Deeply Destructive to our Nation's Safety,* THE WASHINGTON POST, Mar. 20, 2020. Copy supplied. https://www.washingtonpost.com/opinions/former-intelligence-chiefs-trumps-removals-of-experts-are-deeply-destructive-to-our-nations-safety/2020/03/20/b16e7e06-6ac3-11ea-abef-020f086a3fab_story.html

*What Emergency?* POLITICO, Mar. 13, 2019. Copy supplied. https://www.politico.com/magazine/story/2019/03/13/donald-trump-national-emergency-border-225781/

*The Census Bureau owes us some peace of mind*, THE WASHINGTON POST, July 25, 2018. Copy supplied. https://www.washingtonpost.com/opinions/the-census-is-a-prime-hacking-target-we-have-no-idea-if-its-safe/2018/07/25/76ba0d90-9039-11e8-b769-e3fff17f0689_story.html

*"Fixes" to Surveillance Law Could Severely Harm FBI National Security Investigations*, JUST SECURITY, Nov. 27, 2017. Copy supplied. https://www.justsecurity.org/47349/section-702-privacy-surveillance-law-severely-harm-fbi-national-security-investigations/

*The Electoral College is a National Security Threat*, POLITICO, Sept. 20, 2017. Copy supplied. https://www.politico.com/magazine/story/2017/09/20/electoral-college-threat-national-security-215626/

*Russia is still waging cyberwar against Western democracy. It's time to push back.* THE WASHINGTON POST, May 8, 2017. Copy supplied. https://www.washingtonpost.com/news/democracy-post/wp/2017/05/08/russia-is-still-waging-cyberwar-against-western-democracy-its-time-to-push-back/

*Why ISIS Supports Donald Trump*, TIME MAGAZINE, Sept. 7, 2016. Copy supplied. https://time.com/4480945/isis-donald-trump/

*Eric Holder's Defining Legacy on Terror*, POLITICO MAGAZINE, Apr. 28, 2015. Copy supplied. https://www.politico.com/magazine/story/2015/04/eric-holders-defining-legacy-on-terror-117446/

*Toward Consent and Cooperation: Reconsidering the Political Status of Indian Nations*, 22. HARV. C.R.-C.L. L. REV. 509-622 (1987). 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.

I have done my best to identify any reports, memoranda, or policy statements I have prepared or contributed to, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

*Trump Administration Considers Drastic Cut in Refugee Resettlement,* HUMAN RIGHTS FIRST (Aug. 2, 2018). Copy supplied. https://www.humanrightsfirst.org/press-release/trump-administration-considers-drastic-cut-refugee-resettlement

*The "Section 702" Surveillance Program*, CENTER FOR A NEW AMERICAN

SECURITY (Aug. 4, 2017). Copy supplied.
https://www.cnas.org/publications/reports/702

*Don't Panic*, THE BERKMAN CENTER FOR INTERNET & SOCIETY AT HARVARD UNIVERSITY (Feb. 1, 2016). Copy supplied.
https://cyber.harvard.edu/publications/2016/Cybersecurity/Dont_Panic

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. I have located the following:

Brief of Former National-Security Officials as Amici Curiae in Support of Plaintiffs-Appellees, *Arab American Civil Rights League v. Trump*, Case No. 19-2375 (6th Cir. July 31, 2020). Copy supplied.

Brief of Former U.S. Government Officials as Amici Curiae in Support of Plaintiffs-Appellees-Cross-Appellants, *El Paso County v. Trump*, Case No. 19-51144 (5th Cir. Apr. 3, 2020). Copy supplied.

Brief of Former U.S. Government Officials as Amici Curiae in Support of Plaintiffs-Appellees, *Sierra Club v. Trump*, Case Nos. 19-17501, 19-17502, 20-15044 (9th Cir. Feb. 20, 2020). Copy supplied.

Corrected Brief of Former National Security Officials as Amici Curiae in Support of Plaintiff-Appellees, *IRAP v. Trump*, Case No. 19-1990 (4th Cir. Nov. 29, 2019). Copy supplied.

Brief of Former U.S. Government Officials as Amici Curiae in Support of Plaintiff's Motion For Summary Judgment, *Washington v. Trump*, Case No. 19-cv-01502-BJR (W.D. Wash. Oct. 25, 2019). Copy supplied.

Brief of Former U.S. Government Officials as Amici Curiae in Support of Plaintiffs' Motion for Partial Summary Judgment, *State of California v. Trump*, Case No. 19-cv-00872-HSG (N.D. Cal. Oct. 21, 2019). Copy supplied.

Brief of Former National Security Officials as Amici Curiae in Support of Respondents, *U.S. Dep't of Homeland Sec. v. Regents of the Univ. of California*, Case Nos. 18-587, 18-588, 18-589 (U.S. Oct. 4, 2019).

Brief of Former U.S. Government Officials as Amici Curiae in Support of Plaintiffs-Appellees, *Sierra Club v. Trump*, Case Nos. 19-16102, 19-16300, 19-16299, 19-16336 (9th Cir. Aug. 22, 2019). Copy supplied.

Brief of Former U.S. Government Officials as Amici Curiae in Support of Plaintiffs' Motion for A Preliminary Injunction, *California v. Trump*, 4:19-cv-00872-HSG (N.D. Cal. May 13, 2019).

Brief of National Security Professionals as Amici Curiae in Support of Neither Party, *Heindel v. Andino*, 3:18-cv-01887-JMC (4th Cir. Apr. 15, 2019). Copy supplied.

Joint Declaration of Former United States Government Officials, 165 CONG. REC. S1405 (2019). Copy supplied.

*ZTE: A Threat to America's Small Businesses Before the H. Comm. on Small Bus.*, 115th Cong. (June 27, 2018). Transcript supplied.

Brief of Amici Curiae Former National Security Officials in Support of Respondents, *Trump v. Hawaii*, Case No. 17-965 (U.S. Mar. 30, 2018). Copy supplied.

Joint Declaration of Former National Security Officials, *Hawaii v. Trump*, Case No. 17-cv-00050-DKW-KSC (D. Haw. Oct. 15, 2017). Copy supplied.

Joint Declaration of Former National Security Officials, *Washington v. Trump*, Case No. 17-cv-00141-JLR (W.D. Wash. Oct. 11, 2017). Copy supplied.

Brief of Amici Curiae Former National Security Officials in Support of Respondents, *Trump v. Hawaii*, Case Nos. 16-1436, 16-1540 (U.S. Sept. 18, 2017). Copy supplied.

Brief of Former National Security Officials as Amici Curiae in Support of Plaintiffs-Appellees, *Hawaii v. Trump*, Case No. 17-16426 (9th Cir. Aug. 3, 2017). Copy supplied.

*Authorization for the Use of Military Force and Current Terrorist Threats Before the H. Comm. on Foreign Affs.*, 115th Cong. (July 25, 2017). Transcript supplied.

Brief of Amici Curiae Former National Security Officials in Opposition to The Motion for Clarification, *Trump v. Hawaii*, Case No. 16-1540 (16A1191) (U.S. July 18, 2017). Copy supplied.

*The FISA Amendments Act: Reauthorizing America's Vital National Security Authority and Protecting Privacy and Civil Liberties Before the S. Judiciary Comm.*, 115th Cong. (June 27, 2017). Transcript supplied.

Brief of Amici Curiae Former National Security Officials in Opposition to The Applications for A Stay, *Trump v. Hawaii*, Case Nos. 16-1436, 16A1191 (U.S. June 12, 2017). Copy supplied.

Brief of Former National Security Officials as Amici Curiae in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss, *ACRL v. Trump*, Case No. 17-cv-10310-VAR-SDD (E.D. Mich. May 19, 2017). Copy supplied.

Brief of Former National Security Officials as Amici Curiae in Support of Plaintiffs-Appellees, *Hawaii v. Trump*, Case No. 17-15589 (9th Cir. Apr. 20, 2017). Copy supplied.

Corrected Brief of Former National Security Officials as Amici Curiae in Support of Plaintiffs-Appellees and Against A Stay Pending Appeal, *IRAP v. Trump*, Case No. 17-1351 (4th Cir. Apr. 13, 2017). Copy supplied.

Brief of Former National Security Officials as Amici Curiae in Support of Plaintiffs, *Pars Equality Center v. Trump*, Case No. 17-cv-00255-TSC (D.D.C. Mar. 27, 2017). Copy supplied.

Motion of Former National Security Officials for Leave to File Amicus Curiae Brief in Support of Plaintiffs, *IRAP v. Trump*, Case No. 17-cv-00361-TDC (D. Md. Mar. 13, 2017). Copy supplied.

Brief of Former National Security Officials As Amici Curiae in Support of Petitioners, *Darweesh v. Trump*, Case No. 17-cv-00480-CBA (E.D.N.Y. Feb. 16, 2017). Copy supplied.

*Oversight and Reauthorization of the FISA Amendments Act: The Balance Between National Security, Privacy, and Civil Liberties Before the S. Judiciary Comm.*, 114th Cong. (May 10, 2016). Transcript supplied.

*The Spread of ISIS and Transnational Terrorism Before the S. Comm. on Foreign Relations*, 114th Cong. (Apr. 12, 2016). Transcript supplied.

*The Rise of Radicalism: Growing Terrorist Sanctuaries and the Threat to the US Homeland Before the H. Comm.'s on Foreign Affs. and Homeland Sec.*, 114th Cong. (Nov. 18, 2015). Transcript supplied.

*Worldwide Threats to the Homeland Before the H. Comm. on Homeland Sec.*, 113th Cong. (Sept. 17, 2014). Transcript supplied.

*Spillover: The Growing Threat of Terrorism and Sectarianism in the Middle East and Ukraine Update Before the S. Comm. on Foreign Relations*, 113th Cong. (Mar. 6, 2014). Transcript supplied.

*Worldwide Threats Before the H. Select Intelligence Comm.*, 113th Cong. (Feb. 4, 2014). Transcript supplied.

*Annual Open Hearing on Current and Projected National Security Threats to the United States Before the S. Select Comm. on Intelligence*, 113th Cong. (Jan. 29, 2014). Transcript supplied.

*The Homeland Threat Landscape and U.S. Response Before the S. Comm. on Homeland Sec. and Gov't Affs.* 113th Cong. (Nov. 14, 2013). Transcript supplied.

*Assessing Attacks on the Homeland: From Fort Hood to Boston Before the H. Comm. on Homeland Sec.*, 113th Cong. (Jul. 10, 2013). Transcript supplied.

*Current and Projected National Security Threats to the United States Before the S. Select Comm. on Intelligence*, 113th Cong. (Mar. 12, 2013). Transcript supplied.

*Homeland Threats and Agency Responses Before the S. Homeland Sec. and Gov't Affs. Comm.*, 112th Cong. (Sept. 19, 2012). Transcript supplied.

*Understanding the Homeland Threat Landscape Before the H. Homeland Sec. Comm.*, 112th Cong. (Jun. 25, 2012). Transcript supplied.

*Current and Projected National Security Threats to the United States Before the S. Select Comm. on Intelligence*, 112th Cong. (Jan. 31, 2012). Transcript supplied.

*Domestic Threat Intelligence Before the H. Permanent Select Comm. on Intelligence*, 112th Cong. (Oct. 6, 2011). Transcript supplied.

*Ten Years After 9/11: Are We Safer? Before the S. Homeland Sec. and Gov't Affs.* 112th Cong. (Sept. 13, 2011). Transcript supplied.

*Nomination of Matt Olsen to Be National Counterterrorism Center Director Before the S. Select Intelligence Comm.* 112th Cong. (Jul. 26, 2011). Transcript supplied.

Brief for Appellee, *United States v. Winstead*, Crim. No. 93-0331 (D.C. Sept. 21, 1995). Copy supplied.

Brief for Appellee, *United States v. Boney*, Cr. No. 89-381 (D.C. Apr. 14, 1995).

Brief for Appellee, *United States v. Williams*, Case No. 90-0098-03 (D.C. Mar. 16, 1995). Copy supplied.

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

delivered, including through a review of my personal files and searches of publicly available electronic databases. I frequently speak without notes or speak from a handwritten outline. I did not retain the majority of the handwritten outlines and have attached all that I could find. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

*The Changing Paradigm of Security and Privacy*, CYBERSCOOP, DC CYBERTALKS, Washington, D.C. (October 24, 2019). No transcripts, text, or notes available. Webcast: https://www.youtube.com/watch?v=AjXTV6tsxRo

*The New Operational Landscape: Managing Cyber and Physical Disruption*, 27TH WORLD GAS CONFERENCE, Washington, D.C. (June 28, 2018). Speaker profile supplied. No transcripts, text, or notes available.

*Off-the-Record Discussion with Matt Olsen*, PARTNERSHIP FOR A SECURE AMERICA, Washington, D.C. (May 21, 2018). No transcripts, text, or notes available.

*The Future of Cyber Terrorism*, RSA CONFERENCE 2018, San Francisco, CA (Apr. 18, 2018). Presentation supplied.

*Cyber-Defense of American Companies: Can "Operational" Partnerships Work?* RSA CONFERENCE 2018, San Francisco, CA (Apr. 18, 2018). Webcast: https://www.youtube.com/watch?v=R1kLHAIJ4Jc

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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 not run for public office.

I have held the following appointed positions:

Director, National Counterterrorism Center, 2011-2014.
Acting Assistant Attorney General for National Security, 2009

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 as an informal policy advisor for the Biden-Harris campaign in 2020 and was a member of the Transition team focusing on the Intelligence Community.

I also was an informal policy advisor for the Hillary Clinton presidential campaign in 2015-2016.

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 clerked for the Honorable Norma Holloway Johnson, U.S. District Court for the District of Columbia, 1988-1990.

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.

September 2018 – Present
Chief Trust & Security Officer
Uber Technologies, Inc.
1717 Rhode Island Ave., NW
Washington, DC 20036

January 2015 – Present
Lecturer
Harvard Law School
1563 Massachusetts Ave.
Cambridge, MA 01238

August 2017 – Present
Lecturer
University of Virginia
580 Massie Road
Charlottesville, VA 22903

April 2017 – Present
Director
Human Rights First
75 Broad St, 31st Floor
New York, NY 10004

August 2018 – Present
Director
Hart InterCivic, Inc.
15500 Wells Port Drive
Austin, TX 78728

December 2014 – January 2019
National Security Analyst
ABC News

77 West 66th Street
New York, NY 10023

September 2014 – September 2018
President
IronNet Cybersecurity, Inc.
8135 Maple Lawn Blvd.
Fulton, MD 20759

October 2017 – September 2018
Part-time consultant
WestExec Advisors
875 15th Street, N.W.
Washington, DC 2000

December 2017 – September 2018
Part-time consultant
Fairfax National Security Solutions
3701 North Harrison Street
Arlington, VA 22207

January 2015 – May 2017
Part-time consultant
IBM
11107 Sunset Hills Road
Reston, VA 20190

January 2017 – July 2017
Part-time consultant
Booz Allen Hamilton
8283 Greensboro Drive
McLean, VA 22102

September 2011 – September 2014
Director
National Counterterrorism Center
1500 McLean Drive
McLean, VA 22102

July 2010 – August 2011
General Counsel
National Security Agency

9800 Savage Road
Fort Meade, MD 20755

September 2006 – July 2010
Associate Deputy Attorney General (March 2010 – July 2010)
Special Counselor to the Attorney General (March 2009 – March 2010)
Acting Assistant Attorney General for National Security (January 2009 – March 2009)
Deputy Assistant Attorney General for National Security (September 2006 – January 2009)
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

December 1994 – September 2006
Assistant U.S. Attorney
United States' Attorney's Office for the District of Columbia
555 4th Street, N.W.
Washington, D.C. 20001

May 2005 – September 2005
Special Counsel to the Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, D.C. 20535

January 1992 – December 1994
Trial Attorney
Civil Rights Division, Voting Section
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

January 1991 – September1992
Associate
Arnold & Porter
370 17th Street, 4400
Denver, CO 80202

September 1988 – August 1990
Law Clerk to the Honorable Norma Holloway Johnson
United States District Court for the District of Columbia

U.S. Courthouse
333 Constitution Avenue, N.W.
Washington D.C. 20001

Summer 1987
Law Clerk
Sierra Club Legal Defense Fund (now Earthjustice)
325 Fourth Street
Juneau, AK 99801

Summer 1986
Summer Associate
McKenna & Cuneo
1900 K Street, NW
Washington, D.C. 20006

July 1984 – June 1985
News Aide
Washington Post
1301 K Street, N.W.
Washington DC 20071

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

I have not served as a mediator or arbitrator.

b. Describe:

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

From 2018 to the present, I have served as the Chief Trust and Security Officer at Uber Technologies, Inc. I oversee Uber's interaction globally with law enforcement and public safety organizations. In this context, I am directly responsible for legal issues relating to data sharing, cybersecurity, and privacy.

From 2014 to 2018, I was the president and co-founder of IronNet Cybersecurity, Inc. I did not serve as a lawyer but worked closely with outside counsel on legal issues relating to the company.

From 2011 to 2014, I was the director of the National Counterterrorism Center. Created by Congress in response to the attacks of September 11, NCTC is responsible for the integration and analysis of terrorism

information and strategic operational planning of counterterrorism activities. I did not serve as a lawyer in this role, but oversaw and interacted routinely with attorneys within the executive branch on policy and operational legal issues.

From 2010 to 2011, I served as the General Counsel for the National Security Agency. In this role, I advised the NSA Director and other senior leaders on legal issues facing the agency. These issues included surveillance and intelligence, cyber, law enforcement, ethics, employment, and procurement

In 2010, I was an Associate Deputy Attorney General and managed and coordinated national security and criminal cases across the Department of Justice.

From 2009 to 2010, I served as the head of the Guantanamo Review Task Force within the Attorney General's Office and led the review of detainees at Guantanamo in accordance with an executive order. In this capacity, I was responsible for establishing and supervising an interagency task force of national security professionals from across the federal government and for managing the process for compiling and analyzing the relevant intelligence information on each detainee. The interagency nature of the review was designed to promote collaboration and exchange of information and to ensure that all relevant perspectives—including military, intelligence, homeland security, diplomatic, and law enforcement—contributed to the detainee review process.

From 2006 to 2009, as a senior career official in the Department of Justice's National Security Division—a newly formed division in the Department—I managed intelligence and surveillance operations and the oversight of these activities. During the 2009 Presidential transition, I served as the acting Assistant Attorney General for National Security, overseeing the work of the entire division. As the Deputy Assistant Attorney General with responsibility for intelligence activities, I managed over 125 attorneys and support staff members dedicated to the Department's intelligence operations and oversight units. In addition, I was responsible for managing the Department of Justice's implementation of landmark changes in the Foreign Intelligence Surveillance Act and worked in close collaboration with the Intelligence Community to interpret new statutory provisions, address policy and technical challenges, and adopt new oversight mechanisms to ensure the effective and lawful use of the government's new surveillance authority.

From 2004 to 2005, I served on detail as Special Counsel to the FBI Director and handled an array of policy and operational matters in support of the FBI's national security and counterterrorism mission. I gained key

insights about the role, capabilities and structure of the FBI, as well as other intelligence agencies that comprise the government's combined counterterrorism community. In particular, I contributed to the reform of the FBI and—in response to a 2005 Presidential directive—the establishment of the FBI's National Security Branch, which combines the missions and resources of the Bureau's counterterrorism, counterintelligence, weapons of mass destruction, and intelligence elements.

From 1994 to 2005 (not including my detail to the FBI), I served as an Assistant United States Attorney in the District of Columbia. During this period, I supervised the investigation and prosecution of international and domestic terrorism, espionage, and export violation matters and managed a unit of senior attorneys dedicated to national security cases. I prosecuted a complex trial in the District of Columbia, culminating in the conviction of six defendants for RICO conspiracy, 27 murders, and other gang-related offenses. I conducted more than 35 jury trials involving a variety of offenses—including white collar, homicide, and narcotics cases—and argued several appeals in the D.C. Circuit and D.C. Court of Appeals. As a federal prosecutor, I learned first-hand the value of working as team with professionals in operational roles and of building coalitions with federal, state and local partners and gained a deep understanding of the laws and policies that define and limit the government's actions in a domestic law enforcement setting and that protect the civil liberties and privacy of American citizens.

From 1992 to 1994, I served in the Civil Rights Division, Voting Section, of the Department of Justice. In this position, I represented the United States in voting right litigation to ensure equal rights for minority voters. I successfully litigated cases under the Voting Rights Act challenging an election system in Virginia and the method of electing Alabama judges.

From 1991 to 1992, I was an associate at Arnold & Porter. I worked on securities litigation and environment matters.

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

After 1994 during my time in government, my client was the United States. My practice areas during this period are detailed above.

From 1992 to 1994 in private practice, I represented corporations on securities and environmental matters.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of

your appearances in court varied, describe such variance, providing dates.

From 2006 to 2011 as a national security lawyer at the Department of Justice and the National Security agency, the majority of my legal work did not directly involve litigation. I interacted on a regular basis with the Foreign Intelligence Surveillance Court during this period. From 1992 to 2006 as a federal prosecutor and trial attorney in the Civil Rights Division, my practice was primarily focused on litigation and trials, and I appeared in court frequently, often on a daily basis.

As a federal prosecutor in the U.S. Attorney's Office (1994 – 2006)

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

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 0%
   2. criminal proceedings: 100%

In the DOJ Civil Rights Division (1992 – 1994) and National Security Division (2006 – 2009)

i. Indicate the percentage of your practice in:
   1. federal courts: 100%
   2. state courts of record: 0%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 100%
   2. criminal proceedings: 0%

In private practice (1991 – 1992)

i. Indicate the percentage of your practice in:
   1. federal courts: 100%
   2. state courts of record: 0%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 100%
   2. criminal proceedings: 0%

iii. 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 more than 50 cases, most of which were jury trials. These were all criminal trials in district court and D.C. Superior Court when I served as an Assistant U.S. Attorney in Washington, D.C.

What percentage of these trials were:

1. jury: 70%
2. non-jury: 30%

d. 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 personally practiced before the Supreme Court of the United States. However, I signed amicus briefs authored on behalf of former government officials that were filed in the Supreme Court. Copies of these amicus briefs are included in Appendix 12.c, described above.

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.

From 1992 to 2010, I served in several career positions with the Department of Justice and handled a wide range of litigation. This work included representing the United States in classified proceedings before the Foreign Intelligence Surveillance Court; prosecuting numerous criminal cases as a federal prosecutor in D.C. District Court and D.C. Superior Court, including dozens of jury trials; arguing several appeals in both the D.C. Circuit and D.C. Court of Appeals; and litigating voting rights cases in several jurisdictions. Since 2010, I have served in supervisory legal and non-legal roles in the Intelligence Community and in the private sector.

I have listed my most significant litigated matters below.

1. In re: Directives to Yahoo! Inc. pursuant to Section 105B of the Foreign Intelligence Surveillance Act

   Case No. 08-01
   United States Foreign Intelligence Surveillance Court of Review (FISC-R)
   Chief Judge Selya, Senior Judges Winter and Arnold

   Case No. 105B(g): 07-01
   Foreign Intelligence Surveillance Court (FISC)
   Judge Reggie B. Walton
   2007-2008

   Co-counsel (At DOJ while on this case):
   Gregory G. Garre (Acting Solicitor General)
   Latham & Watkins
   555 11th St., NW #1000
   Washington, D.C. 20004
   202-637-2200

   Patrick Rowan (Acting Assistant Attorney General)
   McGuire Woods
   888 16th St., NW Suite 500
   Washington, D.C. 20006
   202-857-1700

   John Demers, National Security Division
   U.S. Department of Justice
   950 Pennsylvania Ave., NW
   Washington, D.C. 20530

   Andrew Tannenbaum (National Security Division)
   Barclays
   745 7th Ave.
   New York, NY 10019
   212-526-7000

   Jamil Jaffer (National Security Division)
   Antonin Scalia Law School
   George Mason University
   3301 Fairfax Dr.
   Arlington, VA 22201
   703-993-5620

   John Phillips (Office of Legal Counsel)
   Boeing Defense, Space & Security
   959 Long Bridge Dr.

Arlington, VA 22202
703-465-3500

Opposing counsel:
Mark J. Zwillinger
ZwillGen
1900 M Street, NW
Suite 250
Washington, D.C. 20036
202-296-3585

Representing the United States, I helped to lead the landmark litigation to compel an Internet provider to comply with specific directives the government issued under the Foreign Intelligence Surveillance Act. The directives required Yahoo! to assist the government in acquiring foreign intelligence information through the surveillance of targets reasonably believed to be located outside the United States. Yahoo! refused to comply with the directives. Both the FISC and FISC-R rejected Yahoo's arguments and upheld the government's authority to compel the company's assistance.

This was the second case to reach the FISC-R. In upholding the government's actions as constitutional, the court held: (1) that under the "special needs" exception to the Fourth Amendment's warrant requirement, a traditional warrant was not required for the collection of foreign intelligence; and (2) that the surveillance at issue met the reasonableness requirement of the Fourth Amendment, in light of the national security interests at issue and the statutory safeguards implemented by multiple branches of the government. This litigation set the foundation for further changes to FISA that have been instrumental in protecting U.S. national security.

2. United States v. Kevin Gray, et al.
Crim. No. 00-157 (RCL)
United States District Court for the District of Columbia
Judge Royce Lamberth
1999-2003

Co-counsel (At DOJ while on this case):
Timothy J. Heaphy (Assistant U.S. Attorney)
University Counsel
University of Virginia
Madison Hall
P.O. Box 400225
Charlottesville, VA 22904
434-924-3586

Amy Jeffress (Assistant U.S. Attorney)

Arnold & Porter
601 Massachusetts Ave., NW
Washington, D.C. 20001
202-942-5968

Opposing counsel:
Francis D. Carter (counsel for Kevin Gray)
Unable to locate

Barry Coburn (counsel for Rodney Moore)
Coburn & Greenbaum
1710 Rhode Island Ave., NW
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McCool Law
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Frederick J. Sullivan counsel for Roy Johnson)
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G. Godwin Oyewole (counsel for John Raynor)
8206 Riverside Rd.
Alexandria, VA 22308
202-347-2743

Patrick Donahue (counsel for Frank Howard)
Unable to locate

Fred Jones (counsel for Derrick Moore)
Unable to locate

Mitchell Baer (counsel for Kenneth Simmons)
717 D St., NW
Washington, D.C. 20004

202-347-1250

Michael Lasley (counsel for Timothy Handy)
1717 K St., NW
Washington, D.C. 20006
202-508-3690

John Carney (counsel for Calvin Smith)
Unable to locate

Sebastian Graber (counsel for Larry Wilkerson)
P.O. Box 189
Wolftown, VA 22748
540-226-9987

Veronice A. Holt (counsel for Lionel Nunn)
3003 Van Ness St., NW
W1111
Washington, D.C. 20008
202-244-2659

David Carey Woll, (counsel for James Alfred)
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Adgis O'Bryant (counsel for Timothy Handy)
Unable to locate

Frank Salvato (counsel for Ronald Alfred)
1203 Duke Street
Alexandria, VA 22314
703-548-5000

Manuel Retureta (counsel for Franklin Seegers)
Retureta & Wassem, PLLC
300 New Jersey Ave., NW
Suite 900
Washington, D.C. 20001
202-450-6119

Kenneth D. Auerbach (counsel for Deon Oliver)
8720 Georgia Ave.
Suite 704
Silver Spring, MD 20910
301-585-5566

Along with my co-counsel, Tim Heaphy and Amy Jeffress, I prosecuted a violent

drug trafficking organization in U.S. District Court in Washington, D.C. According to the indictment and the evidence at trial, during the late 1980s and throughout the 1990s, the organization's members conspired to conduct an ongoing drug distribution business in Washington, D.C. In the course of conducting that business, the co-conspirators committed a wide-ranging course of violence, including 31 murders. The defendants were charged with RICO conspiracy and multiple substantive offenses.

I was directly involved in overseeing the investigation of the case, which was handled by a joint FBI and Metropolitan Police task force, and included multiple wiretaps, search warrants, and the cooperation of several members of the organization. Along with Mr. Heaphy and Ms. Jeffress, I conducted the trial of six of the lead defendants, including the two ring leaders of the organization. The trial, before Judge Lamberth, lasted more than one year. All six defendants were convicted of multiple crimes and sentenced to lengthy prison terms. Dozens of other defendants charged in the investigation were also convicted.

3. United States v. Kirk Thomas and Ronald Sweeney
   Criminal No. F2875-98
   District of Columbia Superior Court
   Judge Ann O'Regan Keary

   Co-counsel (At DOJ while on this case):
   Tim Heaphy (Assistant U.S. Attorney)
   University Counsel
   University of Virginia
   Madison Hall
   P.O. Box 400225
   Charlottesville, VA 22904
   434-924-3586

   Opposing counsel:
   Mark Rochon
   Miller & Chevalier
   900 16th St., NW
   Washington, D.C. 20006

   James Beane
   Unable to locate

   I prosecuted this triple homicide case, along with co-counsel Tim Heaphy. The two defendants opened fire on a group of residents on Maryland Ave., N.E., just a few blocks from the U.S. Capitol, seeking revenge for a robbery, and killed three

people. One of the victims was an innocent bystander. The trial lasted over a month, and the jury found both defendants guilty of first-degree murder.

4. United States v. Brian Love
   Criminal No. F7003-97
   District of Columbia Superior Court
   Judge Frederick H. Weisberg

   Opposing counsel:
   Thomas T. Heslip
   419 7th St., NW
   Washington, D.C. 20004
   202-628-0293

   In this case, the victim Bryant Lawson was shot and paralyzed after he broke up a gunfight among friends in his neighborhood. Lawson acted heroically, taking a gun away from a younger friend and tossing it into dumpster. Later that day, three other men broke into Lawson's house assaulted him and shot him in the back as he ran, severing his spinal cord. Lawson was set to enter the Marine Corps in one week. The defendants were all convicted. Brian Love, the leader of the group of defendants, pled guilty and was sentenced to 20 years in prison.

5. United States v. James Winstead
   No. 94-3025, 74 F.3d 1313 (D.C. Cir. 1996)
   United States Court of Appeals
   Chief Judge Edwards, Judge Buckley, Judge Williams

   Opposing counsel:
   Lisa B. Wright (Federal public defender)
   Unable to locate

   I briefed and argued this corruption and fraud case before the D.C. Circuit. The appellant asserted that he was deprived of his constitutional right to a trial by jury, because the jury was improperly instructed as to the requisite elements of the crime, specifically the materiality element of false statement charges. The court agreed with the government that since the jury was instructed to consider the materiality of appellant's statements before convicting him of a separate offense, mail fraud, there was no constitutional violation.

6. White v. State of Alabama
   867 F. Supp. 1519 (M.D. Ala. 1994)
   The Honorable Myron H. Thompson

Sr. Judge, Middle District of Alabama

Co-counsel:
Deval L. Patrick (Assistant Attorney General, Civil Rights Division, Department of Justice)
Bain Capital
200 Clarendon St.
Boston, MA 02116
617-516-2000

Steven H. Rosenbaum (Civil Rights Division, Department of Justice)
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530
202-514-3847

James P. Turner (Civil Rights Division, Department of Justice)
Retired

Mark A. Posner (Civil Rights Division, Department of Justice)
Unable to locate

Kenneth E. Vines (Assistant U.S. Attorney, Montgomery, AL)
Office of the U.S. Attorney
131 Clayton Street
Montgomery, Al 36104
334-223-7280

Charles Redding Pitt (Assistant U.S. Attorney, Montgomery, AL)
Deceased

Terry G. Davis, Terry G. Davis, P.C. (counsel for Hoover White)
4183 Carmichael Rd.
Montgomery, AL 36106
334-270-0592

Solomon S. Seay, Jr. (counsel for Hoover White)
Deceased

Samuel H. Heldman (counsel for Hoover White)
201- South Washington Ave.
Mobile, AL 36602
251-433-8100

Joe R. Whatley, Jr. (counsel for Hoover White)
Whatley Kallas

2001 Park Place North
1000 Park Place Tower
Birmingham, AL 35203
205-488-1226

John A. Dillard (counsel for Ralph E. Bradford, Sr.)
Unable to locate

Glenn Moody (counsel for Ralph E. Bradford, Sr.)
Unable to locate

Algert S. Agricola, Jr. (counsel for Ralph E. Bradford, Sr.)
Agricola Law
127 S. 8th St.
Opelika, AL 36801
343-610-1064

James McGowin Williamson (counsel for Chirstopher Boehm)
P.O. Box 467
Greenville, AL 36037
334-382-2635

Albert L. Jordan (counsel for Johnny Curry, Jack Williams, Mark G. Montiel)
Wallace, Jordan, Ratliff & Brandt, LLC
P.O. Box 530910
Birmingham, AL 35253
205-874-0305

Opposing counsel:
Robert Marc Givhan (counsel for the State of Alabama)
Deceased

Donald V. Watkins (counsel for the State of Alabama)
Unable to locate

Jonathan C. Rose (counsel for the State of Alabama)
Retired

I represented the United States in this Voting Rights Act lawsuit challenging the at-large method of electing appellate judges in Alabama, the first voting rights case against the Alabama's appellate election system.

In approving a proposed settlement of the case, Judge Myron Thompson concluded that the current appellate judicial election system violated Section 2 of the Voting Rights Act. This conclusion was based on the interaction of the at-

large election, winner-take-all system, which included a majority-vote requirement in primaries and numbered posts, with a pattern of racially polarized voting. These factors had likely diluted the black vote, a situation which was exacerbated by past and present discrimination in voting and other areas. The judge also found that Alabama had a compelling interest in remedying the discrimination.

7. United States v. Newport News, Virginia
Case No. 1994cv00155 (E.D. Va.)
United States District Court for the District of Virginia
1993-1994

Opposing counsel:
George J. Terwilliger, III
McGuireWoods
888 16th St., NW
Suite 500
Washington, D.C.
202-857-2473

I litigated this case under the Voting Rights Act of 1965 to protect the rights of black voters in Newport News, Virginia.

This was the first case brought by the Justice Department under the Voting Rights Act challenging a voting system in Virginia. As we alleged in the complaint, the at-large election method, in which city residents voted for all seven council members, denied black voters an equal opportunity to participate in the political process. The city's racially polarized voting patterns enabled the majority of white voters in Newport News to defeat the candidates of choice of black voters, who constituted a significant share of the population. Only one black candidate had been elected over several election cycles, while several other black candidates, who received the strong support of black voters, were defeated by white bloc voting. Under a consent agreement, Newport News, the fourth largest city in Virginia, ended its discriminatory at-large system in favor of election districts, one of which had a substantial black voting age majority, and agreed to hold a special election.

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 2018 in my current role as the Chief Trust and Security Officer at Uber Technologies, Inc., I oversee Uber's interaction globally with law enforcement and public safety organizations. In this context, I am directly responsible for legal issues relating to data sharing, cybersecurity, and privacy.

As the General Counsel for the National Security Agency in 2010 and 2011, I advised the NSA Director and other senior leaders on a range of legal issues facing the agency and oversaw the legal office for the agency. The legal issues included NSA's intelligence activities and collection of foreign intelligence in accordance with the Foreign Intelligence Surveillance Act and other sources of intelligence law. I also worked extensively on legal issues in support of NSA's cybersecurity and information assurance mission.

In 2009 and 2010, I served as the head of the Guantanamo Review Task Force within the Attorney General's Office and led the review of detainees at Guantanamo in accordance with an executive order. In this capacity, I was responsible for establishing and supervising an interagency task force of national security professionals from across the federal government and for managing the process for compiling and analyzing the relevant intelligence information on each detainee. I also advised the Attorney General and other senior officials in the Justice Department on legal and policy issues relating to detainees.

From 2006 to 2009 as a senior career official in the Department of Justice's National Security Division, I managed intelligence and surveillance operations and the oversight of these activities. I oversaw the work of attorneys and support staff members assigned to the Department's intelligence operations and oversight units. In addition, I was responsible for managing the Department of Justice's implementation of the Foreign Intelligence Surveillance Act and worked in close collaboration with the Intelligence Community to interpret new statutory provisions, address policy and technical challenges, and adopt new oversight mechanisms to ensure the effective and lawful use of the government's new surveillance authority.

From 1994 to 2005 (not including a detail to the FBI), I served as an Assistant United States Attorney in the District of Columbia. During this period, I supervised the investigation and prosecution of international and domestic terrorism, espionage, and export violation matters and managed a unit of senior attorneys dedicated to national security cases. I prosecuted a complex trial in the District of Columbia, culminating in the conviction of six defendants for RICO conspiracy, 27 murders, and other gang-related offenses. I conducted more than 35 jury trials involving a variety of offenses—including white collar, homicide,

and narcotics cases—and argued several appeals in the D.C. Circuit and D.C. Court of Appeals.

From 1992 to 1994, I served in the Civil Rights Division, Voting Section, of the Department of Justice. In this position, I represented the United States in voting right litigation to ensure equal rights for minority voters. I successfully litigated cases under the Voting Rights Act challenging an election system in Virginia and the method of electing Alabama judges, among other litigation and administrative matters.

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.

National Security Law and Technology, Harvard Law School, 2020 and 2021
National Security Law and Technology, University of Virginia Law School, 2020

This course examined a series of legal and policy issues at the intersection of national security law and technology. An enduring challenge for lawyers in the national security arena is keeping pace with technological innovation and change. We explored a range of topics involving emerging technologies that confront national security lawyers and policy makers. These topics included: surveillance; encryption; lethal targeting and artificial intelligence; and cyber security. Each week, we will focus on a discrete challenge in the context of real-world operations and government decision-making from the perspective of national security lawyers.

Syllabus provided.

National Security Law and Practice, Harvard Law School, 2016, 2017, 2018
National Security Law and Practice, University of Virginia Law School, 2017.

This seminar examined a series of national security legal and policy issues, focusing on counterterrorism: the structure and regulation of the intelligence community; the scope of foreign intelligence surveillance; counterterrorism operations and lethal targeting; the authorization for the use of force; the detention and interrogation of suspected terrorists; the investigation and prosecution of terrorism cases; and the role national security lawyers play in government decision making.

Syllabus provided.

National Security, Oversight, and the Press, University of Virginia Batten School of Public Policy, 2019

This seminar explored the mechanisms of oversight and transparency that seek to ensure that the government operates consistent with the law and the will of the people in the context of national security. We examined specific controversies involving national security and oversight, focusing in particular on the role of government overseers and the press as checks on intelligence activities.

Syllabus provided.

Kill or Capture: Hard Counterterrorism Challenges, University of Virginia Batten School of Public Policy, 2018

This seminar examined a series of challenging counterterrorism policy issues: the structure and regulation of the intelligence community; the scope of foreign intelligence surveillance; counterterrorism operations and lethal targeting; the authorization for the use of force; the detention and interrogation of suspected terrorists; the investigation and prosecution of terrorism cases; and the role national security lawyers play in government decision making.

Syllabus provided.

Federal White Collar Crime, Georgetown University Law Center, multiple semesters between 2006-2011

I co-taught this 3-credit course examining substantive and procedural issues in white-collar criminal law.

I did not retain a syllabus.

Trial Advocacy, Georgetown University Law Center, 2001
I did not retain a syllabus.

I co-taught a seminar on trial practice and advocacy.

I did not retain a syllabus.

In addition, from time to time, I have been asked to serve as a guest lecturer at educational institutions on various topics relating to national security.

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.

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 my SF-278e 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.

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 will enter into with the Department's designated agency ethics official. There are no other likely conflicts of interest at this time.

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.

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.

I serve on the board of directors of Human Rights First, an independent advocacy and action organization that challenges America to live up to its ideals and that seeks to harness American influence to secure core freedoms.

**UNITED STATES SENATE**
**COMMITTEE ON THE JUDICIARY**

**QUESTIONNAIRE FOR JUDICIAL NOMINEES**

**PUBLIC**

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

   Florence Yu Pan
   Florence Yvonne Pan

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

   United States District Judge for the District of Columbia

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.

   Superior Court of the District of Columbia
   500 Indiana Avenue, Northwest
   Washington, District of Columbia 20001

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

   1966; New York, New York

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

   1990 – 1993, Stanford Law School; J.D. (with distinction), 1993

   1984 – 1988, University of Pennsylvania; B.A. and B.S (*summa cum laude*), 1988

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

   2009 – present
   Superior Court of the District of Columbia
   500 Indiana Avenue, Northwest
   Washington, District of Columbia 20001

Associate Judge

2012 – present
Georgetown University Law Center
600 New Jersey Avenue, Northwest
Washington, District of Columbia 20001
Adjunct Professor of Law

1999 – 2009; January – July 1997
United States Attorney's Office for the District of Columbia
555 Fourth Street, Northwest
Washington, District of Columbia 20530
Assistant United States Attorney (1999 – 2009)
Special Assistant United States Attorney (January – July 1997)

2007 – 2008
American University, Washington College of Law
4300 Nebraska Avenue, Northwest
Washington, District of Columbia 20016
Adjunct Professor of Law

1998 – 1999
United States Department of the Treasury
1500 Pennsylvania Avenue, Northwest
Washington, District of Columbia 20220
Senior Advisor to the Undersecretary for Domestic Finance (1999)
Senior Advisor to the Assistant Secretary for Financial Markets (1998)

1995 – 1998
United States Department of Justice
950 Pennsylvania Avenue, Northwest
Washington, District of Columbia 20530
Attorney, Criminal Division, Appellate Section (1996 – 1998)
Bristow Fellow, Office of the Solicitor General (1995 – 1996)

1994 – 1995
United States Court of Appeals for the Second Circuit
55 Whitney Avenue, Sixth Floor
New Haven, Connecticut 06510
Law Clerk to Judge Ralph K. Winter (now deceased)

1993 – 1994
United States District Court for the Southern District of New York
500 Pearl Street (previously located at 40 Foley Square)
New York, New York 10007
Law Clerk to Judge Michael B. Mukasey (now retired)

1993 – 1994
Harvard Club
35 West 44th Street
New York, New York 10036
Aerobics Instructor

Summer 1993
Sullivan and Cromwell
125 Broad Street
New York, New York 10004
Summer Associate

1992 – 1993
Stanford Law School
559 Nathan Abbott Way
Stanford, California 94305
Research Assistant to Professor Joseph A. Grundfest

Summer 1992
United States Attorney's Office for the Southern District of New York
One Saint Andrew's Plaza
New York, New York 10007
Summer Intern

Summer 1992
McKinsey and Company
55 East 52nd Street
21st Floor
New York, New York 10022
Summer Associate

Summer 1991
Wachtell, Lipton, Rosen and Katz
51 West 52nd Street
New York, New York 10019
Summer Associate

1988 – 1990
Goldman, Sachs and Co.
200 West Street (previously located at 85 Broad Street)
New York, New York 10282
Financial Analyst

Summer 1998
Asian Americans For Equality
Two Allen Street

New York, New York 10002
Intern

Other Affiliations (uncompensated):

2011 – 2012
National Asian Pacific American Bar Association Judicial Council
1612 K Street, Northwest, Suite 510
Washington, District of Columbia 20006
Secretary

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

   I have not served in the military. I was not required to register for the selective service.

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

   Charles Fahey Distinguished Adjunct Professor Award, Georgetown University Law Center (2018)

   Commendation for service to the Family Court of the Superior Court of the District of Columbia, District of Columbia Bar Family Law Section (2015)

   Member Appreciation Award, Asian Pacific American Bar Association of the District of Columbia (2011)

   Asian Pacific American Trailblazer, Georgetown Asian Pacific American Law Students Association (2009)

   Special Achievement Award, United States Attorney's Office for the District of Columbia (2007, 2003, 2002, 2000)

   Team Award, United States Attorney's Office for the District of Columbia (2004)

   Mr. and Mrs. Duncan L. Matteson, Sr. Award (moot court finalist), Stanford Law School (1993)

   Editor, Stanford Law Review (1992 – 1993)

   Editor, Stanford Law and Policy Review (1990 – 1991)

Hilmer Oehlmann, Jr. Prize (for outstanding work in first-year legal research and writing), Stanford Law School (1991)

Benjamin Franklin Scholar, University of Pennsylvania (1984 – 1988)

Dean's List, University of Pennsylvania (1985 – 1988)

Beta Gamma Sigma Honor Society, University of Pennsylvania (1988)

Phi Beta Kappa, University of Pennsylvania (elected as a junior) (1987)

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, Judicial Division (2011 – 2013)

American Law Institute (2013 – present)
Regional Advisory Group 4 (2014 – present)

Asian Pacific American Bar Association of the District of Columbia (1996 – present)
Advisory Board (2014 – 2018)
Board of Advisors, Robert T. Matsui Annual Writing Competition (2014 – 2019)

District of Columbia Bar (1996 – present)

Edward Coke Appellate Inn of Court (2008 – 2009)

National Asian Pacific American Bar Association (1996 – present)

National Asian Pacific American Bar Association Judicial Council (2009 – present)
Secretary (2011 – 2012)

National Association of Women Judges (2011 – 2013)

Superior Court of the District of Columbia
Chair, Committee on Jury Instructions (2021 – present)
Advisory Committee on Judicial Conduct (2017 – present)
Civil Rules Advisory Committee (2019 – present)
Judicial Education Committee (2013 – 2017)
Committee on the Selection and Tenure of Magistrate Judges (2011 – 2020)
Co-Chair, Family Court Juvenile Subcommittee (2014-2015)
Co-Chair, Juvenile Rules Advisory Committee (2014-2015)
Member, Family Court Attorney Panels Committee (2015)

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, 1994
District of Columbia, 1996

I resigned my New York bar membership in 2010, after I became a judge in the District of Columbia. There have been no lapses in membership.

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

United States Supreme Court, 2001
United States Court of Appeals for the District of Columbia Circuit, 1996
United States Court of Appeals for the Fifth Circuit, 1996
United States Court of Appeals for the Ninth Circuit, 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.

Lawyers' Club of Washington (2012 – present)

Mayor's Commission on Asian and Pacific Islander Affairs (2002 – 2005)

Stanford Outreach Volunteer Alumni Link (2011 – present)

Washington International School Parents Association (2010 – present)

Washington International School, Speech and Debate Coach (2019 – present)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion

or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements**:

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

Acknowledged for research assistance (including research, cite-checking, and minor editing) in the following articles by Stanford Law Professor Joseph A. Grundfest:

> Joseph A. Grundfest, Disimplying Private Rights of Action Under the Federal Securities Laws: The Commission's Authority, 107 Harv. L. Rev. 961 (1994). Copy supplied.
>
> Joseph A. Grundfest, Just Vote No: A Minimalist Strategy for Dealing with Barbarians Inside the Gates, 45 Stan. L. Rev. 857 (April 1993). 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.

Advisory Committee on Judicial Conduct, District of Columbia Courts, 2018 Edition of the Code of Judicial Conduct (Mar. 2021). Copy supplied.

Report of the Superior Court Family Court Panels Oversight Committee to Chief Judge Lee F. Satterfield (Oct. 2015). Copy supplied.

Meeting minutes, Mayor's Commission on Asian and Pacific Islander Affairs (Jan. 27, 2009). Copy supplied.

Quoted in "Celebrating Our Progress in the Federal Judiciary: A Report on the 15-year Anniversary of the NAPABA Judiciary Committee," National Asian

Pacific American Bar Association, Nov. 2009. Copy supplied.

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

On July 13, 2016, I testified at a confirmation hearing before the Senate Judiciary Committee, in connection with my nomination to be a United States District Judge for the District of Columbia. Transcript and opening statement supplied.

On May 13, 2009, I testified at a confirmation hearing before the Senate Committee on Homeland Security and Governmental Affairs, in connection with my nomination to be an Associate Judge of the Superior Court of the District of Columbia. Transcript and opening statement supplied.

On September 19, 2007, I co-signed a letter to Senate leadership, regarding the nomination of Judge Michael B. Mukasey to be Attorney General of the United States. Copy supplied.

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

I have not kept a comprehensive list of the speeches and presentations I have made. The following is my best effort to recreate a list of speaking engagements based on a search of my calendar and files. It is possible that I have omitted speeches or presentations for which I did not retain records.

April 20, 2021: Participant, reenactment of *The Vietnamese Fishermen's Association v. Knights of the Ku Klux Klan*, Asian Pacific American Bar Association of the District of Columbia, Washington, District of Columbia. Script supplied.

March 4, 2020: Fireside chat, Georgetown Asian Pacific American Law Students Association, Georgetown University Law Center, Washington, District of Columbia. I was interviewed by a student moderator and answered questions about my professional experiences. I have no notes, transcript, or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue Northwest, Washington, District of Columbia 20001.

November 14, 2019: Guest lecturer, undergraduate Criminal Law class, George Washington University, District of Columbia. I gave a lecture about how criminal cases are prosecuted in the District of Columbia Superior Court. I have no notes, transcript, or recording. The address of George Washington University is 2121 I Street, Northwest, Washington, District of Columbia 20052.

October 5, 2019: Panelist, "State Trial and Superior Court Clerkships," 2019 Robert E. Wone Judicial Clerkship and Internship Conference, Asian Pacific American Bar Association of the District of Columbia, Washington, District of Columbia. I participated in a panel discussion about the law-clerk hiring process and the duties of a law clerk. I have no notes, transcript, or recording. The address of the Asian Pacific American Bar Association of the District of Columbia is P.O. Box 27223, Washington, District of Columbia 20038.

September 19, 2019: Moderator, Judicial Panel for Stanford Law School D.C. Regional Chapter, Washington, District of Columbia. I moderated a panel discussion with the following judges: Hon. Christopher ("Casey") R. Cooper of the United States District Court for the District of Columbia; Hon. Mariano-Florentino ("Tino") Cuellar of the Supreme Court of California; and Hon. Padmanabhan Srikanth ("Sri") Srinivasan of the United States Court of Appeals for the District of Columbia Circuit. I have no notes, transcript, or recording. The address of Stanford Law School is 559 Nathan Abbott Way, Stanford, California 94305.

April 17, 2019: Participant, *Massie* case trial re-enactment, Asian Pacific American Bar Association of the District of Columbia, Washington, District of Columbia. Script supplied.

May 18, 2018: Panelist, Asian Pacific American Judges, for Asian American Pacific Islander Heritage Month, United States Attorney's Office, Washington, District of Columbia. I participated in a panel discussion with other Asian Pacific American judges, at which we discussed our professional experiences. I have no notes, transcript, or recording. The address of the United States Attorney's Office for the District of Columbia is 555 Fourth Street, Northwest, Washington, District of Columbia 20530.

May 17, 2018: Participant, *Thind/Ozawa* trial re-enactment, Asian Pacific American Bar Association of the District of Columbia, Washington, District of Columbia. Script supplied.

May 1, 2018: Panelist, District of Columbia Court Employees, Asian American Pacific Islander Heritage Month, District of Columbia Superior Court, Washington, District of Columbia. I participated in a panel discussion with other Asian Pacific American court employees, at which I discussed my professional experiences. I have no notes, transcript, or recording. The address of the District

of Columbia Superior Court is 500 Indiana Avenue, Northwest, Washington, District of Columbia 20001.

April 26, 2018: Award recipient and speaker, faculty luncheon, Georgetown University Law Center, Washington, District of Columbia. Speech supplied.

November 2, 2017: Judge, Thomas Tang Moot Court Competition, National Asian Pacific American Bar Association Law Foundation, Washington, District of Columbia. I was a judge in the final round of this moot court competition. I have no notes, transcript, or recording. The address of the National Asian Pacific American Bar Association is 1612 K Street, Northwest, Suite 510, Washington, District of Columbia 20006.

February 5, 2016: Participant, mock trial of Goldilocks and the Three Bears, Superior Court of the District of Columbia, Washington, District of Columbia. I served as the prosecutor in a trial of Goldilocks, for a kindergarten class from Sidwell Friends School. I have no notes, transcript, or recording. The address of the Superior Court of the District of Columbia is 500 Indiana Avenue, Northwest, Washington, District of Columbia 20001.

September 25, 2015: Speaker, 2015 Awards Ceremony and Installation Dinner, Asian Pacific American Bar Association of the District of Columbia, Washington, District of Columbia. Outline supplied.

July 17, 2015: Speaker, Criminal Procedure, Foundations of American Law Program, Georgetown University Law Center, Washington, District of Columbia. Outline supplied.

June 16, 2015: Panelist, Asian Pacific American Judges, Asian Pacific American Bar Association of the District of Columbia, Washington, District of Columbia. I participated in a panel discussion and answered questions about my professional experiences. I have no notes, transcript, or recording. The address of the Asian Pacific American Bar Association of the District of Columbia is P.O. Box 27223, Washington, District of Columbia 20038.

March 11, 2015: Speaker, Asian Pacific American Heritage Month at the Court Services and Offender Supervision Agency, Asian Pacific American Committee, Washington, District of Columbia. I spoke about my background and experience as an Asian Pacific American judge. I have no notes, transcript, or recording. The address of the Court Services and Offender Supervision Agency is 633 Indiana Avenue, Northwest, Washington, District of Columbia 20004.

August 20, 2014: Panelist, District of Columbia Judges, University of the District of Columbia David A. Clarke School of Law, Washington, District of Columbia. I participated in a panel about clerkship and internship opportunities, and general career advice for law students. I have no notes, transcript, or recording. The

address of the David A. Clarke School of Law is 4340 Connecticut Avenue, Northwest, Washington, District of Columbia 20008.

July 25, 2014: Speaker, Criminal Procedure, Foundations of American Law Program, Georgetown University Law Center, Washington, District of Columbia. I used the same outline that was provided for the July 17, 2015, presentation.

April 27, 2014: Panelist, "Moving Forward with Children," Working Parents Forum of the Asian Pacific American Bar Association of the District of Columbia, Washington, District of Columbia. The panel was about managing work commitments and family obligations. I have no notes, transcript, or recording. The address of the Asian Pacific American Bar Association of the District of Columbia is P.O. Box 27223, Washington, District of Columbia 20038.

April 1, 2014: Speaker, Bench-Bar Dialogue, Superior Court of the District of Columbia, Washington, District of Columbia. The dialogue was with judges and lawyers who handle juvenile-delinquency cases. I have no notes, transcript, or recording. The address of the Superior Court of the District of Columbia is 500 Indiana Avenue, Northwest, Washington, District of Columbia 20001.

November 17, 2012: Panelist, The Judiciary, National Asian Pacific American Law Students Association Convention, Washington, District of Columbia. To the best of my recollection, the panel was about how to become a judge. I have no notes, transcript, or recording. The National Asian Pacific American Law Students Association does not have a mailing address.

November 16, 2012: Panelist, The Judicial Nominations Process, National Asian Pacific American Bar Association Convention, Washington, District of Columbia. I discussed the process of judicial selection in the District of Columbia. I have no notes, transcript, or recording. The address of the National Asian Pacific American Bar Association is 1612 K Street, Northwest, Suite 510, Washington, District of Columbia 20006.

September 21, 2012: Speaker, Investiture Ceremony of Judge Roy W. McLeese III, District of Columbia Court of Appeals, Washington, District of Columbia. Speech supplied.

July 27, 2012: Speaker, Criminal Procedure, Foundations of American Law Program, Georgetown University Law Center, Washington, District of Columbia. I used the same outline that was provided for the July 17, 2015, presentation.

April 26, 2012: Panelist, Women in the Courtroom, Women Litigators Committee of the District of Columbia Bar, Washington, District of Columbia. I discussed my experiences as a litigator. I have no notes, transcript, or recording. The address of the District of Columbia Bar is 1101 K Street, Northwest, Suite 200, Washington, District of Columbia 20005.

March 23, 2012, Panelist, Asian Pacific American Trail Blazers, Georgetown Asian Pacific American Law Students Association, Washington, District of Columbia. I discussed my background and career. I have no notes, transcript, or recording. The address of Georgetown University Law Center is 600 New Jersey Avenue, Northwest, Washington, District of Columbia 20001.

November 11, 2011: Panelist, Careers in Public Service, University of Iowa School of Law, Iowa City, Iowa. I discussed my career path in public service. I have no notes, transcript, or recording. The address of the University of Iowa School of Law is 280 Boyd Law Building, Melrose and Byington, Iowa City, Iowa 52242.

September 21, 2011: Speaker, Recipient of Member Appreciation Award, and officiant for swearing-in of new board members, Annual Award Ceremony and Installation Dinner, Asian Pacific American Bar Association of the District of Columbia, Washington, District of Columbia. Speech supplied.

May 12, 2011: Speaker, Spring Speaker Series Lunch, Asian Pacific American Bar Association of the District of Columbia Practicing Attorneys' Resource Committee, Washington, District of Columbia. I had lunch with a group of attorneys and discussed my career. I have no notes, transcript, or recording. The address of the Asian Pacific American Bar Association of the District of Columbia is P.O. Box 27223, Washington, District of Columbia 20038.

November 2010: Panelist, Asian Pacific Americans in the Courtroom, National Asian Pacific American Bar Association Convention, Los Angeles, California. I participated in a panel about effective communication with judges and juries. I have no notes, transcript, or recording. The address of the National Asian Pacific American Bar Association is 1612 K Street, Northwest, Suite 510, Washington, District of Columbia 20006.

October 2010: Panelist, Judicial Clerkships, Robert E. Wone Judicial Clerkship and Internship Conference, Asian Pacific American Bar Association of the District of Columbia, Washington, District of Columbia. I participated in a panel about clerkship and internship opportunities, and general career advice for law students. I have no notes, transcript, or recording. The address of the Asian Pacific American Bar Association of the District of Columbia is P.O. Box 27223, Washington, District of Columbia 20038.

March 11, 2010: Panelist, "The Path to Becoming a Judge," Asian Pacific American Bar Association of the District of Columbia Nominations Committee, Washington, District of Columbia. I discussed my experience with the application and nomination process to the District of Columbia Superior Court. I have no notes, transcript, or recording, but press coverage is supplied. The address of the Asian Pacific American Bar Association of the District of

Columbia is P.O. Box 27223, Washington, District of Columbia 20038.

November 5, 2009: Speaker and Panelist, Asian Pacific American Trail Blazers, Georgetown Asian Pacific American Law Students Association, Washington, District of Columbia. I received an award and participated on a panel, during which I discussed my background and career. I have no notes, transcript, or recording, but press coverage is supplied. The address of Georgetown University Law Center is 600 New Jersey Avenue, Northwest, Washington, District of Columbia 20001.

October 2009: Panelist, Judicial Clerkships, Robert E. Wone Judicial Clerkship and Internship Conference, Asian Pacific American Bar Association of the District of Columbia, Washington, District of Columbia. The panel was about clerkship and internship opportunities, and general career advice for law students. I have no notes, transcript, or recording, but press coverage is supplied. The address of the Asian Pacific American Bar Association of the District of Columbia is P.O. Box 27223, Washington, District of Columbia 20038.

Fall 2009: Panelist, Judicial Selection Process, Asian Pacific American Bar Association of the District of Columbia, Washington, District of Columbia. I participated in a discussion of how to become a Superior Court judge in the District of Columbia. I have no notes, transcript, or recording, but press coverage is supplied. The address of the Asian Pacific American Bar Association of the District of Columbia is P.O. Box 27223, Washington, District of Columbia 20038.

August 27, 2009: Speaker, Asian and Pacific Islander Affairs Commission Networking Happy Hour, co-sponsored by the Asian Pacific American Bar Association of the District of Columbia. To the best of my recollection, I discussed my career path. I have no notes, transcript, or recording, but press coverage is supplied. The address of the Asian Pacific American Bar Association of the District of Columbia is P.O. Box 27223, Washington, District of Columbia 20038.

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.

Malik, *A Conversation with Judge Pan*, More Than the Streets (New Beginnings Youth Development Center), approximately May 19, 2015. Transcript supplied.

Peg Byron, *Lawyer charges terrorism trial judge is anti-Muslim*, UPI (Nov. 5, 1993). 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.

Since June 2009, I have served as an Associate Judge of the Superior Court of the District of Columbia. I was nominated to this position by President Obama on March 24, 2009, and confirmed by the United States Senate on May 21, 2009. The Superior Court of the District of Columbia is a trial court of general jurisdiction. The Superior Court handles all local trial matters, including civil, criminal, family court, probate, tax, landlord-tenant, and small claims cases. For approximately a year and a half, I was assigned to a Misdemeanor calendar in the Criminal Division. I then spent approximately two years presiding over a "Felony II" calendar in the Criminal Division. In 2013, I moved to the Family Court, where I primarily was assigned to a juvenile-delinquency calendar, but also handled a small caseload of domestic-relations cases for one year. In 2016, I was assigned to a "Felony I" caseload in the Criminal Division, which includes some of the most serious felony cases in the jurisdiction. Since 2017, I have been assigned to a "Civil II" calendar in the Civil Division.

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

I have presided over approximately 656 trials.

i. Of these cases, approximately what percent were:

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| jury trials: | 22% |
| bench trials: | 78% |

ii. Of these cases, approximately what percent were:

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| civil proceedings: | 18% |
| criminal proceedings: | 82% |

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

*Barney v. Tactical Security Solutions, Inc.*, 2020 D.C. Super. LEXIS 25 (November 18, 2020)

*Faw v. Q.T. Transportation, Inc.*, 2020 D.C. Super. LEXIS 4 (May 18, 2020)

*Toxin Free U.S.A. v. J.M. Smucker Co.*, 2019 D.C. Super. LEXIS 15 (November 6, 2019)

*Adetu v. Sidwell Friends School*, 2017 D.C. Super. LEXIS 6 (July 14, 2017)

*Adetu v. Sidwell Friends School*, 2017 D.C. Super. LEXIS 5 (May 31, 2017)

*Richardson v. United States*, 116 A.3d 434 (D.C. 2015) (authored while sitting by designation on the District of Columbia Court of Appeals)

*Jordan v. Jordan*, 14 A.3d 1136 (D.C. 2011) (authored while sitting by designation on the District of Columbia Court of Appeals)

*United States v. Ross and Williams*, 138 Daily Wash. L. Rptr. 2237 (D.C. Super. Ct. Oct. 14, 2010)

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. *District of Columbia v. Jefferson-11th Street, LLC et al.*, 2017 CA 2837

In this enforcement action, the District of Columbia brought suit under the Tenant Receivership Act (TRA) and the District of Columbia Consumer Protection Procedures Act (CPPA) against a landlord that operated its property in a manner that demonstrated a pattern of neglect, which posed a serious threat to the health, safety, and security of the tenants. After an evidentiary hearing, I ruled from the bench that the landlord had violated the TRA; and I appointed a receiver to collect rent and oversee repairs that would bring the property into compliance with the District of Columbia housing code. I also presided over a consolidated case in which the tenants alleged that the landlord had violated the Air Quality Amendment Act by failing to remediate mold at the property. I granted summary judgment in favor of the tenants and awarded them attorneys' fees and costs. I granted summary judgment as to liability on the District of Columbia's CPPA claim, in a ruling from the bench. The proceedings on damages are still pending.

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| Counsel for the Government: | Benjamin Wiseman, Esq.<br>Jimmy Rock, Esq.<br>Jane Lewis, Esq.<br>John Lui, Esq.<br>Office of the Attorney General for the District of Columbia<br>400 6th Street, Northwest<br>Washington, DC 20001<br>(202) 727-3400 |
| Counsel for Individual Plaintiffs: | Joanna Persio, Esq.<br>Blake Biles, Esq.<br>Arnold and Porter<br>601 Massachusetts Avenue, Northwest<br>Washington, DC 20001 |

(202) 942-5000

Receiver:

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1702 Seaton Street, Northwest
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(202) 503-1708

Richard Schrager, Esq.
Bacon Thornton Palmer LLP
6411 Ivy Lane
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(301) 345-7001

2. *District of Columbia v. Capitol Petroleum Group*, 2019 CA 4067

In this nuisance-abatement action, the District of Columbia sued a property owner for maintaining a drug-related nuisance at a gas station located on the subject property. The District of Columbia sought injunctive and declaratory relief that would have required the property owner to hire security guards to abate the nuisance. After an evidentiary hearing, I ruled from the bench that the property was a drug-related nuisance, but that I could not order the remedy requested by the government because it had not sued the proper party. The property was leased to a third-party corporate entity that owned and operated the gas station, but that party was not a defendant in the enforcement action. I ordered the government to pay a portion of the property owner's attorneys' fees because the property owner was a prevailing party, and had been unnecessarily forced to litigate a case where the property owner did not have authority to provide the relief sought by the government.

Counsel for the Government:

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Monique Cobb, Esq.
Olivia Jerjian, Esq.
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Counsel for Defendants:

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Jeffrey Leiter, Esq.
Bassman Mitchell,Alfano & Leiter, Chtd.
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Washington, DC 20036
(202) 466-6502

Stuart Schwager, Esq.
Lerch Early & Brewer Chtd.
7600 Wisconsin Avenue
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Bethesda, MD 20814
(301) 347-1271

3. *District of Columbia v. Lumen Eight Media Group LLC*, 2016 CA 6471 B

In this enforcement action, the government sought to enjoin a sign company (previously known as Digi Media Communications) from installing 43 digital, light-emitting diode signs in the District of Columbia without obtaining sign permits. The sign company argued that permits were not required for its signs based on a loophole in a pre-existing regulation, and that emergency legislation that closed the loophole was invalid because it violated the District of Columbia Administrative Procedure Act. I held numerous hearings and ultimately issued an opinion granting the government's motion for summary judgment. An appeal of the judgment is currently pending before the District of Columbia Court of Appeals. Opinion supplied.

Counsel for the Government:

Fernando Rivera, Esq.
Eric Johnson, Esq.
Tony Jackson, Esq.
Eric Glover, Esq.
Christopher Sousa Esq.
Office of the Attorney General for the
District of Columbia
400 6th Street, Northwest
Washington, DC 20001
(202) 727-3400

Counsel for the Defendant:

Steven Cash, Esq.
Adam Grant, Esq.
Day Pitney LLP
605 Third Avenue
31st Floor
New York, NY 10158
(212) 297-5800

4. *EduCap Inc., et al. v. Evans*, 2012 CA 7156

I believe that this was a case of first impression in the District of Columbia Superior Court, in applying the Fair Debt Collection Practices Act (FDCPA). Counter-plaintiff Evans sued counter-defendants EduCap Inc. and Parnell & Crum, P.C. for violating the FDCPA and the Service Members Civil Relief Act (SCRA) in servicing her student loan. Evans took out a total of $6,000 in educational loans in 2006. She joined the military in 2008; and thereafter defaulted on her loans. Evans alleged that the loan originator, EduCap, violated the SCRA by not giving her an interest-rate reduction to which she was entitled as an active-duty service member; and by filing a knowingly false affidavit in a debt-collection action against her. Evans also alleged that Parnell & Crum, a debt-servicing agency, violated the FDCPA by deducting a $30 service charge from her $150 monthly loan payments, without her consent. After a lengthy hearing on dueling motions for summary judgment, I issued a detailed oral ruling from the bench, in which I granted summary judgment in favor of EduCap on the SCRA claims; and granted summary judgment in favor of Evans on the FDCPA claim. I also awarded Evans over $100,000 in attorney's fees for the FDCPA claim.

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| Counsel for EduCap, Inc. and Parnell & Crum, P.C.: | Jamie B. Glick, Esq.<br>Friedman, Framme & Thrush, P.A.<br>10461 Mill Run Circle<br>Suite 500<br>Owings Mills, MD 21117<br>(410) 559-9000 |
| Counsel for Evans: | Dean Gregory, Esq.<br>1629 K Street, Northwest<br>Suite 300<br>Washington, DC 20006<br>(202) 804-8975 |

5. *United States v. Pitt*, 2015 CF1 17598

In this Felony 1 case, the defendant was convicted by a jury of two counts of first-degree sexual abuse, first-degree burglary, kidnapping, assault, robbery, and threats. Defendant committed a brutal home-invasion rape while he was on release on other charges. He broke bones in the victim's face, threatened to kill her, raped her, and stole her cell phone and cash. The trial involved several challenging legal issues, including the admission of other-crimes evidence related to the defendant's unlawful entry into another woman's bedroom in the middle of the night, and the disqualification of a juror during deliberations. The judgment was affirmed on appeal. *Pitt v. United States*, 220 A.3d 951 (D.C. 2019).

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| Counsel for the Government: | Sarah McClellan, Esq.<br>(formerly at the U.S. Attorney's Office)<br>Executive Office for United States Attorneys<br>United States Department of Justice<br>950 Pennsylvania Avenue, Northwest<br>Room 2242<br>Washington, DC 20530<br>(202) 514-2000 |
| Counsel for Defendant: | Magistrate Judge Judith Pipe<br>(formerly at the Public Defender Service)<br>District of Columbia Superior Court<br>500 Indiana Avenue, Northwest<br>Washington, DC 20001<br>(202) 879-4795 |

6. *United States v. Ballard*, 2015 CF1 9160

In this Felony 1 matter, the defendant was charged with assault with intent to kill while armed after he stabbed a stranger in the neck. The defendant had mental health issues and underwent numerous competency evaluations. The defendant chose to represent himself, with the assistance of an attorney advisor. During the pendency of the proceedings, I devoted substantial time to ensuring that the defendant understood the proceedings; and that he had access to legal advice and resources. He eventually was found competent and pled guilty.

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| Counsel for the Government: | Vivian Cockburn, Esq.<br>United States Attorney's Office for the District of Columbia<br>555 Fourth Street, Northwest<br>Washington, DC 20530<br>(202) 252-1900 |
| Advisor to the Defendant: | Jonathan Zucker, Esq.<br>Solo Practitioner<br>37 Florida Avenue, Northeast<br>Suite 200<br>Washington, DC 20002<br>(202) 624-0784 |

7. *In re K.H.*, 2013 DEL 1912; 2015 DEL 1912 (2015)

In these juvenile-delinquency cases, the respondent pled guilty to felony assault, carrying a dangerous weapon (a knife), and simple assault. The respondent was committed to the custody of the Child and Family Services Agency, as well as to

the custody of the Department of Youth Rehabilitation Services. During the pendency of the case, he threatened suicide and was in "active trauma," for which he spent time at the Psychiatric Institute of Washington. His probation officer found a family member, a cousin, who was willing to take him in, and he also went to a residential treatment facility in Mill Creek, Arkansas, for six months. When the case closed at the end of 2015, he was mentally healthy, back in school, and had just gotten a job at a clothing store. He was very positive about his experiences with the juvenile justice system and the residential treatment facility.

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| Government Counsel: | Bonnie Lindemann, Esq.<br>Office of the Attorney General<br>Juvenile Section<br>441 Fourth Street, Northwest, Suite 450<br>Washington, DC 20006<br>(202) 717-1345 |
| Respondent's Counsel: | Blase Kearney, Esq.<br>(formerly at the Public Defender Service)<br>Michigan State Appellate Defender Service<br>500 Griswold, Suite 2900<br>Detroit, MI 48226<br>(313) 410-4057 |

8. *In re K.S.*, 2013 DEL 377 (2015)

In this juvenile-delinquency case, the respondent pled guilty to charges of destruction of property and misdemeanor threats. She eventually was committed to the custody of the Department of Youth Rehabilitation Services. When the respondent's case commenced in 2013, she was violent and often unruly. She had pulled a knife on her mother; she had several outbursts in the courtroom; and she absconded from placement. Her grandmother was her guardian and refused to attend court hearings, so that I had to issue a bench warrant for her arrest. The respondent was provided with therapy and services, and I held multiple hearings in her case. At the last commitment-review hearing in October, 2015, the respondent's grandmother thanked the court for helping K.S., who had begun spending time with her grandmother, stopped going out with her friends, and had decided that she wanted to attend college and become a social worker.

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| Government Counsel: | Stacy Jeremiah, Esq.<br>(formerly of the Office of the Attorney General)<br>Current business-contact information unavailable. |
| Respondent's Counsel: | Seth Schrager, Esq.<br>Solo Practitioner |

7771 Euclid Way
Springfield, VA 22153
(703) 866-5053

9. *Jordan v. Jordan*, 14 A.3d 1136 (D.C. 2011)

I authored this published opinion of the District of Columbia Court of Appeals while sitting by designation in 2011. The opinion resolved an issue of first impression: Whether a trial court may appoint a "parenting coordinator" to resolve day-to-day disputes between the parties in a contested, high-conflict custody case. The court determined that Rule 53 of the Superior Court Rules of Domestic Relations authorized the appointment of a parenting coordinator, which is a form of special master. The court also determined that the appointment of a parenting coordinator did not violate the due-process rights of the objecting parent. The court rejected appellant's claim that the trial court had granted the parties joint custody of their children without giving sufficient weight to evidence that appellee had committed acts of domestic violence.

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| Other Panel Members: | Judge John F. Fisher<br>Judge Anna Blackburne-Rigsby |
| Counsel for Appellant: | Joan S. Meier, Esq.<br>George Washington University Law School<br>2000 H Street, Northwest<br>Washington, DC 20052<br>(202) 994-2278 |
| Counsel for Appellee: | Gail B. Landau, Esq.<br>Solo Practitioner<br>11300 Rockville Pike, Suite 1207<br>Rockville, MD 20852<br>(301) 984-5600 |
| Counsel for *amici curiae:* | Margaret McKinney, Esq.<br>Delaney, McKinney LLP<br>5425 Wisconsin Avenue, Suite 401<br>Chevy Chase, MD 20815<br>(301) 913-5236 |

10. *Michael v. W.H. Bacon Funeral Home et al.*, 2016 CA 9040

In this civil action, the plaintiff sued the defendant funeral home for erroneously cremating the remains of plaintiff's mother, which were instead supposed to be transported to Nigeria for burial. I engaged in a protracted mediation of the dispute and facilitated a settlement, even though the parties had been unable to reach an agreement in private mediation.

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| Counsel for Plaintiff: | Kasey Murray, Esq.<br>Mark Fiedler, ,Esq.<br>Koonz, McKenney, Johnson, Paolis & Lightfoot<br>2001 Pennsylvania Avenue, Northwest<br>Suite 450<br>Washington, DC 2006<br>(202) 659-5500 |
| Counsel for Defendant: | Barron Stroud, Jr., Esq.<br>Stroud Priest LLC<br>1140 Third Street, Northeast<br>Second Floor<br>Washington, DC 20002<br>(303) 683-6550 |

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. *Organic Consumers Association v. Smithfield Foods, Inc.*, 2020 D.C. Super. LEXIS 28 (Dec. 14, 2020).

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|---|---|
| Counsel for Plaintiff: | Kim Richman, Esq.<br>Jay Shooster, Esq.<br>Richman Law Group<br>1 Bridge Street<br>Suite 83<br>Irvington, NY 10553<br>(718) 705-4579 |
| Counsel for Defendant: | Tiffany Riffer, Esq.<br>1050 K Street, Northwest<br>Suite 400<br>Washington, DC 20001<br>(202) 312-7400<br><br>Sarah Brew, Esq.<br>Faegre Baker Daniels LLP<br>2200 Wells Fargo Center<br>90 South Seventh Street<br>Minneapolis, MN 55402<br>(612) 766-7000 |

2. *Asencio et al. v. Jefferson-11th Street LLC, et al.*, 2016 CA 8084 B, 2017 CA 2837 2, Order granting individual plaintiffs' Motion for Summary Judgment on Damages and Fees (July 23, 2020). Opinion supplied.

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| Counsel for the Government: | Benjamin Wiseman, Esq.<br>Jimmy Rock, Esq.<br>Jane Lewis, Esq.<br>John Lui, Esq.<br>Office of the Attorney General for the District of Columbia<br>400 6th Street, Northwest<br>Washington, DC 20001<br>(202) 727-3400 |
| Counsel for Individual Plaintiffs: | Joanna Persio, Esq.<br>Blake Biles, Esq.<br>Arnold and Porter<br>601 Massachusetts Avenue, Northwest<br>Washington, DC 20001<br>(202) 942-5000 |
| Receiver: | Benjamin Gilmore, Esq.<br>1702 Seaton Street, Northwest<br>Washington, DC 20009<br>(202) 688-1330 |
| Counsel for the Defendants: | Jeffery Styles, Esq.<br>Washington Legal Group, LLC<br>1666 K Street, Northwest<br>Suite 440<br>Washington, DC 20006<br>(202) 503-1708<br><br>Richard Schrager, Esq.<br>Bacon Thornton Palmer LLP<br>6411 Ivy Lane<br>Suite 500<br>Greenbelt, MD 208770<br>(301) 345-7001 |

3. *Faw v. QT Transportation, Inc.*, 2020 D.C. Super. LEXIS 4 (D.C. Super. Ct. May 18, 2020).

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| Counsel for Plaintiff: | Tara Tighe, Esq.<br>Allen, Allen, Allen & Allen, PC |

50 Dunn Drive
Suite 105
Stafford, VA 22556
(540) 657- 9222

Counsel for Defendant:

Justin Flint, Esq.
Channing Shor
Eccleston & Wolf PLC
1629 K Street, Northwest
Suite 260
Washington, DC 20006
(202) 857-1696

4. *Pen-Y-Bryn Partners LLC, et al. v. Tayl Investors Group Ltd. of British Virgin Islands, et al.*, 2017 CA 7509 B, Order granting defendants' Motion for More Severe Sanctions (Apr. 14, 2020). Opinion supplied.

Counsel for Plaintiffs:

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Engelhardt & Counsel
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Counsel for Defendants:

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Kropf Moseley PLLC
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(202) 627-6900

Jeffrey Buss, Esq.
Smith, Buss & Jacobs
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Yonkers, NY 10704
(914) 476-0600

5. *American Institute for Truth in Advertising v. Vitacommerce, Inc.*, 2018 D.C. Super. LEXIS 2 (D.C. Super. Ct. Apr. 11, 2018).

Counsel for Plaintiff:

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Levin Law Group
Suite 440
5335 Wisconsin Avenue, Northwest
Washington, DC 20015
(202) 427-5753

Counsel for Defendant:

Steven Krieger, Esq.
Steven Krieger Law, PLLC
2200 Wilson Boulevard
Suite 102-438
Arlington, VA 22201
(703) 831-7707

6. *District of Columbia v. Lumen Eight Media Group LLC, et al.*, 2016 CA 6471 B, Order granting plaintiff's Motion for Summary Judgment (Mar. 9, 2020). Opinion supplied previously in response to Question 13.c.

Counsel for the Government:

Fernando Rivera, Esq.
Eric Johnson, Esq.
Tony Jackson, Esq.
Eric Glover, Esq.
Christopher Sousa, Esq.
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(202) 727-3400

Counsel for the Defendant:

Steven Cash, Esq.
Adam Grant, Esq.
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605 Third Avenue
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(212) 297-580

7. *Adetu v. Sidwell Friends School*, Case Number 2015 CA 9948 B, Order granting defendant's Motion for Summary Judgment, 2017 D.C. Super. LEXIS 6 (D.C. Super. Ct. July 14, 2017).

Counsel for Plaintiff:

Richard C. Baker, Esq.
Baker Simmons, Esq.
2120 L Street, Northwest
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(202) 775-0050

Counsel for Defendant:

O'Kelley McWilliams, Esq.
Shameka Bloyce, Esq.
Brian Scotti, Esq.
1300 I Street, Northwest

Suite 825
Washington, DC 20005
(202) 339-1009

8. *Richardson and Walker v. United States,* 116 A.3d 434 (D.C. 2015)

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|---|---|
| Government Counsel: | Stephen F. Rickard, Esq.<br>United States Attorney's Office<br>555 Fourth Street, Northwest<br>Washington, DC 20530<br>(202) 252-7566 |
| Counsel for Appellants: | Corey L. Carlyle, Esq. (Richardson)<br>Solo Practitioner<br>400 Fifth Street, Northwest, Suite 350<br>Washington, DC 20001<br>(202) 262-1984<br><br>Mikel-Meredith Weidman, Esq. (Walker)<br>Public Defender Service<br>633 Indiana Avenue, Northwest<br>Washington, DC 20004<br>(202) 628-1200 |

9. *Jordan v. Jordan*, 14 A.3d 1136 (D.C. 2011)

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| Counsel for Appellant: | Joan S. Meier, Esq.<br>George Washington University Law School<br>2000 H Street, Northwest<br>Washington, DC 20052<br>(202) 994-2278 |
| Counsel for Appellee: | Gail B. Landau, Esq.<br>Solo Practitioner<br>11300 Rockville Pike, Suite 1207<br>Rockville, MD 20852<br>(301) 984-5600 |
| Counsel for *amici curiae:* | Margaret McKinney, Esq.<br>Delaney, McKinney LLP<br>5425 Wisconsin Avenue, Suite 401<br>Chevy Chase, MD 20815<br>(301) 913-5236 |

10. *United States v. Ross and Williams*, 138 Daily Wash. L. Rptr. 2237 (D.C. Super. Ct. Oct. 14, 2010). Opinion supplied.

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| Government Counsel: | Tejpal Chawla, Esq.<br>United States Attorney's Office<br>555 Fourth Street, Northwest<br>Washington, DC 20530<br>(202) 252-7566 |
| Counsel for Defendants: | Edward Shacklee, Esq. (Ross)<br>Public Defender Service<br>633 Indiana Avenue, Northwest<br>Washington, DC 20004<br>(202) 628-1200 |
| | Judge Catharine Easterly (Ross)<br>(formerly at the Public Defender Service)<br>District of Columbia Court of Appeals<br>430 E Street, Northwest<br>Washington, DC 20001<br>(202) 879-2786 |
| | Stephen Cooper (Ross)<br>(formerly at the Public Defender Service)<br>Current business-contact information unavailable. |
| | Joanne Slaight, Esq. (Williams)<br>Solo Practitioner<br>400 Seventh Street, Northwest, Suite 206<br>Washington, DC 20004<br>(202) 408-2041 |

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

*Adetu v. Sidwell Friends School*, Case No. 2015 CA 9948 B, 2017 D.C. Super. LEXIS 6 (D.C. Super. Ct. July 14, 2017), *aff'd*, Case No. 17-CV-888, 2019 D.C. App. LEXIS 36 (D.C. Jan. 23, 2019), *cert. denied*, Case No. 18-1356, 2019 U.S. LEXIS 4154 (U.S. June 17, 2019).

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.

*RFB Properties II, LLC v. Deutsche Bank Trust Company Americas*, 247 A.3d 689 (D.C. 2021)

Under District of Columbia law, when a condominium association forecloses on a lien for unpaid condominium assessments, the foreclosure sale extinguishes all other possessory interests in the property that are not paid off by the foreclosure sale proceeds, such as a mortgage secured by the condominium. In this case, the plaintiff purchased the subject property at a condominium lien foreclosure sale for $53,000, with the understanding that the sale would be subject to a mortgage with an outstanding balance of over $500,000. The purchaser argued that the condominium lien foreclosure extinguished the mortgage, while the mortgage lender argued that the $53,000 sale price would be unconscionably low if the purchaser were not required to pay the mortgage balance. I ruled from the bench that the sale price was unconscionably low under the circumstances, and that the purchaser should not, as an equitable matter, receive a windfall where the purchaser had purchased the property with the understanding that the sale was subject to the mortgage. The Court of Appeals reversed, holding that unconscionability should be determined at the time of the purchase, and that the price was not unconscionable at that time because all parties believed that the sale would be subject to the mortgage. Including the outstanding mortgage balance at the time of sale, the purchase price was approximately $550,000. The Court of Appeals held that the fact that the sale later turned out not to be subject to the mortgage, due to an intervening change in the law, was a risk assumed by the parties.

*Sivaraman v. Guizzetti & Associates, Ltd. et al.*, 228 A.2d 1066 (D.C. 2020)

The Court of Appeals held that I erred in calculating certain damages owed to the plaintiff. The plaintiff alleged that his former employer had violated the District of Columbia's Wage Payment and Collection Law and Minimum Wage Act by failing to pay plaintiff all amounts owed, and by firing him when he sought full payment. I entered default against the defendant and held a hearing on damages, at which I ruled from the bench. The Court of Appeals affirmed in part and reversed in part, holding that I erred in applying certain parts of the relevant statute. The case was remanded with instructions for me to recalculate the damages.

*Frankeny v. District Hospital Partners*, 225 A.3d 999 (D.C. 2020)

The Court of Appeals reversed my entry of summary judgment in favor of defendants in this case of first impression. I had ruled from the bench in favor of the defendant hospital operators in this medical malpractice case, which also included a claim under the District of Columbia Consumer Protection Procedures Act (CPPA). I agreed with defendants that the CPPA applies to medical malpractice and lack-of-informed-consent cases only in more limited circumstances – *i.e.*, when the plaintiff presents evidence of an "entrepreneurial motive" for the hospital's alleged misrepresentations under the CPPA. I relied on precedent interpreting the CPPA from the United States District Court for the

District of Columbia. The Court of Appeals declined to adopt the reasoning of the United States District Court and ruled that a patient need not allege or prove intentional misrepresentation or any particular motive when making claims against medical providers under the CPPA.

*In re J.W.*, No. 13-FS-1509, slip op. (Aug. 2, 2016)

The Court of Appeals reversed a robbery conviction on the ground that the evidence was insufficient to support at finding that the respondent aided and abetted the commission of the offense. The evidence at trial included the testimony of an eyewitness who observed the respondent running away with the cell phone that was snatched in the robbery. I noted that circumstantial evidence suggested that the respondent probably snatched the phone, but none of the witnesses saw her do that. I found that the respondent was at least an aider and abettor to the robbery because she at least participated in the asportation of the stolen item. The Court of Appeals ruled that in the absence of "evidence that anyone else had the status of a principal who J.W. aided or abetted," the evidence was insufficient to find J.W. involved in the robbery. Unpublished memorandum opinion and judgment supplied.

*In re D.P.*, 122 A.3d 903 (D.C. 2015)

The Court of Appeals reversed judgments of aggravated assault and assault with significant bodily injury on the ground that the evidence of the seriousness of the victim's injuries was insufficient. The respondent and others punched the complaining witness repeatedly on a metro bus, causing the complaining witness to strike her head on a pole, rendering her unconscious, and causing her to have headaches for two to three days.

*Bradley v. United States*, 107 A.3d 586 (D.C. 2015)

The Court of Appeals reversed my judgment affirming the judgment of conviction entered by a magistrate judge. The Court of Appeals held that the magistrate judge violated the defendant's rights under the Due Process Clause by sentencing him based on "misinformation and [a] misunderstanding that is materially untrue." The Court reached this conclusion after requesting supplemental briefs on this issue and inviting the Public Defender Service to file a brief as *amicus curiae*. In the proceedings before me in the Superior Court, the defendant had focused on allegations of judicial bias, not violations of due process. Superior Court opinion supplied.

*Douglas v. United States,* 97 A.3d 1045 (D.C. 2014)

The Court of Appeals reversed the defendant's conviction on the charge of possession with intent to distribute marijuana. In this case, the jury was instructed that it could consider the lesser-included offense of possession of marijuana if the

jury made "reasonable efforts" to reach a verdict on the greater charge of possession with intent to distribute, but were unable to reach a verdict on the greater charge. After two notes indicating they were unable to reach a verdict on the greater charge, the jury was instructed that it could consider the lesser charge if it had expended "reasonable efforts" with respect to the greater charge. After the jury convicted the defendant on the lesser charge, I gave an anti-deadlock instruction and required the jury to deliberate on the greater charge. They then returned a guilty verdict on the greater charge. The Court of Appeals held that I should have declared a mistrial on the greater charge after the verdict was returned on the lesser charge, even though the jury had not indicated that it was deadlocked on the greater charge at that point.

*Hagood v. United States*, 93 A.2d 210 (D.C. 2014)

The Court of Appeals held that I erred in failing to *sua sponte* give a special-unanimity instruction, but that reversal was not warranted under plain-error review. The evidence presented by the government encompassed two incidents at the door of an apartment. The Court held that either incident could have supported the offenses of conviction, and that a special-unanimity instruction should have been given to ensure that the jurors were unanimous in their factual findings with respect to each count of conviction.

*Tarpeh v. United States*, 62 A.3d 1266 (D.C. 2013)

The Court of Appeals reversed the defendant's conviction on the charge of criminal neglect of a vulnerable adult, on the ground that the evidence was insufficient to find that the defendant acted recklessly. The defendant was a certified nursing assistant, who was instructed to transport the victim, Ms.Young, to a dental appointment. Ms. Young was a 61-year-old stroke patient, who was paralyzed on the right side of her body and could not speak. Defendant put Ms. Young in a wheelchair without foot rests, and proceeded to push her in the wheelchair to the appointment while Ms. Young's foot dragged on the ground. Ms. Young's foot was abraded down to the bone and her toe was amputated as a result of the defendant's conduct.

*Quintanilla v. United States*, 62 A.3d 1261 (D.C. 2013)

The Court of Appeals reversed the defendant's conviction on the charge of felony assault on the ground that the evidence was insufficient to establish "significant" bodily injury. The Court held that the following injuries were not sufficiently "significant": (1) the victim's head was "throbbing," "sore," and "very tender to the touch;" (2) she had swelling from her "right eye to behind [her] left ear;" (3) her fingers "stayed swollen for about three weeks"; (4) her index finger was "almost unusable for about two months" and "was in a lot of pain;" and (5) the victim had bruising on her legs.

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 about 95% of my Superior Court opinions are unpublished. One opinion was published in the Daily Washington Law Reporter: *United States v. Ross and Williams*, 138 Daily Wash. L. Rptr. 2237 (D.C. Super. Ct. Oct. 14, 2010). Nine opinions have been published on LEXIS, and are listed above in response to Question 13b. I have issued numerous unpublished opinions. Each opinion is available online on the D.C. Superior Court docket for the case in which the opinion was issued.

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.

*Jordan v. Jordan*, 14 A.3d 1136 (D.C. 2011)

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.

On matters of recusal, I follow the Code of Judicial Conduct adopted by the District of Columbia Courts. My court does not employ an "automatic" recusal system. I do not have records of cases in which I have recused myself. There

have been several instances where a criminal defendant has asked me to recuse myself because I had presided over one of his prior criminal matters. I have generally granted such requests where there have been no costs to judicial economy. When I was presiding over a juvenile-delinquency calendar, several respondents asked me to recuse myself after I took guilty pleas from co-respondents. I denied such requests, relying on my ability to refrain from considering matters that are not relevant, and on the general practice in our court of denying such requests in adult co-defendant cases.

15. **Public Office, Political Activities and Affiliations**:

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

From 2002 to 2005, I served on the Mayor's Commission on Asian and Pacific Islander Affairs in the District of Columbia. I was appointed to the Commission by Mayor Anthony A. Williams.

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

None.

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

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

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

I served as a law clerk to the Honorable Michael B. Mukasey of the United States District Court for the Southern District of New York from 1993 to 1994.

I served as a law clerk to the Honorable Ralph K. Winter of the United States Court of Appeals for the Second Circuit from 1994 to 1995.

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

I 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;

1995 – 1998
United States Department of Justice
950 Pennsylvania Avenue, Northwest
Washington, District of Columbia 20530
Attorney, Criminal Division, Appellate Section (1996 – 1998)
Bristow Fellow, Office of the Solicitor General (1995 – 1996)

1998 – 1999
United States Department of the Treasury
1500 Pennsylvania Avenue, Northwest
Washington, District of Columbia 20220
Senior Advisor to the Undersecretary for Domestic Finance (1999)
Senior Advisor to the Assistant Secretary for Financial Markets (1998)

1999 – 2009, January – July 1997
United States Attorney's Office for the District of Columbia
555 Fourth Street, Northwest
Washington, District of Columbia 20530
Assistant United States Attorney (1999 – 2009)
Special Assistant United States Attorney (January – July 1997)

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 did not serve as a mediator or arbitrator in alternative dispute resolution proceedings when I was a practicing attorney. As noted in my response to Question 13, I have engaged in mediation of civil cases as a judicial officer.

b. Describe:

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

From 1995 to 1998, I worked at the United States Department of Justice, first serving as a Bristow Fellow in the Office of the Solicitor General, and then serving as an attorney in the Criminal Division Appellate Section. In both of these positions, I drafted briefs in opposition to certiorari petitions and prepared recommendations regarding the authorization of government

appeals. I also assisted in the preparation of briefs in Supreme Court cases. In addition, I briefed and argued cases in the United States Courts of Appeals for the District of Columbia Circuit, First Circuit, Fifth Circuit, and Ninth Circuit. While I was an attorney in the Criminal Division Appellate Section, I was detailed to the Misdemeanor Trial Section of the United States Attorney's Office for the District of Columbia for seven months.

From 1998 to 1999, I served as a Senior Advisor to Gary Gensler at the United States Department of the Treasury. Mr. Gensler was Assistant Secretary for Financial Markets in 1998, but was elevated to the position of Under Secretary for Domestic Finance in 1999. I assisted him in the formulation of federal financial policy and in the management of career staff.

From 1999 to 2009, I served as an Assistant United States Attorney in the United States Attorney's Office for the District of Columbia. My first assignment was as a rotational attorney in the Appellate Division, where I spent approximately nine months briefing and arguing criminal cases in the District of Columbia Court of Appeals and in the United States Court of Appeals for the District of Columbia Circuit. I then moved through several Superior Court assignments, spending approximately six to nine months in each rotation. In the General Felony Section, I gained experience in conducting jury trials in lower-level felony cases. In the Grand Jury section, I investigated and indicted felony cases, working closely with grand juries. In the Major Crimes Section, I worked on "vertical prosecutions" of more serious felonies, conducting both the grand-jury investigations and the trials in those matters. I then left the Superior Court Division and joined the Narcotics Section of the Criminal Division for approximately two years. In the Narcotics Section, I had approximately five trials in the United States District Court for the District of Columbia, including one that lasted six months. In 2004, I became a Senior Assistant United States Attorney in the Appellate Division. In that capacity, I handled numerous criminal appeals. I was promoted to Deputy Chief of the Appellate Division in 2007. As Deputy Chief, I reviewed briefs, supervised moot courts in preparation for oral arguments, provided training for prosecutors and police officers, and helped to manage the attorneys and support staff in the Division.

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

While practicing as an attorney, I worked only for the federal government. My only client was 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.

While working as a practicing attorney for approximately 13 years (not including the years that I spent clerking, handling policy work at the United States Department of the Treasury, and serving as a judge), my practice was 100 percent in litigation. I spent three years at the United States Department of Justice doing appellate work in federal courts. At the United States Attorney's Office, I spent about two and a half years litigating exclusively in the Superior Court of the District of Columbia; about two years litigating exclusively in the United States District Court for the District of Columbia; and about five and a half years doing appellate work in both federal and local courts. The majority of my work in the Appellate Division (about 75 percent) was in the District of Columbia Court of Appeals.

i. Indicate the percentage of your practice in:
   1. federal courts: 49%
   2. state courts of record: 51%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 4%
   2. criminal proceedings: 96%

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 estimate that I handled approximately 20 jury trials and approximately 20 bench trials as an Assistant United States Attorney and as a Special Assistant United States Attorney.

i. What percentage of these trials were:
   1. jury: 50%
   2. non-jury: 50%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

From 1995 to 1998, I served as a Bristow Fellow in the Office of the Solicitor General and as an attorney in the Criminal Appellate Section at the United States Department of Justice. I did research to support briefs filed by the government in

Supreme Court cases, drafted oppositions to petitions for certiorari, and participated in moot courts for Supreme Court arguments. I did not, however, personally practice before the Supreme Court. To my knowledge, my name appears on only one brief in opposition to certiorari, in *Manges v. United States*, 1997 WL 33557402, *cert. denied*, 523 U.S. 1106 (1998).

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. Askew*, 529 F.3d 1119 (D.C. Cir. 2008) (*en banc*)

    In 2006 and 2007, as an Assistant United States Attorney, I briefed and argued this case before a panel of the United States Court of Appeals for the District of Columbia Circuit, and then briefed and argued it again before the *en banc* Court. The issue was whether it was permissible under the Fourth Amendment for the police to partially unzip a suspect's jacket to see if his clothing matched that of an armed robber, during the course of a *Terry* stop. The appellant argued that this was a full-blown search that required probable cause and an exception to the warrant requirement; the government's position was that it was a reasonable investigative measure that did not exceed the scope of the *Terry* stop. The government lost on narrow grounds: The Court held that the facts of this particular case did not support a reasonable belief that unzipping the jacket would further the investigation.

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    | Argued before: | Then-Chief Judge Ginsburg; Associate Judges Sentelle, Henderson, Rogers, Tatel, Garland, Brown, Griffith, and Kavanaugh; Senior Judge Edwards |
    | Counsel for Appellant: | Sandra Roland<br>Assistant Federal Public Defender<br>625 Indiana Avenue, Northwest, Suite 550<br>Washington, DC 20004<br>(202) 208-7500 |

2. *United States v. Burno*, 953 A.2d 1095 (D.C. 2008)

I briefed and argued this case before the District of Columbia Court of Appeals in 2007. The appellant was convicted of assault with intent to rob while armed and assault on a police officer with a dangerous weapon, after he shot a police officer in an attempt to steal the officer's service weapon. On appeal, he claimed that he had invoked his right to remain silent under *Miranda v. Arizona*, 384 U.S. 436 (1966), when he stated in response to certain questions during a custodial interrogation, "I'd rather not say." The Court of Appeals agreed with the government's position that an invocation of the right to remain silent must be clear and unambiguous, adopting the standard that had been applied to invocations of the right to counsel under *Miranda*.

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| Argued before: | Associate Judge Ruiz, and Senior Judges Farrell and Terry |
| Counsel for Appellant: | Sydney J. Hoffman, Esq.<br>Solo Practitioner<br>P.O. Box 42733<br>Washington, DC 20015<br>(202) 262-8444 |

3. *McNeil v. United States*, 933 A.3d 354 (D.C. 2007)

I briefed and argued this case before the District of Columbia Court of Appeals in 2006. It established the legal standard for mounting a "settled insanity" defense at trial. Appellant, while high on PCP, slit the throat of her 15-month-old daughter, nearly decapitating the child. Appellant's defense was that she was insane, or, in the alternative, that she suffered from a "settled" insanity due to her habitual use of PCP. The Court adopted the legal standard for establishing settled insanity that was advocated by the government. (The case was reversed on a different ground: The government had elicited evidence of the defendant's invocation of her *Miranda* rights as proof that she was sane, in violation of a Supreme Court precedent.)

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| Argued before: | Associate Judges Reid and Glickman, and Senior Judge Prior |
| Counsel for Appellant: | Judge Corinne Beckwith<br>District of Columbia Court of Appeals<br>Historic Courthouse<br>430 E Street, Northwest<br>Washington, DC 20001<br>(202) 879-2728 |

4. *United States v. Simmons et al.*, No. 00-157 (2003 – 2004), *aff'd sub nom. United States v. McGill*, 815 F.3d 846 (D.C. Cir. 2016), *cert. denied*, 138 S. Ct. 58 (2017)

I was a member of a three-attorney team that tried this case in the United States District Court for the District of Columbia from October 2003 to April 2004. (A fourth attorney also participated in the first month of trial.) The six defendants were charged with narcotics conspiracy, Racketeering Influenced Corrupt Organization (RICO) conspiracy, continuing criminal enterprise, and numerous offenses involving drugs and violence, including eight murders and the shooting of a cooperating witness that left the victim a paraplegic. I examined about one-third of the government's witnesses, and I delivered the government's closing argument. All six defendants were convicted of the vast majority of the charges against them. This was the "Group II" trial of defendants who were indicted with lead defendant Gray in a 158-count indictment, a case that the press dubbed "Murder, Inc." Almost all of the convictions were subsequently affirmed on appeal.

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| Presiding Judge: | Judge Royce C. Lamberth |
| Co-Counsels: | Glenn Kirschner, Esq.<br>(formerly at the U.S. Attorney's Office)<br>43717 Gold Hill Square<br>Leesburg, VA 20176<br>(202) 680-8403<br><br>Arvind Lal, Esq.<br>United States Attorney's Office<br>555 Fourth Street, Northwest<br>Washington, DC 20530<br>(202) 252-7566<br><br>Amy Jeffress<br>(formerly at the U.S. Attorney's Office)<br>Arnold and Porter<br>601 Massachusetts Avenue, Northwest<br>Washington, DC 20001<br>(202) 942-5968 |
| Counsel for Defendants: | Joseph E. Beshouri (Defendant Simmons)<br>Magistrate Judge (former solo practitioner)<br>Superior Court of the District of Columbia<br>500 Indiana Avenue, Northwest<br>Washington, DC 20001<br>(202) 879-8343 |

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218 Seventh Street, Southeast
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5. *United States v. Adams*, No. F-717-02 (2002)

With co-counsel Ronald Sharpe, I prosecuted this first-degree murder case in the Superior Court of the District of Columbia in 2002. The defendant was convicted and sentenced to 30 years' imprisonment. I conducted the grand-jury investigation, examined half of the witnesses at trial, and delivered the government's closing argument and rebuttal argument.

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| Presiding Judge: | Judge Robert I. Richter |
| Co-Counsel: | Ronald Sharpe (former prosecutor)<br>United States Attorney for the District of the Virgin Islands<br>Federal Building and U.S. Courthouse<br>5500 Veterans Drive<br>St. Thomas, VI 00802-6424<br>(340) 774-5757 |
| Counsel for Defendant: | Joel Davidson, Esq.<br>Solo Practitioner<br>611 Pennsylvania Avenue, Southeast<br>Number 288<br>Washington, DC 20003<br>(202) 543-2665 |

6. *United States v. Quigley*, No. F-7850-01 (2002)

With co-counsel Glenn Kirschner, I prosecuted this first-degree murder case in the Superior Court of the District of Columbia in 2001. The defendant was convicted and sentenced to 70 years' imprisonment. I conducted the grand-jury investigation, handled the suppression hearing, examined half of the witnesses at trial, and delivered the government's closing argument.

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| Presiding Judge: | Judge Judith Retchin |

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| Co-Counsel: | Glenn Kirschner, Esq.<br>(formerly at the U.S. Attorney's Office)<br>43717 Gold Hill Square<br>Leesburg, VA 20176<br>(202) 680-8403 |
| Counsel for Defendant: | James Williams, Esq.<br>Solo Practitioner<br>P.O. Box 1165<br>Great Falls, VA 22066<br>(703) 757-8375 |

7. *United States v. Johnson*, F-1193-02 (2002)

I prosecuted this defendant on two counts of assault with a dangerous weapon (gun) and related offenses, in the Superior Court of the District of Columbia in 2002. The defendant pulled out a gun, "cocked" it, and pointed it at one victim; he then fled the scene in a car driven by an accomplice. The defendant and the accomplice led the police on a high-speed chase down Interstate 395, during which they fired shots at the pursuing police officers on the highway. A bullet hit the windshield of one of the police cars. The defendant was convicted on all counts and was sentenced to 18 years' imprisonment.

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| Presiding Judge: | Judge Frederick Weisberg |
| Counsel for Defendant: | Judge Maribeth Raffinan<br>(formerly at the Public Defender Service)<br>Superior Court of the District of Columbia<br>500 Indiana Avenue, Northwest<br>Washington, DC 20001<br>(202) 879-0131 |

8. *United States v. Omar and Miller*, F-6737-01, F-51-02 (2002)

I prosecuted these defendants in the Superior Court of the District of Columbia in 2002. The lead defendant, Mr. Omar, was charged with assault with intent to kill while armed and related offenses; and his wife, Ms. Miller, was charged with obstruction of justice, based on alleged attempts to cover up the crime. Mr. Omar was convicted on all counts and sentenced to 25 years' imprisonment. Ms. Miller was acquitted.

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| Presiding Judge: | Judge Russell F. Canan |
| Counsel for Defendants: | Christian Lamar, Esq. (Defendant Omar)<br>(formerly at the Public Defender Service)<br>Georgia Capital Defender |

225 Peachtree Street, Northeast
Atlanta, GA 30303
(404) 739-5151

Sharon Burka, Esq. (Defendant Miller)
Burka and Engle
900 Pennsylvania Avenue, Northwest
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Washington, DC 20004
(202) 966-0625

9. *United States v. Williams*, F-153-02 (2002)

Along with co-counsel John Carlin, I prosecuted this defendant on charges of armed car-jacking and related offenses, in the Superior Court of the District of Columbia in 2002. Although one of the victims identified the defendant from a photo array and in court, and there was grainy surveillance footage of the perpetrator that appeared to confirm the identification, we were not completely confident of the identification. The defendant was convicted of all charges, but we conducted an extensive post-trial investigation of the defendant's claim that someone else was the perpetrator of the crime. The defendant claimed that the real perpetrator had confessed to a witness, and we subjected that witness to a lie-detector test. We intended to dismiss the charges against the defendant if the lie-detector test confirmed the defendant's account, but the witness failed the lie-detector test. The defendant received a lengthy prison sentence. Thereafter, defendant filed a post-trial motion alleging ineffective assistance of counsel, which was litigated by other prosecutors. The government dismissed the case during the post-trial litigation.

| | |
|---|---|
| Presiding Judge: | Judge Judith Retchin |
| Co-Counsel: | John Carlin<br>Principal Associate Deputy Attorney General<br>United States Department of Justice<br>950 Pennsylvania Avenue, Northwest<br>Washington, DC 20530<br>(202) 514-4263 |
| Counsel for Defendant: | Antoini Jones, Esq.<br>Gibson, Jones and Associates, LLP<br>1401 Mercantile Lane, Suite 381<br>Largo, MD 20774<br>(301) 209-0453 |

10. *United States v. Allen*, 755 A.2d 402 (D.C. 2000)

I briefed and argued this government appeal before the District of Columbia Court of Appeals in 1999 and 2000. The issue on appeal was whether the Double Jeopardy Clause precluded the government from re-trying the defendant on the greater offense of possession with intent to distribute cocaine after (1) the jury had exercised "reasonable efforts" to reach a verdict on that charge but had been unable to do so, (2) the jury then convicted the defendant of the lesser-included offense of possession of cocaine, and (3) the court granted a mistrial on the greater offense at the request of the defendant. The Court agreed with the government's position that there was no bar to retrial under the doctrine of "continuing jeopardy" because the trial on the greater offense had ended in a mistrial at the defendant's request.

| | |
|---|---|
| Argued before: | Associate Judges Steadman, Ruiz, and Reid (all of these judges are now senior) |
| Counsel for Appellant: | Leslie B. Holt, Esq.<br>Contact information unavailable |
| Counsel for *amicus curiae:* | Sandra Levick, Esq.<br>James Klein, Esq.<br>Public Defender Service<br>633 Indiana Avenue, Northwest<br>Washington, DC 20004<br>(202) 628-1200 |

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

I have been an active member of the National Asian Pacific American Bar Association and the Asian Pacific American Bar Association of the District of Columbia for many years. Since I became a judge in 2009, I have appeared regularly at events sponsored by those organizations. From 2011 to 2012, I was Secretary of the Judicial Council of the National Asian Pacific American Bar Association. From 2014 to 2018, I was a member of the Advisory Board for the Asian Pacific American Bar Association of the District of Columbia. As of January 2021, I am Chair of the Superior Court Committee on Jury Instructions. Since 2017, I have been a member of the Advisory Committee on Judicial Conduct for the District of Columbia Courts. Since 2019, I have been a member of the Civil Rules Advisory Committee. From 2011 to 2019, I was a member of the Superior Court Committee on the Selection and Tenure of Magistrate Judges. From 2013 to 2017, I was a member of the Superior Court Judicial Education Committee. From 2014 to

2015, I was Co-Chair of the Superior Court Juvenile Subcommittee, and Co-Chair of the Juvenile Rules Advisory Committee. From 2013 to present, I have been a member of the American Law Institute; I currently serve as a member of Regional Advisory Group 4. From 2012 to present, I have been an associate member of the Lawyers' Club of Washington. From 2011 to 2013, I was a member of the National Association of Women Judges and a member of the American Bar Association Judicial Division. From 2008 to 2009, I was a member of the Edward Coke Appellate Inn of Court.

I have never participated in 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 2012 to the present, I have taught Criminal Procedure at Georgetown University Law Center to LL.M. candidates. The course covers Supreme Court cases interpreting the Fourth, Fifth, and Sixth Amendments. Representative syllabi are supplied.

From 2013 to the present, I have taught Constitutional Law at Georgetown University Law Center to LL.M. candidates. In 2013, I taught the class by myself and covered only structural issues. Since 2014, I have co-taught the class with Judge Todd Edelman of the Superior Court of the District of Columbia. I have continued to focus on structural issues, while Judge Edelman focuses on individual rights. Syllabuses for 2013, 2014 and 2015 are supplied.

In 2007 and 2008, I taught Criminal Procedure at American University, Washington College of Law, to J.D. candidates. The course covered Supreme Court cases interpreting the Fourth, Fifth, and Sixth Amendments. Syllabus for 2007 is 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 participate in the District of Columbia 457(b) Deferred Compensation Plan. Distributions from the plan will commence upon my retirement from the D.C. Courts.

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.

The only outside employment that I would plan to pursue during my service with the court, if confirmed, would be teaching Criminal Procedure and Constitutional Law at

Georgetown University Law Center. I have taught at Georgetown since 2012, while also serving as an Associate Judge of the Superior Court of the District of Columbia.

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

    See attached Financial Disclosure Report.

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

    See attached Statement of Net Worth.

24. **Potential Conflicts of Interest**:

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

       I am not aware of any family members or persons, parties, categories of litigation, or financial arrangements that are likely to present potential conflicts of interest should I be confirmed.

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

       If confirmed, I would handle any matter presenting actual or potential conflicts of interest by applying the Code of Conduct for United States Judges and any other relevant ethical canons and rules.

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

    I have dedicated my legal career to public service. I have also participated in non-legal volunteer work throughout my adult life. I served as a volunteer at the Washington Home, a senior citizens' facility in my neighborhood. With my children, I have visited seniors at two other senior citizens' homes and participated in other service projects, such as providing holiday packages for disadvantaged children. While employed at the United States Department of Justice from 1995 to 1996, I tutored a student at the Ludlow-Taylor

School in the District of Columbia. While living in New York and Connecticut from 1993 to 1995, I served as a mentor to a woman who had just been released from prison.

26. **Selection Process**:

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

On January 11, 2016, I submitted an application to the District of Columbia Federal Law Enforcement Nominating Commission. I interviewed with that commission on February 3, 2016. I was subsequently contacted by the office of Congresswoman Eleanor Holmes Norton of the District of Columbia, and I met with the Congresswoman on February 25, 2016 in Washington, D.C. On March 1, 2016, I was informed by the White House Counsel's Office that I was under consideration. On April 13, 2016, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice. On April 28, 2016, the President submitted my nomination to the Senate. On July 13, 2016, I received a hearing before the United States Senate Committee on the Judiciary. On September 15, 2016, the nomination was reported out of committee. The nomination expired on January 3, 2017, with the end of the 114th Congress.

On February 15, 2021, I submitted an application to the District of Columbia Federal Law Enforcement Nominating Commission. I interviewed with that commission on February 27, 2021. I was subsequently contacted by the White House Counsel's Office and was informed that I was under consideration. Since that time, I have been in communication with officials from the Office of Legal Policy at the Department of Justice. On March 30, 2021, the President announced his intent to nominate me, and on June 15, 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).

   Myrna Pérez (no middle initial)

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

   United States Circuit Judge for the Second Circuit

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

   Office:
   120 Broadway
   Suite 1750
   New York, New York 10271

   Residence:
   Jersey City, New Jersey

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

   1974; San Antonio, Texas

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

   2000 – 2003, Columbia Law School; J.D., 2003

   1996 – 1998, Harvard University, John F. Kennedy School of Government; M.P.P., 1998

   1992 – 1996, Yale College; B.A., 1996

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
Brennan Center for Justice at NYU School of Law
120 Broadway, Suite 1750
New York, New York 10027
Director, Voting Rights and Election Program (approximately 2019 – present)
Deputy Director, Democracy Program/Director of Voting Rights and Elections Project (approximately 2013 – 2019)
Senior Counsel (approximately 2011 – 2013)
Counsel, (approximately 2006 – 2011)

Fall 2016 Semester
Fall 2017 Semester
Fall 2018 Semester
Spring 2020 Semester
Spring 2021 Semester
Columbia Law School
435 West 116th Street
New York, New York 10027
Lecturer-in-Law

2007 – present
Columbia Law School Public Interest Legal Center
435 West 116th Street
New York, New York 10027
Adjunct Career Counselor

Fall 2013 Semester
Fall 2014 Semester
Fall 2015 Semester
NYU School of Law
40 Washington Square South
New York, New York 10012
Adjunct Professor of Clinical Law

2005 – 2006
Relman Colfax LLC (formerly Relman & Associates)
1225 19th Street, Northwest
Washington, District of Columbia 20036
Legal Fellow

2004 – 2005
U.S. Court of Appeals for the Third Circuit
50 Walnut Street, Room 5032
Newark, New Jersey 07102
Law Clerk for the Honorable Julio Fuentes

2003 – 2004
U.S. District Court for the Eastern District of Pennsylvania
601 Market Street, Room 7613
Philadelphia, Pennsylvania 19106
Law Clerk for the Honorable Anita B. Brody

Summer 2003
O'Melveny & Myers
1625 Eye Street, Northwest
Washington, District of Columbia 20006
Summer Associate

Fall 2002
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, New York 10014
Fellow/Legal Intern

Summer 2002
Bredhoff & Kaiser
805 15th Street, Northwest
Washington, District of Columbia 20005
Summer Associate

Spring 2002
Professor Jack Greenberg, Columbia Law School
435 West 116th Street
New York, New York 10027
Research Assistant

Summer 2001
Asia Pacific Forum
Level 3, 175 Pitt Street
Sydney, New South Wales 2000, Australia
Summer Intern

1998 – 2000
Government Accountability Office
10 Causeway Street, Room 575
Boston, Massachusetts 02222
Presidential Management Fellow/Analyst

1997 – 1998
Harvard Kennedy School, Office of Community and Public Service
79 John F. Kennedy Street

Cambridge, Massachusetts 02138
Work-Study Employee

Summer 1996; Summer 1997
Boston Housing Authority
52 Chauncy Street
Boston, Massachusetts 02111
Intern

Other Affiliations (Uncompensated):

2020 – present
Sojourners
408 C Street, Northeast
Washington, District of Columbia 20002
Board Member

2020 - present
Hispanic National Bar Association
1020 19th Street, Northwest, Suite 505
Washington, District of Columbia 20036
Deputy, Region III

2015 – present
Crossroads Prison Ministries
P.O. Box 900
Grand Rapids, Michigan 49509
Board Member

2009 – present
Grace Community Services
39 Erie Street
Jersey City, New Jersey 07302
Board Member (2016 – 2020)
Breakfast Plus Coordinator (2012 – present)
Breakfast Plus Volunteer (2009 – 2012)

2007 – present
Saint Matthew's Evangelical Lutheran Church
85 Wayne Street
Jersey City, New Jersey 07302
Congregation President (2020 – present)
Call Committee Member (2008 – 2009, 2011 – 2012, 2019 – 2020)
Pride Coordinator (2009 – present)
Nominating Committee Member (2009 – present)

Approximately 2017 – 2020
Parent Teacher Association for Jersey City Public School #5
182 Merseles Street
Jersey City, New Jersey 07302
After School Program Coordinator

Approximately 2017 – 2019
Tri-State Chapter of the Yale Latino Alumni Association
(No Address)
Board Member

2007 – 2014
Association of the Bar of the City of New York
42 West 44th Street
New York, New York 10036
Chair, Election Law Committee (approximately 2010 – 2013)
Member, Nominating Committee (approximately 2013)

Approximately 2011 – 2012
Barrow Mansion Development Corporation
83 Wayne Street
Jersey City, New Jersey 07302
Board Member

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

   I have not served in the military. I was not required to register for the selective service.

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

   Breaking the Glass Ceiling Award, Leadership Institute for Women of Color Attorneys (2021)

   Distinguished Alumni Award, Columbia Law School Latino/a Law Student Association (2019)

   Distinguished Alumni Award, Yale Latino Alumni Association of the Tri-State Area (2017)

   Making Democracy Work Award, League of Women Voters of New Jersey (2016)

Named one of 2014's "50 Hispanic Influentials" by Hispanic Business (2014)

Excellence in Academia Award, Puerto Rican Bar Association (2011)

Columbia Fellow, American Civil Liberties Union (2002)

Harlan Fiske Stone Scholar, Columbia Law School (May 2001; May 2003)

Lowenstein Public Interest Fellowship, Columbia Law School (2000-2003)

Above and Beyond Award, Government Accountability Office (approximately 2000)

Certificate of Excellence, Government Accountability Office (approximately 1999)

Presidential Management Internship (now called Fellowship), Office of Personnel Management (1998 – 2000)

Robert F. Kennedy Award for Excellence in Public Service, John F. Kennedy School of Government, Harvard University (1998)

Co-Editor, Harvard Journal of Hispanic Policy, John F. Kennedy School of Government (1996 – 1997)

Frank M. Patterson Prize Fellowship, Yale College (approximately 1995)

Andrew W. Mellon Fellowship, Yale College (approximately 1995)

Congressional Hispanic Caucus Institute Internship (approximately 1993)

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

Association of the Bar of the City of New York (approximately 2007 – 2014)
Chair, Election Law Committee (2010 – 2013)
Member, Election Law Committee (2013)
Member, Nominating Committee

Hispanic Bar Association of New Jersey (approximately 2010 – present)

Hispanic National Bar Association (2020 – present)
Deputy, Region III (2021)

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in

membership. Please explain the reason for any lapse in membership.

Texas (2003)
New York (2011)

I have been a continuous member.

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 (2013)
United States Court of Appeals for the Second Circuit (2021)
United States Court of Appeals for the Third Circuit (2005)
United States Court of Appeals for the Fifth Circuit (2015)
United States Court of Appeals for the Seventh Circuit (2018)
United States Court of Appeals for the Eleventh Circuit (2020)
United States District Court for the District of Colorado (2008)
United States District Court for the Northern District of Florida (2007)
United States District Court for the Southern District of Indiana (2017)
United States District Court for the Eastern District of Michigan (2020)
United States District Court for the Western District of Michigan (2020)
United States District Court for the Southern District of New York (2021)

There was a temporary lapse in my Third Circuit membership because of nonpayment of renewal fees. I have been a continuous member of the others.

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.

I have searched my files and records in an effort to identify all organizations responsive to this question. I have identified the organizations below, but it is possible there is an organization in for which I made a monetary donation making me a "member," but was not otherwise involved with materially.

Barrow Mansion Development Corporation, Board Member (approximately 2011 – 2012)

Crossroads Prison Ministries (formerly known as Crossroads Bible Institute),

Board Member (2015 – present)

Grace Community Services
Breakfast Coordinator (approximately 2010 – present)
Board Member (2016 – 2020)

League of Women Voters of New Jersey (intermittent since 2009)

PS 5 PTA Afterschool Enrichment Program, Coordinator (approximately 2017 – present)

Sojourners, Board Member (approximately 2020 – present)

St. Matthew's Evangelical Lutheran Church of America
Church Council President (approximately 2020 – present)
Call Committee member (during three pastoral vacancies)
Organizer for outreach at PRIDE PARADE (most years)
Organizer of many community service ministries

Tri-State Chapter of Yale Latino Alumni Association, Board Member (approximately 2017 – 2019)

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

To the best of my knowledge, none of the organizations listed above currently 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 searched my files and electronic databases in an effort to locate all materials responsive to this question. I have located the materials below that I have authored, co-authored, or bylined, but it is possible that there are a few that I

have been unable to identify.

*CT needs to restore voting rights to formerly incarcerated people*, CTPost, June 6, 2021. Copy supplied.

*New York Still Needs More Reform*, N.Y.L.J., Apr. 22, 2021. Copy Supplied.

*Texas Republicans Move Swiftly on Voter Suppression Bills*, Brennan Center, Mar. 30, 2021. Copy supplied.

*Voter Suppression in the Lone Star State, Past and Potential Future*, Brennan Center, Mar. 15, 2021. Copy supplied.

*Voter Suppression Efforts in Georgia Are Escalating*, Brennan Center, Mar. 15, 2021, Copy supplied.

*Protecting the Right To Vote*, N.Y.L.J., Feb. 25, 2021, Copy supplied.

*How to Restore and Strengthen the Voting Rights Act*, Brennan Center, Jan. 28, 2021. Copy supplied.

*Election Lessons from 2020*, Brennan Center, Dec. 28, 2020. Copy supplied.

*Worst election fears averted, but Americans were still failed in real ways*, The Hill, Dec. 24, 2020. Copy supplied.

*Why These New Election Lawsuits Will Fail. Still.*, Brennan Center, Nov. 17, 2020. Copy supplied.

*Why These New Election Lawsuits Will Fail*, Brennan Center, Nov. 6, 2020. Copy supplied (reprinted in multiple outlets).

*One Question: What is Needed to Have a Free and Fair Election this November?*, The Progressive Magazine, Oct. 21, 2020. Copy supplied.

With Eliza Sweren-Becker, *A win for PA voters*, Pittsburgh Post Gazette, Oct. 15, 2020. Copy supplied.

*Protecting the Right to Vote: The Assault on the Franchise Continues*, N.Y.L.J., Sept. 1, 2020. Copy supplied.

*How to Redesign the World for Coronavirus and Beyond: 15. Don't ditch in person voting-Make it safer*, Politico, July 3, 2020. Copy supplied

*7 Years of Gutting Voting Rights*, Brennan Center, June 25, 2020. Copy supplied.

*Voter Purges in an Increasingly Vote-by-Mail World*, Brennan Center, May 20, 2020. Copy supplied.

*The Disturbing Pattern of Voter Registration Purges*, Sojourners, Apr. 1, 2020. Copy supplied.

*Voters Need Safe and Sanitary In-Person Voting Options*, Brennan Center, Mar. 31, 2020. Copy supplied.

*Here's what has to happen to prevent a repeat of long lines to vote*, Market Watch, Mar. 10, 2020. Copy supplied.

*Federal Appeals Court Rules Florida Voting Restrictions Unconstitutional*, Brennan Center, Feb. 19, 2020. Copy supplied.

*Wisconsin May Purge 200,000 Voters From State Rolls in 2020*, Truthout, Jan. 16, 2020. Copy supplied.

*The Wisconsin Voter Purge Is a Bad Idea*, Brennan Center, Jan. 15, 2020. Copy supplied.

*Partisan Gerrymandering—A Continuing Threat*, N.Y.L.J., Dec. 26, 2019. Copy supplied.

*Restore voting rights for New Jerseyans on probation and parole | Opinion*, North Jersey, Dec. 18, 2019. Copy supplied.

*How to Fight Voter Suppression Nationwide*, Brennan Center, Dec. 9, 2019. Copy supplied.

*This is our last chance to ensure the 2020 election is not rigged*, The Guardian, Dec. 7, 2019. Copy supplied (reprinted in multiple outlets).

*How to Fix Participation: Restore Voting Rights to Ex-Felons,* Politico, December 2019 (Estimated). Copy supplied.

*Here We Go Again: Politicians Using the False Specter of Voter Fraud*, Brennan Center, Nov. 19, 2019. Copy supplied.

*Summer 2019 Election Law Round-Up*, N.Y.L.J., Aug. 28, 2019. Copy supplied.

*An Anniversary and a Call to Action*, Brennan Center, Aug. 6, 2019. Copy supplied.

*A Joyful Accident: Myrna's Story with Breakfast Plus*, Grace Community Services, May 15, 2019. Copy supplied.

*Albany's Still-To-Do Election Reforms*, N.Y.L.J., May 9, 2019, Copy supplied.

*Democracy Reform at the top of the Agenda*, Sojourners, Mar. 18, 2019. Copy supplied.

*New York Election Reform Needs Improvement*, N.Y.L.J., Feb. 13, 2019. Copy supplied.

*Battling for Rights Restoration, Honoring Dr. King*, Brennan Center, Jan. 18, 2019. Copy supplied.

*The Kingdom of God and a Florida Amendment*, Sojourners, Dec. 28, 2018. Copy supplied.

*How New York Suppresses the Vote*, N.Y.L.J., Dec. 26, 2018. Copy supplied.

*North Carolina's Election Fiasco Is About Voter Suppression, Not Voter Fraud*, Brennan Center, Dec. 6, 2018. Copy supplied.

*What Victory in Florida Means to Me*, Brennan Center, Nov. 7, 2018. Copy supplied.

*What to Do If You Encounter Problems at the Polls*, Brennan Center, Nov. 5, 2018. Copy supplied.

*Why I Vote*, Sojourners, Nov. 1, 2018. Copy supplied.

*Florida, Georgia, North Carolina Still Purging Voters at High Rates*, Brennan Center, Oct. 1, 2018. Copy supplied.

*A new Congress could restore the promise of the Voting Rights Act*, Brennan Center, Aug. 6, 2018. Copy supplied.

*Interference in US Elections Has Been Going On For Years. The Reason? Voter Purges*, Brennan Center, July 28, 2018. Copy supplied.

*Purges: A Growing Threat to the Right to Vote*, Brennan Center, July 21, 2018. Copy supplied.

*How Purges Could Disenfranchise Voters This Fall*, Brennan Center, July 20, 2018. Copy supplied.

*How the Midterm Elections May Be Compromised*, N.Y. Times, July 19, 2018. Copy supplied.

*Q&A: Voting Rights Five Years After the Supreme Court's Shelby County Decision*, Brennan Center, June 25, 2018. Copy supplied.

*With Midterms Looming, Conservative Groups Push Aggressive Voter Purges*, Brennan Center, June 25, 2018. Copy supplied.

*Ohio Voting Rights Decision not a Green Light for Reckless Voter Purges,* CNN, June 12, 2018, Copy supplied (reprinted in multiple outlets).

*Easing Voter Registration*, N.Y.L.J., May 15, 2018. Copy supplied.

*Q&A: Brennan Center Lawsuit to Stop Indiana's Voter Purge Law*, Brennan Center, May 1, 2018. Copy supplied.

*New Jersey on Brink of Becoming Next State to Implement Automatic Voter Registration*, Brennan Center, Apr. 6, 2018. Copy supplied.

*Rest in Power Joaquin Avila (June 23, 1948 - March 9, 2018)*, Brennan Center, Mar. 13, 2018. Copy supplied.

*Why Now's the Time for N.J. to Adopt Automatic Voter Registration*, Brennan Center, Jan. 17, 2018. Copy supplied (reprinted in multiple publications).

*Brennan Center and New Jersey Institute for Social Justice, An Agenda for a Renewed Democracy in New Jersey* (approximately 2017). Copy supplied.

*New York Inches Its Way Toward Easier Ballot Access*, N.Y.L.J., Oct. 10, 2017. Copy supplied.

*Public Interest Legal Foundation Paper Appears to Undermine Its Own Central Claim*, Brennan Center, Sept. 12, 2017. Copy supplied.

*PEREZ: Honor the 4th by passing voting reforms*, App.com, July 3, 2017. Copy supplied.

*Noncitizen Voting: The Missing Millions*, Brennan Center, May 5, 2017. Copy supplied.

*President Trump and the 25th Amendment*, N.Y.L.J., Apr. 27, 2017. Copy supplied.

*Real Solutions for Real Problems*, N.Y.L.J., Feb. 23, 2017. Copy supplied.

*Challenges to Candidates: Residency and Timing*, N.Y.L.J., Dec. 23, 2016. Copy supplied.

*Early Voters in Texas Don't Have All the Right Information*, Brennan Center, Oct. 25, 2016. Copy supplied.

*Court Victories Don't Mean Voters Are in the Clear*, N.Y.L.J., Oct. 6, 2016. Copy supplied.

*Re-Enfranchising People With Prior Convictions*, N.Y.L.J., June 22, 2016. Copy supplied.

*Electing the President: Rules and Laws*, N.Y.L.J., Apr. 18, 2016. Copy supplied.

*Voting Rights – and Wrongs*, Sojourners, Apr., 2016, Copy supplied.

*Arizona's Long Voting Lines Showed How Democracy is Broken. Here's How to Fix it,* The Huffington Post, Mar. 25, 2016. Copy supplied.

*Voting Reform Prominent in Two Executive Addresses*, N.Y.L.J., Feb. 5, 2016. Copy supplied.

*Election Integrity: A Pro-Voter Agenda*, Brennan Center, Jan. 19, 2016. Copy supplied.

*Year-End Roundup: Significant State and Federal Developments*, N.Y.L.J., Dec. 17, 2015. Copy supplied.

*Voter Registration in a Digital Age: 2015 Update*, Brennan Center, Oct. 27, 2015. Copy supplied.

*Making Sense of the Bronx 'Switcheroo'*, N.Y.L.J., Oct. 7, 2015. Copy supplied.

*Governor Jerry Brown Should Sign Historic Voting Bill*, Brennan Center, Sept. 26, 2015. Copy supplied.

*State Legislatures Adjourning, But Voting Rights Still Center Stage*, Brennan Center, Aug. 5, 2015. Copy supplied.

*A Bipartisan Breakthrough on Restoring Voting Rights*, Brennan Center, May 13, 2015. Copy supplied.

With Jennifer L. Clark, *Texas Should Move to Modernize Its Registration System*, Brennan Center, Apr. 20, 2015. Copy supplied (reprinted in multiple outlets).

*Alabama and Albany Minority Voters Get Wins*, N.Y.L.J., Apr. 10, 2015. Copy supplied.

*Federal Actions Bring Election Matters to the Forefront*, N.Y.L.J., Feb. 27, 2015. Copy supplied.

*Year-End Round Up on Elections and Voting Rights*, N.Y.L.J., Jan. 5, 2015. Copy supplied.

*Voting Restrictions: From Statehouses to Courts*, N.Y.L.J., Oct. 24, 2014. Copy supplied.

*Election Day Long Lines: Resource Allocation*, Brennan Center, Sept. 15, 2014. Copy supplied.

*The Governor Challenges His Opponent's Residency*, N.Y.L.J., Aug. 6, 2014. Copy supplied.

*New Ballot-Box Rules Create Obstacles*, Brennan Center, June 30, 2014. Copy supplied.

*Proving Who You Are: The Legal Battle Over Voter ID Laws*, N.Y.L.J., June 4, 2014. Copy supplied (reprinted in multiple outlets).

*New York Round Up: Campaign Finance and Ballot Issues*, N.Y.L.J., Apr. 2, 2014. Copy supplied.

*Presidential and Legislative Efforts on Voting Reform*, N.Y.L.J., Feb. 5, 2014. Copy supplied.

*2013's Top 10: From Voting Rights Act to Moreland Commission*, N.Y.L.J., Dec. 30, 2013. Copy supplied.

*On Election Day, Get in that Booth and Vote*, Brennan Center, Nov. 5, 2013. Copy supplied.

*After 'Shelby County' Ruling, Are Voting Rights Endangered?*, Brennan Center, Sept. 23, 2013. Copy supplied.

*The Cuomo-Schneiderman Moreland Commission*, N.Y.L.J., July 19, 2013. Copy supplied.

*A Devastating Setback for Civil Rights*, Boston Review, June 27, 2013. Copy supplied.

*After Supreme Court, Congress Must Move on Voting Rights Act*, Christian Science Monitor, June 25, 2013. Copy supplied.

*If Section 5 Falls: New Voting Implications*, Brennan Center, June 12, 2013. Copy supplied.

*Colorado Passed Broad Election Reform, Other States Should Follow*, Huffington Post, May 16, 2013. Copy supplied.

*U.S. Supreme Court Examines Voting Rights in Two Cases*, N.Y.L.J., May 15, 2013. Copy supplied.

*Congress Must Retain Power to Protect Voters*, Brennan Center, Mar. 18, 2013. Copy supplied.

*Why Latinos Must Weigh in on Current Voting Rights Case*, Brennan Center, Mar. 14, 2013. Copy supplied.

*Why the Predictions Could be Wrong in* Shelby County, Brennan Center, Mar. 1, 2013. Copy supplied.

*To Protect Democracy, Supreme Court Must Fully Uphold Voting Rights Act*, Christian Science Monitor, Feb. 27, 2013. Copy supplied.

*Voting Rights Act is an Important Moral Statement*, Sojourners, Feb. 25, 2013. Copy supplied.

*Three Ways to Fix Our Democracy*, The Huffington Post, Nov. 26, 2012. Copy supplied.

*Vote to Have Your Say: Register Now*, The Huffington Post, Oct. 5, 2012. Copy supplied.

*With voter purges, Florida repeats past errors*, South Florida Sun Sentinel, June 6, 2012. Copy supplied.

*Florida's Unsung Election Heroes*, Brennan Center, June 5, 2012. Copy supplied.

*Florida Should Avoid Misdeeds of the Past*, Brennan Center, May 21, 2012. Copy supplied.

*Remembering Chuck Colson*, Brennan Center, Apr. 26, 2012. Copy supplied.

*Democracy Restoration Act Would Restore Voting Rights to Millions*, Huffington Post, Apr. 26, 2012. Copy supplied.

*States Shouldn't Tamper with Voting Rights Act*, Brennan Center, Apr. 25, 2012. Copy supplied.

*How the Voting Rights Act, a Cornerstone of Civil Rights Law, Has Come Under Threat*, Highbrow Magazine, Apr. 24, 2012. Copy supplied.

*Connecticut Leading the Way on Voting Rights*, Brennan Center, Mar. 22, 2012. Copy supplied.

*Ash Wednesday: Restoring the Right to Vote*, Sojourners, Feb. 21, 2012. Copy supplied.

*A Media Guide to Redistricting*, Brennan Center, Mar. 7, 2011. Copy supplied.

*MLK and the Supreme Court*, Sojourners, Jan. 22, 2010. Copy supplied.

*Adios 2009, Saludos 2010: A Latino Year in Review*, Brennan Center, Dec. 28, 2009. Copy supplied.

*How Latinos Can Build Political Power in Port Chester, NY*, Brennan Center, Nov. 10, 2009. Copy supplied.

*Proof of Citizenship Requirements; Chart of State Legislation*, Brennan Center, Nov. 5, 2009. Copy supplied.

*In Memory of Judge Justice*, Brennan Center, Oct. 17, 2009. Copy supplied.

*Accounting for the Census Clause*, Brennan Center, Aug. 11, 2009. Copy supplied.

*Voting Rights Act: The Legacy of the 15th Amendment*, Brennan Center, June 30, 2009. Copy supplied.

*When Voters Move*, Brennan Center, June 13, 2009. Copy supplied.

*Politics Makes Strange Bedfellows*, Huffington Post, Mar. 5, 2009. Copy supplied.

*Voter Purges*, Brennan Center, Sept. 30, 2008. Copy supplied.

*Attacking the Nuns*, Brennan Center, May 9, 2008. Copy supplied.

*King's English-Only*, Brennan Center, Apr. 9, 2008. Copy supplied.

*It Just Keeps Getting Worse In Mississippi*, Brennan Center, Mar. 11, 2008. Copy supplied.

*Mississippi's "Reform" Failure*, Brennan Center, Feb. 27, 2008. Copy supplied.

*Administrative Transfer of NVRA Regulations*, Brennan Center, Dec. 3, 2007. Copy supplied.

With Irma Munoz, Editors' remarks, *Vol 10, Harvard Journal of Hispanic Policy*, Harvard Journal of Hispanic Policy, 1996-1997. Copy supplied.

*Localizing Rights*, Yale Review of Politics, Dec. 1994. Copy supplied.

*Letter to the editor on "Gripes About No Grapes"*, Yale Herald, Nov. 4, 1994. Copy supplied.

*Unheard Voices*, Yale Journal of Human Rights, Fall 1993. Copy supplied.

*Rude Awakenings*, Yale Review of Politics, Oct. 1993. Copy supplied.

Below are pieces to which I have made specific editing contributions, but was not an author.

Brennan Center for Justice, *Voting Laws Roundup: March 2021* (Apr. 1, 2021). Available at https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-march-2021.

Brennan Center for Justice, *Voting Laws Roundup: February 2021* (Feb. 8, 2021). Available at https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-february-2021.

Brennan Center for Justice, *Voting Laws Roundup: January 2021* (Jan. 26, 2021). Available at https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-january-2021.

Hannah Klain, Kevin Morris, Rebecca Ayala, *Waiting to Vote* (June 3, 2020). Available at https://www.brennancenter.org/our-work/research-reports/waiting-vote.

Brennan Center for Justice, *Voting Laws Roundup 2020* (Feb. 4, 2020). Available at https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2020.

Brennan Center for Justice, *Voting Laws Roundup 2019* (July 10, 2019). Available at https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2019.

Peter Dunphy, Kevin Morris, *AVR Impact on State Voter Registration* (Apr. 11, 2019). Available at https://www.brennancenter.org/our-work/research-reports/avr-impact-state-voter-registration.

Brennan Center for Justice, *Voting Laws Roundup 2018* (Apr. 2, 2018). Available at https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2018.

Jonathan Brater, *Voter Purges: The Risks in 2018* (Feb. 27, 2018). Available at https://www.brennancenter.org/our-work/research-reports/voter-purges-risks-2018.

Brennan Center for Justice, *Voting Laws Roundup 2017* (May 10, 2017). Available at https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2017.

Erin Kelley, *Racism & Felony Disenfranchisement: An Intertwined History* (May 9, 2017). Available at https://www.brennancenter.org/our-work/research-reports/racism-felony-disenfranchisement-intertwined-history.

Erika Wood, *Florida: An Outlier in Denying Voting Rights* (Dec. 16, 2016). Available at https://www.brennancenter.org/our-work/research-reports/florida-outlier-denying-voting-rights.

Brennan Center for Justice, *Voting Laws Roundup 2016* (Apr. 18, 2016). Available at https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2016.

Multiple Authors, *The Case for Automatic Voter Registration* (Sept. 22, 2015). Available at https://www.brennancenter.org/our-work/research-reports/case-automatic-voter-registration.

Brennan Center for Justice, *Voting Laws Roundup 2015* (June 3, 2015). Available at https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2015.

Brennan Center for Justice, *Voting Laws Roundup 2014* (Dec. 18, 2014). Available at https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2014.

Brennan Center for Justice, *Voting Laws Roundup 2013* (Dec. 19, 2013). Available at https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2013.

Brennan Center for Justice, *Election 2012: Voting Laws Roundup* (Oct. 11, 2012). Available at https://www.brennancenter.org/our-work/research-reports/election-2012-voting-laws-roundup.

Nicolas Riley, *Voter Challengers* (Aug. 30, 2012). Available at https://www.brennancenter.org/our-work/research-reports/voter-challengers.

Monica Youn, *Judge Sotomayor's Record in Constitutional Cases* (July 9, 2009). Available at https://www.brennancenter.org/our-work/analysis-opinion/sotomayor-not-activist-judge-study-finds.

Multiple Authors, *My First Vote* (July 5, 2009). Available at https://www.brennancenter.org/our-work/research-reports/my-first-vote.

I would also note that as head of a department, I have likely provided at least high-level editorial feedback to many, if not all, outward facing publications issued from my department.

I wrote various fictional poems for student publications when in college. I am unable to locate any copies.

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.

With Wendy Weiser, *Proposed Guidance on NVRA* (Mar. 1, 2010). Copy supplied.

*Best Practices for Purges* (approximately 2006). Copy supplied.

The Election Law Committee of the City of New York, when I was a member and when I was chair, issued numerous reports on various voting related matters. I did not prepare, nor did I contribute materially to any preparation, but I may have engaged in internal discussions as to the topic. Given I was listed as a member of the issuing committee, I list the following reports:

Presentation of John H. Snyder on behalf of the Election Law Committee of the Association of the Bar of the City of New York (Dec. 14, 2010). Available at https://www.nycbar.org/pdf/report/uploads/20072022-TestimonyatPublicHearingregardingNYSRedistrictingProcess.pdf.

New York City Bar Association, Statement to the 2010 Charter Revision Commission (July 26, 2010). Available at https://www.nycbar.org/pdf/report/uploads/charterrevisionfinal2.pdf.

New York City Bar Association Committee on Election Law, The National Popular Vote Initiative (July 1, 2010). Available at https://www.nycbar.org/pdf/report/uploads/20071975-TheNationalPopularVoteInitiative.pdf.

New York City Bar Association Committee on Election Law, Proposal for a Filing Fee Alternative for Ballot Access (July 1, 2010). Available at https://www.nycbar.org/pdf/report/uploads/20071983-ProposalforaFilingFeeAlternativeforBallotAccess.pdf.

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.

*Hearing on State COVID-19 Voting Procedures Before the H. Comm. on Judiciary*, 116th Cong. (2020). Copy supplied.

*Hearing on Restoring the Voting Rights Act Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary*, 116th Cong. (2019). Copy supplied.

*Hearing on State Voter Suppression Before the Subcomm. on Civil Rights and Civil Liberties of the H. Comm. on Oversight and Reform*, 116th Cong. (2019). Copy supplied.

*Hearing on New Jersey Rights Restoration Before the S. Gov't Comm.*, 218th Leg. (N.J. 2019). Copy supplied.

Letter to the United States House Committee on the Judiciary in Support of the For the People Act, (2019). Copy supplied.

Letter to the Indiana Secretary of State regarding Non-Compliance with Section 8 of the National Voter Registration Act addressed, (2017). Copy supplied.

*Hearing on Nominations of Thomas Hicks and Myrna Pérez to be members of the Election Assistance Commission Before the S. Comm. on Rules and Administration*, 113th Cong. (2013). Copy supplied.

*Hearing on Connecticut Voter Registration; Voter Intimidation Before the Joint Comm. on Government Administration and Elections*, (Conn. 2011). Copy supplied.

*Hearing on Nominations of Gineen Bresso, Thomas Hicks, and Myrna Pérez to be members of the Election Assistance Commission Before the S. Comm. on Rules and Administration*, 112th Cong. (2011). Copy supplied.

*Hearing on New Jersey Redistricting Before the N.J. Apportionment Comm'n*, (N.J. 2011). Copy supplied.

*Hearing on Michigan Redistricting Before the H. Judiciary Comm.* (Mich. 2010). Copy supplied.

*Hearing on New York Voting Machines; Voter Registration Before the S. Elections Comm.* (N.Y. 2009). Copy supplied.

With James Sample, Letter to the Montana Secretary of State Regarding Large-Scale Challenges in Six Counties (Oct. 5, 2008). Copy supplied.

Letter to the Mississippi Secretary of State with Recommendations to Protect Against Improper Purges addressed, (Mar. 26, 2008). Copy supplied.

Testimony before the Election Assistance Commission, State Voter Registration (2007). Copy supplied.

With Wendy Weiser, *United States Senate Committee on Homeland Security and Governmental Affairs, Subcommittee Oversight of Government Management, Real ID* (2007). Copy Supplied.

I was a law student signatory to an amicus brief on behalf of law students authored by Julie Sullivan and Peter Rubin in *Grutter v. Bollinger*, 539 U.S. 306 (2003). Brief for Law Students at Accredited American Law Schools as Amici Curiae, 2003 WL 554404.

As a Presidential Management Fellow at the Government Accountability Office, I was listed as a major contributor to the following reports to congressional requestors:

U.S. Gov't Accountability Off., GAO-01-137, Prescription Drugs: Drug Company Programs Help Some People Who Lack Coverage (2000). Copy supplied.

U.S. Gov't Accountability Off., GAO-00-162, State Pharmacy Programs: Assistance Designed to Targe Coverage (2000). Copy supplied.

U.S. Gov't Accountability Off., GAO-00-112, Prescription Drugs: Adapting Private Sector Management Methods, Testimony: Subcommittee on Health, Ways, and Means, House of Representatives (2000). Copy supplied.

U.S. Gov't Accountability Off., GAO-00-38, Telecommunications: Development of Competition in Local Telephone Markets (2000). Copy supplied.

U.S. Gov't Accountability Off., GAO-99-178, Homelessness: State and Local Efforts to Integrate and Evaluate Homeless Assistance Programs (1999). Copy supplied.

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

See attached list of responsive events.

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.

See attached list of interviews.

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

I have not served as a judge.

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

i. Of these cases, approximately what percent were:

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

ii. Of these cases, approximately what percent were:

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

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

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

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

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

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

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

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

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

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations**:

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

I have not held any public office.

In 2011, and again in 2013, I was nominated to be a commissioner of the U.S. Election Assistance Commission—a Senate-confirmed position. While awaiting confirmation, I had a child and a work promotion and ultimately decided to withdraw my name.

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

In 2020 I served as a policy volunteer with the Biden-Harris Campaign, where I was Co-Chair of the Democracy Committee. In 2009 I volunteered for Friends of David Buchwald. I did not hold any office, but assisted with website translation into Spanish.

In approximately 2017 I served as a member of the Democracy Committee of Governor-Elect Phil Murphy's Policy Transition Team.

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;

Hon. Anita Brody
United States District Court for the Eastern District of Pennsylvania
2003 – 2004

Hon. Julio Fuentes
United States Court of Appeals for the Third Circuit
2004 – 2005

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;

Summer 2003
O'Melveny & Myers, LLP
1625 Eye Street, NW
Washington, DC 20006
Summer Associate

2005 – 2006
Relman, Colfax PLLC (then Relman, Dane, and Colfax)
1225 19th Street, Northwest, # 600
Washington, District of Columbia 20036
Legal Fellow

2006 – present
Brennan Center for Justice at NYU School of Law
120 Broadway, Suite 1750
New York, New York 10027
Director, Voting Rights & Elections Program (formerly Counsel in the Voting Project; Senior counsel in the Voting Project; Deputy Director/Director of the Voting Rights & Elections Project)

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.

I lead, supervise, and direct the Brennan Center's voting litigation, research, and policy advocacy nationwide and the attorneys and researchers who perform that work. My team litigates complex civil matters related to election law, and provides litigation counsel and advice to nonprofit clients, often in compressed timetables. Many of our cases have multiple parties (including intervenors), numerous legal

organizations or law firms, and extensive motion practice. We also conduct research and publish studies, testify before legislative bodies, draft legislative and policy proposals, and publish legal scholarship. Throughout my career, I have personally appeared in federal and state courts across the country, arguing key motions and presenting witnesses at trial and in proceedings for preliminary or temporary relief.

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

My clients include civic and religious organizations such as the League of Women Voters and its chapters, the NAACP and its state affiliates, Common Cause and its chapters, and the Anti-Defamation League of the Southwest region.

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.

Approximately 30% of my practice is and has been litigation (including amicus work), although the share of litigation at particular points in time is often quite higher, especially near elections. The non-litigation aspect of my practice involves overseeing a high performing team, drafting legislation, performing research, and drafting public-facing written communication pieces.

i. Indicate the percentage of your practice in:
   1. federal courts: 75%
   2. state courts of record: 25%
   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.

Because so many voting cases are litigated in the context of upcoming elections, many matters take place in the context of seeking expedient relief, requiring the accumulation of facts, experts, and witnesses, in short order. Against that backdrop, I have argued numerous proceedings in state and federal courts. I have been lead counsel for the Brennan Center in one trial, supervisor of the Brennan Center team in another trial, and lead counsel for the Brennan Center in at least

eight matters involving preliminary or temporary relief. I have argued solely or in part four cases in state trial court on motions for preliminary injunction or summary judgment, and four cases in federal district court on motions for preliminary or summary judgment. Additionally, I have presented expert witnesses in both state and federal court, and lay witnesses in federal court. I have argued before the U.S. Court of Appeals for the Seventh Circuit twice and have been lead counsel for the Brennan Center in appellate matters. I have also appeared before a federal district judge as *amicus* counsel at the remedy phase of a proceeding after liability was found. I have an active Supreme Court amicus practice.

i. What percentage of these trials were:
   1. jury: 0%
   2. non-jury: 100%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

My practice before the Supreme Court involves participating in the preparation of amicus briefs on behalf of the Brennan Center and leading amicus strategy for the voting rights field, which includes identifying helpful briefs, recruiting amici and pro bono counsel to represent the amici, and serving as a resource to amici and parties before the Court.

I have played a major role in the preparation of the following Amicus Curiae briefs on behalf of either the Center or other petitioners:

*Brnovich v. Democratic Nat. Comm.*, No. 19-1257, 2021 U.S. LEXIS 670 (Jan. 25, 2021) (brief of the Brennan Center for Justice as amicus curiae supporting respondents, 2021 WL 260090)

*Husted v. A. Philip Randolph. Inst.*, 138 S. Ct. 1833 (2018) (brief of the Brennan Center for Justice as amicus curiae supporting respondents, 2017 WL 6939164)

*Ne. Ohio Coal. for the Homeless v. Husted*, 137 S. Ct. 2265 (2017) (brief of the Brennan Center for Justice as amicus curiae supporting petitioners, 2017 WL 1326548)

*Shelby County v. Holder*, 570 U.S. 529 (2013) (brief of the Brennan Center for Justice as amicus curiae supporting respondents, 2013 WL 417738)

*Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1 (2013) (brief of Constitutional Law Professors as amicus curiae supporting respondents, 2013 WL 267029)

*Northwest Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009) (brief for the Brennan Center for Justice as amicus curiae supporting appellee, 2009 WL 797589)

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. *Gruver v. Barton* (N.D. Fla., No. 1:19-cv-121), consolidated with *Jones v. DeSantis*, 462 F. Supp. 3d 1196 (N.D. Fla. 2020), *rev'd sub nom Jones v. Governor of Florida*, 975 F.3d 1016 (11th Cir. 2020).

In 2018, Floridians voted for a constitutional amendment to automatically restore voting rights to Floridians who had been convicted of felony offenses (other than murder or a felony sex offense) upon completion of their sentences, including probation and parole. Six months later, the Florida legislature passed Senate Bill 7066 prohibiting citizens with felony convictions from voting unless and until they paid off all outstanding financial obligations imposed in relation to their convictions. On June 28, 2019, S.B. 7066 was signed into law, and the Brennan Center, along with the ACLU, the ACLU of Florida, and the NAACP Legal Defense and Education Fund, filed a lawsuit on behalf of 11 individual Florida residents, the Florida State Conference of the NAACP, the Orange County Branch of the NAACP, and the League of Women Voters of Florida, challenging the new law on various grounds. The Brennan Center's case was consolidated with four other cases challenging S.B. 7066. On October 18, 2019, the Honorable Robert L. Hinkle of the U.S. District Court for the Northern District of Florida granted a preliminary injunction, allowing the individual plaintiffs to vote. In February 2020, the U.S. Court of Appeals for the Eleventh Circuit affirmed the injunction and denied defendants' request for a rehearing *en banc*. On May 24, 2020, following a full trial on the merits, the U.S. District Court ruled in our clients' favor on some claims and ordered remedial action. The defendants appealed, and on September 11, 2020, the Eleventh Circuit reversed and vacated the district court's ruling. I supervised and consulted with numerous team members from the Brennan Center participating in all aspects of litigation throughout the

proceedings, reviewed and revised numerous briefs, and mooted the oralist for the appellate argument.

This was a large case involving numerous parties. Please see below for some of the participating parties.

Co-Counsel for Plaintiffs:
Julie Ebenstein
American Civil Liberties Union Foundation, Inc.
125 Broad Street, 18th Floor
New York, NY 10004
(212) 284-7332

Leah C. Aden
NAACP Legal Defense and Education Fund, Inc.
40 Rector Street, 5th Floor
New York, NY 10006
(212) 965-2200

Counsel for Plaintiffs in Consolidated Case, *McCoy v. DeSantis* (N.D. Fla., No. 4:19-cv-00304)
Nancy Gbana Abudu
Southern Poverty Law Center
P.O. Box 1287
Decatur, GA 30031
(404) 221-4062

Counsel for Plaintiffs in Consolidated Case, *Raysor v. Lee* (N.D. Fla., No. 4:19-cv-00301)
Danielle Lang
Campaign Legal Center
1101 14th Street, Northwest, Suite 400
Washington, DC 20005
(202) 736-2200

Defendants' Counsel:
Oren Rosenthal
Miami-Dade County Attorney's Office
111 Northwest 1st Street, Suite 2810
Miami, FL 33128-1930
(305) 375-5151

2. *Indiana State Conference of the NAACP et al. v. Lawson et al.*, 326 F.Supp.3d 646 (S.D. Ind. 2018), *aff'd sub nom. Common Cause Indiana v. Lawson et al.*, 937 F.3d 944 (7th Cir. 2019).

On August 29, 2017, along with co-counsel, the Brennan Center filed a lawsuit in the U.S. District Court for the Southern District of Indiana on behalf of the Indiana NAACP and the Indiana League of Women Voters against Connie Lawson, the Indiana Secretary of State, and J. Bradley King and Angela Nussmeyer, Indiana Election Division Co-Directors. Indiana relied on the controversial database program known as the Interstate Voter Registration Crosscheck Program ("Crosscheck") to identify and remove voters from the registration list but eliminated a provision in its statute that provided the notice to voters and waiting period required by the National Voter Registration Act ("NVRA"). The lawsuit challenged the state law that eliminated the NVRA-mandated notice and waiting period. I argued our motion for a preliminary injunction before the Honorable Tonya Walton Pratt. We won, the defendants appealed, and I argued the case before the U.S. Court of Appeals for the Seventh Circuit. The Seventh Circuit affirmed in a 3-0 decision. The state later passed a new law on the same topic, and proceedings on that law also made it to the Seventh Circuit, and I split the oral argument on behalf of plaintiffs.

Related Cases:
*Common Cause Indiana v. Lawson et al.,* 481 F. Supp. 3d 799 (S.D. Ind. 2020).

On October 27, 2017, Common Cause Indiana filed suit in the U.S. District Court for the Southern District of Indiana against the same defendants. The District Court heard the two cases together and, on appeal, the Seventh Circuit consolidated the Brennan Center's case with the *Common Cause Indiana* case for decision.

Pro Bono Counsel to the Indiana NAACP and Indiana LWV:
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Counsel to Common Cause Indiana:
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Demos
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Sophia Lin Lakin
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Opposing Counsel:
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Office of the Indiana Attorney General

Indiana Government Center South, 5th Floor
302 West Washington Street
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3. *Common Cause Georgia v. Raffensperger*, 347 F.Supp.3d 1270 (N.D. Ga. 2018).

On November 5, 2018, the Brennan Center filed a complaint on behalf of Common Cause Georgia to protect against the denial of Georgians' fundamental right to vote as a result of malfeasance or tampering with the State's voter registration database. The database, maintained by the Secretary of States, was vulnerable to hacking, and the security risk was compounded because Georgia's provisional ballot counting process failed to provide adequate protections to voters. Two days later, on November 7, 2018, we filed a motion for temporary restraining order to prevent elections officials from rejecting provisional ballots without additional processes demonstrating that the voter was not eligible to vote or was not registered. On November 8, just days after the election, we had a hearing before the Honorable Amy Totenberg in the U.S. District Court for the Northern District of Georgia. Pre-hearing, I performed legal research, searched for witnesses, identified experts, drafted declarations, and drafted and edited the complaint and motion (along with others). I argued the TRO motion, along with *pro bono* counsel, presented our evidence, and cross-examined the state's witnesses. On November 12, 2018, the court granted in part our request for a temporary restraining order, setting forth certain rules and protocols for counting provisional ballots. That remedy was then incorporated into legislation, allowing the case to be dismissed, and making the remedy more durable and permanent.

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Skip Sugarman (pro bono local counsel)
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(404) 495-4811

Opposing Counsel:
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Special Assistant Attorney General
Strickland Brockington Lewis LLP
Midtown Proscenium, Suite 2200
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Atlanta, GA 30309

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4. *League of Women Voters of Texas v. Pablos*, No. D-1-GN-17-003451 (Tex. 98th Jud. Dist. Ct., Oct. 3, 2017); *In re Pablos*, 2018 WL 699335 (Tex. App. 3rd 2018).

In 2017, former President Trump created a controversial presidential commission to examine voter fraud. A member of that commission requested numerous pieces of voter information from states across the country, information that the Brennan Center believed could be used to purge eligible voters from the registration rolls. While some states expressly indicated they intended to defy the request, others publicly declared they intended to provide the data to the commission.

Many federal lawsuits ensued, and, in addition to nationally focused advocacy, the Brennan Center filed lawsuits in selected states arguing that it was illegal under that state's law to provide the requested information. The Brennan Center, representing the League of Women Voters of Texas, the Texas NAACP, and Ruthann Geer, sought to prevent the Texas Secretary of State from producing the voter information, filing a petition in Texas state court on July 20, 2017. I conceived and devised much of the theory and strategy of the case, performed and supervised much of the relevant state law and factual research, reviewed and revised the papers, and argued a motion for a temporary restraining order before the Honorable Tim Sulak in the District Court of Travis County, Texas, which the court granted on October 3, 2017. Defendants appealed, but the Texas Court of Appeals extended the TRO indefinitely. While the appeal was pending, under much public scrutiny, the president disbanded the commission. Accordingly, the Brennan Center voluntarily dismissed the case. To the best of our knowledge, this case was the only litigation victory that emerged from the numerous lawsuits filed, and more consequently, Texas did not provide any voter data before the commission disbanded.

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Lead Opposing Counsel:
Esteban S.M. Soto
Assistant Attorney General

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5. *Rick Scott for Senate v. Snipes*, No. CACE 18-026470 (Cir. Ct. 17th Jud. Cir., Broward Cnty., Fla. Nov. 16, 2018).

Following the November 6, 2018, general election, Florida U.S. Senate candidate Rick Scott filed a lawsuit in the Circuit Court for the 17th Judicial Circuit, Broward County, seeking to prevent Broward County from counting valid and timely-cast ballots that the county had not processed by the first-round canvassing deadline.

On behalf of the League of Women Voters of Florida and an individual voter, the Brennan Center and co-counsel successfully moved to intervene as defendants in November 2018, asserting that all valid and timely cast ballots should be counted. At a temporary injunction hearing before Chief Judge Jack Tuter, I argued on behalf of my clients that Florida law supported the counting of the ballots in later canvassing rounds. Pre-hearing, I performed and supervised all stages of litigation including developing our legal position, interviewing clients and preparing declarations, performing legal research and writing, and reviewing and revising filings.

In November 2018, Chief Judge Tuter denied Scott's request for a temporary injunction to halt the ballot counting process. Four days later, Scott withdrew the lawsuit.

The Democratic Senatorial Campaign Committee and the campaign for Bill Nelson (Rick Scott's opponent in the election) also intervened in the case.

Co-Counsel:
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Simpson Thacher & Bartlett LLP
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Defendant's Counsel
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Broward County Governmental Center
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(954) 357-7600

Plaintiff's Counsel:
Aliette D. Rodz
Shutz & Bowen LLP
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Miami, FL 33131

(305) 347-7342

Counsel to DSCC/Bill Nelson for U.S. Senate:
Kevin J. Hamilton
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101
(206) 359-8741

6. *League of Women Voters of Florida v. Scott*, No. 4:16-cv-633 (N.D. Fla. Oct. 12, 2016); *Florida Democratic Party v. Scott*, 2016 WL 6080225 (N.D. Fla. Oct. 12, 2016)

Hurricane Matthew hit Florida just four days before the state's October 11 voter registration deadline for the 2016 general election. With the deadline just days away, over 1.5 million Floridians remained under evacuation orders, more than a million were without power, and state and county offices were closed in 43 out of Florida's 67 counties.

On October 10, 2016, in response to a lawsuit filed by the Florida Democratic Party in the U.S. District Court for the Northern District of Florida, the Honorable Mark Walker issued an order extending the deadline by one day. The following day, October 11, 2016, the Brennan Center and co-counsel from Paul, Weiss, Rifkind, Wharton & Garrison, LLP filed a separate lawsuit on behalf of the League of Women Voters of Florida, arguing that an additional extension was needed to afford Floridians sufficient time to register, as required by the National Voter Registration Act. The two cases were consolidated. Pre-hearing, I performed numerous aspects of litigation from conducting legal and factual research, to revising and drafting motions, to coordinating with other counsel. At an October 12, 2016, hearing on the motion for a preliminary injunction, I argued on behalf of the League of Women Voters of Florida.

Following the hearing, the Court granted our request and extended the registration deadline by an additional week, to October 18, 2016. Our successful legal intervention enabled the League and others to reschedule and conduct voter registration drives.

Co-Counsel:
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(212) 373-3008

Defendants' Counsel:
William Spicola
William Spicola PA
P.O. Box 664

Tallahassee, FL 32302-0664
(850) 895-1056

7. *Texas State Conference of NAACP Branches et al. v. Perry, consolidated with Veasey v. Perry*, 71 F. Supp. 3d 627 (S.D. Tex. 2014), *aff'd in part, rev'd in part sub nom. Veasey v. Abbott*, 796 F.3d 487 (5th Cir. 2015), *aff'd en banc*, 769 F.3d 890 (5th Cir.), *cert. denied*, 137 S. Ct. 612 (2016)

On September 17, 2013, on behalf of the Texas NAACP and the Mexican American Legislative Caucus of the Texas House of Representatives, the Brennan Center (along with attorneys from the Lawyers' Committee for Civil Rights Under Law, Texas NAACP, and others) commenced a lawsuit in the U.S. District Court for the Southern District of Texas, challenging SB 14, Texas's 2011 photo ID law, as racially discriminatory in violation of Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the U.S. Constitution. The law had failed to pass muster under the preclearance provisions of the Voting Rights Act. In the wake of the Supreme Court's 2013 decision in *Shelby County v. Holder* striking down the coverage formula for preclearance, however, Texas swiftly implemented the law. This case was consolidated with others. The case was complex and lengthy, spanning more than five years, several appeals, and the passage of remedial legislation. In October 2014, the Honorable Nelva Gonzalez Ramos issued an order enjoining the law. Ultimately, an *en banc* Fifth Circuit Court of Appeals affirmed that the originally challenged law violated Section 2 of the Voting Rights Act. I performed and supervised necessary steps at all stages of the litigation, from identifying witnesses and experts, developing the discovery plan, drafting portions of numerous briefs and motions, supervising my team at depositions, defending an expert at deposition, presenting an expert witness at the trial, arguing a disputed legal issue before the court with respect to enforcement of the interim remedy, and arguing a portion of our case on remand to the district court.

Co-Counsel:
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Lawyers' Committee for Civil Rights Under Law
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Other Plaintiffs' Counsel:
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NAACP Legal Defense and Educational Fund
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New York, NY 10006
(212) 965-2200

Jose Garza (for Texas Rural Legal Aid)
7414 Robin Rest Drive
San Antonio, Texas 78209
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U.S. Department of Justice Counsel:
Richard Dellheim
Voting Section, Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, Northwest
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Defendants' Counsel:
Matthew Frederick
Deputy Solicitor General
Office of the Attorney General
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Austin, TX 78711-2548
(512) 936-6407

8. *Gessler v. Johnson*, No. 2011CV6588 (Denver Dist. Ct. 2011).

In 2011, Colorado gave counties the option to conduct certain elections entirely by mail. Just before the November 2011 election, the Colorado Secretary of State Scott Gessler issued an order prohibiting counties from sending mail-in ballots to voters who had not voted in the previous year's general election.

When the Denver County Clerk and Recorder announced her intent to send ballots to every eligible voter in the county nonetheless, the Secretary sued in the District Court, Denver County, to force county election administrators to adhere to his directive, even though an in-person voting option was not available in most counties. In October 2011, the Honorable Edward D. Bronfin denied Gessler's preliminary request, which pertained only to the 2011 general election.

Representing Colorado Common Cause, the Brennan Center and the law firm of Holland and Hart successfully moved in October 2011 to intervene as defendants. I performed numerous aspects of litigation, including conceiving and developing the legal theory, performing legal and factual research, and reviewing and revising briefs and motions. At a hearing on the Secretary's request for injunctive relief, I argued in court that the Secretary's interpretation of the law violated both the federal and state constitutions. The Court denied the Secretary's request for injunctive relief and dismissed all remaining claims.

Co-Counsel:
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(303) 290-1602

Plaintiffs' counsel:
Maurice G. Knaizer (former Deputy CO Attorney General; now retired)
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(303) 863-8504

Original Defendant's Counsel:
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Denver City Attorney's Office
Municipal Operations Section
201 West Colfax Avenue, Department 1207
Denver, CO 80202
(720) 913-3275

9. *Little v. LATFOR*, Index No. 2310-2011 (Sup. Ct. Albany Cnty. 2011.)

In 2010, New York State enacted a law requiring that, for redistricting and reapportionment purposes, incarcerated persons be allocated to their home community rather than the community in which they are incarcerated. In 2011, a group of New York State senators and other plaintiffs commenced an action in the Supreme Court of the State of New York, Albany County, alleging that the law violated the New York State Constitution. On May 17, 2011, the Brennan Center, along with numerous other civil rights organizations, moved to intervene as defendants on behalf of three statewide nonprofit organizations and fifteen individuals. I performed and supervised all aspects of litigation including researching and drafting motions and briefs, interviewing clients and preparing their declarations, organizing co-counsel calls, and arguing part of the summary judgment motion before the Honorable Eugene P. Devine. On December 2, 2011, Justice Devine entered judgment in favor of the defendants and intervenors, thus upholding the law's constitutionality.

Plaintiffs appealed directly to the Court of Appeals of the State of New York, attempting to bypass the intermediate appellate court, but dropped their challenge after the Court declined to hear the case. This case played a critical role in upholding an important law addressing how communities are represented.

Co-Counsel:
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Rutgers Law School

470 S.I. Newhouse Center for Law and Justice
123 Washington Street
Newark, NJ 07102
(973) 353-3239

Dale Ho (formerly of the NAACP Legal Defense and Education Fund, Inc; currently with the American Civil Liberties Union)
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Peter Wagner
Prison Policy Institute
P.O. Box 127
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Brenda Wright
Demos
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(646) 948-1621

Plaintiffs' Counsel:
David L. Lewis
225 Broadway, Suite 3300
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(212) 285-2290

Original Defendants' Counsel:
Stephen M. Kerwin (Current contact information unknown)
Office of the Attorney General of the State of New York
The Capitol
Albany, NY 12224
(518) 474-4843

10. *United States v. Village of Port Chester*, No. 06-cv-15173, 2008 WL 190502 (S.D.N.Y. Jan. 17, 2008)

On December 15, 2006, the U.S. Department of Justice filed a complaint against the Village of Port Chester, New York, alleging that the Village's at-large system of electing its board of trustees diluted the voting strength of its Hispanic citizens in violation of Section 2 of the Voting Rights Act ("VRA"). In January 2008, the Honorable Stephen C. Robinson of the U.S. District Court for the Southern District of New York found that the at-large system did in fact violate the VRA and directed the parties to submit remedial plans. Beginning in February 2008, the Brennan Center represented Fair Vote as *amicus*

*curiae*, after its brief had been submitted. I argued at a July 2008 hearing on the remedy in support of Port Chester's use of an alternate voting system, such as cumulative voting or ranked choice voting, as a remedy to the Section 2 violation. In December 2009, the Court approved a consent decree enjoining the Village from conducting any further at-large elections for the Port Chester Board of Trustees and adopting cumulative voting. The new system was a success, and the following June, the Village elected its first Latino member to the Board of Trustees.

Co-Counsel:
Justin Levitt (formerly of the Brennan Center for Justice)
Loyola Law School
Burns 335
919 Albany Street
Los Angeles, CA 90015
(213) 736-7417

Plaintiff's Counsel (United States):
David J. Kennedy
Assistant U.S. Attorney
U.S. Attorney's Office for the Southern District of New York
86 Chambers Street, 3rd Floor
New York, NY 10007
(212) 637-2733

Defendant's Counsel:
Anthony G. Piscionere
Piscionere & Nemarow, P.C.
363 Boston Post Road
Rye, NY 10580
(914) 835-6900

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

I have litigated cases across the country at the state and federal level, and my docket has included some of the country's most high-profile voting cases, including matters related to the cases listed above, and one of the 2020 Pennsylvania election cases. I have provided legislative and policy drafting assistance, on behalf of my employer the Brennan Center for Justice, to federal and state legislators on election-related topics such as automatic voter registration, voter purges, and restoring voting rights to people with past criminal convictions. I provide supervision and direction to a diverse and top-flight

legal team that litigates high-impact cases, including the defense of Florida's Amendment 4, the state ballot measure that restored the right to vote to 1.4 million people with past felony convictions. And my team advances and has advanced state legislation, such as New York's automatic voter registration law and similar measures in numerous states, including California, New Jersey, and Connecticut. I have significant *amicus* experience, including supervising and leading efforts to coordinate *amici* at the state and federal level. In a voting case recently heard by the U.S. Supreme Court, for example, my team and I identified helpful potential brief topics, recruited *amici* and law firms to represent them, proposed outlines and reviewed briefs of the recruited *amici*, and mooted the oralists we were supporting—on top of submitting our own *amicus* brief.

Around 2010, I registered as a lobbyist in Michigan because I was invited to testify before a legislative committee and determined that my efforts would exceed the then-threshold for registration under state law. Along with many Brennan Center policy staff, I am identified on the Brennan Center's Organizational Profile in connection with its New York State biennial lobbying registration. Other than as noted, I am not currently registered as a lobbyist anywhere because I do not perform enough lobbying activity to require registration at the state or federal level. I do report qualifying activity to my employer which reports as required to the relevant federal and state bodies.

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

    I have been teaching a seminar once a year at Columbia Law School since 2016. Initially, I co-taught a class on Advanced Civil Rights with Kendall Thomas. I later taught that class myself. Of late, I have been solo teaching a seminar on Election Law. Copies of all course syllabi have been supplied.

    I taught a clinic on Policy Advocacy for three semesters (one annually) at NYU School of Law between 2013 and 2015. Copies of all course syllabi have been supplied.

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

    I have a 401(k) plan from the Brennan Center and a Thrift Savings Plan from when I worked at the GAO. I also have IRA accounts.

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

I would seek advice and counsel (and proceed accordingly) as to the propriety and feasibility of continuing my teaching and outside community service, including my regular efforts feeding persons who are food insecure, my board memberships, and my service to my church.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

        If confirmed, I would scrupulously follow the Code of Conduct for United States Judges and seek advice and counsel as to appropriate matters for recusal. I would do so in matters in which the Brennan Center was a party or represented a party; or in matters involving Easi LLC, the staffing agency that employs my husband, or Johnson & Johnson, the company at which he is currently placed. I am not aware of any other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts of interest.

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

        If confirmed, I would evaluate and resolve any potential conflict of interest by applying rules and standards set forth in 28 U.S.C. § 455, the Code of Conduct for United States Judges, and any other relevant ethical canons or rules, and seek advice and counsel as necessary.

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

listing specific instances and the amount of time devoted to each.

I have worked almost my entire legal career for a national civil rights organization that provides legal representation without charging for our services as a matter of standard practice. In my personal capacity, I have consistently dedicated much of my non-working hours in service of others by, for example, feeding persons who are food insecure, assisting members of my parish, and offering enrichment opportunities at my son's Title I school.

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 late February 2021, a member of Senator Schumer's staff reached out to provide me a link to the Senator's judicial application, which I completed. In early March 2021, I had multiple conversations with a member of Senator Schumer's screening committee. On March 12, 2021, I spoke with a member of Senator Schumer's staff. On March 13, 2021, I met with Senator Schumer. On March 29, 2021, I was contacted by an official from the White House Counsel's Office to set up an interview with attorneys from that office, which took place the following day. Since March 30, 2021, I have been in contact with officials at the Office of Legal Policy at the Department of Justice and the White House Counsel's Office. On June 14, 2021, I spoke with White House Counsel Dana Remus. On June 15, 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.

listing specific instances and the amount of time devoted to each.

I have worked almost my entire legal career for a national civil rights organization that provides legal representation without charging for our services as a matter of standard practice. In my personal capacity, I have consistently dedicated much of my non-working hours in service of others by, for example, feeding persons who are food insecure, assisting members of my parish, and offering enrichment opportunities at my son's Title I school.

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In late February 2021, a member of Senator Schumer's staff reached out to provide me a link to the Senator's judicial application, which I completed. In early March 2021, I had multiple conversations with a member of Senator Schumer's screening committee. On March 12, 2021, I spoke with a member of Senator Schumer's staff. On March 13, 2021, I met with Senator Schumer. On March 29, 2021, I was contacted by an official from the White House Counsel's Office to set up an interview with attorneys from that office, which took place the following day. Since March 30, 2021, I have been in contact with officials at the Office of Legal Policy at the Department of Justice and the White House Counsel's Office. On June 14, 2021, I spoke with White House Counsel Dana Remus. On June 15, 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).

   Karen McGlashan Williams (formerly Karen Louise McGlashan)

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

   United States District Judge for the District of New Jersey

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

   Office: United States District Court
   District of New Jersey
   Mitchell H. Cohen U.S. Courthouse
   1 John F. Gerry Plaza, Room 2060
   Camden, New Jersey 08101-0849

   Residence: Voorhees, New Jersey

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

   1963; Syosset, 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

   1988 – 1992, Temple University Beasley School of Law; J.D., 1992
   1981 – 1985, The Pennsylvania State University; B.S., 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.

2020 – present
Rowan University
201 Mullica Hill Road
Glassboro, New Jersey 08028
Adjunct Professor

2009 – present
United States District Court
District of New Jersey
Mitchell H. Cohen U.S. Courthouse
1 John F. Gerry Plaza, Room 2060
Camden, New Jersey 08101-0849
United States Magistrate Judge

2010 – 2014
Rutgers Law School (Camden)
217 North Fifth Street
Camden, New Jersey 08102
Adjunct Professor

1991 – 2009
Jasinski & Williams, P.C. (formerly Jasinski & Paranac, Jasinski & Bisceglia)
Ten Park Place
Newark, New Jersey 07102
and
1125 Atlantic Avenue, Suite 525
Atlantic City, New Jersey 08401
Managing Partner, Atlantic City Office (2002 – 2009)
Partner (1998 – 2002)
Associate (1992 – 1998)
Summer Associate/Law Clerk (1991 – 1992)

1987 – 1991
Jeanes Hospital
7600 Central Avenue
Philadelphia, Pennsylvania 19111
Employment Manager

1985 – 1987
New York University Medical Center
550 First Avenue
New York, New York 10016
Human Resources Interviewer and Wage and Salary Analyst

Summer 1987
Bally's Grand Casino

1900 Pacific Avenue
Atlantic City, New Jersey 08401
Sales Associate (part time)

Summer 1986
Showboat Casino
801 Boardwalk
Atlantic City, New Jersey 08401
Lounge Hostess (part time)

Summer 1985
Sheraton City Squire Hotel
811 7th Avenue, West 53rd Street
New York, New York 10019
Personnel Assistant

Other Affiliations

2008 – 2013
Warren and Edwards
14 Whispering Pine Lane
Voorhees, New Jersey 08043
Five percent ownership interest in home improvement contracting company principally owned by my husband and his business partner and family friend Jack Pierce. The company was formed in 2008 (estimate) and dissolved in or about 2013.

2002 – 2010
Marlton Recreation Council
P.O. Box 159
Marlton, New Jersey 08053
Youth Track Coach

2002 – 2009
New Jersey Supreme Court
Committee on the Unauthorized Practice of Law
Part D Chair (2007 – 2009)

2002 – 2006
New Jersey Supreme Court
Office of Attorney Ethics,
Fee Arbitration Committee, District 1

1990 – present
Saint Bartholomew's Episcopal Church
1989 Route 70
Cherry Hill, New Jersey 08003

Member, Sunday School Teacher, Eucharistic Minister

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

   I have not served in the military. I was not required to register for the selective service.

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

   Rutgers Law (Camden), Black Law Students Association, Rev. Dr. Martin Luther King Jr., Social Justice Award (2015)

   Garden State Bar Association, Van Y. Clinton Award (2013)

   Temple University Beasley School of Law, Distinguished Class Performance; Contract Remedies, (Spring 1989) Labor Law (Fall 1989), Civil Rights Remedies (Summer 1990) and Advanced Trial Advocacy (Fall 1991)

   Temple University Beasley School of Law, Dean's Honors List (Fall 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.

   Atlantic County Bar Association
   Association of the Federal Bar of New Jersey, Advisory Board Member 2016
   Garden State Bar Association
   New Jersey State Bar Association
   United States Court of Appeals for the Third Circuit
   Courts and Community Committee (2016 – present)
   United States District Court for the District of New Jersey
   District of New Jersey, Case Management Committee (2015 – present)
   District of New Jersey, Criminal Justice Act Panel Selection and Management Committee (2017 – present)
   District of New Jersey, Magistrate Judge Reappointment Panel, Camden (2000, 2003)
   District of New Jersey, Magistrate Judge Merit Selection Panel, Camden (2006)

10. **Bar and Court Admission**:

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

New Jersey, 1992
Pennsylvania, 1992

There have been no lapses in membership for New Jersey. As an active member of the judiciary, I am currently on inactive status in Pennsylvania.

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

United States Court of Appeals for the Third Circuit, 1998
United States District Court for the District of New Jersey, 1992
United States District Court for the Eastern District of Pennsylvania, 1994

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.

Alpha Kappa Alpha Sorority Incorporated
Upsilon Delta Omega Graduate Chapter 1994 – present
Founding member (1994)
Parliamentarian, (1994-2000)
Various committees (1994 – present)

Rotary International, Atlantic City Club (2001 – 2009)

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.

Alpha Kappa Alpha Sorority, Incorporated is an international sorority dedicated to community service. Its credo is "To be supreme in service to all mankind."

Rotary International is also a community service organization. To the best of my knowledge, Rotary International does not currently discriminate on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies. It is my understanding that, more than 10 years before I became a member of the Atlantic City Rotary Club, Rotary International excluded women from membership. However, in 1987, The United States Supreme Court required Rotary Clubs to open membership to women. Rotary International's exclusionary policy had been eliminated prior to my becoming a member of the Atlantic City Club.

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.

*Pre-Trial Management*, *in* NEW JERSEY FEDERAL CIVIL PROCEDURE (Robert E. Bartkus et al. eds., 2021). In 2011, I assumed responsibility for reviewing and maintaining Chapter 8 of this publication and do so on an annual basis. This chapter was originally prepared by the Honorable Jerome B. Simandle, S.U.S.D.J. A copy of the most recent version of this chapter is supplied.

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

None.

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

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.

I have searched my files and publicly available information in order to list below all speeches or talks I have delivered. There may, however, be others I have been unable to remember or identify.

March 28, 2021: Moot Court Judge, National Marshall-Brennan Moot Court Competition Finals, Rutgers Law, Camden, New Jersey. I have no notes, transcript, or recording. The address for Rutgers Law-Camden is 217 North 5th Street, Camden, New Jersey 08102.

March 23, 2021: Moot Court Judge, Hunter Moot Court Quarterfinals, Rutgers Law-Camden, Camden, New Jersey. I have no notes, transcript, or recording. The address for Rutgers Law-Camden is 217 North 5th Street, Camden, New Jersey 08102.

February 25, 2021: Panelist: "Dispute Resolution in the Age of COVID," South Jersey Chamber of Commerce, Voorhees Township, New Jersey. I discussed how the federal courts are handling settlement conferences in light of COVID restrictions. I have no notes, transcript, or recording. The address of the South Jersey Chamber of Commerce is 220 Laurel Road Suite 203, Voorhees, New Jersey 08043.

October 23, 2020: Panelist, 3rd Annual Federal Pro Bono Institute: "The Essentials of Handling a Pro Bono Matter and the Benefits of the Re-entry Program in the District of New Jersey," New Jersey State Bar Association (NJSBA). I participated in a panel of judges and practitioners highlighting the benefits of accepting pro bono assignments from the federal court. I discussed how pro bono counsel have assisted the participants in re-entry court. I have no notes, transcript, or recording. The address of the New Jersey State Bar Association is 1 Constitution Square, New Brunswick, New Jersey 08901.

October 7, 2020: Panelist, "Ethics," Vincent S. Haneman American Inn of Courts. PowerPoint supplied.

August 18, 2020: Panelist, Introduction to Federal Courts, Rutgers Law-Camden, Minority Student Program, Camden, New Jersey. The presentation introduced incoming first year law students to federal courts. I discussed the basic structure of federal courts. I have no notes, transcript, or recording. The address for Rutgers Law-Camden is 217 North 5th Street, Camden, New Jersey 08102.

July 14, 2020: Panelist, "A View From The Bench: How To Become A U.S. Magistrate Judge," Co-sponsored by the Garden State Bar Association (GSBA) and Association of Black Women Lawyers of New Jersey (ABWL). Outline supplied.

October 17, 2019: Speaker, "Civility and Professionalism – It Matters" Burlington County Bar Association. I have no notes, transcript or recording. The address for the Burlington County Bar Association is Mount Laurel, New Jersey.

September 20, 2019: Panelist, 2nd Annual Federal Pro Bono Institute: "The Essentials of Handling A Pro Bono Matter and the Benefits of the Re-Entry Program in the District of New Jersey, Tenets, Ethics, Issues and More," New Jersey Institute for Continuing Legal Education (NJICLE), New Brunswick, New Jersey. Video available at https://player.vimeo.com/video/526318998.

September 3, 2019: Speaker, *Introduction to Federal Courts*, Rutgers Law-Camden, Minority Student Program, Camden, New Jersey. Notes supplied.

June 14, 2019: Speaker, *Introduction to Federal Courts*, Rutgers Law-Camden, Minority Student Program, Camden, New Jersey. I used the same notes that were supplied for the presentation on September 3, 2019.

June 20, 2019: Speaker, "Successful Federal Court Practice." New Jersey State Bar Association Federal Practice and Procedure Section. New Jersey Institute for Continuing Legal Education ("NJICLE"), New Brunswick, New Jersey. Notes supplied.

May 8, 2019: Guest Speaker, "Views From the Bench" New Jersey Association for Justice (NJAJ), Atlantic City, New Jersey. Notes supplied.

April 5, 2019: Speaker, "Judge Chats" with the National Constitution Center, United States Court of Appeals for the Third Circuit, Courts and Community Committee in partnership with the National Constitution Center, Philadelphia, Pennsylvania. The presentation was on the role of magistrate judges. I answered questions about the United States Constitution for elementary and middle school students during their visit to the National Constitution Center. I have no notes, transcript, or recording. The address of the National Constitution Center is 525 Arch Street, Philadelphia, Pennsylvania 19106.

March 25, 2019: Moot Court Judge, Hunter Moot Court Quarterfinals. Rutgers Law-Camden, Camden, New Jersey. I have no notes, transcript, or recording. The address for Rutgers Law-Camden is 217 North 5th Street, Camden, New Jersey 08102.

March 2, 2019: Speaker, "Judge Chats" with the National Constitution Center, United States Court of Appeals for the Third Circuit, Courts and Community in partnership with the National Constitution Center, Philadelphia, Pennsylvania. The presentation was on the role of magistrate judges. I answered questions about the United States Constitution for elementary and middle school students during their visit to the National Constitution Center. I have no notes, transcript, or

recording. The address of the National Constitution Center is 525 Arch Street, Philadelphia, Pennsylvania 19106

January 24, 2019: Panelist, "50th Anniversary of the Federal Magistrates Act. New Jersey State Bar Association Federal Practice and Procedure Section, The Act-in Text and Application-and Practice Points from the Bench," New Brunswick, New Jersey. This was a panel of judges moderated by a practitioner addressing the role of magistrate judges in the District of New Jersey. I discussed my approach to case management. I have no notes, transcript, or recording. The address of the New Jersey State Bar Association is 1 Constitution Square, New Brunswick, New Jersey 08901.

November 14, 2018: Speaker, Naturalization Ceremony, United States District Court for the District of New Jersey. Remarks supplied.

August 17, 2018: Speaker, "Introduction to Federal Courts," Rutgers Law-Camden, Minority Student Program, Camden, New Jersey. I used the same notes that were supplied for the presentation on September 3, 2019.

June 7, 2018: Speaker, "Introduction to Federal Courts," Rutgers Law-Camden, Minority Student Program, Camden, New Jersey. I used the same notes that were supplied for the presentation on September 3, 2019.

May 23, 2018: Speaker, "Judge Chats" with the National Constitution Center, United States Court of Appeals for the Third Circuit, Courts and Community in partnership with the National Constitution Center, Philadelphia, Pennsylvania. The presentation was on the role of magistrate judges. I answered questions about the United States Constitution for elementary and middle school students during their visit to the National Constitution Center. I have no notes, transcript, or recording. The address of the National Constitution Center is 525 Arch Street, Philadelphia, Pennsylvania 19106

May 11, 2018: Panelist, "Ethics in Employment Law," New Jersey Association for Justice (NJAJ), Atlantic City, New Jersey. PowerPoint and notes supplied.

April 5, 2018: Speaker, "Movement to Restore Voting Rights to People on Parole, on Probation, and in Prison," Cherry Hill, New Jersey. The event was co-sponsored by New Jersey Institute for Social Justice, Unitarian Universalist Church in Cherry Hill, Rutgers Law School, Reentry Coalition of New Jersey, New Jersey NAACP, National Lawyers Guild-Rutgers Chapter, Cherry Hill African American Civic Association, Volunteers of America Delaware Valley, New Jersey ACLU, UU Faith Action New Jersey, and New Jersey League of Women Voters. Notes supplied.

March 26, 2018: Moot Court Judge, Hunter Moot Court. Rutgers Law-Camden, Camden, New Jersey. I have no notes, transcript, or recording. The address for

Rutgers Law-Camden is 217 North 5th Street, Camden, New Jersey 08102.

February 12, 2018: Panelist, "Inaugural Forum On Women's Leadership In The Law," New Jersey State Bar Association, (NJSBA) Women in the Profession Section, New Brunswick, New Jersey. Notes supplied.

December 1, 2017: Panelist, "Avoiding Pitfalls of Discovery In Federal Litigation: Perspectives of the Bench and Bar," Association of the Federal Bar of New Jersey (AFBNJ) Brown Bag Lunch Series. Outline and PowerPoint supplied.

November 1, 2017: Panelist, "Networking & Professional Etiquette," Black Law Student Association, Rutgers Law-Camden, Camden, New Jersey. Notes supplied.

September 18, 2017: Speaker, "Judge Chats" with the National Constitution Center, United States Court of Appeals for the Third Circuit, Courts and Community in partnership with the National Constitution Center, Philadelphia, Pennsylvania. The presentation was on the role of magistrate judges. I answered questions about the United States Constitution for elementary and middle school students during their visit to the National Constitution Center. I have no notes, transcript, or recording. The address of the National Constitution Center is 525 Arch Street Philadelphia, Pennsylvania 19106

July 19, 2017: Speaker, Naturalization Ceremony, United States District Court for the District of New Jersey, Camden, New Jersey. Remarks supplied.

July 19, 2017: Speaker, "Judge Chats" with the National Constitution Center, United States Court of Appeals for the Third Circuit, Courts and Community in partnership with the National Constitution Center, Philadelphia, Pennsylvania. The presentation was on the role of magistrate judges. I answered questions about the United States Constitution for elementary and middle school students during their visit to the National Constitution Center. I have no notes, transcript, or recording. The address of the National Constitution Center is 525 Arch Street, Philadelphia, Pennsylvania 19106

June 22, 2017: Panelist, Practice Before U.S. Magistrate Judges, New Jersey Institute for Continuing Legal Education (NJICLE), New Brunswick, New Jersey. The presentation provided an overview and practice tips for appearing in the United States District Court for the District of New Jersey. I used the same notes that were supplied for the program on June 20, 2019.

June 10, 2017: Panelist, "Ted Talk - Climbing the Ranks," Garden State Bar Association 42nd Anniversary Scholarship Awards Gala, Atlantic City, New Jersey. I shared my experiences from law school to the bench as part of a panel of federal and state judges discussing their careers as practitioners and as members of the judiciary. I have no notes, transcript, or recording. The address for the

Garden State Bar Association is P.O. Box 1040, Newark, New Jersey 07101.

June 2, 2017: Speaker, "Introduction to Federal Courts," Rutgers Law-Camden, Minority Student Program, Camden, New Jersey. I used the same notes that were supplied for the presentation on September 3, 2019.

May 26, 2017: Speaker, "Judge Chats" with the National Constitution Center, United States Court of Appeals for the Third Circuit, Courts and Community in partnership with the National Constitution Center, Philadelphia, Pennsylvania. The presentation was on the role of magistrate judges. I answered questions about the United States Constitution for elementary and middle school students during their visit to the National Constitution Center. I have no notes, transcript. or recording. The address of the National Constitution Center is 525 Arch Street, Philadelphia, Pennsylvania 19106

May 17, 2017: Panelist, "First Chairs at Trial – More Women Need Seats at the Table," New Jersey State Bar Association (NJSBA), Atlantic City, New Jersey. Notes supplied.

April 27, 2017: Panelist, "Mass Torts," New Jersey State Bar Association (NJSBA), Atlantic City, New Jersey. Notes supplied.

March 26, 2017: Moot Court Judge, Hunter Moot Court. Rutgers Law-Camden, Camden, New Jersey. I have no notes, transcript, or recording. The address for Rutgers Law-Camden is 217 North 5th Street, Camden, New Jersey 08102.

February 10, 2017: Speaker, "Judge Chats" with the National Constitution Center, United States Court of Appeals for the Third Circuit, Courts and Community in partnership with the National Constitution Center, Philadelphia, Pennsylvania. The presentation was on the role of magistrate judges. I answered questions about the United States Constitution for elementary and middle school students during their visit to the National Constitution Center. I have no notes, transcript or recording. The address of the National Constitution Center is 525 Arch Street, Philadelphia, Pennsylvania 19106

November 18, 2016: Panelist, "Diversity in the Law," Rutgers Women Law Caucus, Camden, New Jersey. I discussed my experiences as a practitioner and member of the bench. I have no notes, transcript, or recording. The address for Rutgers Law-Camden is 217 North 5th Street, Camden, New Jersey 08102.

November 15, 2016: Panelist, "Discovery in Federal Court and the Impact of the 2015 Amendments to the Federal Rules of Civil Procedure," Sidney Reitman Employment Inn of Court, New Brunswick, New Jersey. Notes supplied.

October 21, 2016: Speaker, "Judge Chats" with the National Constitution Center, United States Court of Appeals for the Third Circuit, Courts and Community in

partnership with the National Constitution Center, Philadelphia, Pennsylvania. The presentation was on the role of magistrate judges. I answered questions about the United States Constitution for elementary and middle school students during their visit to the National Constitution Center. I have no notes, transcript or recording. The address of the National Constitution Center is 525 Arch Street, Philadelphia, Pennsylvania 19106

August 10, 2016: Speaker, "Introduction to Federal Courts," Rutgers Law-Camden, Minority Student Program, Camden, New Jersey. I used the same notes that were supplied for the presentation on September 3, 2019.

July 11, 2016: Speaker, "Introduction to Federal Courts," Rutgers Law-Camden, Minority Student Program, Camden, New Jersey. I used the same notes that were supplied for the presentation on September 3, 2019.

June 1, 2016: Panelist, "First Chair – Why Are So Few Women Lead Counsel and How Do We Get Seats at the Table?," New Jersey Women Lawyers Association (NJWLA), Camden, New Jersey. Notes supplied.

May 25, 2016: Panelist, "Running in Heels: Women on the Bench – From Nomination to Confirmation," Burlington County Bar Association, Mount Laurel, New Jersey. Notes supplied.

April 26, 2016: Panelist, Practice Before U.S. Magistrate Judges, New Jersey Institute for Continuing Legal Education (NJICLE). The presentation provided an overview and practice tips for appearing in the United States District Court, District of New Jersey, New Brunswick, New Jersey. I used the same notes that were supplied for the program on June 20, 2019.

April 7, 2016: Guest Speaker, "Impact of Revised Federal Rules," New Jersey Association for Justice (NJAJ), Atlantic City, New Jersey. Notes and PowerPoint supplied.

March 24, 2016: Panelist, "Women in Re-Entry," Jersey City Employment & Training Program, St. Peter's University, Jersey City, New Jersey. I participated in a panel of judges, practitioners, and community representatives addressing the issues faced by women returning from prison and shared my experience with women who are returning to their communities. I have no notes, transcript, or recording. The address for Jersey City Employment & Training Program is 438 Summit Avenue, Jersey City, New Jersey 07306.

February 22, 2016: Panelist, Reentry Court, New Jersey State Bar Association (NJSBA) Federal Practice Section, New Brunswick, New Jersey. The presentation was on I participated in a panel of judges and practitioners addressing re-entry issues and how the formerly incarcerated can be assisted by the courts and practitioners. I provided an overview of ReNew Camden. I have no notes,

transcript, or recording. The address of the New Jersey State Bar Association is 1 Constitution Square, New Brunswick, New Jersey 08901.

December 15, 2015: Speaker, "Judge Chats" with the National Constitution Center, United States Court of Appeals for the Third Circuit, Courts and Community in partnership with the National Constitution Center, Philadelphia, Pennsylvania. The presentation was on the role of magistrate judges. I answered questions about the United States Constitution for elementary and middle school students during their visit to the National Constitution Center. I have no notes, transcript, or recording. The address of the National Constitution Center is 525 Arch Street, Philadelphia, Pennsylvania 19106.

November 12, 2015: Panelist, "Federal Rules Roadshow – The New Amendments," American Bar Association (ABA), United States District Court for the District of New Jersey, Newark, New Jersey. Notes supplied.

October 15, 2015: Roundtable Discussion, "Women Advancing Women," Co-sponsored by New Jersey Women Lawyers Association (NJWLA)and Reed Smith LLP, Philadelphia, Pennsylvania. I engaged in a discussion with members of the bar and shared my experiences as a lawyer and as a magistrate judge. I have no notes, transcript, or recording. The New Jersey Women Lawyers Association does not have a physical address; its website is www.njwla.org.

July 8, 2015: Speaker, Naturalization Ceremony, United States District Court for the District of New Jersey, Camden, New Jersey. Remarks supplied.

June 11, 2015: Speaker, "Judge Chats" with the National Constitution Center, United States Court of Appeals for the Third Circuit, Courts and Community in partnership with the National Constitution Center, Philadelphia, Pennsylvania. The presentation was on the role of magistrate judges. I answered questions about the United States Constitution for elementary and middle school students during their visit to the National Constitution Center. I have no notes, transcript or recording. The address of the National Constitution Center is 525 Arch Street, Philadelphia, Pennsylvania 19106

June 10, 2015: Panelist, "Diversity: It's Good For Business," Burlington County Bar Association, Mount Laurel, New Jersey. Notes supplied.

May 1, 2015: Keynote Speaker, "Law Day – The Magna Carta," Superior Court of New Jersey, Camden, New Jersey. PowerPoint supplied.

April 14, 2015: Panelist, "Nuts and Bolts of Federal Court Practice," New Jersey State Bar Association (NJSBA) Federal Practice & Procedure Section. Notes supplied.

April 6, 2015: Speaker, Women's History Month, "Weaving the Stories of

Women's Lives," U.S. Customs and Immigration Services, Newark Field Office, Newark, New Jersey. Notes supplied.

April 6, 2015: Panelist, "The Role of the Magistrate Judge," Association of the Federal Bar New Jersey (AFBNJ) and Bankruptcy Inn Joint Session. Notes supplied.

January 23, 2015: Acceptance Speech, 19th Annual MLK Champions Of Social Justice Award, Rutgers Law Black Law Students Association, Camden, New Jersey. Notes supplied.

December 12, 2014: Speaker, "Judge Chats" with the National Constitution Center, United States Court of Appeals for the Third Circuit, Courts and Community in partnership with the National Constitution Center, Philadelphia, Pennsylvania. The presentation was on the role of magistrate judges. I answered questions about the United States Constitution for elementary and middle school students during their visit to the National Constitution Center. I have no notes, transcript, or recording. The address of the National Constitution Center is 525 Arch St. Philadelphia, Pennsylvania 19106

November 20, 2014: Speaker, "Judge Chats" with the National Constitution Center, United States Court of Appeals for the Third Circuit, Courts and Community in partnership with the National Constitution Center, Philadelphia, Pennsylvania. The presentation was on the role of magistrate judges. I answered questions about the United States Constitution for elementary and middle school students during their visit to the National Constitution Center. I have no notes, transcript or recording. The address of the National Constitution Center is 525 Arch Street, Philadelphia, Pennsylvania 19106

October 23, 2014: Panelist, "Working for the Judiciary," Rutgers Law-Camden, Camden County Courthouse, Camden, New Jersey. I participated in a panel of judges describing the value of judicial clerkships. I have no notes, transcript, or recording. The address of Rutgers Law-Camden is 217 North Fifth Street, Camden, New Jersey 08102.

October 15, 2014: Panelist, Professionalism Day, Association of the Federal Bar of New Jersey (AFBNJ), United States District Court for the District of New Jersey, Camden, New Jersey. Notes supplied.

October 7, 2014: Panelist, "Settlement Issues In Federal Court Litigation," Camden County Bar Association, Haddonfield, New Jersey. This panel was on the role of Magistrate Judges in the Camden Vicinage. I discussed best practices for settlement conferences. I have no notes, transcript, or recording. The address of the Camden County Bar Association is 1040 Kings Highway North, Cherry Hill, New Jersey 08034.

May 14, 2014: Guest Speaker, Practice Tips, Burlington County Bar Association, Burlington County Courthouse, Mount Holly, New Jersey. Notes supplied.

May 1, 2014: Panelist, "Roundtable Discussion with United States Attorney for the District of New Jersey - Paul Fishman", Rutgers Law -Camden, Camden, New Jersey. Notes supplied.

April 10, 2014: Panelist, "Is There A Right Time To Settle?," Brown Bag Lunch Series, Association of the Federal Bar of New Jersey (AFBNJ), United States District Court for the District of New Jersey, Camden, New Jersey. Notes supplied.

March 20, 2014: Panelist, 38th Annual United States District Court Judicial Conference, "Why Women Lawyers Should Stay in The Game: A View From The Bench & Bar," Association of the Federal Bar of New Jersey (AFBNJ), West Orange, New Jersey. Notes supplied.

February 21, 2014: Keynote Speaker, Annual NAACP Founders Day Banquet - "Commemorating Our Legacy," Rutgers University, New Brunswick, New Jersey. Notes supplied.

February 10, 2014: Panelist, "New Jersey Judiciary's Law Clerk Panel," Rutgers Law Camden, Camden, New Jersey. Notes supplied.

January 23, 2014: Panelist, Practice Before U.S. Magistrate Judges, New Jersey Institute for Continuing Legal Education (NJICLE). The presentation provided an overview and practice tips for appearing in the United States District Court, District of New Jersey, New Brunswick, New Jersey. I used the same notes that were supplied for the program on June 20, 2019.

October 23, 2013: Panelist, Professionalism Day, Association of the Federal Bar of New Jersey (AFBNJ), United States District Court for the District of New Jersey, Camden, New Jersey. Outline supplied.

September 26, 2013: Panelist, Women's Bench Bar Conference, New Jersey State Bar Association (NJSBA), Atlantic City, New Jersey. The presentation was on mentoring, promoting, and recognizing women in leadership in the legal profession. I discussed my personal experiences with mentoring. I have no notes, transcript, or recording. The address of the New Jersey State Bar Association is 1 Constitution Square, New Brunswick, New Jersey 08901.

June 1, 2013: Acceptance Speech, 38th Anniversary Scholarship & Awards Gala Van Y. Clinton Award recipient. Garden State Bar Association. Video available at https://www.youtube.com/watch?v=lhHOFu7hNAI.

May 30, 2013: Guest Speaker, Law Day, Florence High School, Florence, New

Jersey. Burlington County Bar Association. The presentation was on students and their rights under the Fourth Amendment of the United States Constitution. I have no notes, transcript, or recording. The address for the Burlington County Bar Association is 137 High Street, 3rd Floor, Mt. Holly, New Jersey 08060.

February 27, 2013: Panelist, "Roundtable Discussion with Paul J. Fishman, United States Attorney for the District of New Jersey", Rutgers Law-Camden, Camden, New Jersey. I used the same notes that were supplied for the discussion held on May 1, 2014.

September 12, 2012: Panelist, New Jersey Judiciary Law Clerk Panel, Rutgers Law-Camden, Camden, New Jersey. Notes supplied.

May 17, 2012: Panelist, "Guidance From The Bench: Practical Advice From Successful Women Jurists," New Jersey State Bar Association (NJSBA), Women in the Profession Section, Atlantic City, New Jersey. Notes supplied.

May 8, 2012: Panelist, "Lawyers Without Rights, Jewish Lawyers in Germany under the Third Reich," Officers and Trustees of the Camden County Bar Association, Cherry Hill, New Jersey. Notes supplied.

May 1, 2012: Speaker, Law Day, "Social Media Gone Wild". Co-Sponsored by New Jersey Superior Court, Burlington County and Burlington County Bar Association. I have no notes, transcript or recording. Mount Holly, New Jersey.

February 2, 2012: Panelist, Practice Before U.S. Magistrate Judges, New Jersey Institute for Continuing Legal Education (NJICLE), New Brunswick, New Jersey. The presentation provided an overview and practice tips for appearing in the United States District Court for the District of New Jersey. I used the same notes that were supplied for the program on June 20, 2019.

October 29, 2011: Keynote Speaker, A Social Justice and Human Rights Symposium, Theta Pi Omega Chapter of Alpha Kappa Alpha Sorority, Inc. & Association of Black Women Lawyers of New Jersey (ABWL), Burlington County Community College, New Jersey. Notes supplied.

October 12, 2011: Panelist, "Overview of Federal Civil Practice in the District of New Jersey," New Jersey State Bar Association (NJSBA), Cherry Hill, New Jersey. I have no notes, transcript or recording. The address for the New Jersey State Bar Association is 1 Constitution Square, New Brunswick, New Jersey 08901.

February 3, 2011: Panelist, "Professionalism, Effective Advocacy & Conduct of Attorneys," Association of the Federal Bar of New Jersey (AFBNJ), United States District Court for the District of New Jersey, Camden, New Jersey. The panel was on best practices when appearing in federal court. I have no notes, transcript, or

recording. The address of the Association of the Federal Bar of New Jersey is 970 Broad Street, Newark, New Jersey 07102.

October 20, 2010: Panelist, "Pathways to the Federal Judiciary," New Jersey State Bar Association (NJSBA), Asian Pacific American Lawyers Association of New Jersey (APALA-NJ), Association of Black Women Lawyers of New Jersey (ABWL), Garden State Bar Association (GSBA), Hispanic Bar Association (NJHBA), New Jersey Muslim Lawyers Association (NJMLA), South Asian Bar Association-New Jersey (SABA-NJ). New Brunswick, New Jersey. Notes supplied.

September 23, 2010: Panelist, "Basic Elements of Federal Civil Practice in the Camden Vicinage," Camden County Bar Association, Haddonfield, New Jersey. I discussed my judicial preferences for case management. I have no notes, transcript, or recording. The address of the Camden County Bar Association is 1040 Kings Highway North, Cherry Hill, New Jersey 08034.

May 13, 2010: Panelist, "Employment Law Update 2010," Camden County Bar Association, Voorhees, New Jersey. Notes supplied.

February 24, 2010: Speaker, Naturalization Ceremony, United States District Court for the District of New Jersey, Camden, New Jersey. Remarks supplied.

November 5, 2009: Panelist, Judicial Panel "Women and the Law," University of Pennsylvania Law School. I participated in a panel on the role of women in the legal profession. I have no notes, transcript, or recording. The address for the University of Pennsylvania Carey Law School is 3501 Sansom Street, Philadelphia, Pennsylvania 19104.

June 25, 2009: Speaker, "Swearing In of Karen M. Williams," United States District Court for the District of New Jersey, Camden, New Jersey. Transcript supplied.

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

Mike Sepanic, *Diversity Reception in Camden Celebrates Launch of Minority Student Program*, Rutgers Magazine, Nov. 30, 2016. Copy supplied.

The Timeless Service of Alpha Kappa Alpha Sorority, Inc., by Upsilon Delta Omega Chapter – 2015. Copy supplied.

James J. Ferrelli, *Tips for Federal Practitioners: an Interview with the Honorable Karen Williams, U.S.M.J.*, N.J. LAW. 34 (Aug. 2015). Copy supplied.

Maureen T. Coghlan, *An Interview with the Honorable Karen McGlashan Williams, United States Magistrate Judge*, N.J. STATE BAR ASS'N FED. PRAC. & PROC. SECTION 3 (Sept. 2014). Copy supplied.

Celeste E. Whittaker, *Been there, done that*, Courier Post, Aug. 18, 2008. Copy supplied.

Michael Clark, Regina Schaffer and Michael Miller, *Police, Fire and Courts*, The Press of Atlantic City, Aug. 9, 2008. Copy supplied.

Michael Pritchard, *Man Can't Give Out Atlantic City Council Transcript, Judge Rules*, The Press of Atlantic City, Apr. 8, 2006. Copy supplied.

Derek Harper, *Atlantic City Looks to Plug Information Leaks*, The Press of Atlantic City, Apr. 5, 2006. Copy supplied.

Kate Coscarelli, *The Anti-Harassment Lawyer Who Knows the Value of Drama*, The Star Ledger, Nov. 20, 2005. Copy supplied.

Lynda Cohen, *PBA Needn't Pay Atlantic City For "Blue Flu," Judge Rules*, The Press of Atlantic City, Dec. 15, 2004. Copy supplied.

John Brand, *Judge Declines to Issue Fines to A.C. Officers with Blue Flu*, The Press of Atlantic City, Aug. 24, 2004. Copy supplied.

Associated Press, *Judge Won't Fine "Sick" Officers, Orders Contract Talks to Resume*, The Record, Bergen County, Aug. 24, 2004. Copy supplied.

John Curran, *Judge Orders Talks After "Blue Flu" Epidemic*, Herald News, Aug. 24, 2004. Copy supplied.

John Shiffman, *A.C. firm must pay fired trio $4 million - A federal jury concluded that the time-share firm wrongly dismissed them for refusing to take lie-detector tests,* The Philadelphia Inquirer, July 4, 2004. Copy supplied.

Madelaine Vitale, *Atlantic City Officer, City Settle Lawsuit for $575,000*, The Press of Atlantic City, Sept. 5, 2003. Copy supplied.

Madelaine Vitale, *Retrial Begins in ACPD Officer's Harassment Case*, The Press of Atlantic City, Sept. 3, 2003. Copy supplied.

Charles Toutant, *$700,000 Settles Civil Rights Suit: Suits and Deals*, N.J. L. J., Dec. 3, 2001. Copy supplied.

Judy DeHaven, *The Few, the Proud, the Beach Patrol*, The Star Ledger, Aug. 12, 2001. Copy supplied.

Aisling Swift, *Judge Drops Lawsuit Against Atlantic City Police*, The Press of Atlantic City, July 10, 2001. Copy supplied.

Mary P. Gallagher, *$605,000 In Sex Case: Suits and Deals*, N.J. L. J., Apr. 16, 2001. Copy supplied.

Aisling Swift, *Jurors to Begin Deliberating A.C. Sex-Harassment Case*, The Press of Atlantic City, Apr. 4, 2001. Copy supplied.

Aisling Swift, *Atlantic City Considers Settling Sexual-Harassment Case*, The Press of Atlantic City, Feb. 16, 2001. Copy supplied.

Richard Pearsall, *Woman Lifeguard Sues A.C. for Sex Harassment*, Asbury Park Press, Aug. 25, 2000. Copy supplied.

*Female A.C. Lifeguard Files Bias, Harassment Lawsuit*, N.J. Courier Post, Aug. 25, 2000. Copy supplied.

Henry Gottlieb, *Suit City, Here We Come; Are Blood Hungry Plaintiff's Lawyers Or An Out-Of- Control Police Force to Blame For Atlantic City's $12 million Exposure in Civil Suits?*, N.J. L. J., Apr. 3, 2000. Copy supplied.

Aisling Swift, *Rare Ruling Backs Police Department*, The Press of Atlantic City, Dec. 19, 1999. Copy supplied.

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

On May 1, 2009, I was appointed as a United States Magistrate Judge for the District of New Jersey. I was reappointed to a second term on May 1, 2017. I preside over all pre-trial proceedings, including discovery and non-dispositive motions. I routinely conduct settlement conferences in civil cases. I preside over civil actions in full when all parties to the litigation consent. My criminal duties primarily consist of conducting initial appearances and bail hearings. I also issue criminal complaints and warrants. In addition, I preside over ReNew Camden, the Camden Vicinage Reentry Court, with Noel L. Hillman, U.S.D.J.

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

As a United States Magistrate Judge, I have presided over four cases that have gone to verdict or judgment. Because I can only preside over civil matters by consent of the parties and over criminal trials involving misdemeanor and petty offenses, only a small percentage of the thousands of cases I have handled have

gone to trial.

i. Of these cases, approximately what percent were:

| | |
|---|---|
| jury trials: | 75% |
| bench trials: | 25% |

ii. Of these cases, approximately what percent were:

| | |
|---|---|
| civil proceedings: | 100% |
| criminal proceedings: | 0% |

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

Please see attached list of opinions.

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. A.B. v. Pacific Cycles, Inc., No. 17-0170 (KMW) (D.N.J. 2020)

This personal injury and product liability action was brought on behalf of a minor plaintiff who punctured himself from his groin to his spine on bicycle handle bars. The defendant, a bicycle manufacturer, contended that plaintiff's injuries were caused by plaintiff's removal of the protective grip caps for the handle bars. I was responsible for all aspects of case management. The parties consented to my jurisdiction. I facilitated a settlement of the matter. I entered the Order Finalizing Distribution of Minor's Settlement and terminated the case.

Counsel for Plaintiff:

Jeffrey Scott Simons, Esq.
Jacobs Schwalbe & Petruzzelli, PC
10 Melrose Avenue, Suite 340
Cherry Hill, NJ 08003
(856) 429-5661

Counsel for Defense:

Brittany Hope Sokoloff, Esq.
Schiff Hardin, LLP
1185 Avenue of the Americas, Suite 3000
New York, NY 10036

(212) 753-5000

2. Alavez-Lopez v. South Jersey Sanitation Co., No. 10-5647 (KMW), 2013 WL 12317904 (D.N.J. July 19, 2013)

This action was brought by a class of plaintiffs (trash haulers) pursuant to the Fair Labor Standards Act and New Jersey Wage and Hour Law. Plaintiffs alleged that they routinely worked in excess of 60 hours each week and were unlawfully denied overtime compensation. Defendant, a vendor for municipal trash collection, maintained that it properly classified plaintiffs and paid them all wages due. The parties consented to my jurisdiction. I facilitated a settlement of all claims. I granted the Joint Motion to Approve Settlement. I also awarded attorney's fees and costs and entered the Stipulation and Order of Dismissal with Prejudice.

Counsel for Plaintiffs:

Justin L. Swidler, Esq.
Swartz Swidler, LLC
1101 Kings Highway North, Suite 402
Cherry Hill, NJ 08034
(856) 685-7420

Counsel for Defendant:

Allison M Tomljenovic, Esq.
Cooper Levenson
1125 Atlantic Avenue
Atlantic City, NJ 08401
(609) 344-3161

3. D'Orazio v. Washington Twp., 2011 WL 6715635 (D.N.J. Oct. 18, 2011), report and recommendation adopted in part, 2011 WL 6717427 (D.N.J. Dec 21, 2011), aff'd in part, remanded in part, 501 F. App'x 185 (3d Cir. 2012)

In this civil rights action, plaintiff alleged, pursuant to 42 U.S.C. § 1983, that he was retaliated against and discriminated against in violation of the First, Fourth, and Fourteenth Amendments of the United States Constitution when his employer, defendant Washington Township, failed to promote him from Special Law Enforcement Officer (part-time/seasonal) to a full-time law enforcement officer. The Honorable Joseph E. Irenas (S.U.S.D.J.) dismissed most of plaintiff's claims on summary judgment and concluded that plaintiff's total wage loss claim equaled $270. Judge Irenas ultimately entered an Order adopting the defendants Offer of Judgment and indicated that plaintiff was also entitled to reasonable attorney's fees and costs. I issued a report and recommendation providing a detailed calculation of and then awarding plaintiff attorney's fees and costs.

Plaintiff appealed the report and recommendation. Judge Irenas accepted the report and recommendation in part and further reduced the award. The case was then appealed to the Third Circuit which affirmed in part and remanded.

Counsel for Plaintiff:

Jacqueline M. Vigilante, Esq.
99 North Main Street
Mullica Hill, NJ 08062
(856) 223-9990

Counsel for Defendant:

Michael Barker, Esq.
Barker, Gelfand & James
Linwood Greene
210 New Road, Suite 12
Linwood, NJ 08221
(609) 601-8677

4. GLeS, Inc. v. MK Real Est. Dev. & Trade Co., 2012 WL 12902795 (D.N.J. Dec. 28, 2012), aff'd, 530 F. App'x 153 (3d Cir. 2013), aff'd, 511 F. App'x 189 (3d Cir. 2013)

In this breach of contract case, plaintiff, a fuel and fuel brand supplier, claimed that defendant, a gas station operator, failed to pay for fuel supplied and failed to comply with branding requirements. The parties consented to my jurisdiction. I presided over a two-day bench trial. Thereafter, I issued Findings of Fact and Conclusions of Law entering judgment in favor of plaintiff and against defendant. My decision was affirmed on appeal.

Counsel for Plaintiff:

Michael Vincent Tinari, Esq.
Leonard, Sciolla, Hutchison, Leonard & Tinari
712, East Main Street, Suite 1A
Moorestown, NJ 08057
(856) 273-0109

Counsel for Defendant:

Jeffrey H. Sutherland, Esq.
Jeffrey H. Sutherland, PC
Linwood Commons
2106 New Road, Suite E-5
Linwood, NJ 08221

(609) 601- 2345

5. Ingram v. County of Camden, No. 14-5519 (JRS, EDPA) (KMW), 2019 WL 1424330 (D.N.J. Mar. 29, 2019)

In this civil rights action, plaintiff brought suit pursuant to 42 U.S.C. § 1983 alleging that several Camden County police officers violated his constitutional rights during his arrest by engaging in excessive force and failing to render medical care. Plaintiff alleges that he was rendered a quadriplegic as a result of the arrest. Defendants contend that plaintiff's injuries resulted from his own actions. I handled all case management and resolved several complicated and contentious discovery disputes related to plaintiff's expert report. The trial is delayed by COVID and remains pending. The Honorable Juan R. Sanchez (EDPA) is sitting by designation.

Counsel for Plaintiff:

Beth G. Baldinger, Esq.
Mazie Slater Katz & Freeman LLC
103 Eisenhower Parkway
Roseland, NJ 07054
(973) 228-9898

Counsel for Defendant County of Camden:

William F. Cook, Esq.
Brown & Connery, LLP
360 Haddon Avenue
P.O. Box 539
Westmont, NJ 08108
(856) 854-8900

William M. Tambussi, Esq.
Brown & Connery, LLP
360 Haddon Avenue
P.O. Box 539
Westmont, NJ 08108
(856) 854-8900

Counsel for Defendant Officer Merck:

Jay J. Blumberg, Esq.
Blumberg & Wolk, LLC
158 Delaware Street
P.O. Box 68
Woodbury, NJ 08096

(856) 848-7472

Counsel for Defendant Officer Gennetta:

Dean R. Wittman, Esq.
Zeller & Wieliczko, LLP
120 Haddontowne Court
Cherry Hill, NJ 08034
(856) 428-6600

6. Maddy v. General Electric Co., No. 14-490 (JBS)(KMW), 2016 WL 769394 (D.N.J. Feb. 26, 2016)

This case involved claims of a nationwide Fair Labor Standards Act collective action brought by technicians responsible for repairing residential appliances. Plaintiffs claimed that they were not being properly compensated under the Act because their employer was excluding time spent when they logged on to their computers before the work day began and during designated break times. Defendant asserted that the time spent on these tasks was not compensable and largely included time the employees spent addressing personal matters. I handled all case management including complicated discovery disputes that involved the production of electronically stored information. The parties consented to my jurisdiction. I granted their Motion To Approve Settlement and terminated the case. Thereafter, plaintiffs moved to have a court appointed independent auditor, and I denied that motion.

Counsel for Plaintiffs:

Joshua S. Boyette, Esq.
Swartz Swidler, LLC
1101 Kings Highway North, Suite 402
Cherry Hill, NJ 08034
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Counsel for Defense:

Nina K. Markey, Esq.
Littler Mendelson, PC
Three Parkway
1601 Cherry Street, Suite 1400
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(267) 402-3020

7. May v. Borough of Pine Hill, No. 10-2628 (KMW), 2014 WL 2931020 (D.N.J. June 30, 2014)

Plaintiff, the Tax Collector for the Borough and an employee of the Borough for more than 20 years, instituted this lawsuit pursuant to several federal and state employment laws. Plaintiff claimed that she was subjected to sexual harassment, was retaliated against for complaining about unlawful conduct. Plaintiff further alleged that her termination violated the Federal Employee Retirement Income Security Act of 1974 (ERISA) and Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). In addition to extensive factual discovery and disputes related to same, the case was further complicated by the then pending criminal charges filed by the Borough against plaintiff. I handled all aspects of case management. I facilitated a settlement between the parties. The parties consented to my jurisdiction. I entered the Stipulation and Order of Dismissal with Prejudice as to all parties.

Counsel for Plaintiff:

Richard F. Klineburger, III, Esq.
38 Haddon Avenue, Suite 100
Haddonfield, NJ 08033-2463
(856) 428-7469

Counsel for Defense:

Christine P. O'Hearn, Esq.
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360 Haddon Avenue
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(856) 854-8900

8. Suarez v. Johnson, No. 16-2509 (KMW), 2018 WL 2228224 (D.N.J. Jan. 29, 2018); 2018 WL 621290 (D.N.J. Jan. 29, 2018)

This case involved a rear-end motor vehicle accident. Plaintiff was a passenger in the vehicle that was struck by defendant. The defendant asserted that plaintiff failed to satisfy the verbal threshold to claim damages and the applicability of the Deemer Statute. I handled all aspects of case management. The parties consented to my jurisdiction. I entered partial summary judgment in favor of plaintiff finding defendant liable for damages and provided an analysis of the Deemer Statute. I presided over a five-day jury trial on damages. The jury found for defendant, and I entered judgment in favor of defendant.

Counsel for Plaintiff:

Sean E. Quinn, Esq.
Quinn Law Group
1500 Market Street
Centre Square West

Suite 4000 West
Philadelphia, PA 19102
(215) 360-3666

Counsel for Defendant:

Darren Christopher Kayal, Esq.
Rudolph & Kayal
Atlantic Corporate Center
2317 Highway 43, Suite 2-C
Manasquan, NJ 08736
(732) 449- 0190

9. Treiber v. Krug, No. 08-1476 (KMW), 2011 WL 2908668 (D.N.J. 2019)

This was a personal injury and products liability case involving plaintiff's fall from the roof top deck of their beach house rental. Plaintiff sustained extensive injuries, including a broken back. The case involved significant medical discovery and evidence that included a multi-million-dollar life care plan. Plaintiff sued the homeowners, roof decking manufacturer, and deck installers. I presided over a six-day trial. The jury returned a two-million-dollar verdict for plaintiff. I entered judgment in favor of plaintiffs and against all defendants. I also granted plaintiff's Motion for Enhanced Attorney Fees.

Counsel for Plaintiffs:

Thomas W. Sheridan, Esq.
Sheridan & Murray, LLC
424 South Bethlehem Pike
Third Floor
Fort Washington, PA 19034
(215) 977-9500

Counsel for Defendant Krug:

Rose Marie Dimeo, Esq.
Law Office of Linda Bauman
50 Millstone Road Building 300
Suite 140
East Windsor, NJ 08520
(609) 308-1090

Counsel for Defendant J.W. Hand & Sons:

Robert J. Borrelle, Sr., Esq.
Dempster & Haddix

161 Gaither Drive, Suite 201
Mount Laurel, NJ 08054
(856) 778-7800

Counsel for Defendant Railing Dynamics, Inc.:

Lewis K. Jackson, Esq.
Styliades, Jackson & Dimeo
10 Lake Center Executive Park
401 Route 73 North, Suite 310
Marlton, NJ 08053
(856) 596-7778

10. United States v. Watson, No. 17-5537 (KMW)

On May 8, 2017, the United States filed a one-count information against Watson, the former Executive Director of the Ocean City Housing Authority, charging her with embezzling, stealing, purloining, and converting federal funds, in violation of 18 U.S.C. § 641. The parties consented to trial before me and reached a plea agreement. On September 8, 2017, I accepted the guilty plea and entered judgment against Watson and imposed three years of supervised release. The sentence was not appealed by either party.

Counsel for the United States:

Matthew J. Skahill
United States Magistrate Judge
United States District Court
District of New Jersey
Mitchell H. Cohen U.S. Courthouse
1 John F. Gerry Plaza Room 2040
Camden, NJ 08101-0849
(856) 757-5446

Counsel for Defendant:

Lisa Evans Lewis
Assistant Federal Public Defender
Office of the Federal Public Defender
800-840 Cooper Street, Suite 350
Camden, NJ 08101
(856) 757-5341

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. Sabinsa Corp. v. Herbakraft, Inc., No. 14-04738, 2017 U.S. Dist. Lexis 221481 (D.N.J. July 25, 2017)

Counsel for Plaintiff:

Sean R. Kelly, Esq.
Saiber, LLC
18 Columbia Turnpike, Suite 200
Florham Park, NJ 07932
(973) 622-3349

Counsel for Defendant:

Jason B. Lattimore, Esq.
Law Office of Jason B. Lattimore
55 Madison Avenue, Suite 400
Morristown, NJ 07960
(973) 998-7477

2. Maddy v. Gen. Elec. Co., No. 14-490, 2016 WL 769394 (D.N.J. Feb. 11, 2016), report and recommendation adopted, 2016 WL 780304 (D.N.J. Feb. 26, 2016)

Counsel for Plaintiffs:

Joshua S. Boyette, Esq.
Swartz Swidler, LLC
1101 Kings Highway North Suite 402
Cherry Hill, NJ 08034
(856) 685-7420

Counsel for Defendant:

Nina K. Markey, Esq.
Littler Mendelson PC
Three Parkway 1601 Cherry Street
Suite 1400
Philadelphia, PA 19102-1321
(267) 402-3020

3. Gles, Inc. v. MK Real Est. Dev. & Trade Co., No. 08-1447, 2011 WL 1769818 (D.N.J. May 6, 2011), aff'd, 511 F. App'x 189 (3d Cir. 2013); GLeS, Inc. v. MK Real Est. Dev. & Trade Co., No. 08-cv-1447, 2012 WL 12902795 (D.N.J. Dec. 28, 2012), aff'd, 530 F. App'x 153 (3d Cir. 2013)

Counsel for Plaintiff:

Michael Vincent Tinari, Esq.
Leonard, Sciolla, Hutchison, Leonard & Tinari
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(856) 273-0109

Counsel for Defendant:

Jeffrey H. Sutherland, Esq.
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Linwood Commons
2106 New Road Suite E-5
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(609) 601-2345

4. Moore v. City of Gloucester, No. 10-5778, 2012 WL 6027664 (D.N.J. June 28, 2012), report and recommendation adopted, 2012 WL 6021663 (D.N.J. Dec. 3, 2012)

Counsel for Plaintiff:

Pro Se

Counsel for Defendant:

Paola Kaczynski, Esq.
William J. Ferren & Associates
1500 Market Street Suite 2920
Philadelphia, PA 19102
(267) 675-3017

5. Emory et al. v. Greyhound Bus Lines, Inc., No. 10-6358, 2012 WL 685832 (D.N.J. Feb. 15, 2012), report and recommendation adopted, 2012 WL 685692 (D.N.J. Mar. 1, 2012)

Counsel for Plaintiffs:

Deborah L. Mains, Esq.
Costello & Mains, PC
18000 Horizon Way, Suite 800
Mount Laurel, NJ 08054
(856) 291-0642

Counsel for Defendant:

Gregory T. Alvarez, Esq.
Jackson Lewis PC
200 Connell Drive, Suite 2000
Berkely Heights, NJ 07922
(908) 795-5200

6. D'Orazio v. Washington Twp., No. 07-5097, 2011 WL 6715635 (D.N.J. Oct. 18, 2011), report and recommendation adopted in part, Civ. No. 07-5097 (JEI, 2011 WL 6717427 (D.N.J. dec 21, 2011), aff'd in part, remanded in part, 501 F. App'x 185 (3d Cir. 2012)

Counsel for Plaintiff:

Jacqueline M. Vigilante, Esq.
99 North Main Street
Mullica Hill, NJ 08062
(856) 223-9990

Counsel for Defendant:

A. Michael Barker, Esq.
Barker, Gelfand & James
Linwood Greene 210 New Road
Suite 12
Linwood, NJ 08221
(609) 601-8677

7. Crawford v. Am. Legion Ambulance Ass'n, No. 08-2338, 2009 WL 5218060 (D.N.J. Dec. 30, 2009)

Counsel for Plaintiff:

David P. Heim, Esq.
Bochetto & Lentz
1524 Locust Street
Philadelphia PA 19102
(215) 735-3900

Counsel for Defendant:

Lee Harris Eckell, Esq.
Fowler, Hirtzell McNulty & Spaulding
10000 Midlantic Drive, Suite 402W,
Mount Laurel, NJ 08054

(856) 242-2131

8. Equal Emp. Opportunity Comm'n v. Friedman Realty Grp., Inc., No. 17-7659, 2018 WL 10038314 (D.N.J. Oct. 11, 2018)

Counsel for EEOC:

Tanisha R. Wilburn, Esq.
U.S. Equal Employment Opportunity Commission Washington Field Office
131 M Street, Northeast
Washington, DC 20507
(202) 419-0712

Counsel for Defendant:

Steven E. Angstreich, Esq.
Weir and Partners LLP
20 Brace Road Suite 200
Cherry Hill, NJ 08034
(856) 740-1490

9. Smart Vent, Inc. v. USA Floodair Vents, Ltd., No. 10-0168-JBS-KMW, 2012 WL 12909887 (D.N.J. Apr. 25, 2012); 2011 WL 13146436 (D.N.J. Oct. 31, 2011)

Counsel for Plaintiff:

Anthony J. DiMarino, Esq.
52 Haddonfield Berlin Road
Suite 1000
Cherry Hill, NJ 08034
(856) 853-0055

Counsel for Defendant:

Robert Mahoney, Esq.
Norris McLaughlin PA
400 Crossing Boulevard, 8th Floor
P.O. Box 5933
Bridgewater, NJ 08807-5933
(908) 722-0700

10. Russell v. City/Town of Hammonton, No. 15-1669, 2020 WL 831124 (D.N.J. Feb. 20, 2020)

Counsel for Plaintiff:

Pro Se

Counsel for Defendant:

Thomas Reynolds, Esq.
Reynolds & Horn, PC
116 South Raleigh Avenue, Apartment 9B
Atlantic City, NJ 08401

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

To the best of my knowledge and after having undertaken a search on the internet, certiorari has not been requested in any of my cases.

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

I have undertaken a search of all decisions on LexisNexis and Westlaw and my internal files to locate any decisions, discovery orders, and reports and recommendations which have been reversed, rejected, or modified by a reviewing court. To the best of my knowledge all responsive cases are listed below.

Long v. Legget & Platt Inc. et al., No. 16-4907. In this case, plaintiff was terminated from employment, the Honorable Noel L. Hillman (U.S.D.J.) reversed my decision to deny plaintiff discovery related to complaints of harassment. Discovery order supplied. Long v. Legget & Platt Inc., No. 16-cv-4907, slip op. (D.N.J. June 13, 2018), rev'd, 2019 WL 626428 (D.N.J. Feb. 13, 2019)

Nat'l Amusements, Inc. v. Borough of Palmyra, No. 08-2469, 2010 WL 3210693 (D.N.J. Feb. 23, 2010), report and recommendation rejected, 2010 WL 3199880 (D.N.J. Aug. 12, 2010). In this civil rights case, plaintiff, operator of an "open air" flea market, filed for preliminary injunction seeking to vacate the municipal government's denial of access to the property. I granted plaintiff's application for interim attorney's fees and costs. The Honorable Renee M. Bumb (U.S.D.J.) declined to adopt my report and recommendation.

Otsuka Pharm. Co., LTD. V. Aurobindo Pharma Ltd., No. 14-3306, 2016 WL 11645388 (D.N.J. Oct. 20, 2016), vacated, 2017 WL 11463663 (D.N.J. Sept. 15, 2017). In this Abbreviated New Drug Application case, the Honorable Jerome B. Simandle (S.U.S.D.J.) reversed my decision to exclude as untimely plaintiff's supplemental expert report.

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

As a magistrate judge, I issue orders on non-dispositive matters or orders on dispositive matters in cases where both parties have consented to magistrate judge jurisdiction. My non-dispositive orders include discovery matters, motions to amend pleadings, motions to extend the discovery schedule and other miscellaneous civil motions. I issue hundreds of such orders each year. Very few of those orders are published, although I have filed all of my orders and opinions with our court's electronic case filing system. With respect to any dispositive motions referred to me by the district judge, the reports and recommendations I issued are published electronically on the court's electronic case filing system which is available to the public. In addition, the majority of my decisions addressing substantive issues are published electronically on Westlaw or LexisNexis.

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 opinions that addressed significant 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 keeping with the Code of Conduct for United States Judges and 28 U.S.C. § 455, I review every new case assigned to me to ensure that no conflict of interest exists. I maintain a standing recusal list with the Clerk's Office. I also recuse myself in any case that I or an immediate family member has a financial interest. In addition, I recuse myself in any case where I have significantly close relationship (family, business, or social) with a party, counsel, or witness.

I have recused myself from cases involving the City of Atlantic City. I believe that because my prior representation of this particular municipality required me to learn the internal operations and form close business relationships with some of its employees I could not fairly and impartially render any decisions in cases involving Atlantic City. I periodically review new filings to confirm this approach to recusal.

I have included Rutgers Law School and Rowan University on my recusal list for any periods that I am teaching.

I have undertaken a search of all decisions on LexisNexis and Westlaw and my internal files to locate any motions for recusal and opinions related thereto. To the best of my knowledge, one pro se litigant filed a recusal motion against me and the district judge assigned to the case. Hickson et al., v. Mauro et al., 1:11-cv-06304-NLH-KMW. The motion was denied and not appealed. I have not found any other motions.

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.

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 never served as a law clerk to a judge.

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

      I have never practiced law alone.

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

      1991 – 2009
      Jasinski & Williams, P.C. (formerly Jasinski & Paranac, Jasinski & Bisceglia)
      Ten Park Place
      Newark, New Jersey 07102
      and
      1125 Atlantic Avenue, Suite 525
      Atlantic City, New Jersey 08401
      Managing Partner, Atlantic City Office (2002 – 2009)
      Partner (1998 – 2002)
      Associate (1992 – 1998)
      Summer Associate/Law Clerk (1991 – 1992)

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

      As a practicing lawyer, I never served as a mediator.

      Although mediation was not part of my practice with the firm, during some of my time at the firm I was a member and Panel Chair of the New Jersey Supreme Court District Fee Arbitration Committee. In that role, I arbitrated fee disputes between clients and attorneys in accordance with N.J. Ct. R. 1:20A. I have no notes, records, or documents relating to any of these matters.

b. Describe:

   i. the general character of your law practice and indicate by date when its

character has changed over the years.

I practiced law with one law firm under the direction of the Managing Partner David F. Jasinski, Esq. In 1991, during my final year of law school, I began working with Mr. Jasinski as a Summer Associate/Law Clerk at Jasinski & Bisceglie, his recently-formed firm. The firm name changed as two other named partners departed the firm; however, staff and associate attorneys, including myself, remained. From its inception, the firm primarily represented management in all aspects of employment and labor law. This representation remained the general character of the legal practice for the duration of my employment. The firm's clients were usually small to mid-size employers in the private and public sector.

My practice was primarily dedicated to employment litigation, conducting internal investigations of employee complaints, developing and conducting workplace training workshops, reviewing and revising workplace policies and procedures and employee handbooks for compliance with federal and state laws and regulations, and counseling human resources professionals on routine employee-related matters.

In 1996, I began primarily representing municipalities in Southern New Jersey in employment litigation, public sector collective bargaining, and Section 1983 cases in federal and state court. The general character of my law practice did not change except that over time my cases and issues became increasingly more complex, and my role expanded.

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

My typical clients were small to mid-size employers in the private and public sector and consisted mostly of employers in the healthcare industry, and municipalities. The firm was also occasionally retained as assigned counsel on specific litigation for large corporations.

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 appeared in court frequently because 80 percent of my law practice involved litigation in federal and state courts and before administrative bodies.

i. Indicate the percentage of your practice in:
   1. federal courts: 45%
   2. state courts of record: 45%
   3. other courts: 0%
   4. administrative agencies: 10%

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.

During my seventeen years as a litigator, I tried between ten to fifteen cases to verdict in courts of record including cases before administrative law judges. I was lead counsel in at least eight civil cases tried to verdict in federal and state court. I was co-counsel in two to three civil cases tried to verdict in other federal or state court proceedings. I was lead counsel in at least two cases that went to verdict before administrative law judges and co-counsel in at least one other case. In addition, given the nature of my law practice, I appeared numerous times at proceedings before the National Labor Relations Board, Equal Employment Opportunity Commission, New Jersey Division of Civil Rights, and at arbitration proceedings.

i. What percentage of these trials were:
1. jury: 90%
2. non-jury: 10%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

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. Bennett v. City of Atlantic City, No. 03-00823 (JEI-JBR), 288 F. Supp. 2d 675 (D.N.J. 2003)

Plaintiff Bennett and initially, twenty-one other firefighters for the City of Atlantic City, brought suit alleging racial discrimination and hostile working environment, in violation of the 1980 Consent Decree between the City of Atlantic City and the Department of Justice. At the time of trial ten firefighters remained in the case. I represented the City of Atlantic City and its current and former Fire Chiefs. I managed all aspects of pre-trial discovery and pre-trial motions, and was lead trial counsel. This sixteen-day jury trial (which spanned the course of six-weeks), proceeded before the Honorable Joel B. Rosen, U.S.M.J. On January 24, 2006, judgment was entered in favor of three of the remaining ten plaintiffs in the amounts of $1, $15,000, and $200,000.

Counsel for Plaintiffs:

Mark B. Frost, Esq.
Mark B. Frost & Associates
1515 Market Street, Suite 1300
Philadelphia, PA 19102
(215) 351-3333

Greg L. Zeff, Esq.
Zeff Law Firm LLC
100 Century Parkway, Suite 160
Mt. Laurel, NJ 08054
(856) 778-9700

2. Chow v. City of Atlantic City, No. 95-1356 (JBS) (D.N.J. 1995)

This was an excessive force case brought against the City of Atlantic City and four of its police officers by Mr. and Mrs. Chow. Mrs. Chow claimed that the officers used excessive force when arresting her and that she was denied her medication when taken into custody. I was lead trial counsel representing the City for the eight-day jury trial, which was presided over by The Honorable Jerome B. Simandle (U.S.D.J). The jury returned a verdict in favor of all defendants.

Counsel for Plaintiffs:

Richard T. Fauntleroy, Esq.
Richard T. Fauntleroy, PC
1525 South Main Street
Pleasantville, NJ 08232
(609) 646-4466

Counsel for Officer Kurtz:

Joseph Gindhart, Esq.
1 South New York Avenue
Atlantic City, NJ 08401
(609) 345-3050

Counsel for Officer Davidson:

Peter L. Bruso, Esq.
6 West Glendale Avenue
Pleasantville, NJ 08232
(609) 645-8300

Counsel for Officer Burns:

Catherine Tuohy, Esq.
Tuohy & Tuohy
4707 Atlantic Avenue
Atlantic City, NJ 08401
(609) 345-0005

3. Flamma v. John Does 1-25, N.J. Super. Ct., Atlantic County, No. ATL-L-009324-06

Plaintiff Flamma alleged that he was not promoted to Fire Captain because of his race (Caucasian). The Honorable Joseph Kane presided over the five-day jury trial which resulted in a verdict for plaintiff. The City appealed, and the Appellate Division reversed and entered judgment for the City holding that, *inter alia*, the City could not promote from an expired promotional list. My firm was retained by the City at the time of trial, and I was trial counsel. The firm continued to represent the City on appeal. While the case was pending on appeal, I began my service as a United States Magistrate Judge.

Counsel for Plaintiff:

Michelle Douglass, Esq.
Burnham Douglass Law Group
8000 Sagemore Drive, Suite 8303
Marlton, NJ 08053
(856) 512-1461

4. Glass v. Snellbaker and City of Atlantic City, No. 05-01971 (JBS-JS), 2008 WL 4416450 (D.N.J. Sept. 23, 2008)

Deputy Chief of Police Glass brought this lawsuit against the Chief of Police and the City of Atlantic City for being transferred in retaliation for exercising his rights under the First Amendment by making a statement to the local Police Benevolent Association that criticized the Chief. This six-day trial before the Honorable Jerome B. Simandle resulted

in a jury verdict for plaintiff in the amount of $796,000 against all defendants and $75,000 in punitive damages against Chief Snellbaker. My firm was counsel of record for the City of Atlantic City from the inception of the case. I handled all aspects of pre-trial discovery and pre-trial motion practice. I was lead counsel and lead trial counsel for the City.

Counsel for Plaintiff:
Michelle Douglass, Esq.
Burnham Douglass Law Group
8000 Sagemore Drive, Suite 8303
Marlton, NJ 08053
(856) 512-1461

Counsel for Defendant Chief Snellbaker:

Kristopher Facenda, Esq.
Nehmad, Perillo & Davis
4030 Ocean Heights Avenue
Egg Harbor Township, NJ 08234
(609) 927-1177

5. Green v. Bonanni and the City of Atlantic City, N.J. Super. Ct., Atlantic County, No. ATL-L-001394-96

Plaintiff Green, a member of the police department clerical staff, alleged that she was subject to a sexually hostile work environment based on a single incident. I represented the City of Atlantic City. I handled all aspects of pre-trial discovery including expert discovery and complicated pre-trial motions. The case was tried in Superior Court Atlantic County. The Honorable Charles R. Previtti, J.S.C. Atlantic County Superior Court presided over the jury trial, which resulted in a verdict for the plaintiff.

Counsel for Plaintiff:

Clifford Van Syoc, Esq.
535 Route 39
Cherry Hill, NJ 08540
(856) 429-6444

Counsel for Defendant Bonanni:

D. William Subin, Esq. (believed to be retired)
308 South New York Road
Suite B-1
Galloway, NJ 08205
I was unable to locate a telephone number for Mr. Subin.

6. Hargrave v. County of Atlantic, No. 00-2568 (SSB) 262 F. Supp. 2d 393 (D.N.J. 2003)

Plaintiff Hargrave brought gender-based hostile work environment claims under Title VII of the Civil Rights Act and the New Jersey Law Against Discrimination against the County and four employees including plaintiff's supervisors. This case was litigated before the Honorable Stanley S. Brotman (S.U.S.D.J.) I represented an individual supervisor and was extensively involved in discovery, which spanned a two-year period and led to significant motion practice involving individual liability under Title VII and the New Jersey Law Against Discrimination. The case settled just prior to trial.

Counsel for Plaintiff:

Frank L. Corrado, Esq.
2700 Pacific Avenue
Wildwood, New Jersey 08620
(609) 729-1333

Counsel for County of Atlantic:

William P. Busch, Jr., Esq.
Atlantic County Department of Law
1333 Atlantic Avenue
Atlantic City NJ 08401
(609) 345-6700

Counsel for Defendant Martello:

Edwin J. Jacobs, Jr., Esq.
Jacobs & Barbone, P.A.
1125 Atlantic Avenue
Atlantic City, NJ 08401
(609) 348-1125

Counsel for Defendant Ross:

Katherine Hartman, Esq.
Attorneys Hartman, Chartered
68 East Main Street
Moorestown, NJ 08057
(856) 209-6087

7. Jones v. South Jersey Industries, N.J. Super. Ct., Atlantic County, No. ATL-L-15354-06

The firm was retained by South Jersey Industries to represent it in litigation and

collective bargaining. This representation began in and around 2005 and continued after I began serving as a United States Magistrate Judge. I was the lead negotiator in collective bargaining and I personally handled this age and disability discrimination case arising out of plaintiff's termination from employment. Plaintiff was employed as a natural gas sales person whom the employer asserted was terminated for failing to meet his sales goals. This case was intensely contested and involved novel issues relating to the definition of "perceived as having a disability" under the New Jersey Law Against Discrimination. Because plaintiff was a long term employee, discovery was protracted and required numerous depositions and voluminous motion practice. I handled all pre-trial matters, discovery, and pre-trial motion practice. The Honorable Steven P. Perskie J.S.C. was the assigned judge during my appearances in this case.

Counsel for Plaintiff:

Kimberly D. Sutton, Esq.
Obermayer, Rebman, Maxwell & Hippel, LLP
20 Brace Road, Suite 300
Cherry Hill, New Jersey 08034
I am unable to locate a telephone number for Ms. Sutton

8. Karins v. City of Atlantic City, 152 N.J. 532, 706 A.2d 706 (N.J. 1998); OAL Docket No. CSV 3632-94

I represented the City of Atlantic City in this case, which presented a First Amendment challenge to the authority of the City's Fire Chief to discipline an off-duty firefighter, plaintiff Karins, for directing a racial slur to an on-duty police officer. Upon learning of the incident, the Chief of the Fire Department suspended Karins. Karins appealed his suspension through the administrative agency, which reversed the suspension, and the City sought appellate review. The Superior Court of New Jersey - Appellate Division affirmed. The City appealed to the New Jersey Supreme Court. The New Jersey Supreme Court upheld the disciplinary action imposed by the City. My co-counsel and I were the principal attorneys on behalf of the City of Atlantic City and began our representation at the appellate stage. I was on the brief in the Appellate Division and argued the case before the New Jersey Supreme Court. I began representing the City of Atlantic City in 1996 and continued representing the City in various matters until 2009.

Counsel for Plaintiff:

Jeffrey S. McClain, Esq.
Holtzman McClain & Londar, P.C.
524 Maple Avenue, Suite 200
Linwood, NJ 08221
(609)-601-0900

9. Lyles, Bonds, Gadson v. Flagship Resort Development Corp., No. 01-cv-6118 (JEI-AMD), 371 F. Supp. 2d 597 (D.N.J. 2005)

My firm represented Flagship Resort Development Corp. from approximately 1999 through 2009 in litigation and counseling on routine employment matters. In this case, plaintiffs, employees of Flagship alleged that they were wrongfully terminated because of the defendant's utilization of a polygraph examination in violation of both federal and state law. I represented Flagship Resort Development Corp. and handled all aspects of pre-trial discovery and pre-trial motions. This five-day jury trial was presided over by The Honorable Joseph E. Irenas (S.U.S.D.J.) and resulted in a verdict for plaintiffs. The case was appealed, remanded, and eventually settled. I was counsel of record and was primarily responsible for all pre-trial matters. Louis M. Barbone, Esq., was lead trial counsel and I was co-counsel for the trial I did not have a role with the appeal.

Counsel for Plaintiffs:

Mark Pfeffer, Esq. (deceased)
Goldenberg, Mackler, Sayegh, Mintz, Pfefffer, Bonchi & Gill
1030 Atlantic Avenue
Atlantic City, NJ 08401
(609) 344-7131

James Grimley, Esq.
Grimley Law
22 North Shore Road
Absecon, NJ 08201
(609) 241-8970

10. Mallory v. City of Atlantic City, N.J. Super. Ct. Atlantic County, No. ATL-L-16644-06

Plaintiff Mallory brought this lawsuit alleging that two Atlantic City police officers used excessive force when arresting him. My firm represented the City and the officers from the inception of the lawsuit. I managed all pre-trial matters and was lead trial counsel. The Honorable William E. Nugent, J.S.C. Superior Court of New Jersey - Atlantic County presided over the jury trial. The jury returned a verdict in favor of all defendants.

Counsel for Plaintiff:

Robert Beakley, Esq.
426 Shore Road at Groveland Avenue
Somers Point, NJ 08244
(609) 601-0601

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.)

Currently, I am one of a two-judge team presiding over ReNew Camden, the United States District Court, District of New Jersey, Camden Vicinage, re-entry court. My participation in reentry court allows me to facilitate the transition of formerly incarcerated individuals into the community. Most importantly, along with a team that consists of Assistant United States Attorneys, Assistant Federal Public Defenders, Probation Officers and other community stakeholders, our team helps individuals recently released from incarceration secure stable housing and employment, and establish positive familial relationships.

As an employment and labor attorney, the most significant legal activity I pursued in addition to litigation was negotiating collective bargaining agreements on behalf of private and public sector employers. This work enabled me to examine documents that regulate the workplace and compensation, and provided me with the opportunity to review and analyze workplace rules and policies and establish fair compensation and benefits packages. In particular, I was involved in these negotiations at a time when employees were being asked for the first time to contribute to health insurance coverage as the cost of these benefits were skyrocketing. I believe that my demeanor, understanding, and perspective helped to facilitate agreement.

The other aspect of the representation that our firm provided was offering workplace training programs. Specifically, in coordination with others at the firm, creating, developing and conducting Sexual Harassment Training and Diversity Training Program for clients enabled me to keep abreast of the law in this area as it evolved through case law over time and educate front line and managerial employees of their respective rights and responsibilities under the various employment laws.

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.

Since 2020, I have served as an Adjunct Instructor for undergraduate students at Rowan University. I currently teach or have taught Introduction to Law and Courts and Civil Aspects of Law Enforcement, both of which are introductory level courses. Civil Aspects of Law Enforcement is a required course for Law and Justice majors. These courses are designed to introduce students to key legal concepts and terms, identify legal principles, and conceptualize legal theories related to civil litigation. Syllabi supplied.

From 2010 to 2014, I served as an Adjunct Professor at Rutgers Law School-Camden. I co-taught a Litigation course (Spring 2010 and Spring 2014) with a tenured professor and

fellow magistrate judges. This six-credit course took mostly third year law students through a case hypothetical, beginning with the initial client interview, concluding with the filing of a dispositive motion. Syllabus supplied.

I co-taught Electronic Discovery with another magistrate judge (Spring 2011, 2012, and 2014). This course, created by my colleague, was designed to introduce law students to this developing area of discovery. Syllabus supplied.

I taught Pre-Trial Litigation (Spring 2012 and Spring 2013). This course covered the strategic thinking that is essential to the litigation process by exploring pre-trial skills. Syllabus supplied.

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

    None.

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

    I plan to continue as an Adjunct Instructor at Rowan University.

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.

As a magistrate judge, I recuse myself in any cases in which my former law partner David F. Jasinski, Esq. and the other lawyers in his firm, Jasinski P.C. are counsel. If confirmed, I will continue to recuse myself from any case in which I or an immediate family member has a financial interest; in any case where I have a significantly close relationship (family, business or social) with a party, counsel, or witness; and in any case involving the City of Atlantic City.

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

If confirmed as a district court judge, I would continue to resolve any potential conflict of interest by adhering to the Code of Conduct for United States Judges, 28 U.S.C. § 455 and 28 U.S.C. § 144, and all other applicable policies and procedures of the United States Courts.

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

As a magistrate judge, I am not permitted to represent clients, pro bono or otherwise. However, I regularly serve on panels that provide continuing legal education to attorneys, advice for law students, and engage in civics education for the community.

As a practicing attorney, I served on two New Jersey Supreme Court Committees.

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 March 2019, I submitted my resume to an Advisory Group for Senator Booker. In July 2019, I interviewed with the Advisory Group. On December 15, 2020, I was interviewed by members of Senator Booker's staff. On December 21, 2020, I interviewed with Senator Booker. On January 11, 2021,

I interviewed with Senator Menendez and members of his staff. On February 19, 2021, I interviewed with attorneys from the White House Counsel's Office. Since that time, 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.



